



# Osteopaths Act 1993

## 1993 CHAPTER 21

### *Professional conduct and fitness to practise*

VALID FROM 01/04/1998

#### **19 The Code of Practice.**

- (1) The General Council shall prepare and from time to time publish a Code of Practice—
  - (a) laying down standards of conduct and practice expected of registered osteopaths; and
  - (b) giving advice in relation to the practice of osteopathy.
- (2) It shall be the duty of the General Council to keep the Code under review and to vary its provisions whenever the Council considers it appropriate to do so.
- (3) Before issuing the Code or varying it, the General Council shall consult such representatives of practising osteopaths as it considers appropriate.
- (4) Where any person is alleged to have failed to comply with any provision of the Code, that failure—
  - (a) shall not be taken, of itself, to constitute unacceptable professional conduct on his part; but
  - (b) shall be taken into account in any proceedings against him under this Act.
- (5) Any person who asks the General Council for a copy of the Code shall be entitled to have one on payment of such reasonable fee as the Council may determine.
- (6) Subsection (5) is not to be taken as preventing the General Council from providing copies of the Code free of charge whenever it considers it appropriate.

#### **20 Professional conduct and fitness to practise.**

- (1) This section applies where any allegation is made against a registered osteopath to the effect that—

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- (a) he has been guilty of conduct which falls short of the standard required of a registered osteopath;
  - (b) he has been guilty of professional incompetence;
  - (c) he has been convicted (at any time) in the United Kingdom of a criminal offence; or
  - (d) his ability to practise as an osteopath is seriously impaired because of his physical or mental condition.
- (2) In this Act conduct which falls short of the standard required of a registered osteopath is referred to as “unacceptable professional conduct”.
- (3) Where an allegation is made to the General Council, or to any of its committees (other than the Investigating Committee), it shall be the duty of the Council or committee to refer the allegation to the Investigating Committee.
- (4) The General Council may make rules requiring any allegation which is made or referred to the Investigating Committee to be referred for preliminary consideration to a person appointed by the Council in accordance with the rules.
- (5) Any rules made under subsection (4)—
  - (a) may allow for the appointment of persons who are members of the General Council; but
  - (b) may not allow for the appointment of the Registrar.
- (6) Any person to whom an allegation is referred by the Investigating Committee in accordance with rules made under subsection (4) shall—
  - (a) consider the allegation with a view to establishing whether, in his opinion, power is given by this Act to deal with it if it proves to be well founded; and
  - (b) if he considers that such power is given, give the Investigating Committee a report of the result of his consideration.
- (7) Where there are rules in force under subsection (4), the Investigating Committee shall investigate any allegation with respect to which it is given a report by a person appointed under the rules.
- (8) Where there are no such rules in force, the Investigating Committee shall investigate any allegation which is made or referred to it.
- (9) Where the Investigating Committee is required to investigate any allegation, it shall—
  - (a) notify the registered osteopath concerned of the allegation and invite him to give it his observations before the end of the period of 28 days beginning with the day on which notice of the allegation is sent to him;
  - (b) take such steps as are reasonably practicable to obtain as much information as possible about the case; and
  - (c) consider, in the light of the information which it has been able to obtain and any observations duly made to it by the registered osteopath concerned, whether in its opinion there is a case to answer.
- (10) The General Council may by rules make provision as to the procedure to be followed by the Investigating Committee in any investigation carried out by it under this section.
- (11) In the case of an allegation of a kind mentioned in subsection (1)(c), the Investigating Committee may conclude that there is no case to answer if it considers that the criminal

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offence in question has no material relevance to the fitness of the osteopath concerned to practise osteopathy.

- (12) Where the Investigating Committee concludes that there is a case to answer, it shall—
- (a) notify both the osteopath concerned and the person making the allegation of its conclusion; and
  - (b) refer the allegation, as formulated by the Investigating Committee—
    - (i) to the Health Committee, in the case of an allegation of a kind mentioned in subsection (1)(d); or
    - (ii) to the Professional Conduct Committee, in the case of an allegation of any other kind.
- (13) Where the Investigating Committee concludes that there is no case to answer, it shall notify both the osteopath concerned and the person making the allegation.
- (14) In this section “allegation” means an allegation of a kind mentioned in subsection (1).

