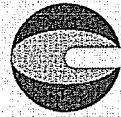


**General
Chiropractic
Council**



**Protecting patients
Setting standards**

Fitness to Practise Report 2009

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Chair's foreword

This is the sixth annual *Fitness to Practise Report* published by the GCC, and it summarises 13 cases heard by the Professional Conduct Committee during 2009. It highlights where respondent chiropractors fell short of the proper standards of conduct and so provides learning points for the profession.

The report illustrates the way in which the Committee exercises its duty to be proportionate when imposing one of the four sanctions available to it. For example, four of the cases resulted in the lowest sanction: admonishment. At the other end of the spectrum the calculated and gross abuse of a vulnerable patient's trust by a chiropractor who ignored sexual boundaries led to his removal from the Register with immediate suspension.

Other chiropractors, who had failings that the Committee considered could be remedied, were given conditions of practice orders that involved elements of supervision and retraining. And, for the first time, the Committee considered some cases on the basis of documentary evidence only at meetings rather than public hearings. This was done with the agreement of the respondent chiropractors, where the nature of the conduct in question was thought to be unlikely to justify the imposition of a sanction other than an admonishment or conditions of practice order.

The fourth edition of the Code and Standard is effective from 30 June 2010 and it contains a wealth of supporting guidance and advice on the required standards, set out in an easy-to-read format. It can be read on www.gcc-uk.org and we will soon be circulating another printed copy to chiropractors.



Peter Dixon
Chair, General Chiropractic Council

Learning points

Introduction

A significant amount of the text within this chapter is taken directly from the GCC's revised *Code of Practice and Standard of Proficiency* (effective from 30 June 2010) to enable chiropractors to apply it to the learning points. Some of the learning point headings listed below may therefore be worded differently from those in previous years; the issues and the principles involved, however, have arisen before and have been discussed in previous reports. They are also directly relevant to findings by the Professional Conduct Committee in 2009.

1. Establishing and maintaining sexual boundaries
2. Acting with honesty and integrity
3. Consent and establishing effective communication with patients
4. Maintaining patient records
5. Management and care: initial examination and review of treatment
6. Ionising radiation
7. Politeness and consideration towards patients
8. Knowing your own limits
9. Professional behaviour
10. Managing complaints
11. Providing access to patient health records
12. Professional indemnity insurance

I. Establishing and maintaining sexual boundaries

The Council for Healthcare Regulatory Excellence (CHRE) has made clear that there is no such thing as a 'consensual' sexual relationship between a health professional and a patient. Its guidance *Clear sexual boundaries between healthcare professionals and patients* (January 2008) applies to all healthcare professionals and can be read on www.chre.org.uk. It emphasises that:

- a) the professional relationship between a health practitioner and a patient depends on confidence and trust. A healthcare professional who displays sexualised behaviour towards a patient breaks that trust, acts unprofessionally and may also be committing a criminal act. Breaches of sexual boundaries by health professionals can damage confidence in healthcare professions generally and lessen the trust between patients, their families and healthcare professionals
- b) sexualised behaviour is defined as: 'acts, words or behaviour designed or intended to arouse or gratify sexual impulses or desires'
- c) if you find yourself sexually attracted to patients or their carers, it is your responsibility not to act on these feelings and to recognise the harm that any such actions can cause. If you are sexually attracted to a patient and are concerned that it may affect your professional relationship with the patient (or you believe that a patient is sexually attracted to you), you should ask for help and advice from a colleague or appropriate professional body in order to decide on the most suitable course of action to take. If having sought advice, you do not believe you can remain objective and professional, you should find alternative care for the patient and ensure a proper handover to another healthcare professional.

These requirements are upheld by the GCC's Professional Conduct Committee and unambiguously set out in the GCC's *Code of Practice and Standard of Proficiency* (effective from 30 June 2010).

2. Acting with honesty and integrity

Chiropractors must act with honesty and integrity and never abuse their professional standing by imposing their views on people or arousing their fears.

It is wholly unacceptable for chiropractors to use alarmist language, suggestions of future ill-health or to create patient dependency on a particular type of treatment beyond the point of benefit.

The trust that patients place in chiropractors can be abused in a variety of ways. It may be using strategies designed to lock patients into treatment plans that are excessive in both frequency and duration. Or it may be through marketing activities and the provision of inaccurate information that exploits the public even before they become patients.

3. Consent and establishing effective communication with patients

Effective chiropractic care is a partnership based on openness, trust and good communication. Talking to your patients about their assessment and care, and encouraging them to talk to you, will enable each patient to play a full part in their own assessment and care.

Consent

Giving accurate, relevant and clear information is integral to obtaining a patient's consent. Chiropractors must share with patients the information they want or need to make decisions about their health and wellbeing, their health needs and related care-options.

Patients have a right to receive information about the assessment and care that is available to them, presented in a way that is easy for them to follow and use. This places a considerable responsibility on chiropractors, but without this information patients cannot play a full part in their care or make the decisions that are appropriate for them.

More detailed guidance on the information that is usually shared with patients, the factors that influence the information shared and suggestions of what comprises 'effective communication' can be found in the GCC's *Code of Practice and Standard of Proficiency* (June 2010).

4. Maintaining patient records

Chiropractors must keep patient records that are legible, attributable and truly represent their interaction with the patient.

Poor record keeping continues to be integral to many cases heard by the Professional Conduct Committee. Chiropractors who fail to keep adequate clinical records are unable to assess the effects of the care they are providing from the initial appointment to any subsequent reviews or reassessments. This means that they are unable to judge when it is necessary to modify or stop treatment, or refer the patient to another health professional. It should also be emphasised that routinely doing no more than box-ticking does not constitute adequate record keeping.

Good record keeping is essential for fellow chiropractors who may need to take over the care of a patient.

Inadequate patient records also result in respondent chiropractors finding it difficult to explain their decisions and justify their actions to the Professional Conduct Committee.

5. Management and care: initial examination and review of treatment

The Professional Conduct Committee heard several cases that involved seriously poor patient management, where fundamental aspects of clinical decision making had been ignored, resulting in distressed patients and potential for patient harm. In one case, a patient received 85 treatments

within a six-month period without adequate reassessment of her health status or health needs, or evaluation of the treatment plan, to decide if changes to her treatment were appropriate or necessary. The patient's condition had not improved, she found the treatment distressing and felt that her condition was worsening.

Chiropractors must monitor patients' treatment on a continuous basis from the outset and must not continue treatment beyond the point of benefit to the patient. Patients should be told, at the earliest opportunity, that this is how you will manage their care.

It is therefore essential that, at the outset, chiropractors evaluate each patient's individual health and health needs and arrive at, and document in the patient's notes, a working diagnosis or rationale for care, based on the evaluation of the information.

When drawing up the working diagnosis or rationale for care, chiropractors must consider:

- a) relevant information about the natural history and prognosis of any complaint the patient has
- b) the potential benefits and risks of care, including contraindications
- c) the likelihood of recurrence or need for long-term management.

The working diagnosis or rationale for care must be kept under review while care is given to the patient. Chiropractors must:

- a) evaluate the benefit of care to the patient and identify whether the original diagnosis or rationale for care, or the plan of care, should be modified
- b) review with patients the effectiveness of the plan of care in meeting its agreed aims
- c) reach agreement with patients on any changes that need to be made
- d) make a record of these agreements.

6. Ionising radiation

Routinely exposing patients to X-rays at set periods as part of a care plan, as seen in two cases before the Professional Conduct Committee, is contrary to patients' best interests and cannot be justified. Patient safety requires that care is taken when submitting any patient to ionising radiation, and it should be undertaken only when there are sufficient benefits to justify the risks.

Further, chiropractors who take and interpret X-rays have a responsibility to ensure that they remain competent to do so. Each radiograph must capture the area of clinical interest clearly and exposure to ionising radiation must, as far as possible, be limited to that area and appropriate shielding used. Failure to do this may expose the patient to unnecessary levels of ionising radiation, adversely affect the management of the patient's condition and lead to a patient being further exposed to ionising radiation.

The law and regulations must be observed

Chiropractors must follow the legislation and regulations covering ionising radiation. Every X-ray must be justified under the Ionising Radiation (Medical Exposure) Regulations 2000. Further, the Ionising Radiation (Medical Exposure) (Amendment) Regulations apply to all healthcare professionals, including chiropractors.

