

# *Fitness to Practise Report*

## *15 June 2005-31 December 2006*

**General  
Chiropractic  
Council**



**Protecting patients  
Setting standards  
Promoting the profession**

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# Chairman's foreword

## Introduction

The purpose of this *Fitness to Practise Report* is to help chiropractors reflect upon their practice, and identify any possible weaknesses, by highlighting the mistakes of others. For example, do you continually assess your patients' treatment needs? Are you confident about your record keeping? Have you ever made a silly, off-hand comment to a patient that didn't go down well? Think about it, discuss it with colleagues and your professional associations – and then please set about remedying any shortcomings you identify.

## What people want

We all expect to be treated with consideration and respect. If we are unwell or in pain we will usually turn to health professionals for help and treatment. At these times we are particularly vulnerable and rely on health professionals to do their best for us.

Within the context of chiropractic this means observing professional boundaries, applying professional judgement and remembering that each patient is an individual – not a 'case' or a condition. The holistic approach chiropractors take to patient care usually helps us to avoid the latter – but it happens.

## Doing the right thing: the *Code of Practice and Standard of Proficiency* can help you

On a daily basis chiropractors are confronted with dilemmas and decisions. Your training, experience, your understanding of ethics and respect for the patient (and others who consult you in your professional capacity) will help you to think it all through and do, and say, the right thing. The GCC's *Code of Practice and Standard of Proficiency* is integral to this process; it is essential that you are familiar with its principles, recognise their relevance to your daily practice, and know how to apply them. This *Fitness to Practise Report* demonstrates that things can go wrong when the *Code of Practice and Standard of Proficiency* is ignored or forgotten.

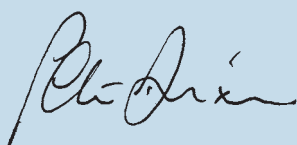
## Insight: an essential attribute for any health professional

The Professional Conduct Committee sometimes sees evidence of chiropractors so lacking in insight that they cannot recognise their actions for the serious abuses they are, nor acknowledge the harm for which they are responsible. The Professional Conduct Committee will always respond robustly to such evidence.

Insight, and the ability for critical self assessment, is essential for any health professional's development and improvement in practice. Failure to have this attribute means that mistakes and poor practice are not identified or corrected, leading to complaints. Prevention by taking proactive remedial action is better by far.

## Caring about standards

Statutory regulation gives the public and patients confidence that chiropractors set and uphold professional standards. In taking action to identify and remedy, where possible, unacceptable professional conduct, statutory regulation helps to protect the public, enhances the reputation of the chiropractic profession and the reputation of each and every chiropractor.



**Peter Dixon**

Chairman, General Chiropractic Council

# Learning points

## Introduction

**The range of learning points derived from professional conduct hearings increases year by year. Some of those set out below are recurring themes (items 1 to 6), while items 7 to 10 relate only to cases heard in the period June 2005 to December 2006.**

- 1 Improper relationships with patients**
- 2 Abuse of trust or exploitation of lack of knowledge**
- 3 Communication with patients**
- 4 Record keeping**
- 5 Review of treatment**
- 6 Use of X-rays**
- 7 Provision of reports**
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- 9 Treatment prescribed by another health professional**
- 10 Failure to refer for required medical treatment**

**We have to accept that it may take time for these learning points to be taken on board by the whole of the profession, so reiteration is important. What will be particularly damaging for the reputation of the chiropractic profession though, is if the range of learning points derived from professional conduct hearings simply continues to grow each year.**

## **1 Improper relationships with patients**

The Council for Healthcare Regulatory Excellence is currently working with all the healthcare regulatory bodies to develop guidelines, information leaflets and education programmes designed to maintain professional boundaries and prevent the abuse of patients. The products of this work will be distributed by the GCC as soon as they are available. In the meantime, chiropractors are urged to bear in mind the following points.

Several cases before the Professional Conduct Committee highlighted how essential it is for chiropractors to recognise professional boundaries with patients. Health professionals, including chiropractors, are in a position of power and trust and because of this patients are vulnerable. This is why the GCC's Code of Practice emphasises the principle that chiropractors must never abuse their professional standing.

The establishment and maintenance of appropriate professional boundaries between chiropractors and patients is essential if public confidence in the profession is to be upheld.

The onus is always on the chiropractor to ensure that no improper personal relationship is developed with a patient, even if the patient makes the first approach.

Remember, your relationship with your patients is a professional one. It is based on trust. To fulfil this role you need to apply your professional judgement impartially.

Chiropractors need also to apply their good sense. This includes using your understanding and insight to identify professional boundaries. Clearly, chiropractors must not use their professional

position to pursue a relationship with a patient (or a patient's close relative). To do so is an abuse of your professional position and your patient's trust.

If you find yourself facing these, or similar circumstances, you'll probably recognise the signs and you will have a responsibility to end the professional relationship and arrange alternative care for the patient.

## **2 Abuse of trust or exploitation of lack of knowledge**

The trust that the public places in chiropractors can be abused in a variety of ways. It may be through marketing activities that exploit the public even before they become patients. Or it may be by using strategies designed to lock patients into treatment plans that are excessive in both frequency and duration. Such treatment plans are exploitative, leading patients to believe they are more seriously ill than they are and thereby promoting undue dependence on chiropractic care.

Any abuse of trust or exploitation of lack of knowledge undermines the foundation of respect for the profession. It is particularly damaging when a conduct hearing exposes a complete lack of clinical justification for recommended treatment.

When a patient consents to treatment/care, it is essential that the plan of care is developed in discussion with the patient to ensure that

- it helps the patient to improve her/his own health and actively participate in her/his own care
- it has aims that are consistent with the patient's identified health and health needs, and anticipated changes in those health needs
- it is kept under continuous review by the chiropractor and modified appropriately, in line with the patient's changing health and health needs

All chiropractors must ensure that all the information they provide, or authorise others to provide on their behalf

- is factual and verifiable
- is not to be misleading or inaccurate in any way
- does not, in any way, abuse the trust of members of the public nor exploit their lack of experience or knowledge about either health or chiropractic matters
- does not put pressure on people to use chiropractic, for example by arousing ill-founded fear for their future health or suggesting that chiropractic can cure serious disease

## **3 Communication with patients**

Many of the complaints we receive about chiropractors contain an element of failure to communicate clearly and appropriately with patients. Good communication is at the heart of any professional relationship because it is essential that patients have the necessary information to make informed decisions about their initial and ongoing care and treatment.

The onus is always on the chiropractor to explain fully and clearly to patients any findings and treatment plan. Practitioners must remember that patients may find some things difficult to understand or remember, especially if they are worried, unwell or in pain at the time. Unfamiliar terminology can be a particular problem.

When it comes to hands-on examination and treatment, chiropractors need to ensure that patients understand which parts of their body will be touched and why. Otherwise there is a real possibility that patients could believe that they had been touched inappropriately, or even complain that they had been assaulted.

We know that the chiropractic profession as a whole takes a thoughtful and holistic approach to healthcare. So why are there examples of chiropractors getting their communication and interpersonal skills so wrong?

Here are some questions for chiropractors to think about

- Before they make an appointment, do patients know how much they will have to pay?
- Do your patients know what to expect during a consultation?
- Is your practice information leaflet or brochure factual and easy to understand?
- After your initial examination and history taking, do you explain clearly to the patient your findings and treatment plan?
- Do you encourage patients to ask questions?
- Do you explain what you're about to do and why, before you do it? And do you give the patient a chance to object?
- As a matter of routine, do you reassess and discuss the treatment/care options with your patients, depending on their changing needs?

If you have replied “no” to any of these questions, then do not be surprised if something happens that gives rise to a complaint. Patient and public expectations may differ widely from those of chiropractors. Your intentions may be good but don't expect patients to know this if you don't communicate clearly – they can't read your mind. We have seen instances of poor communication causing misunderstandings, confusion and deep distress. Please take this opportunity to review your practice in line with the GCC's *Code of Practice and Standard of Proficiency*, which provides a clear framework to enable chiropractors to implement good practice.

#### **4 Record keeping**

Despite the clarity of the Standard of Proficiency and all the efforts that professional associations put into providing advice on this topic to their members, during this reporting period poor record keeping was central to the consideration of nearly half of the cases heard by the Professional Conduct Committee.

Record keeping is an integral part of chiropractic practice and the care process. Complete, comprehensible records protect the interests of the patient and the practitioner.

Chiropractors must ensure that records are contemporaneous, legible and attributable, and kept together with any clinical correspondence relevant to the case. Patient records must contain

- the case history
- an accurate record of examination and assessment undertaken
- a record of outcomes of further investigations
- a working diagnosis
- attendance, treatments, advice and observations
- review and reassessment
- record of consent

## **5 Review of treatment**

There have been several cases that have attracted local and national media attention. These have involved the routine prescription of long courses of treatment. It is essential that patients know from the outset that their progress will be monitored on a continuous basis and that treatment will not continue beyond the point of benefit to them.

Chiropractors are required to regularly review and reassess their initial diagnosis/clinical impression and the treatment that they are providing to patients. This enables them to

- determine whether to continue, modify or conclude treatment
- evaluate the perceived benefits of treatment to the patient
- determine whether to modify the original prognosis in the light of treatment outcomes

This review and reassessment must be recorded in the patient's notes.

## **6 Use of X-rays**

Typically, complaints and findings against chiropractors have arisen because they have taken X-rays when there has been insufficient reason to do so.

The use of X-rays in the United Kingdom is subject to statutory regulation, through the Ionising Radiation (Medical Exposure) Regulations 2000 (IR(ME)R). The requirements of these regulations are binding on all health professionals, including chiropractors, who use X-rays and other forms of ionising radiation. Specific reference to these obligations is made in the Standard of Proficiency.

We have issued specific advice about IR(ME)R to the profession, so that chiropractors can be in no doubt about their responsibilities. The advice can also be read on our web-site [www.gcc-uk.org](http://www.gcc-uk.org).

## **7 Provision of reports**

Chiropractors may be asked to provide reports by a variety of people/organisations for a variety of purposes – but the same central principles apply in every case

- proper care must be exercised in setting out any limitations in the preparation of the report, so it is clear what weight should be placed on it
- the rights of the individual who is the subject of the report must be respected
- confidential clinical information must never be disclosed in a report to a third party without the consent of the individual concerned

## **8 Local complaints procedure**

The Code of Practice is very specific about the need for every chiropractor to have a complaints procedure in place within their practice. Just as with record keeping, this is an aspect of practice that protects the interest of the patient and the practitioner. Prompt attention at local level to the concerns of patients may well avoid a complaint being made to the GCC.

## **9 Treatment prescribed by another health professional**

Chiropractors may often be seeing patients who are concurrently under the care of another health professional. In instances where the chiropractor has any views to express about treatment prescribed by the other professional it is essential that, with the patient's consent, contact with that professional is made and a proper dialogue is established. Patients can derive great benefit from planned co-management. What a chiropractor must not do is act in isolation and advise a patient to stop treatment prescribed by another health professional.

## **I0 Failure to refer for required medical treatment**

In one case heard by the Professional Conduct Committee, the practitioner's failure to follow up test results and to conduct any assessment of the consequent needs of the patient, led to a serious delay in required medical treatment.

The Standard of Proficiency is very clear about what is expected of chiropractors when assessing the needs of their patients. Chiropractors must be able to identify when further investigations are needed and act on this need in the patient's best interests. When making clinical decisions all available information about a patient can then be interpreted. A valid decision and record can then be made about

- how the patient's health and health needs are likely to change over time with and without chiropractic care
- the benefits and risks of providing care for the patient, including any contra-indications
- the natural history and prognosis of any presenting complaint
- any emergency situations that need immediate action
- the likelihood of preventing recurrences or managing any long-term health needs and the severity of those health needs
- patients whose health needs would be better met through the care offered by another healthcare professional, including those covered by specific legislation (e.g. Cancer Act 1939)
- any other care which the patient is receiving where there is evidence that it is having an adverse effect on the patient's health



## Professional Conduct Committee cases 15 June 2005-31 December 2006

The cases listed below are the new cases considered by the GCC's Professional Conduct Committee between 15 June 2005 and 31 December 2006 where chiropractors were found guilty of unacceptable professional conduct.

<b>Name</b>	<b>Source of complaint</b>	<b>Summary of allegations</b>	<b>Outcome</b>
<b>Peter John PROUD</b>	Patient	<ul style="list-style-type: none"> <li>● Unjustifiable use of X-rays contrary to IR(ME)R</li> <li>● Undue influence of patient to accept treatment</li> <li>● Recommendation of treatment that was not clinically supported</li> </ul>	Suspension Order (18 months) Interim (immediate) Suspension Order
<b>Finn Peter Anthony JENK</b>	Other chiropractor	Improper relationships with two patients	Suspension Order (six months) Following a review hearing Mr Jenk's name was restored to the Register at the end of the period of suspension on 16 July 2006
<b>Mallon Philip HARRIS</b>	Patient	Failure to <ul style="list-style-type: none"> <li>● recognise significant symptoms requiring further investigation</li> <li>● maintain proper patient records and reassess the patient's condition</li> <li>● communicate effectively with the patient</li> </ul>	Conditions of Practice Order (one year)
<b>Gurmeet Kaur TULSI</b>	Patient	Failure to <ul style="list-style-type: none"> <li>● take a full patient history</li> <li>● conduct a full examination</li> <li>● maintain proper patient records</li> </ul>	Conditions of Practice Order (one year)
<b>Graham Stanley HEALE</b>	<ul style="list-style-type: none"> <li>● Patients</li> <li>● Member of the public</li> </ul>	<ul style="list-style-type: none"> <li>● Preparing occupational health reports without due care</li> <li>● Failing to report the findings of a physical examination to the patient</li> <li>● Disclosing confidential clinical information to a third party without first obtaining consent</li> </ul>	Conditions of Practice Order (six months) Following a review hearing the Conditions of Practice Order was revoked with effect from 3 April 2006
<b>Christian ALLARD</b>	<ul style="list-style-type: none"> <li>● Other health professional</li> <li>● Member of the public</li> </ul>	<ul style="list-style-type: none"> <li>● Inappropriate and unprofessional marketing activities</li> <li>● Failure to protect privacy and confidentiality of members of the public</li> </ul>	Admonished
<b>Andrew John CARR</b>	Other chiropractor	<ul style="list-style-type: none"> <li>● Failure to maintain adequate patient files and financial records</li> <li>● Breach of contract</li> </ul>	Admonished

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<b>Name</b>	<b>Source of complaint</b>	<b>Summary of allegations</b>	<b>Outcome</b>
<b>Keith Leonard CROPP</b>	Patient	Failure to have a formal practice complaints procedure	Admonished
<b>Kim Angela GARNHAM</b>	Patient	Failure to <ul style="list-style-type: none"> <li>● Manage adequately a patient's treatment dependence</li> <li>● Keep any adequate written record of any reassessment of the patient's needs</li> <li>● Comply with a patient's request for a copy of her treatment records within a reasonable time</li> </ul>	Admonished
<b>Richard Hugh Antony GRAY</b>	Patient	<ul style="list-style-type: none"> <li>● Failing to explain beforehand to a patient that a procedure was to be undertaken and why</li> <li>● Breach of confidentiality</li> </ul>	Admonished
<b>William Charles HORSLEY</b>	Patient	Failure to recognise and maintain professional boundaries by making inappropriate and unprofessional comments to a patient	Admonished
<b>Liam Michael MULVANY</b>	Patient	Failure to <ul style="list-style-type: none"> <li>● Reassess a patient's condition</li> <li>● Formulate a working diagnosis and treatment plan</li> <li>● Record new symptoms</li> </ul>	Admonished
<b>Rekha RAMPERSAD</b>	Patient	Failure to maintain proper patient records	Admonished
<b>Robert James SANDFORD</b>	Patient	Failure to maintain proper patient records and reassess a patient's needs	Admonished
<b>Iain George SMITH</b>	<ul style="list-style-type: none"> <li>● Patient's mother</li> <li>● Registrar</li> </ul>	<ul style="list-style-type: none"> <li>● Advising a patient to cease treatment prescribed by another health professional</li> <li>● Failure to communicate with that health professional</li> </ul>	Admonished