Guidance and links to relevant legislation and regulations are in the GCC's *Code of Practice and Standard of Proficiency* (June 2010). Specific guidance on chiropractors' responsibilities can also be found on our website, together with a [guidance note](#) on the statutory powers of the Health & Safety Executive and the provisions of the Ionising Radiations Regulations 1999.

7. Politeness and consideration towards patients

A crass and insensitive comment made by a chiropractor to a female patient, whom he knew to be feeling low and vulnerable due to personal circumstances, was an integral part of a case considered by the Professional Conduct Committee.

Chiropractors are expected to treat patients with politeness and consideration, and must be aware of the impact of their words and behaviour upon patients. It is important for chiropractors to be self-aware, think before they act and regulate their own behaviour to a consistent professional standard.

8. Knowing your own limits

Each chiropractor must recognise and work within the limits of their own knowledge, skills and competence. The Professional Conduct Committee saw several examples of chiropractors who had misjudged their own limits and whose conduct was found to be unacceptable. For example, in one case a chiropractor injected a patient with steroids, provided by that patient, when he was not competent to do so; further, he had failed to establish if the steroids were prescribed. In another case a chiropractor gave alarmist advice to two patients about what he considered to be the effects of amalgam fillings, a subject that was outside his area of clinical competence.

You should consider your knowledge, skills and competence, and use your professional judgement to assess your own limits. You might consider:

- a) getting advice and support from an appropriate source when the needs of the patient or the complexity of a case are beyond your own knowledge and skills
- b) identifying where it might be appropriate to consider co-managing the patient with another healthcare practitioner
- c) referring patients to other healthcare practitioners when their needs are beyond your own knowledge, skills and competence.

9. Professional behaviour

Chiropractors must avoid acting in a way that may undermine public confidence in the chiropractic profession or bring the profession into disrepute. It is possible to undermine public confidence by your conduct in professional practice or in your personal life more generally.

Areas of your professional practice that might undermine public confidence or bring the profession into disrepute would include:

- a) arguments between you and other chiropractors or other healthcare workers that are shared with or involve patients
- b) soliciting the patients of other healthcare professionals.

When you enter into joint working arrangements with other chiropractors, you are recommended to agree at the start a contract about the arrangements. The contract should include what will happen when the joint working arrangements come to an end. This should help minimise the possibility of arguments and misunderstandings at a later date.

Areas of your personal life that might undermine public confidence or bring the profession into disrepute include, for example, misuse of drugs and alcohol, convictions for fraud or dishonesty and convictions related to the use of pornography.

Complaints about the misuse of drugs or alcohol may lead to a charge of unacceptable professional conduct, whether or not:

- a) the complaint is the subject of criminal proceedings
- b) the conduct directly affects your practice.

If your ability to practise is impaired due to the misuse of alcohol or other drugs, this may lead to a question of your fitness to practise being referred to the Health Committee.

10. Managing complaints

Chiropractors must have a written complaints procedure in place in their practice, which is easily accessible to patients. Any complaint or claim made by a patient must be dealt with promptly and fairly. Patients must be told about their right to refer any unresolved complaint to the GCC and be given the GCC's contact details. It is recommended that chiropractors:

- a) make all staff in the practice aware of the complaints procedure and make sure that they know what they should do if a patient wants to make a complaint
- b) try to resolve promptly and professionally within the practice any issues raised by a patient so that the issues do not become more serious.

It is important to remember that just as with keeping good clinical records, having an effective complaints procedure is an aspect of practice that protects the interests of patients and practitioners alike. A good complaints procedure may help chiropractors to improve their overall services as well as avoid complaints escalating to a referral to the GCC.

11. Providing access to patient health records

The Data Protection Act 1998 sets down the right of access that individuals have to personal records that are held about them. It applies to X-ray images, paper and electronic records and includes the time limits for responding to a request for access. You must give patients access to their personal health records consistent with legislation.

More guidance is in the GCC's *Code of Practice and Standard of Proficiency* (June 2010). Further information is also available from the Information Commissioner's Office www.ico.gov.uk, which is the body responsible for enforcing and upholding the Data Protection Act.

12. Professional indemnity insurance

Chiropractors must secure and maintain the necessary professional indemnity insurance and any other insurance required by legislation. Failure to have appropriate professional indemnity insurance as defined in the GCC (Professional Indemnity Insurance) Rules Order 1999 constitutes unacceptable professional conduct. Several chiropractors found themselves subject to disciplinary proceedings because they had not secured appropriate insurance cover and some had, initially, failed to understand the gravity of the situation.

You are personally liable to individual patients for any assessment and care you provide. Personal liability applies to all chiropractors, including those working as a locum, those working in a practice run by a principal and those working for a limited company.

You will need to:

- a) tell your insurance company about any changes in your circumstances that affect your policy
- b) make sure that your insurance has enough 'run-off' cover to protect you when you finish practising.

Professional Conduct Committee cases | January-31 December 2009

Name and registration number	Source of complaint	Summary of allegations	Outcome
HALL Nicholas John 01915	Patient	Instigating and controlling a sexual relationship with a patient	Removed from the Register with interim (immediate) suspension
FARTHING Christian Hamilton Edward 00666	Public	Misleading the public by advertising as a chiropractor when subject to a GCC Suspension Order	Removed from the Register
PAULL Michael 02045	Other chiropractor	<ul style="list-style-type: none"> ● Inappropriately injecting a patient with steroids supplied by the patient ● Failure to ensure the steroids were prescribed ● Failure to take any steps to prevent someone from treating patients, knowing that he was not GCC registered and/or insured at the time ● Failure to have an in-house practice complaints procedure 	Suspension Order (Four months)
FARRELL Neil 02346	Other chiropractor	<ul style="list-style-type: none"> ● Practising as a chiropractor when not registered with the GCC ● Practising without any, or any adequate, professional indemnity cover ● Failure to establish a formal practice complaints procedure 	Suspension Order (28 days)
McAVINEY Jeb Ronald John 02112	Patient	<ul style="list-style-type: none"> ● Excessive and unjustifiable use of X-rays contrary to IR(ME)R 2000 ● Promoting a patient's dependence on treatment ● Excessive and unjustifiable treatment ● Failure to formulate a working diagnosis or adequately assess and re-evaluate treatment 	Conditions of Practice Order (Two years)
HARRIS Paul Anthony Elmo 00181	Patient	<ul style="list-style-type: none"> ● Inadequate record keeping and ongoing assessment ● Inappropriate communication 	Conditions of Practice Order (12 months)
MASSEY Graeme 02108	Patient x 2	<ul style="list-style-type: none"> ● Taking full spinal X-rays when not clinically indicated or justified, contrary to IR(ME)R 2000 ● Producing radiographs that were of inadequate diagnostic value, poorly collimated, without paraspinial filtration and in parts overexposed ● Inadequate record keeping ● Exceeding the limits of knowledge, skills and experience ● Failure to ensure that patients' records were provided to them ● Failure to provide patients with information about their assessment and care 	Conditions of Practice Order (12 months)

Name and registration number	Source of complaint	Summary of allegations	Outcome
PENFOLD Adam Stuart 02615	Registrar	Criminal conviction: possession of a Class A controlled drug	Conditions of Practice Order (12 months)
THOMSON Christopher David 01589	Patient x 2	Failure to <ul style="list-style-type: none"> ● keep adequate patient treatment records ● re-examine a patient when she presented with new symptoms 	Conditions of Practice Order (Eight months)
CURRIE Ross 02114	Registrar	Failure to arrange appropriate professional indemnity insurance cover	Admonished
MORLEY David Gerrard 00433	Registrar	Failure to <ul style="list-style-type: none"> ● arrange appropriate 'run-off' insurance cover ● respond adequately to correspondence from the GCC requesting relevant information 	Admonished
SHAFER Joseph 01060	Registrar	Failure to disclose a criminal conviction when applying for GCC registration	Admonished
SVEINSVOLL Ann Kristin 02540	Registrar	Failure to arrange appropriate 'run-off' insurance cover	Admonished

Case summaries

Introduction

This section of the report contains a summary of the cases heard by the Professional Conduct Committee during 2009. Details of the Professional Conduct Committee hearings, including the charges and decisions in full, are available upon request or can be read on our website www.gcc-uk.org.

Reasons for the Committee's decisions

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.

Please note that the use of the title 'Dr' in the case summaries refers to 'Doctor of Chiropractic'.

GCC v Nicholas John HALL

Registration number: 01915

Removed from the Register with interim (immediate) suspension

Source of complaint

Patient

In brief

- Instigating and controlling a sexual relationship with a patient

Case summary

Patient A, a 55-year-old woman suffering from neck and shoulder pain, first consulted Mr Hall at the Cotswold Chiropractic Clinic on 29 January 2007. She consulted him about 60 times, usually every two weeks, until 20 January 2009.

After the initial appointment, Mr Hall commenced a relationship with Patient A, which escalated and became increasingly inappropriate and personal. For example, Mr Hall shared personal information about his wife, family, friends, home and business life; he exchanged clinically unnecessary texts and emails; he hugged Patient A and kissed her on her cheeks and face during consultations; and gave her massages of an intimate nature.

From 9 October 2007 onwards, Mr Hall engaged in an intimate relationship with Patient A that was conducted at the clinic and that frequently involved sexual intercourse. Appointments would be arranged at the end of the day and Mr Hall controlled the relationship with Patient A by deciding whether the consultation would be for sexual intimacy, treatment or both.

Outcome

Mr Hall attended the hearing and was legally represented.

At the outset of the hearing Mr Hall admitted that he had had a sexual relationship with Patient A, which had been conducted on practice premises.

In relation to those matters that remained disputed, the Committee considered all of the oral and documentary evidence and took into account submissions made on behalf of the GCC and Mr Hall and the advice of the Legal Assessor. The Committee heard oral evidence from Patient A and Mr Hall. In many respects it found Patient A to be a credible and reliable witness, although sometimes her evidence was inconsistent or unclear and so the Committee did not find proved some of the detailed elements of the allegation of unacceptable professional conduct.

The Committee decided that the facts found proved did amount to unacceptable professional conduct because Mr Hall had engaged in a long-standing sexual relationship with a patient in his care.

Sanction

The Committee concluded that the only sanction that would properly protect the public interest was to remove Mr Hall's name from the Register of Chiropractors.

The Committee further decided that, to avoid exposing patients to risk, it was necessary to impose an Interim Suspension Order.

Extract from the Committee's final decision

"Patient A was a physically and emotionally vulnerable person when she came to Mr Hall for treatment. Despite being aware of this and his own professional obligations, Mr Hall chose to engage in a wholly inappropriate and extended personal and sexual relationship with Patient A...

Mr Hall made no attempt to end the professional relationship and arrange alternative care for Patient A and...on his own admission, was well aware of the requirements of the GCC's Code of Practice and Standard of Proficiency in this regard. He had stated to Patient A that his conduct, if discovered, would lead to serious consequences for him. He was well aware of the professional boundaries between himself and Patient A which he deliberately ignored and breached in pursuit of his own gratification...

Quite plainly and on his own admission, he abused his professional position and acted in a manner that was unprofessional and unacceptable to the chiropractic profession.

There was evidence that direct harm of both a physical and emotional nature had been caused to Patient A, who gave evidence that she had lost weight and required counselling which was ongoing.

Mr Hall failed to demonstrate appreciable insight into his conduct. He had not taken the opportunity to apologise for his behaviour to Patient A until the point of being cross-examined in the hearing. The Committee's view was that the apology offered to Patient A was reluctant. In addition, Mr Hall failed to initially accept that his behaviour was not in Patient A's best interest and an abuse of his professional position.

Mr Hall told the Committee that he was not as emotionally involved in the relationship as Patient A had been. His lack of insight into the harm he caused her and his reluctant apology struck the Committee as displaying an appalling attitude to the welfare of Patient A and to Mr Hall's professional responsibilities...

The Committee is firmly of the view that the behaviour demonstrated in this case is fundamentally incompatible with continuing to be registered as a chiropractor. This is a very serious case of misconduct over an extended period involving real consequent harm to a patient in the care of a healthcare professional...

Patient A displayed considerable physical and emotional vulnerability. It was clear from the evidence that Mr Hall deliberately cultivated an empathic relationship with Patient A over a period of time. The abuse occurred on numerous occasions over a significant period.

Mr Hall was at all times, in the view of the Committee, in control of the relationship. He was the professional healthcare provider and Patient A was his patient...

...the firm view of the Committee was that the minimum appropriate sanction to secure the legitimate aims of public protection, maintaining public confidence and declaring and upholding proper standards of conduct was to order the removal of Mr Hall from the Register of Chiropractors..."

GCC v Christian Hamilton Edward FARTHING

Registration number: 00666

Removed from the Register

Source of complaint

Public

In brief

- **Misleading the public by advertising as a chiropractor when subject to a GCC Suspension Order**

Case summary

Mr Farthing's name was suspended from the Register in 2003; the Suspension Order was subsequently extended twice and would have continued until at least April 2010. The misconduct for which Mr Farthing was originally suspended related to complaints from four patients concerning multiple counts of:

- a) inappropriate use of X-rays, contrary to the Ionising Radiation (Medical Exposure) Regulations 2000
- b) failure to keep adequate clinical records
- c) failure to minimise the need for further care or take steps to prevent treatment dependence
- d) exercising undue influence on patients, including exaggerating the gravity of their conditions and the therapeutic value of care, and the use of inappropriate methods of patient education and payment plans.

It is contrary to Section 7(3) of the Chiropractors Act 1994 for anyone whose registration has been suspended to use the title chiropractor or imply they are a chiropractor, as specified in Section 32(1) of the Act. Mr Farthing knew this, yet while suspended he deliberately advertised as a chiropractor in the British Telecom phone book 2007–2008 for Canterbury.

Outcome

Mr Farthing chose not to attend the hearing. The Committee considered all oral and documentary evidence, including documents provided by Mr Farthing.

The Committee saw copies of the advertisement and the BT authorisation forms Mr Farthing had signed so that it would be placed in the section headed 'Chiropractors'. The Committee also noted a letter dated 17 April 2009 to the GCC from Mr Farthing in which he stated that he is entitled to provide *'chiropractic services to members of the public'*.

The Committee found that Mr Farthing had allowed himself to be advertised as a chiropractor when he knew that he was not entitled to do so. The Committee decided that the facts proved amounted to unacceptable professional conduct.

Sanction

The Committee determined that Mr Farthing's name should be removed from the Register.

The Committee, in determining an appropriate sanction, took into account a number of factors including its role to protect patients and the wider public, and the GCC's Indicative Sanctions Guidance. A sanction should be proportionate and is not intended to be punitive, although that may be its effect.

Extract from the Committee's final decision

"...Mr Farthing's advertisement misled the public into believing that he was a registered chiropractor, entitled to practise as such. There is no evidence of insight...He does not have previous good history, being currently suspended from the Register..."

...The Committee considers that the misconduct in this case is fundamentally incompatible with continuing to be a registered chiropractor. Mr Farthing deliberately promoted himself as a chiropractor over a substantial period despite knowing that he was not entitled to do so whilst being the subject of a Suspension Order. This is a violation of the interests of patients, who are entitled to assume that someone who advertises himself as a chiropractor has unrestricted registration. It also shows a fundamental disregard for the regulatory process.

...There was an abuse of trust of patients and serious harm to the reputation of the profession and confidence of the public in the profession. There was also a persistent lack of insight.

The Committee is aware that Mr Farthing has requested removal from the Register. However, the Committee has reached its own conclusions for the reasons already given."

GCC v Michael PAULL

Registration number: 02045

Suspension Order (Four months)

Source of complaint

Other chiropractor

In brief

- Inappropriately injecting a patient with a substance, which Dr Paull had been told by Patient A was steroids, and failing to ensure that the substance was prescribed for Patient A
- Failure to take any steps to prevent someone from treating patients, knowing that he was not GCC registered and/or insured at the time
- Failure to have an in-house practice complaints procedure

Case summary

Between around June 2005 and August 2005, Dr Paull inappropriately injected Patient A on a number of occasions with a substance supplied by Patient A, and which the patient informed Dr Paull were steroids. Dr Paull failed to ensure that the steroids were prescribed for Patient A.