## Case summaries

### Introduction

This section of the report contains a summary of each of the new cases heard by the Professional Conduct Committee during 2005-6. Details of the Professional Conduct Committee hearings, including the allegations and decisions in full, are available upon request or can be read on our web-site [www.gcc-uk.org](http://www.gcc-uk.org). Information about the GCC's regulatory activities is also published in the Annual Report.

The structure of each case considered by the Professional Conduct Committee is the same and follows a legal framework. This is so that the evidence is presented fairly and equitably. The standard of proof is the civil standard (i.e. the balance of probabilities). The case summaries on the following pages reflect, in part, the structure of the proceedings.

### Extracts from the Committee's final decisions

For the first time, we have included extracts from the Committee's final decisions. This is to convey more fully the nature of the cases heard by the Committee and, in some cases, the seriousness of the respondent chiropractor's failings and their impact on patients.

### Reasons for the Committee's decisions: imposing a proportionate sanction

When the evidence has been heard and the Committee has found some, or all, of the allegations proven, the Committee must make more decisions. Do the proven facts amount to unacceptable professional conduct? If so, what would be a proportionate sanction and what would be the Committee's reasons for imposing it?

The GCC's Indicative Sanctions Guidance sets out the issues to be considered by the Committee when deciding upon a sanction following a finding of unacceptable professional conduct.

A broad analysis of the reasons given by the Committee over 18 months for its decisions to impose the sanctions it did, shows that the following issues are of key importance

- The Committee's duty to protect the public, maintain confidence in the chiropractic profession, and to uphold standards
- The quality and nature of the evidence adduced
- The advice contained in the Indicative Sanctions Guidance that the sanction must be proportionate i.e. the minimum required to protect the public
- Whether or not a patient had suffered direct, or indirect, harm as a result of the respondent chiropractor's conduct
- A clear demonstration of insight by respondent chiropractors into the failings that led to concerns and complaints, and an understanding of the impact their conduct has had upon other people and the profession as a whole
- Evidence that a chiropractor has taken steps, such as re-training or a change to practice arrangements, to remedy any failings to ensure that they will not happen again

- **Evidence in mitigation, for example, previous good character and the confidence of colleagues and patients and/or further relevant information about the context of the circumstances that may have contributed to the chiropractor's failings**
- **The need to send a clear signal to the respondent chiropractor, the public and the profession, when the respondent chiropractor demonstrates no insight into the harm, or potential harm, for which he or she is responsible. For example, a lack of understanding of what constitutes an abuse of patients' trust, and a failure to recognise appropriate professional boundaries.**

## **GCC v Peter John PROUD**

### **Suspension Order (18 months)**

### **Interim (immediate) Suspension Order**

#### **Source of complaint**

Patient

#### **Nature of allegations**

- Recommended treatment that was not clinically supported and in a way that was likely to unduly influence the patient
- The treatment was not in the patient's best interests and involved plans to routinely X-ray patients inappropriately and in a manner not clinically necessary – contrary to the provisions of IR(ME)R

#### **Allegations in brief**

It was alleged that during several conversations with a patient, Mr Proud

- 1 Recommended that the patient undergo a 12 month period of treatment comprising 72 sessions, that was not in the patient's best interests and was inappropriate and excessive
- 2 Misrepresented the gravity of the patient's condition and the therapeutic value of the proposed treatment, promoted the patient's undue dependence on the care and tried unduly to influence the patient to accept the treatment plan
- 3 Proposed to re-X-ray the patient, if she accepted the treatment plan, after 90 days for the stated purpose of establishing if the degeneration of the patient's spine had stopped and whether there was any improvement in the patient's condition – this was contrary to IR(ME)R in that it was inappropriate, not clinically necessary and contrary to the best interests of the patient
- 4 Informed the patient that the services he offered were superior to that of another chiropractor and other health professionals

#### **Summary of the hearing and its outcome**

Mr Proud chose not to attend the two-day hearing (with a third day to consider imposing an interim suspension order). The Committee was satisfied that Mr Proud was aware of the hearing and its purpose, and so decided to continue with the hearing in Mr Proud's absence.

The Committee considered written submissions from Mr Proud, the written and oral submissions of the GCC, witnesses, and two tape recordings that had been transcribed.

#### **The finding of facts**

All of the allegations were found proved in their entirety and Mr Proud was found guilty of unacceptable professional conduct.

#### **Extract from the Committee's final decision**

*"Members of the public are entitled to believe that they can trust a chiropractor to give proper advice and not take advantage of the practitioner-patient relationship by persuading the patient to accept and pay for inappropriate packages of care. A chiropractor must not further abuse this trust by leading a patient to believe that they are more seriously ill than they are. Nor must a chiropractor claim to be*

able to correct or reverse a condition which cannot be corrected or reversed, such as degenerative or structural change.

The Committee was also concerned that Mr Proud considered, in advance, the re-X-raying of the patient in a manner that would have been in violation of the Ionising Radiation (Medical Exposure) Regulations 2000.

It is also inappropriate and unprofessional to criticise fellow chiropractors or other health care professionals, particularly if such criticism directly or indirectly affects a patient by undermining their confidence in these other professionals.

The Committee has no evidence that Mr Proud has any insight into his behaviour. Moreover, Mr Proud's non-attendance at this hearing could be taken as demonstrating disregard for the regulatory process".

### **Imposing a proportionate sanction**

The Committee decided to suspend Mr Proud from the Register for 18 months. During this period the Committee recommended that Mr Proud should take appropriate advice on his style of practice, including the use of X-rays, bearing in mind the GCC's *Code of Practice and Standard of Proficiency*.

The Committee has the power to extend the period of suspension or make a Conditions of Practice Order if, at the end of 18 months, it does not see evidence that Mr Proud has reviewed and reflected on the findings of the Committee.

The Committee further decided that, given the wide-ranging deficiencies in Mr Proud's practice, it was necessary for the protection of the public to impose an Interim Suspension Order. This means that Mr Proud's name was suspended from the Register with immediate effect.

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## **GCC v Finn Peter Anthony JENK**

### **Suspension Order (six months)**

#### **Source of complaint**

Other chiropractor

#### **Nature of allegations**

Entering into improper relationships with two patients

#### **Allegations in brief**

It was alleged that

- Mr Jenk commenced inappropriate relationships with Patient A and Patient B while he was responsible for their care. Neither at the outset of the relationships, nor later, did Mr Jenk take any adequate steps to transfer the patients' care to another practitioner
- Mr Jenk's behaviour was inappropriate, unprofessional, an abuse of trust, contrary to the best interests of the patients and liable to bring the profession into disrepute

### **Summary of the hearing at its outcome**

The Committee considered this matter over eight days. It heard the representations on behalf of Mr Jenk and the GCC and considered the evidence adduced. The Committee remarked, however, on the difficulties arising from the absence of clinical records of Patients A and B. This lack of available evidence made it difficult for the Committee to establish when Patients A and B were treated by Mr Jenk and when they could have been regarded as his patients.