Between July 2004 and 1 December 2004, Dr Paull didn't take sufficient steps to prevent Dr Neil Farrell, a recent graduate of a chiropractic degree programme, from treating some patients and taking decisions concerning their chiropractic management or treatment, when he knew or had reason to suspect that Dr Farrell was not registered with the GCC. Nor did Dr Paull take appropriate steps to address the situation, which would have included notifying the GCC and the practice owner.

Based on the evidence heard, it was found that Dr Paull knew, or had reason to suspect, that between 5 November and 16 November 2004 Dr Farrell was not properly insured to practise. Dr Paull didn't intervene to prevent Dr Farrell from treating some patients and didn't tell the practice owner, the GCC or the patients.

It was also found that between around 29 November 2004 and July 2006 Dr Paull did not have a formal complaints procedure in place at the clinic.

Allegations made by Dr Farrell that Dr Paull had verbally abused and physically assaulted him were not found proved by the Committee.

Outcome

Under the circumstances, the Committee approached Dr Farrell's evidence with caution and gave little weight to it unless there was independent corroboration to support it. The Committee heard evidence from Patient A, who the Committee found to be a credible witness, that Dr Paull had injected him with steroids on a number of occasions. Dr Paull had previously apologised to the GCC for failing to check whether the steroids were prescribed for Patient A.

Initially, Dr Paull had chosen not to attend the hearing. Following the Committee's announcement that the facts found proved amounted to unacceptable professional conduct, the Committee contacted Dr Paull to give him the opportunity to take up his right to present evidence in mitigation. When the Committee reconvened a month later, Dr Paull was present.

Sanction

The Committee was concerned that Dr Paull maintained a *'single instance of injection in the face of the clear finding of the Committee that this happened on more than one occasion'*. A letter of 15 September 2006 from Dr Paull to the GCC *"...displayed a worrying attitude towards a willingness to practise outside the scope of a chiropractor..."*

The Committee considered that a Suspension Order for a period of four months was a sufficient and proportionate sanction.

Extract from the Committee's final decision

"The Committee viewed your conduct, particularly the administration of steroid injections to Patient A, as a serious incident of unacceptable professional conduct..."

The Committee was very concerned at your lack of insight into the seriousness of administering steroid injections to another, both within the context of professional practice or at all.

Your conduct did not comprise an isolated incident. The injections were found to have been administered by you on more than one occasion. Your knowledge of Dr Farrell's lack of registration and insurance extended over some time...

...Dr Paull is found to have taken no steps to prevent Dr Farrell from treating patients, knowing that Dr Farrell was uninsured for a period of approximately 11 days...

The Committee recommends that during the period of suspension, you participate in a course/training on Ethics and Professional Conduct. At the review hearing the Committee expects you to produce evidence either in writing or by your actions that you have developed insight into your failings and have been able to correct them..."

Outcome of review hearing

The Committee reconvened shortly before the expiry of the Suspension Order to review the Order and decide whether it was necessary to vary its provisions or to let it expire. Dr Paull was present and represented, and the Committee concluded that he had met the Committee's recommendations and allowed the Order to expire.

GCC v Neil FARRELL

Registration number: 02346

Suspension Order (28 days)

Source of complaint

Other chiropractor

In brief

- Practising as a chiropractor when not registered with the GCC
- Practising without any, or any adequate, professional indemnity cover
- Failure to establish a formal practice complaints procedure

Case summary

Dr Farrell achieved his chiropractic degree in late June or early July of 2004. The GCC received his application for registration on 17 November 2004 and Dr Farrell was registered with effect from 2 December 2004. It is a statutory requirement of registration with the GCC that chiropractors hold effective professional indemnity insurance. To achieve this, Dr Farrell had applied to join the British Chiropractic Association (BCA) on 7 November 2004 and became a member with effect from 16 November 2004; his membership of the BCA included professional indemnity insurance cover.

Dr Michael Paull, a chiropractor who had qualified the year before, invited Dr Farrell to join him at Wigan Chiropractic Practice in July 2004. The practice was owned by chiropractor Dr Dean Kenny, who was planning to sell it and return to New Zealand. It was asserted that Dr Farrell joined the practice on an unpaid, expenses-only basis to learn a chiropractic technique under the direct supervision of Dr Kenny. Dr Farrell said that he was advised, erroneously, by Dr Paull and Dr Kenny that he did not need professional indemnity insurance cover or to be registered with the GCC, because he would be observing or working under supervision and that their insurance would cover him.

It transpired that Dr Farrell did treat a number of patients who believed him to be a registered chiropractor. He was not supervised at the time and was acting as an autonomous practitioner.

In a written statement, Dr Kenny explained that he had required Dr Farrell to be insured, and GCC registered, with effect from 15 November 2004, although Dr Kenny did not check that this had been done. He said that, from then onwards, Dr Farrell was allowed to treat patients. Shortly afterwards, Dr Kenny transferred the practice to Dr Paull and returned to New Zealand.

Subsequently there was a disagreement between Dr Farrell and Dr Paull about the ownership of the practice. They each submitted complaints to the GCC about the other's conduct. Dr Paull submitted a complaint to the GCC about Dr Farrell in June 2005 in which he made various allegations, including those summarised in this report.

Outcome

It was found that, at various times between July and 2 December 2004, Dr Farrell did treat a number of patients and practised as a chiropractor, unsupervised, while unregistered and uninsured; the patients who gave evidence had believed Dr Farrell to be a registered chiropractor at the time.

Dr Farrell had admitted at the outset that the practice did not have a formal in-house complaints procedure.

The evidence submitted in the case was conflicting and the Committee approached it with caution and at times did not consider the evidence to be credible or reliable.

For instance, Dr Paull had stated that he had not known until 2006 that Dr Farrell was not registered or uninsured during the period in question. This assertion was contradicted by evidence that Dr Paull had seconded Dr Farrell's application to join the BCA. Further, he provided a character reference dated 5 November 2004 to support Dr Farrell's application for GCC registration.

Sanction

Dr Farrell's conduct was considered to amount to unacceptable professional conduct and, in the light of mitigating factors, a short Suspension Order of 28 days was imposed.

Extract from the Committee's final decision

"The Committee has found that you did manage and treat, unsupervised, a number of patients who had attended the clinic who believed that they were being treated by a registered chiropractor. At this time you were not in fact registered with the GCC. The GCC has accepted that you were told by a senior colleague, Dr Kenny, that it was acceptable for you to work under his supervision without GCC registration...you now appreciate that you were naïve to have accepted this.

You should have been acutely aware of the requirements for professional practice as Margaret Coats, of the GCC, and Susan Wakefield, of the British Chiropractic Association, gave a presentation to final year students at the Welsh Institute of Chiropractic less than two months before you joined the Wigan Chiropractic Clinic. The Committee considers that it was your professional responsibility to check with the GCC and the BCA your position with regard to practising when not registered.

It is not acceptable for an individual who has successfully graduated from a chiropractic programme to circumvent the regulatory process by attempting to practise in this way without first registering with the GCC and having in place adequate, effective Professional Indemnity Insurance.

...The Committee accepts that in essence this was an isolated episode when you, as a newly qualified practitioner, were led astray...You were not acting under duress, but you were misled by the advice you were given by senior and respected colleagues.

The Committee has been impressed by your testimonials which indicate that you are a responsible, safe and conscientious practitioner. You have been registered and appropriately insured since 2 December 2004. You are of previous good character and have practised without any complaint for four years since the time in question. The Committee is satisfied that there is no risk of you repeating these failings.

However, practising without insurance and outside the regulatory framework are very serious matters. They directly affect patient safety. If you had made a negligent mistake whilst uninsured, the patient involved might well have been deprived of proper compensation...

...For all these reasons the Committee determines that a short Suspension Order is appropriate in your case. The Committee considers that a lengthy period of suspension would be disproportionate, punitive and not in the best interests of your patients."

GCC v Jeb Ronald John McAVINEY

Registration number: 02112

Conditions of Practice Order (Two years)

Source of complaint

Patient

In brief

- Excessive and unjustifiable use of X-rays contrary to IR(ME)R 2000
- Promoting a patient's dependence on treatment
- Excessive and unjustifiable treatment
- Failure to formulate a working diagnosis or to adequately assess and re-evaluate treatment

Case summary

Patient A, a 28-year-old woman, consulted Dr McAviney on 7 April 2004 with symptoms of dizziness and light-headedness from which she had been suffering since September 2003.

Patient A had consulted medical professionals, including her GP and ear, nose and throat specialists, a number of times previously; they had been unable to reach a definite diagnosis and her symptoms had not resolved in response to medication prescribed for possible migraine.

Patient A stated that, at that first consultation, Dr McAviney asked her questions about her medical history and symptoms, examined her and recommended X-rays, which were taken on the same day. Patient A returned to see Dr McAviney a few days later for the results and his recommendations.

Patient A explained that Dr McAviney told her he had 'great news' and that he could help her. He said that she had a 'neck misalignment' and that one of the care options would be a spinal rehabilitation programme involving manipulation, exercises and 'cervical curve traction', to which she agreed.

Patient A then underwent the programme in cycles of 36 treatment sessions, which occurred up to four times a week between 7 April 2004 and 28 October 2004. There were 85 treatment sessions provided in total. Initially treatment comprised adjustments delivered by Dr McAviney to Patient A in a room with three other patients. Patient A stated that Dr McAviney moved from patient to patient.

Dr McAviney undertook X-ray examinations of Patient A on seven occasions.

After the first consultation, Dr McAviney then generally X-rayed Patient A at the 18th and 36th visit of each treatment cycle, usually for the stated purpose of assessing the effect of treatment. Dr McAviney had also failed to take account of Patient A's previous exposure to ionising radiation, of which he was aware, when a CT scan had been undertaken six months before Patient A had initially consulted him.

At the end of the first cycle of treatments, Dr McAviney told Patient A that her treatment had not been successful and recommended a further cycle of 36 treatments, saying that more aggressive traction was needed and that only his treatment could help her.

During the second cycle of 36 treatments, for which Dr McAviney did not charge, Patient A complained to him about ongoing headaches. As the treatments became more aggressive, Patient

A said she would often sit in the waiting area after each session to recover before driving home, and sometimes she was so distressed by the discomfort from the traction treatments that she sat crying in the waiting area.

About midway through a third cycle of treatments, Patient A said that her condition was not improving. Dr McAviney recommended that she should have an MRI scan. Patient A consulted her GP who referred her, privately, to a consultant orthopaedic surgeon who arranged an MRI scan. The consultant told Patient A that 'her neck was fine, other than some disc dehydration' and she had some loss of lordosis consistent with muscle spasm. He said there was nothing further he could do and discharged her from his care.

Patient A terminated her treatment with Dr McAviney. In April 2005 she complained to Dr McAviney and asked for a refund of the fees she had paid. Dr McAviney responded with a letter dated 29 April 2005 and a cheque. In his letter he said his treatment had been in accordance with protocols for CBP, the Clinical Biomechanics of Posture, which he said were based on published research and that in treating Patient A he had acted in her best interests.

Outcome

Over a total of 13 days, the Committee considered oral and documentary evidence and submissions made on behalf of the GCC and Dr McAviney. It also took into account advice from the legal assessor, and from expert witnesses Dr Hennis and Dr Harrison, acting for the GCC and the respondent respectively.

The Committee determined that Dr McAviney's conduct contravened the GCC's *Code of Practice and Standard of Proficiency* in a number of significant areas and amounted to unacceptable professional conduct.

Sanction

The Committee gave careful thought about whether or not to suspend Dr McAviney's registration for a period, particularly in light of his contraventions of IR(ME)R. It considered, however, that Dr McAviney's failings could be satisfactorily addressed through retraining and that conditions could be formulated that would protect patients while they are in force. A Conditions of Practice Order was therefore imposed by the Committee for two years. The Committee concluded that it is the proportionate sanction necessary to protect the public, maintain confidence in the profession and uphold standards of practice.

The Order requires, amongst other things, that Dr McAviney:

- a) must not take, or refer any patient, for X-rays
- b) must complete a course, acceptable to the Committee, on ionising radiation, provide evidence of successful completion of the course and demonstrate understanding of and compliance with IR(ME)R
- c) pass the Test of Competence run on behalf of the GCC
- d) must complete a course on reflective practice, provide evidence of its successful completion and demonstrate understanding of the need to adjust treatment to the individual needs of each patient.

At any stage while the Order remains in force, Dr McAviney can apply for reconsideration, or the Committee may decide to extend, reduce, revoke or vary the Order or any of its conditions. Unless the Order has been revoked before then, the Committee will review it shortly before its expiry.

Extract from the Committee's final decision

"The Committee accepts that it is for a chiropractor to determine the precise number and frequency of treatments appropriate for the needs of each individual patient. However, this can only be properly determined if there is appropriate evaluation and re-evaluation of that patient's specific health needs.

The Committee was concerned by the number and frequency of treatments. The Committee noted that approximately 85 treatments were recorded and these in fact took place during only six of the seven months that Patient A was your patient...You did not carry out adequate or appropriate assessments or reassessments of Patient A's changing health status and health needs during the period you treated her. You did not adequately evaluate and re-evaluate the treatment plan to ensure that it remained appropriate. Such assessments or reassessment or evaluation or re-evaluation as you did carry out was inadequate and insufficient to justify continuing treatment. Your failings in this respect resulted in Patient A receiving treatment on approximately 85 occasions within the time period, which was excessive and not in her best interests. Even your own expert, Dr Harrison, accepted that there was a need for regular re-evaluation and reassessment...

...The Committee heard evidence from Dr Hennis, who relied on the Ionising Radiation (Medical Exposures) Regulations (Northern Ireland) 2000 (IR(ME)R) governing the taking of X-rays within Northern Ireland, that risk is implicit when any X-ray is taken. These regulations place the responsibility on the practitioner to identify the nature and extent of the risk and then to weigh this risk against the benefits of the investigation. In contrast, Dr Harrison expressed the view that there was no risk involved in X-raying patients and his own approach would be to rely on a patient raising a concern regarding X-rays. The Committee rejects Dr Harrison's approach as it does not comply with IR(ME)R, which requires that all exposures are justified by the practitioner on the basis that there is an evaluation of the individual benefits and detriments of each exposure.

...the Committee determined that it was unprofessional and not in Patient A's best interests for you to have provided treatment to her on approximately 85 occasions over a treatment period of six months, without adequate reassessment of her health status and needs during treatment...

...it was unprofessional of you, and not in the patient's best interests, to take X-rays in the manner and with the frequency that you did, thereby breaching the relevant provisions of IR(ME)R and the Code of Practice and Standard of Proficiency. You subjected a young woman of child-bearing age to unnecessary ionising radiation and thereby exposed her to risk.

...by telling Patient A that only your treatment could help, you encouraged Patient A to depend on you and your treatment. It was your responsibility to communicate appropriately with Patient A and ensure that she fully understood the nature, extent and risks of your planned investigations and treatment.

...long before 85 treatments, without substantial or sustained improvement, had taken place, the health status and health needs of Patient A should have been appropriately reassessed by means other than just questionnaires and repeated X-rays. For a patient with headaches, dizziness and obvious emotional distress, this should have included a range of assessments including, for example, a neurological examination with an assessment of cranial nerve function...

In the light of the seriousness and extent of your failings and in particular your persistent disregard of IR(ME)R, the Committee is satisfied that your conduct fell significantly below the standards required of a registered chiropractor and you are therefore guilty of unacceptable professional conduct."

GCC v Paul Anthony Elmo HARRIS

Registration number: 00181

Conditions of Practice Order (12 months)

Source of complaint

Patient

In brief

- Inadequate record keeping and ongoing assessment
- Inappropriate communication

Case summary

Patient A, a female patient in her thirties suffering from knee pain, consulted Dr Harris about 37 times between June 2007 and 10 April 2008.

While giving evidence to the Committee, Patient A explained that she had generally been satisfied with the care she had received from Dr Harris and that he had been focused, not given to chat, and professional; he had been 'kind' when she told him about the miscarriages that she had suffered and which had distressed her greatly, leaving her subject to stress and low feelings.