### **The finding of facts**

A significant number of allegations, as described above, were found proved by the Committee. On the basis of these allegations the Committee determined that Mr Jenk was guilty of unacceptable professional conduct.

Other more serious allegations, relating to improper sexual activity while Ms A and Ms B could be considered to be patients of Mr Jenk, could not be found proved on the basis of the evidence adduced.

### **Extracts from the Committee's final decision**

*"Although the Committee did not find proved the two most serious allegations, those of having sexual intercourse with Patients A and B while they were patients, it is concerned that a chiropractor conducted improper relationships with two patients over a period of time. Such behaviour, where the boundary between professional and personal behaviour is ignored, is wholly inappropriate for any health care professional..."*

*"When considering whether or not the totality of these proven allegations amounts to unacceptable professional conduct, the Committee has been particularly concerned at Mr Jenk's total disregard for his professional responsibility to read and understand the GCC's Code of Practice..."*

*The Committee was concerned that, although these events occurred five years ago, even during this hearing your evidence showed little insight as to why your behaviour towards these patients was wholly inappropriate".*

### **Imposing a proportionate sanction**

The Committee decided to suspend Mr Jenk's name from the Register for six months.

The Committee commented that had the events occurred more recently, the suspension may have been for a longer period.

The Suspension Order will be reviewed approximately one month before its end to establish whether it should be lifted, extended or some other action taken. By that time the Committee will expect Mr Jenk to demonstrate a thorough insight and understanding of the GCC's Code of Practice. The Committee further suggested that Mr Jenk should take instruction on the wider ethical issues that arise from relationships between practitioners and patients.

### **Note**

At a review hearing on 2 June 2006, the Committee was satisfied that Mr Jenk had acquired the necessary insight and knowledge to justify a decision to allow the Suspension Order to lapse at the end of its six month period. Mr Jenk's name was restored to the Register on 16 July 2006.

## **GCC v Mallon Philip HARRIS**

### **Conditions of Practice Order**

#### **Source of complaint**

Patient

#### **Nature of allegations**

Failure to

- recognise significant symptoms requiring further investigation
- maintain proper patient records and reassess the patient's condition
- communicate effectively with the patient

#### **Allegations in brief**

Patient A presented with left groin and lateral thigh pain. Dr Harris carried out a 'Patrick's Fabere' test on Patient A and recorded that the test was positive. At that appointment Dr Harris did not explain to Patient A his diagnosis, the nature of the treatment to be provided, the rationale for providing it or the prognosis. Neither did Dr Harris make a record of his clinical impression or diagnosis relating to Patient A's left groin and lateral thigh pain, the treatment plan, or a prognosis.

Dr Harris did not take adequate notice of indicators of hip arthritis. Having undertaken an orthopaedic examination upon Patient A and given the positive result of the Patrick's Fabere test, which raised the possibility of hip pathology, Dr Harris failed to undertake any further investigations; an X-ray was not arranged for Patient A and no further examination undertaken.

Patient A attended a further 23 appointments and there was no significant improvement of her symptoms. Dr Harris failed to record this, and throughout did not conduct a re-examination or reassessment or repeat a Patrick's Fabere test.

These failures led to a significant delay in Patient A receiving her hip replacement.

#### **Summary of the hearing and its outcome**

The case was heard over two days. At the outset Dr Harris admitted all of the matters alleged, apart from two elements of one allegation, which were withdrawn. Dr Harris also admitted that the allegations amounted to professional incompetence and unacceptable professional conduct.

The Committee considered oral and written evidence, together with submissions from both Counsel and testimonials from professional colleagues and patients.

#### **Extracts from the Committee's announcement**

*"This Committee considers that your failures in your treatment of Patient A, in particular in respect of diagnosis, assessment, communication with the patient and record keeping were serious. These failures almost certainly led to a significant delay in Patient A receiving her hip replacement. The Committee views it as unacceptable for treatment to have commenced on 3 July 2003 without a diagnosis, and explanation to the patient of the recommended treatment, and the reasons for it, or a prognosis. These failures also indicate a lack of competence.*



The Committee accepts the opinion of Dr Brown, the expert witness, to the effect that

*“[the failure] to recognise the significance of symptoms and the diagnostic value of an X-ray investigation...and [continuing] treatment that was having little or no effect, combine[d] to raise serious questions as to [your] diagnostic competency and clinical decision making.”*

*The Committee further adopts Dr Brown’s conclusion that you took little or no notice of Patient A’s lack of progress, and certainly did not consider the need to alter your approach to care. Dr Brown considered this to be a failing of which no chiropractor of reasonable care and skill would have been guilty. In addition, your clinical notes were of a standard that falls below that of a safe and competent chiropractor.”*

*The Committee accepts that you have admitted all matters at the earliest opportunity, were of good character, and took steps within the practice of your former employer to change the forms of the documents for record keeping. Further, the Committee accepts that you have demonstrated some insight into your failings, and have supportive testimonials.”*

### **Imposing a proportionate sanction**

The Committee decided that it would be appropriate and proportionate to impose a Conditions of Practice Order

The Conditions announced by the Committee are

- 1 You may only practice under the supervision of another chiropractor. This means that
  - a The supervisor must review and approve by signing every new patient record before you treat the patient
  - b You must meet with the supervisor at least once a week to review your patient records
  - c The supervisor must provide to the Professional Conduct Committee a report on his supervision of you at six months and at 11 months
  - d You must make your supervisor aware of all the conditions of this order

The Committee emphasises that it is not the responsibility of the GCC to identify a supervisor – it is your responsibility.

- 2 You will be subject to an audit process, such that
  - a You shall make any and all patient records made by you following the commencement of this order, available for audit by a person appointed by this Committee
  - b Such audit shall occur every three months, and a written report be submitted to the Committee following each audit, to inform the Committee whether or not further action may be necessary
  - c You shall be responsible for all costs incurred in the audit of your records
  - d You must undertake to pay any related invoices within 28 days of receipt
- 3 You must advise your patients that you are subject to a Conditions of Practice Order; and that all the records in your practice will be reviewed, and audited, by other chiropractors
- 4 You must take and pass the Test of Competence conducted on behalf of the GCC by the University of Glamorgan. The Committee considers these conditions to be the minimum necessary to ensure public protection

This Order will run for a period of 12 months. At any stage while the Order remains in force, you may apply for reconsideration, or the Committee may, of its own motion, extend, reduce, revoke or vary the Order or any of its conditions.

The Professional Conduct Committee will review your progress before the expiry of the Order. On that occasion, the Committee will expect to have before it

- the six and 11 month reports from your supervisor
- the three, six and nine month reports from the chiropractor appointed to audit your records
- confirmation that you have passed the Test of Competence

Note

Dr Harris failed to attend the Professional Conduct Committee hearing on 31 October 2006 to review the Conditions of Practice Order; nor has Dr Harris provided evidence that he has complied with any part of it. The Order therefore remains in place and the Professional Conduct Committee will resume its consideration of this matter as soon as possible.

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## **GCC v Gurmeet Kaur TULSI**

### **Conditions of Practice Order**

#### **Source of complaint**

Patient

#### **Nature of allegations**

Failure to

- take a full patient history and conduct a full examination
- maintain proper patient records

#### **Allegations in brief**

It was alleged that Patient B attended an initial consultation with Dr Tulsi with three problem areas: shoulders, knees and lower back. During the consultation Dr Tulsi failed to take and record a history or conduct and record and examination with regard to Patient B's shoulders and knees. Although providing Patient B with a diagnosis, Dr Tulsi failed to keep a written record of it, or any clinical impression or treatment plan.

#### **Summary of the hearing and its outcome**

At the outset of a two-day hearing, Dr Tulsi admitted the allegations in their entirety. The Committee duly found the allegations proved and determined that Dr Tulsi was guilty of unacceptable professional conduct.

The Committee considered evidence in the form of an affidavit from Patient B, and a report and oral evidence from an expert witness. Dr Tulsi and two of her patients also gave evidence, and the Committee read a number of supportive testimonials.

#### **Extract from the Committee's final decision**

*"The Committee has taken into account your admissions and expressions of regret and has heard the considerable efforts you have made to address your failings. The Committee has seen examples of your recent case record documents. Nevertheless, the Committee remains concerned that despite the insight*

you have shown, your further efforts to improve your record keeping as evidenced by your testimony during the hearing, demonstrate the need for additional improvement”

### **Imposing a proportionate sanction**

The Committee determined to impose a Conditions of Practice Order which would be in place for one year.

The Conditions of Practice Order is that Dr Tulsi shall

- 1 Submit for audit, ten successive sets of her new patient records most recently completed up to the date at which she made her submission. These records will be audited by a person appointed by the Professional Conduct Committee and who will provide a report for the Committee
- 2 Be responsible for paying the costs of this audit and report, and shall pay any related invoices within 28 days of receipt

The Committee further decided that although Conditions of Practice Orders are usually reviewed shortly before their expiry, it was open to Dr Tulsi to submit the required patient records at any time and a review hearing would then be convened as soon as possible.

The Committee further advised Dr Tulsi that at any review hearing, it would expect to be satisfied that her standard of record keeping complies with the GCC's *Code of Practice and Standard of Proficiency*.

The Committee suggested to Dr Tulsi that she would be greatly assisted in this matter by seeking the advice of the College of Chiropractors and her professional association.

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## **GCC v Graham Stanley HEALE**

### **Conditions of Practice Order**

#### **Source of complaint**

- 1 Patients
- 2 Member of the public

#### **Nature of allegations**

- Preparing occupational health reports without due care
- Failing to report the findings of a physical examination to the patient/subject of the examination
- Disclosing confidential clinical information to a third party without first obtaining consent

#### **Allegations in brief**

Dr Heale was contracted by a local business to provide occupational health reports on three of its employees: Mr A, Mr B and Mr C.

It was alleged that in preparing the reports upon Mr A and Mr C's physical fitness to work, Dr Heale failed to document that his opinions were based solely on edited covert video surveillance. Dr Heale failed to make clear that he had not obtained any other relevant information to justify his conclusions.

In preparation of his report upon Mr B's physical fitness to work, Dr Heale examined the employee. Dr Heale failed to report the findings of his examination to Mr B. Nor did Dr Heale, prior to preparing his report, obtain Mr B's written consent to disclose information to a third party. Dr Heale subsequently disclosed information to Mr B's employer without consent.

Dr Heale knew the purpose to which the reports would be put. His reports would be pivotal to any disciplinary proceedings instigated against Messrs A, B and C by their employer. It was argued that the public have a right to expect any such report in these circumstances will be explicit about its limitations and the parameters within which it is written.

It was alleged that such conduct was contrary to the GCC's Code of Practice, would undermine public confidence in the profession or bring the profession into disrepute.

### **Summary of the hearing and its outcome**

The case was heard by the Committee over seven days. Having considered the evidence put before them, the Committee decided that allegations, as outlined above, were proved. Dr Heale was found guilty of three counts of unacceptable professional conduct.

### **Extracts from the Committee's announcement**

*"The Committee considered that Dr Heale, by his own admission, knew the possible uses to which such reports might be put. As Dr Heale must have known, the reasoning behind obtaining any report from him, as [the witness] made clear in her witness statement, "would have been...to find out whether an employee had been malingering". Furthermore, the consequences to an employee of such a report must have been clear to Dr Heale, namely disciplinary action against the employee and that considerable weight would be placed by the company on his report at any disciplinary hearing.*

*"Whilst the report stated that it was based on the video evidence, it failed to make sufficiently clear the limitations on the conclusions drawn by not setting in full what information was or was not used to compile the report. In reaching his emphatic opinion that Mr A was able to undertake his normal work duties, Dr Heale failed to document the parameters and narrow context within which his conclusions were reached and the report was written. For example, whether or not Mr A was known as a patient or otherwise to Dr Heale; whether or not any medical record was available, including any concomitant medication that might affect mobility; whether or not any consideration had been given to the opinions of other health professionals or any other matters."*

### **Imposing a proportionate sanction**

The Committee decided that it would be appropriate and proportionate to impose a Conditions of Practice Order. The conditions were

- 1 You shall not undertake, or be a party to, any review of covert surveillance videos or any fitness to work reports for a period of nine months
- 2 Should you within this period demonstrate to the satisfaction of the Professional Conduct Committee that you have
  - a Reviewed your policies and protocols to clarify the division between your role as a chiropractor and your role in the provision of fitness to work reports and covert video reports, to ensure that it is explicit to all parties and that confidence in the profession is maintained in the light of the findings of the Committee; and

- b You make explicit how these new and/or altered protocols comply with the *Code of Practice and Standard of Proficiency*, professional and ethical obligations and maintenance of public confidence in the profession, you may apply to the Professional Conduct Committee to ask them for any appropriate relief of these sanctions under Section 22 of the Chiropractors Act 1994
- 3 The Professional Conduct Committee will itself review this order within six months of its commencement pursuant to Section 22 of the Chiropractors Act 1994

#### Note

At the Committee's review hearing of 3 April 2006, the Conditions of Practice Order imposed upon Dr Heale on 26 September 2005 was revoked with immediate effect. The Committee was satisfied, on the basis of evidence presented, that Dr Heale had complied with the terms of the conditions imposed upon him.

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## GCC v Christian Allard

### Admonished

#### Source of complaint

- 1 Other health professional
- 2 Member of the public

#### Nature of allegations

The allegations related to complaints about marketing activities instigated by Dr Allard.

#### Allegations in brief

The allegations were that

- As part of a marketing campaign to promote chiropractic, 'thermographic scans' were offered to passers-by in a shopping centre and a supermarket by unsupervised, unregulated and inadequately trained sales people who worked to a script
- The status of the sales people was not made clear to the public
- Inadequate steps were taken to protect the privacy and confidentiality of the members of the public who participated
- Outcomes of the participant's scans were used without their consent as marketing tools to attract further customers/clients/patients
- This conduct was inappropriate, unprofessional, and was not undertaken in the best interests of the people who were the subject of the marketing activities

#### Summary of the hearing and its outcome

Of a total of 19 allegations, Dr Allard admitted nine at the outset of the proceedings, and the Committee found all but three elements of the remaining allegations proved.

The GCC and Dr Allard were legally represented. Over three days, the Committee considered evidence from Dr Allard, two of the relevant sales people, and the complainants.

### **The finding of unacceptable professional conduct**

The Committee found that the facts found proved amounted to unacceptable professional conduct. In reaching this decision the Committee considered the following

- Dr Allard was responsible for all aspects of his practice, which included marketing
- his failure to exercise proper control of his marketing activities such that members of the public were exploited undermines confidence in the chiropractic profession and its standards
- an improperly supervised marketing system had the potential to be abused
- Dr Allard's conduct fell short of the standard required of a registered chiropractor

### **Extract from the Committee's final decision**

*"The Committee was satisfied that the lack of adequate supervision it found on both dates was both inappropriate and unprofessional. This is because the extent to which Dr Allard did supervise the system – which the Committee found as a fact was minimal – was piecemeal, reactive and insufficient. It did not equate to a professional and appropriate approach to a marketing system involving unqualified screeners meeting and dealing with members of the public on a marketing scheme designed to promote the chiropractic profession."*

### **Imposing a proportionate sanction**

The Committee decided that an admonishment was an appropriate sanction to impose upon Dr Allard and concluded the case.