On 10 April 2008, Patient A asked Dr Harris if her emotional state, which was caused by a range of personal circumstances, could be affecting her response to treatment. Dr Harris responded by recounting a story about someone who had told a stressed female student of chiropractic that 'what she needed was "a good shag" to sort out her stress issues.'

Patient A informed Dr Harris that his comment was inappropriate, cancelled her next appointment the day before she was due to attend, and did not consult Dr Harris again.

The case against Dr Harris also included matters relating to a previous treatment session in late October 2007, which were largely found unproved.

Dr Harris's clinical records of the consultations were, however, found to be inadequate. He failed to record a treatment plan, or any assessment or reassessment, and how Patient A's health and health needs were likely to change over time with, and without, chiropractic care. Dr Harris also failed to maintain adequate records of the consultation in late October 2007, because it was found that he had no record of Patient A's request for advice about a hardened raised vein on her wrist, or any advice that he gave to her about it.

Outcome

The Committee decided that, on the basis of the evidence it had heard and found proved, the allegation of unacceptable professional conduct was well founded.

Sanction

The Committee imposed a Conditions of Practice Order upon Dr Harris for 12 months, which involved a series of visits to Dr Harris's practice from an auditor to review the quality of his record keeping. The auditor would provide regular reports to the Committee of the outcomes of the reviews. Dr Harris was also required to provide the Committee with evidence of successful completion of a course dealing with communication with patients.

Extract from the Committee's final decision

"The findings against you relate to an inappropriate communication with one patient and inadequate record keeping and ongoing assessment..."

In reaching its decision the Committee has considered carefully your argument that the instance of crass and insensitive communication...was a single aberration. It accepts the thrust of that argument and has also borne in mind your frank recognition of the inappropriateness of what transpired and your assurance that such conduct will never recur. However, it wishes to make clear that the incident itself was a very grave one that had the potential to cause serious distress and to bring the profession generally into disrepute. The Committee has also had regard to the consequences of poor record keeping, which have the potential to reduce the standard of patient care, a fact which you have admitted."

Outcome of review hearing

Dr Harris complied with the Conditions of Practice Order and the Committee revoked it on 8 April 2010.

GCC v Graeme MASSEY

Registration number: 02108

Conditions of Practice Order (12 months)

Source of complaint

Patients

In brief

- Taking full spinal X-rays when not clinically indicated or justified, contrary to patients' best interests and the requirements of IR(ME)R 2000
- Producing radiographs that were of inadequate diagnostic value, poorly collimated, without parasagittal filtration and in parts overexposed
- Inadequate record keeping
- Exceeding the limits of knowledge, skills and experience
- Failure to ensure that patients' records were provided to them within a reasonable time when requested
- Failure to provide patients with information about their assessment and care including: the rationale for treatment, formal reassessments of care and a recorded care plan

Case summary

The case relates to Mr Massey's management of two patients between December 2007 and March 2008. The patients were referred to as Ms P and Mr D throughout the hearing. Ms P and Mr D consulted Mr Massey 23 and 26 times respectively. Mr Massey's approach to Ms P's and Mr D's care was very similar, notwithstanding their different clinical histories, presenting symptoms and health needs.

Ms P experienced back pain following a road traffic accident. Her husband, Mr D, an insulin dependent diabetic taking prescribed medication for high cholesterol levels, suffers from chronic back pain. They first consulted Mr Massey together on 20 December 2007 when he accepted them both as patients.

Ms P

On 20 December 2007, Mr Massey failed to record a plan of care for Ms P and then, during the entire period he provided care and treatment to Ms P on 23 visits up to March 2008, he failed to reassess or record a reassessment or revised treatment plan, and continued to see Ms P at the same frequency.

Without adequately explaining his reasoning and at the end of the first block of 12 appointments, Mr Massey told Ms P that she required ongoing treatment and recommended that she book a further block of 12 adjustments.

At her first visit, Mr Massey recorded that Ms P should be X-rayed due to her past road traffic accident and took full spine X-rays of Ms P. The X-rays were of insufficient diagnostic value because the anterior posterior X-rays were inadequate. Further, the full spine X-rays showed inadequate collimation, no evidence of paraspinal filtration or of gonad shielding. He also failed to identify the specific nature of the X-rays administered in his X-ray logbook and did not record X-rays in chronological order.

Mr Massey told Ms P at her first and second visits that her dental fillings were poisoning her and would need to come out. These comments were made without a full and proper diagnosis from a dental practitioner.

On 3 March 2008, and afterwards, a request was made for Mr Massey's records relating to Ms P, including X-rays. Mr Massey failed to provide the records to her within a reasonable time, or at all.

Mr D

At his first visit, Mr Massey did not take or record an adequate case history, nor did he record a plan of care for Mr D. Mr Massey also failed to record that Mr D was taking a statin medication to control high cholesterol.

Mr Massey recorded that Mr D should be X-rayed as he had 'not responded to prior treatment' received from another chiropractor some time before, had 'spinal tenderness' and an 'inconclusive exam'. Mr Massey took full spine X-rays of Mr D. Similar to the X-rays Mr Massey had taken of Ms P, they were of insufficient diagnostic value and showed inadequate collimation and no evidence of paraspinal filtration. Mr Massey's X-ray logbook entries were also inadequate. He also told Mr D that his fillings were poisoning him and would need to come out.

Mr Massey gave Mr D an information sheet called 'Advice on Patient Diet'. The advice was not specific to Mr D despite the fact that he was a diabetic, taking medication for high cholesterol and had provided Mr Massey with a food diary as requested.

Further, Mr Massey recommended another block of 12 treatments to Mr D and again, as with Ms P, did not adequately explain his rationale for this approach. Mr D consulted Mr Massey about 26 times, and at no time did Mr Massey reassess, or record a reassessment of Mr D's condition, or a revised treatment plan.

Mr D also requested a copy of his records, including X-rays, on 3 March 2008. Mr Massey failed to provide them within a reasonable time, or at all.

Outcome

The Committee heard the case over six days and considered evidence put to them on behalf of the GCC and Mr Massey. This included documentary evidence and oral evidence from Mr D and Ms P, expert witnesses and Mr Massey.

There were 24 separate elements, or particulars, to the allegation of unacceptable professional conduct considered by the Committee, many of them detailed, and some admitted by Mr Massey. On the basis of the evidence considered by the Committee, a majority of the particulars were found proved. The Committee found that the facts found proved amounted to unacceptable professional conduct.

Sanction

The Committee took into account evidence of remedial action that Mr Massey had undertaken since the events concerned, and noted that he had put into place systems to remedy deficiencies in his practice. It also considered testimonials offered on Mr Massey's behalf.

The Committee determined to impose a Conditions of Practice Order upon Mr Massey for 12 months, which it considered was the minimum necessary to protect the public, maintain confidence in the profession and uphold standards of practice.

The Committee considered that Mr Massey's failings could be addressed by an audit of his practice that was proportionate, workable and measurable. The Conditions of Practice Order required that, amongst other things, Mr Massey:

- a) will be subject to an audit of his practice by an auditor appointed by the Committee
- b) will cooperate with the auditor and make available whatever information they require
- c) shall make available for audit all patient records made since the commencement of the Order to enable the auditor to focus on: rationale for care, plan of care and formal reassessment
- d) provide evidence, in relation to X-rays, of satisfactory: clinical indications, clinical justifications, collimation, paraspinal filtration and gonadal shielding
- e) provide evidence of his successful completion of an IR(ME)R course.

The auditor will visit Mr Massey's practice after seven to nine months have elapsed from the date the Order commenced, and will provide a report to the Committee to include recommendations to ensure that Mr Massey's practice conformed to the *Code of Practice and Standard of Proficiency*.

Extract from the Committee's final decision

"In determining whether your conduct fell below the standard that is expected of a chiropractor, the Committee took account of the Code of Practice and Standard of Proficiency... For chiropractors this Code represents the benchmark of conduct and practice against which they are content to be measured. The Committee found that your conduct breached a number of sections of the Code.

...you failed to provide information on assessment and care which should have included the rationale for treatment, formal reassessments of care and a recorded care plan...