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## **GCC v Andrew John CARR**

### **Admonished**

#### **Source of complaint**

Other chiropractor

#### **Nature of allegations**

- Failure to maintain adequate patient files and financial records
- Breach of contract

**Allegations of an element of dishonesty in Dr Carr's actions were not proved**

#### **Allegations in brief**

The allegations were based on a complaint made by a chiropractor who was the owner of the practice in question that, following an audit of patient files and clinic records, it was discovered that Dr Carr failed to

- keep accurate records of patients who attended for treatment and the fees they paid
- account to the owner of the clinic for the full amount of fees paid by patients, resulting in an underpayment of monies due to the owner under the terms of an agreed contract

It was further alleged that these failures were unprofessional, dishonest and a breach of the contract Dr Carr had agreed with the clinic owner.

### **Summary of the hearing and its outcome**

During a two-day hearing, the Committee considered available documentary evidence, submissions from lawyers representing Dr Carr and the GCC, and the evidence, under oath, of the clinic owner and Dr Carr.

#### **The finding of facts**

At the outset of the hearing Dr Carr had admitted that he had failed to keep accurate records on the clinic's 'patient sheets', of patients who had attended for treatment and the fees that they paid. The Committee found that while Dr Carr's actions were unprofessional and "inexcusably lax and haphazard, the evidence presented [was] not sufficiently cogent to prove the serious allegation of dishonesty". In particular, the Committee was not satisfied that there was sufficient evidence to show that Dr Carr had failed to pay the required monies to the clinic owner. The Committee did, however, concur with the allegation that Dr Carr's actions were a breach of contract.

#### **The finding of unacceptable professional conduct**

The Committee found that those facts found proved amounted to unacceptable professional conduct. In reaching this decision the Committee considered that Dr Carr's conduct fell short of the standard required of a registered chiropractor by

- failing to keep accurate records of patients who attended his clinic
- failing to record the fees they paid for their treatments
- breaching an agreed contract

#### **Extract from the Committee's final decision**

*"Dr Carr's failure to keep accurate financial records was caused by his appallingly lax and slapdash administration. His actions and omissions led to a breakdown of trust between him and [the clinic owner]. The competent and accurate recording of which patients have been treated and when, and the fees they have paid, is an important and integral part of any health professional's practice".*

#### **Imposing a proportionate sanction**

The Committee decided that an admonishment was an appropriate sanction to impose upon Dr Carr and concluded the case.

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## **GCC v Keith Leonard CROPP**

### **Admonished**

#### **Source of complaint**

Patient

#### **Nature of allegations**

Failure to have a formal practice complaints procedure.

#### **Allegations in brief**

It was alleged that Dr Cropp, as principal of the practice at the time in question, did not

- have in place or make known to patients a formal complaints procedure
- offer to deal with a patient's concerns by means of a formal complaints procedure when she phoned to express her dissatisfaction with the treatment she had received at his practice

### **Summary of the hearing and its outcome**

The hearing took place over the course of a day. The Committee considered the allegation that Dr Cropp was guilty of unacceptable professional conduct because of his failure to have a formal practice complaints procedure, as required by the GCC's Code of Practice.

### **The finding of facts**

Dr Cropp admitted all of the facts at the outset of the proceedings. The Committee duly found the facts proved.

### **The finding of unacceptable professional conduct**

The Committee found that the facts found proved amounted to unacceptable professional conduct.

### **Imposing a proportionate sanction**

The Committee decided that an admonishment was an appropriate sanction to impose upon Dr Cropp and concluded the case.

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## **GCC v Kim Angela GARNHAM**

### **Admonished**

#### **Source of complaint**

Patient

#### **Nature of allegations**

Failure to

- take adequate steps to address a patient's treatment dependence
- keep any adequate written record of any reassessment of a patient's needs
- comply with a patient's request for a copy of her clinical records within a reasonable time

#### **Allegations in brief**

Patient A attended 220 appointments between June 1999 and November 2003 – on average this was one appointment a week during the four year and five month period. It was alleged that having identified Patient A's treatment dependence, Dr Garnham failed adequately to address it, or keep an adequate record of the problem or of any steps taken to manage the patient's treatment dependence. It was further alleged that Dr Garnham failed, for a period of seven months, to comply with the patient's request for a full copy of her treatment records.

Allegations were not found proved that Dr Garnham had made claims of superiority regarding her services and denigrating comments about other healthcare professionals' management of Patient A.

### **Summary of the hearing and its outcome**

During a four day hearing, the Committee considered the allegation that Dr Garnham was guilty of unacceptable professional conduct. Members of the Committee considered oral and documentary evidence, including that from two expert witnesses, submissions from lawyers acting for the respondent and the GCC, and the advice of the Legal Assessor.



### **The finding of facts**

At the outset of the proceedings Dr Garnham admitted five of the ten allegations and these were found proved. Of the remaining allegations the Committee found two, and an element of a third allegation, to be proved.

### **The finding of unacceptable professional conduct**

The Committee found that the facts found proved amounted to unacceptable professional conduct. In reaching this decision the Committee considered that Dr Garnham's conduct fell short of the standard required of a registered chiropractor. The Committee's reasons were that Dr Garnham failed to

- take adequate steps to address Patient A's treatment dependence
- keep any adequate record of any re-assessment of Patient A
- comply promptly with Patient A's request for a full copy of her treatment records

The Committee accepted that there was no proactive promotion of dependence by Dr Garnham or any deliberate attempt to make Patient A treatment dependent.

### **Extracts from the Committee's final decision**

*"...whenever treatment dependency arises or is suspected, it clearly remains the responsibility of the health professional concerned to manage the situation in the best interests of the patient. This includes taking all appropriate steps to address the problem.*

*"While Dr Garnham did take some steps to address this issue, they were inadequate. The Committee was concerned at the aggravating factor of the lack of adequate recording of the problem and those steps that had been taken."*

*"You have shown insight by taking corrective steps to improve your record keeping by changing the system you use. In evidence you detailed how you have significantly amended and expanded your record keeping, including the need to record re-assessments. You have also studied the issues of Treatment Dependency and yellow flags."*

*"Any finding of Unacceptable Professional Conduct is serious. The Committee has already emphasised the vital nature of detailed and accurate record keeping. Your omissions in your record keeping were failings that had the potential to lead to patient harm, although they did not do so in this case. Any system of record keeping must facilitate a complete record being kept in one place and enable records to be easily copied if required. The system you used at the time had inherent weaknesses, which also contributed to your failure to provide a copy of the records to Patient A without delay."*

### **Imposing a proportionate sanction**

The Committee decided that an admonishment was an appropriate sanction to impose upon Dr Garnham and concluded the case.

## GCC v Richard Hugh Antony GRAY

### Admonishment

#### Source of complaint

Patient

#### Nature of allegations

- Failing to explain beforehand to a patient that a procedure was to be undertaken and why
- Breach of confidentiality

#### Allegations in brief

It was alleged that

- during an initial examination and assessment of Patient A and, without first establishing or ensuring that Patient A understood what was to be done, Dr Gray undertook a gluteal crease test without prior warning or explanation. From the patient's perspective this involved Dr Gray standing behind him, running his hands up his legs and grabbing his buttocks
- during Patient A's subsequent appointment, Dr Gray breached another patient's confidentiality by referring to her injured coxxyx, described what an internal coccygeal examination involved, which was not strictly relevant to Patient A's condition, and used words to the effect that it was fortunate that Patient A "*was not one of those silly girls*"

#### Summary of the hearing and its outcome

During a three-day hearing, the Committee considered the allegation that Dr Gray was guilty of unacceptable professional conduct. The Committee considered documents provided by the respondent, submissions made on his behalf and the GCC, oral evidence from Dr Gray and Patient A, and the advice of the Legal Assessor.

#### The finding of facts

Dr Gray admitted some of the facts and matters alleged at the outset and these were therefore found proved. The Committee found all but three elements of the remaining allegations proved. The Committee did not find proved an allegation that Dr Gray pushed himself against Patient A, wrapped an arm around him at waist height and forced him to bend forwards.

#### The finding of unacceptable professional conduct

The Committee found that the facts proved amounted to unacceptable professional conduct. In reaching this decision the Committee considered that Dr Gray's conduct fell short of the standard required of a registered chiropractor. The Committee's reasons were that Dr Gray had not complied with those sections of the *Code of Practice and Standard of Proficiency* that require that members of the public and patients are entitled to expect that

- chiropractors will communicate which procedures they are about to undertake and ensure that the individual patient comprehends what is to be done
- confidentiality will be maintained at all times, and that their complaint or condition would not be discussed in an inappropriate way

### **Extracts from the Committee's final decision**

*"...the Committee accepted the account of Patient A that he was taken by surprise when Dr Gray performed a test to assess the heights of his gluteal creases. This test requires a clear prior explanation to the patient. It is the chiropractor's responsibility to ensure that the patient has heard and understood what is about to take place...it was inappropriate and unprofessional of Dr Gray to carry out the procedure...without prior warning or explanation..."*

*"The Committee was concerned at the overall context in which the case was described. Dr Gray had not sought the consent of the other patient to speak about her case in circumstances which were neither strictly clinical nor relevant to Patient A's condition, but which described a sensitive procedure, concerning a female patient, during a conversation between two men...The Committee considered that these actions were inappropriate and unprofessional. For the same reasons, the Committee also considered Dr Gray had abused his position of trust by disclosing information he acquired, in a confidential setting, to a third party"...*

### **Imposing a proportionate sanction**

The Committee decided that an admonishment was an appropriate sanction to impose upon Dr Gray and concluded the case.

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## **GCC v William Charles HORSLEY**

### **Admonished**

#### **Source of complaint**

Patient

#### **Nature of allegations**

**Failure to recognise and maintain appropriate professional boundaries by making inappropriate and unprofessional comments to a patient**

#### **Allegations in brief**

During an appointment where Patient A was lying prone and undergoing treatment while wearing underpants and a gown open at the back, Dr Horsley commented to the effect that if he "was twenty years younger" he would be "chasing her around the couch" and that she had a "nice body".

#### **Summary of the hearing and its outcome**

Dr Horsley chose not to attend the hearing and was not represented. The Committee agreed to proceed in the absence of Dr Horsley.

#### **The finding of facts**

Dr Horsley did not admit any of the allegations. The Committee considered documents provided by Dr Horsley including statements from himself and members of his family, oral evidence from Patient A, submissions made on behalf of the GCC and advice from the Legal Assessor.

The Committee found Patient A's evidence to be credible and consistent. In his own account, Dr Horsley accepted that he had treated Patient A and admitted that a conversation had taken place at the material time in which he had commented that she was still attractive and would have no problems finding a husband.

In considering the evidence placed before it by Dr Horsley, the Committee took into account that neither he, nor his witnesses, attended and were therefore not the subject of cross-examination. The Committee was unable to give the same weight to this evidence as to the oral evidence of Patient A. Although Patient A was not subject to cross-examination, she was questioned in detail by the Committee to test and clarify her evidence in the interests of fairness to both parties.

The Committee found all of the allegations proved.

### **The finding of unacceptable professional conduct**

The Committee was mindful of relevant sections of the Code of Practice that emphasise that members of the public are entitled to expect that they will be treated with respect and that chiropractors must be aware of, and set, appropriate boundaries in the relationships with patients. The Committee considered that Dr Horsley's conduct crossed these boundaries. The Committee was satisfied that Dr Horsley's conduct fell short of the standard required of a registered chiropractor and was guilty of unacceptable professional conduct.

### **Extract from the Committee's final decision**

*"The Committee took the view that any patient harm in the circumstances of this case was minimal. There was no evidence that this was anything other than an isolated incident which was not deliberate. The GCC provided no evidence that Dr Horsley had any previous findings against him, or that there had been any repetition of this behaviour".*

### **Imposing a proportionate sanction**

The Committee decided that an admonishment was an appropriate sanction to impose upon Dr Horsley and concluded the case.

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## **GCC v Liam Michael MULVANY**

### **Admonished**

#### **Source of complaint**

Patient

#### **Nature of allegations**

It was alleged that Mr Mulvany failed to

- reassess and review Mrs A's condition when she presented with new symptoms
- formulate a working diagnosis, and management or treatment plan for Mrs A
- properly record Mrs A's new symptoms
- have a system in place to ensure that practice staff could notify him promptly of urgent contact from patients

#### **Allegations in brief**

Mrs A consulted Mr Mulvany four times and at the initial consultation she complained of left-sided back and leg pain. At subsequent appointments Mrs A told Mr Mulvany about further complaints and symptoms that included pins and needles in her right hand, pain in her right shoulder and that fingers on her right hand felt dead.

Mr Mulvany failed to address Mrs A's new symptoms and complaints because he did not reassess or re-examine the patient, reconsider his working diagnosis or amend the original treatment plan or his prognosis. Further, Mr Mulvany failed to describe the new symptoms, identify when they commenced and the circumstances when they commenced, in the patient's treatment records.

After the fourth appointment, Mrs A telephoned Mr Mulvany to report urgently her discomfort and to make an appointment. The practice receptionist told Mrs A that Mr Mulvany was fully booked and that she would place Mrs A on a cancellation list. Mr Mulvany did not have practice procedures in place to enable staff to notify him of urgent messages from patients. Consequently he did not return Mrs A's call, but contacted her over two weeks later after he had received a letter of complaint from Mrs A.

### **Summary of the hearing and its outcome**

At the outset of the proceedings, one of the allegations was amended and subsequently all but one of the allegations were admitted by Mr Mulvany. These allegations were accordingly found proved by the Committee. In relation to the outstanding allegation, which concerned a system for urgent contact from patients to be notified to Mr Mulvany, the Committee considered carefully all the oral and documentary evidence. This included the documents provided by the respondent, and the submissions made on behalf of the respondent and the GCC. The Committee found this allegation proved.

### **The finding of unacceptable professional conduct**

The Committee found that the allegations relating to Mr Mulvany's record keeping and management of Mrs A amounted to unacceptable professional conduct. With regard to the allegation that related to Mr Mulvany's practice system for urgent communications from patients, the Committee found it to be ineffective on this occasion for this patient. This was a single failure that, of itself, was insufficient to amount to unacceptable professional conduct.

### **Extracts from the Committee's final decision**

*"...you have sought to address your shortcomings by your participation in relevant Continuing Professional Development, including courses...The Committee has been particularly impressed by your insight in taking the corrective steps that you have taken, including participation in these courses, a revision of your record cards in conjunction with your colleagues, and the introduction of new protocols for handling complaints and urgent telephone calls. Your insight has been further demonstrated by your admission of the facts which go to make up the matters upon which a finding of Unacceptable Professional Conduct was made. The Committee is satisfied that this was an isolated incident, that you have learnt from the experience and that there will be no repetition. Further, you have clearly expressed remorse."*

*"...the Committee balanced the question of possible harm to Mrs A against the mitigating factors which it has heard in this case."*

### **Imposing a proportionate sanction**

The Committee decided that an admonishment was an appropriate sanction to impose upon Mr Mulvany and concluded the case.

## **GCC v Rekha RAMPERSAD**

### **Admonished**

#### **Source of complaint**

Patient

#### **Nature of allegations**

Failure to maintain proper patient records

#### **Allegations in brief**

It was alleged that Dr Rampersad did not keep a written record of her clinical impression or diagnosis or prognosis of Patient A's lower back pain over the course of a number of treatments. In particular, there was no record made of Patient A's report that her lower back pain had become worse and her mobility had decreased following treatment.