Patient safety requires that care is taken when submitting any patient to ionising radiation and this should only be carried out when there will be sufficient benefits from the process to justify the risks.

...you exceeded the limit of your knowledge, skills and experience when you gave information regarding amalgam fillings to Ms P and Mr D, and dietary advice to Mr D, who is an insulin dependent diabetic.

...The Committee first considered an admonishment, but concluded that this would be insufficient to reflect the seriousness of the facts found against you, in particular, the potential for harm to Ms P and Mr D by exposing them to unnecessary ionising radiation."

Outcome of review hearing

The review hearing is listed for September 2010 and has not taken place at the time of writing. Review hearing outcomes are published on www.gcc-uk.org.

GCC v Adam Stuart PENFOLD

Registration number: 02615

Conditions of Practice Order (12 months)

Source of complaint

Registrar

In brief

- Convicted at Fort William Sheriff Court on 13 December 2007 for possession of a Class A controlled drug contrary to section 5(2) of the Misuse of Drugs Act 1971

Case summary

At the outset of the hearing the fact of the conviction was evidenced by a certificate of conviction issued by the Court and found proved. Dr Penfold accepted that he had been convicted, after pleading guilty, to the possession of six Ecstasy tablets for his own use.

Outcome

Having considered submissions and legal advice, the Committee concluded that the conviction was 'materially relevant' to Dr Penfold's fitness to practise chiropractic. The Committee was of the view that Ecstasy had the potential to affect Dr Penfold's health and behaviour and his fitness to practise. Further, the fact and the circumstances of the offence have the potential to undermine confidence in the chiropractic profession and bring it into disrepute.

Sanction

The Committee heard submissions on behalf of the GCC and Dr Penfold, took advice from the legal assessor and heard evidence from Dr Penfold and a consultant psychiatrist with specialist training and expertise in substance misuse.

The Committee imposed a Conditions of Practice Order to be in place initially for 12 months. The conditions upon Dr Penfold included:

- a) that he must agree to the supervision of a medical supervisor nominated by the Committee
- b) to consult the medical supervisor when required and follow their advice and recommendations
- c) he must allow the Committee to exchange information with the medical supervisor on his progress under supervision and his fitness to practise, and compliance with these Conditions
- d) he must comply with arrangements made on behalf of the Committee for the testing for the ingestion of drugs to be taken at approximately three-monthly intervals.

Extract from the Committee's final decision

"...you have considerable insight into your failings and you expressed genuine regret and remorse to the Committee...There has been no repetition of the behaviour that resulted in your conviction. You are of previous good history and you have taken significant steps to change your lifestyle..."

It is very serious for any person, let alone a registered healthcare practitioner, to be in possession of a Class A drug. Whilst you acknowledge that you were 'foolish' and 'stupid' in so doing, the Committee is concerned that, even with your education and training, you were prepared to consider taking an illegal substance when you had no knowledge of its precise composition or the dose or the effect it could have on your body.

...The Committee accepts that there is no evidence of harmful, deep-seated personality or attitudinal problems or of general incompetence, save that of possessing and being prepared to take a Class A drug is unacceptable behaviour for a chiropractor.

The Committee considers that the imposition of appropriate conditions will give confidence to patients and the public and they will be protected and not put at risk, directly or indirectly, as a result of your continued registration with Conditions."

Outcome of review hearings

The Committee met twice after the initial hearing: in July 2009 to vary the conditions to ensure effective drug testing; and in January 2010 when it was satisfied that Dr Penfold had complied with the Conditions of Practice Order and decided to let it expire with effect from 16 February 2010.

GCC v Christopher David THOMSON

Registration number: 01589

Conditions of Practice Order
(Eight months)

Source of complaint

Patients

In brief

- Failure to keep adequate patient treatment records
- Failure to re-examine a patient when she presented with new symptoms

Case summary

The case related to Dr Thomson's management of two patients' treatment.

Patient A

Dr Thomson provided treatment to Patient A between about October 2004 and June 2005. Patient A presented with a number of symptoms, which were chronic, including spine and shoulder pain, joint restrictions, postural imbalances, stiffness and sciatica.

Dr Thomson admitted that during his treatment of Patient A, he had failed to keep adequate patient treatment records. He had failed to record adequately or at all, the treatment he provided to Patient A at each treatment session, her progress and other changes in her condition, her response to treatment and the findings and outcome of any review or reassessment of Patient A's treatment.

In addition, on about 28 December 2004, Patient A had informed Dr Thomson that she was suffering from rib pain. The Committee heard evidence from an expert witness that any chiropractor would regard rib pain as a 'red flag' and it '*should be taken into account prior to any treatment being undertaken*'. The Committee also found proved that Dr Thomson had failed to re-examine Patient A subsequent to this and noted his admission that he had failed to make a record of rib pain in the patient's record.

Patient B

On 13 October 2004, Dr Thomson accepted Patient B as a patient. He presented with a number of symptoms including chronic pain in his upper back, ongoing elbow and hand problems, and he reported that various postural activities were painful. He had been involved in a road traffic accident and had previously suffered from lower back problems.

Dr Thomson admitted that his patient treatment records were inadequate and substantially comprised ticks and 'AA' or 'as above'. They failed to record Patient B's progress and changes in his condition, his response to treatment and the findings and outcome of any review or reassessment of treatment while he was Dr Thomson's patient.

Outcome

The Committee considered the evidence over 18 days between April and October 2009. Dr Thomson was found guilty of unacceptable professional conduct and a Conditions of Practice Order was imposed on him for eight months.

There were 16 separate elements to the charge of unacceptable professional conduct against Dr Thomson. The Committee found proved those elements relating to inadequate record keeping and failure to re-examine a patient. Significant aspects of the charge were not, however, proved. For example, the alleged recommendation of excessive treatment plans to Patients A and B and requesting X-rays when not clinically indicated.

The Conditions of Practice Order

The Committee was satisfied that "*...an appropriate, workable and measurable set of conditions...*" could be formulated, which would be sufficient "*...to protect patients, maintain confidence in the profession and uphold proper standards of conduct and practice*".

The Order provides a framework to enable Dr Thomson to achieve the required standards of practice in the areas identified during the hearing as deficient. It included an audit of patient records by an auditor appointed by the Committee at two and six months after the hearing, with reports being provided to the Committee to enable it to monitor Dr Thomson's progress.

Extract from the Committee's final decision

"A fundamental principle is that every chiropractor is responsible for ensuring that they document the treatment provided, reviews and reassessments undertaken and the subjective response of the patient to treatment. A patient's records should clearly demonstrate the thought processes of the health professional to ensure that anyone taking over the management of the patient will understand. Records are also extremely important for the chiropractor to be able to refer back at any stage during the care of the patient to serve as an aide memoir when considering findings, treatment and decisions made at different stages. The Committee heard that when you were required to provide a detailed verbatim account of your records, it proved to be a very lengthy process, which highlights the real difficulty of attempting to retrospectively justify or rationalise previous thoughts and decisions.

The Committee also considered that failing to re-examine Patient A to establish whether there were ongoing implications with regard to her previous reports of rib pain was not the conduct of a reasonable chiropractor."

Outcome of review hearing

Dr Thomson complied with the Conditions of Practice Order and the Committee determined that it should be allowed to lapse after its expiry on 8 July 2010.

GCC v Ross CURRIE

Registration number: 02114

Admonished

Source of complaint

Registrar

In brief

- Failure to arrange appropriate insurance cover contrary to the General Chiropractic Council (Professional Indemnity Insurance) Rules 1999

Case summary

In an email dated 21 April 2008, Dr Currie informed the Registrar that he had breached the Code of Practice by failing to have any professional indemnity insurance in place for a period of two years between March 2006 and March 2008.

Having identified his failing to have in place professional indemnity insurance, Dr Currie reported this to the GCC and, on 24 April 2008, put in place back-dated insurance for the whole period in question.

Outcome

The Professional Conduct Committee had previously determined not to hold a public hearing to deal with the allegation.¹ Dr Currie had agreed to waive his right to attend and accepted that, if the Committee found the allegation proved, it could impose a sanction of Admonishment or a Conditions of Practice Order at the meeting without considering any further written or oral representations from him.

The Committee therefore met and considered the allegation on the basis of documentary evidence and neither party was present at the meeting.