#### **Summary of the hearing and its outcome**

During a two-day hearing, the Committee considered the allegation that Dr Rampersad was guilty of unacceptable professional conduct. Members of the Committee considered available documentary evidence, submissions from lawyers representing Dr Rampersad and the GCC and the evidence, under oath, of Patient A, Dr Rampersad and an expert witness called on behalf of the GCC.

#### **The finding of facts**

At the outset of the hearing Dr Rampersad admitted a significant proportion of the allegations but not that they amounted to unacceptable professional conduct. The Committee found proved those allegations admitted by Dr Rampersad together with an element of the remaining disputed allegation.

#### **The finding of unacceptable professional conduct**

The Committee found that the facts found proved amounted to unacceptable professional conduct. In reaching this decision the Committee considered that Dr Rampersad's conduct fell short of the standard required of a registered chiropractor. The Committee's reasons were that Dr Rampersad failed to

- keep a written record of her clinical impression or diagnosis or prognosis for Patient A, and
- to record the patient's report of an adverse reaction to treatment

#### **Extract from the Committee's final decision**

*"The importance of keeping accurate records is self-evident and was recognised by Dr Rampersad herself in her evidence. Ensuring patient safety is, of course, the primary purpose of proper records. Dr Creed told the Committee that accurate record keeping is necessary so that other chiropractors, who may treat the patient subsequently, can see the full history. Further, the Committee agrees with Dr Creed's view that accurate records are important for any re-assessment or re-examination of the condition in order to inform any changes to the clinical impression and subsequent treatment. Also any feedback from the patient is important to record to allow for the care plan to be altered as a result. Dr Rampersad, in her evidence, accepted that it was important to record adverse reactions".*

### ***Imposing a proportionate sanction***

The Committee decided that an admonishment was an appropriate sanction to impose upon Dr Rampersad and concluded the case.

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## **GCC v Robert James SANDFORD**

### **Admonished**

#### **Source of complaint**

Patient

#### **Nature of allegations**

**Failure to maintain proper patient records and reassess a patient's needs**

#### **Allegations in brief**

It was alleged that Mr Sandford did not keep a written record of his clinical impression or diagnosis or prognosis of a patient's condition over the course of a number of treatments, spanning several weeks. In particular, there was no re-examination or reassessment undertaken when the patient reported a change in his condition, i.e. the development of back pain, and no clinical record was made of this development.

It was further alleged that some aspects of Mr Sandford's practice arrangements were unprofessional and inappropriate; in particular, requiring each patient to replace paper sheets on a treatment bench.

#### **Summary of the hearing and its outcome**

During a three-day hearing, the Committee considered the allegation that Mr Sandford was guilty of unacceptable professional conduct. Members of the Committee considered available documentary evidence, submissions from lawyers representing Mr Sandford and the GCC, and the evidence under oath, of Patient A, Mr Sandford and an expert witness called on behalf of the GCC.

#### **The finding of facts**

At the outset of the hearing some of the allegations were withdrawn because the GCC did not offer evidence in relation to them. Mr Sandford admitted a number of the remaining allegations. The Committee found proved those allegations admitted by Mr Sandford together with those remaining that were disputed.

#### **The finding of unacceptable professional conduct**

The Committee found that the facts found proved amounted to unacceptable professional conduct. In reaching this decision the Committee considered that Mr Sandford's conduct fell short of the standard required of a registered chiropractor. The Committee's reasons were that Mr Sandford failed to

- keep a written record of his clinical impression or diagnosis or prognosis for Patient A, at the initial, and three subsequent appointments
- continually assess the patient, and in particular, when the patient reported a change in his condition

The Committee accepted the view of the expert witness that it is “unacceptable and unprofessional for patients to be made responsible for ensuring basic hygiene within the clinic room by giving written instructions for them to change the face paper”. The Committee decided, however, that such conduct did not, of itself, amount to unacceptable professional conduct.

#### **Extract from the Committee’s final decision**

*“Ensuring patient safety is the primary purpose of proper records. Accurate record keeping is necessary so that other chiropractors who may treat the patient subsequently can see the full history. Records are also important for any reassessment or re-examination of the patient to inform any changes to the clinical impression and subsequent treatment. Also, any subjective feedback from the patient is important to record to allow for the care plan to be altered as a result.*

*It is the responsibility of the practitioner to continually assess the patient and especially when the patient reports a change in condition. It appears that no harm has resulted from the failure to re-examine Patient A when he reported his back pain, although, for another patient, in other circumstances, the outcome could have been different.”*

#### **Imposing a proportionate sanction**

The Committee decided that an admonishment was an appropriate sanction to impose upon Mr Sandford and concluded the case.

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## **GCC v Iain George SMITH**

### **Admonished**

#### **Source of complaint**

- 1 Patient’s mother
- 2 Registrar

#### **Nature of allegations**

- Advising a patient to cease treatment prescribed by another health professional
- Failure to communicate with that health professional

#### **Allegations in brief**

Miss G, accompanied by her mother, consulted Dr Smith complaining of back pain. There were a total of four consultations and at each consultation a spinal adjustment was undertaken upon Miss G. At the initial consultation Dr Smith advised Miss G and her mother that, amongst other things, the dental appliance on Miss G’s teeth could be making her back problems worse and it needed to be removed as soon as possible. Dr Smith went on to emphasise that if the orthodontist wanted Miss G to keep her brace for a further six months, she should insist that it be removed.

Dr Smith is not qualified as a dentist or an orthodontist and is not qualified to give the emphatic advice he did. He did not make any attempt to contact the orthodontist to discuss the management of Miss G’s condition, nor did he indicate that he planned to do so. Consequently when Miss G, and her mother, attended the next appointment with the orthodontist they were greatly distressed and were insisting upon the removal of the dental brace. Due to this incident Miss G’s treatment with the dental brace was prolonged by several weeks.



### **Summary of the hearing and its outcome**

At the outset of the three day hearing some allegations were admitted, others were amended and then admitted during the course of the proceedings. Members of the Committee considered all the oral and documentary evidence before reaching a decision on the allegations not admitted. Apart from one part of one allegation the Committee found all of the facts proved.

### **The finding of unacceptable professional conduct**

The Committee found that the facts proved amounted to unacceptable professional conduct. The reasons given for their decision were that Dr Smith was “far too emphatic in pressing his view of the contribution made by a fixed dental appliance to Miss G’s problems”. Further, he “did not adopt the sound practice to be expected of a reasonable practitioner; that he was not qualified, or competent to give the emphatic advice that he gave. Furthermore, this advice had the potential to bring her [Miss G’s] orthodontic treatment to a premature end. In the event, it had the effect of interrupting her treatment and lengthening its period by some weeks”.

The Committee relied on the expectation in the Standard of Proficiency at 6.2. that

*“A chiropractor shall not advise the cessation of any treatment prescribed by another health professional where such cessation might endanger the health of the patient or adversely affect the management of the case”. (GCC May 1999)*

### **Extract from the Committee’s final decision**

*“The Committee has considered the many impressive and supportive testimonials from patients, two local General Medical Practitioners, fellow chiropractors in this country and overseas. They speak of your professionalism and you are clearly a valued, dedicated, caring professional. The Committee has taken into account your previous good record.*

*In this case, as a result of your advice and your failure to comply with Section 6.2 of the Standard of Proficiency, Miss G’s treatment with a fixed dental appliance was prolonged by several weeks. In the event, no serious harm occurred.*

*The Committee has heard that you have been chastened by today’s findings and you have taken the criticisms on board and have learnt from this experience. There have been no repetitions of your behaviour”.*

### **Imposing a proportionate sanction**

The Committee decided that an admonishment was an appropriate sanction to impose upon Mr Smith and concluded the case.