Failure to comply with the GCC (Professional Indemnity Insurance) Rules 1999 constitutes Unacceptable Professional Conduct, and accordingly the Committee determined that Dr Currie was guilty of Unacceptable Professional Conduct.

¹ In accordance with Rule 3(1) of the General Chiropractic Council (Professional Conduct Committee) Rules 2000.

Sanction

Prior to the Committee's determination on a proportionate sanction, Dr Currie and his legal representative attended the hearing to present mitigating evidence. Dr Currie gave oral evidence about the steps he has taken to remedy the situation and to ensure that it would not be repeated.

Extract from the Committee's final decision

"Having considered your evidence and the nature and quality of your supportive testimonials, the Committee has concluded that this is a case where it is proper to mitigate what might otherwise have been a more stringent sanction for the following reasons:

- *you self-reported your failing to the GCC*
- *your ex-wife explained what had happened and accepted the blame*
- *you quickly put in place retrospective insurance cover and instigated new procedures to avoid any repetition of your failing*
- *you have produced supportive and relevant testimonials demonstrating your value to your patients*
- *you have demonstrated insight into your failing.*

For all these reasons the Committee has determined that the appropriate sanction is Admonishment."

GCC v David Gerrard MORLEY

Registration number: 00433

Admonished

Source of complaint

Registrar

In brief

- Failure to arrange appropriate insurance cover contrary to the General Chiropractic Council (Professional Indemnity Insurance) Rules 1999
- Failure to respond adequately to correspondence from the GCC requesting relevant information

Case summary

Mr Morley was first granted GCC registration in July 1998. He ceased to practise in the UK in about June 2006 and cancelled his insurance cover. In doing so, he failed to put in place perpetual or 'run-off' cover, which insures practitioners against future claims for past actions. Mr Morley did not apply to renew his GCC registration and his name was removed from the statutory Register on 15 December 2006.

Between August and September 2006, the GCC contacted Mr Morley repeatedly to ask for details of his run-off insurance cover. Although he emailed once, on 20 August 2006, he failed to respond adequately. He therefore did not comply with his obligations to have the required insurance in place or to provide relevant information to the GCC.

Mr Morley returned to the UK in December 2008 and resumed his GCC registration and practice. He has also, since then, been part of the British Chiropractic Association's professional indemnity insurance scheme, and retrospective 'run-off' insurance cover is in place for claims that might be made by patients whom he treated between 13 July 1998 and June 2006.

Outcome

The Professional Conduct Committee had previously determined not to hold a public hearing to deal with the allegation.² Mr Morley had agreed to waive his right to attend and accepted that, if the Committee found the allegation proved, it could impose a sanction of Admonishment or a Conditions of Practice Order at the meeting without considering any further written or oral representations from him.

The Committee therefore met and considered the allegation on the basis of documentary evidence and neither party was present at the meeting.

On the basis of the documentary evidence, the Committee was satisfied that the allegation was proved and that Mr Morley was guilty of Unacceptable Professional Conduct.

Sanction

The Committee decided to Admonish Mr Morley.

Extract from the Committee's final decision

"Even though Mr Morley had ceased practise in the UK, failing to have appropriate run-off insurance could cause financial harm to patients in the event of a claim arising in respect of past treatment... Mr Morley has been proactive in contacting the GCC since deciding to return to practise in the UK and in securing appropriate insurance, including retrospective insurance for the period 1998 to 2006.

A failure to have run-off cover in place is a serious matter and all registered chiropractors must respond appropriately to the requests for information regarding their insurance..."

GCC v Joseph SHAFER

Registration number: 01060

Admonished

Source of complaint

Registrar

In brief

- Failure to disclose a criminal conviction when applying for GCC registration

Case summary

On about 12 April 2001, Mr Shafer submitted to the GCC an application for registration. On the application form he circled 'no' in answer to the question: 'Have you ever been convicted of a criminal offence?' This was incorrect because on 17 June 1996, Mr Shafer was convicted at Dunfermline Magistrates' Court of drink-driving.

Mr Shafer told the Committee the he did not believe he was required to disclose the conviction as he thought that driving with excess alcohol was not a criminal offence. He contended that he had not intended to mislead the GCC but that his omission was due to ignorance, which is not evidence of either intent or dishonesty.

2 In accordance with Rule 3(I) of the General Chiropractic Council (Professional Conduct Committee) Rules 2000.

The Committee noted that the application form stated:

'You are obliged to disclose by virtue of the above Exception Orders ALL criminal convictions whether "spent" or not under the 1974 Act³ and its subsequent revisions. Parking and minor traffic offences only punishable by fine may be excluded.'

The form was intended to be read in conjunction with guidance notes, which made clear the significance of this section and stated:

'If you are in doubt about the nature of traffic offences that may be excluded you should seek legal advice, either from a solicitor, qualified legal advisor or the police... Applicants are reminded that failure to disclose convictions may render them liable to criminal proceedings.'

Furthermore, the front cover of the guidance notes advised an applicant who was unclear about how to complete the form to contact the GCC and gave the telephone number and email address. Mr Shafer had instead sought advice, which proved to be unhelpful, from his wife who is a chiropractor and, on a social occasion, from a friend who is a lawyer.

Outcome

The Committee met in public and considered documentary evidence, and submissions from Mr Shafer. The GCC was not represented. Having considered the evidence, the Committee imposed an Admonishment upon Mr Shafer.

Extract from the Committee's final decision

"Good character is at the heart of statutory professional regulation and the Registrar must be able to rely on the information an individual supplies when registering. A conviction for driving with excess alcohol is serious and must be declared. Further, any conviction where there is a possibility of punishment over and above the imposition of a fine should always be declared. Belonging to a regulated profession is a privilege to be taken seriously. It was Mr Shafer's responsibility to ensure that the information he provided was true, accurate and comprehensive.

However, the Committee is satisfied that on this occasion Mr Shafer's failing was an error of judgement, resulting from his misunderstanding of the section of the registration form referring to 'Your character'. In the Committee's view, this section of the form could have been made clearer by indicating more precisely the disclosure requirements."

GCC v Ann Kristin SVEINSVOLL

Registration number: 02540

Admonished

Source of complaint

Registrar

In brief

- Failure to arrange appropriate insurance cover contrary to the General Chiropractic Council (Professional Indemnity Insurance) Rules 1999

Case summary

Having returned to Norway, Dr Sveinsvoll ceased to practise in the UK in August 2007 and cancelled her insurance cover. In doing so, she failed to put in place perpetual or 'run-off' cover, which insures practitioners against future claims for past actions.

The GCC contacted Dr Sveinsvoll several times to advise her that 'run-off' insurance cover was a legal requirement; and failure to have appropriate insurance cover, of itself, constitutes unacceptable professional conduct. She failed to respond to the GCC's communications until after disciplinary proceedings had commenced.

Dr Sveinsvoll then wrote to the GCC on 7 December 2007, admitting that she had 'misunderstood the seriousness of the matter' and then arranged appropriate insurance on about 17 December 2007, to have effect from August 2007.

Outcome

The Professional Conduct Committee had previously determined not to hold a public hearing to deal with the allegation.⁴ Dr Sveinsvoll had agreed to waive her right to attend and accepted that, if the Committee found the allegation proved, it could impose a sanction of Admonishment or a Conditions of Practice Order at the meeting without considering any further written or oral representations from her.

The Committee therefore met and considered the allegation on the basis of documentary evidence and neither party was present at the meeting. The Committee was satisfied that the allegation was proved and that Dr Sveinsvoll was guilty of Unacceptable Professional Conduct and imposed an Admonishment.

Extract from the Committee's final decision

"Even though she ceased to practise, failing to have in place the appropriate insurance could cause harm to patients who find themselves in the position of making a claim on past treatment. The Committee noted Dr Sveinsvoll's insight and expressions of regret, which she demonstrated by her apology in her letter to the GCC of 7 December 2007. The Committee notes Dr Sveinsvoll's previous good history and the fact that she subsequently arranged the appropriate indemnity insurance backdated to 6 August 2007, thereby ensuring proper protection for her former patients."

⁴ In accordance with Rule 3(1) of the General Chiropractic Council (Professional Conduct Committee) Rules 2000.