VALID FROM 05/07/1999

## **21 Interim suspension powers of the Investigating Committee.**

- (1) This section applies where, under section 20, the Investigating Committee is investigating an allegation against a registered osteopath.
- (2) If the Committee is satisfied that it is necessary to do so in order to protect members of the public, it may order the Registrar to suspend the osteopath’s registration.
- (3) The order shall specify the period of the suspension, which shall not exceed two months beginning with the date on which the order is made.
- (4) The Committee shall not—
  - (a) make an order in any case after it has referred the allegation in question to the Professional Conduct Committee or the Health Committee; or
  - (b) make more than one order in respect of the same allegation.
- (5) Before making an order, the Investigating Committee shall give the osteopath concerned an opportunity to appear before it and to argue his case against the making of the proposed order.
- (6) At any such hearing the osteopath shall be entitled to be legally represented.

## **22 Consideration of allegations by the Professional Conduct Committee.**

- (1) Where an allegation has been referred to the Professional Conduct Committee under section 20 or by virtue of any rule made under section 26(2)(a), it shall be the duty of the Committee to consider the allegation.
- (2) If, having considered it, the Committee is satisfied that the allegation is well founded it shall proceed as follows.
- (3) If the allegation is of a kind mentioned in section 20(1)(c), the Committee may take no further action if it considers that the criminal offence in question has no material relevance to the fitness of the osteopath concerned to practise osteopathy.

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- (4) Otherwise, the Committee shall take one of the following steps—
  - (a) admonish the osteopath;
  - (b) make an order imposing conditions with which he must comply while practising as an osteopath (a “conditions of practice order”);
  - (c) order the Registrar to suspend the osteopath’s registration for such period as may be specified in the order (a “suspension order”); or
  - (d) order the Registrar to remove the osteopath’s name from the register.
- (5) A conditions of practice order shall cease to have effect—
  - (a) if a period is specified in the order for the purposes of this subsection, when that period ends;
  - (b) if no such period is specified but a test of competence is so specified, when the osteopath concerned passes the test; or
  - (c) if both a period and a test are so specified, when the period ends or when the osteopath concerned passes the test, whichever is the later to occur.
- (6) At any time while a conditions of practice order is in force under this section or by virtue of a recommendation under section 31(8)(c), the Committee may (whether or not of its own motion)—
  - (a) extend, or further extend, the period for which the order has effect;
  - (b) revoke or vary any of the conditions;
  - (c) require the osteopath concerned to pass a test of competence specified by the Committee;
  - (d) reduce the period for which the order has effect; or
  - (e) revoke the order.
- (7) Where the period for which a conditions of practice order has effect is extended or reduced under subsection (6), or a test of competence is specified under that subsection, subsection (5) shall have effect as if—
  - (a) the period specified in the conditions of practice order was the extended or reduced period; and
  - (b) the test of competence was specified in that order.
- (8) At any time while a suspension order is in force with respect to an osteopath under this section or by virtue of a recommendation under section 31(8)(c), the Committee may (whether or not of its own motion)—
  - (a) extend, or further extend, the period of suspension; and
  - (b) make a conditions of practice order with which the osteopath must comply if he resumes the practice of osteopathy after the end of his period of suspension.
- (9) The period specified in a conditions of practice order or in a suspension order under this section, and any extension of a specified period under subsection (6) or (8), shall not in each case exceed three years.
- (10) Before exercising its powers under subsection (4), (6) or (8), the Committee shall give the osteopath concerned an opportunity to appear before it and to argue his case.
- (11) At any such hearing the osteopath shall be entitled to be legally represented.
- (12) In exercising its powers under subsection (6) or (8), the Committee shall ensure that the conditions imposed on the osteopath concerned are, or the period of suspension

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imposed on him is, the minimum which it considers necessary for the protection of members of the public.

- (13) The Committee shall, before the end of the period of twelve months beginning with the commencement of this section, and at least once in every succeeding period of twelve months, publish a report setting out—
- (a) the names of those osteopaths in respect of whom it has investigated allegations under this section and found the allegations to be well founded;
  - (b) the nature of those allegations; and
  - (c) the steps (if any) taken by the Committee in respect of the osteopaths so named.
- (14) Where the Committee has investigated any allegation against an osteopath under this section and has not been satisfied that the allegation was well founded, it shall include in its report for the year in question a statement of that fact if the osteopath so requests.

VALID FROM 08/03/2000

### **23 Consideration of allegations by the Health Committee.**

- (1) Where an allegation has been referred to the Health Committee under section 20 or by virtue of any rule made under section 26(2)(a), it shall be the duty of the Committee to consider the allegation.
- (2) If, having considered it, the Committee is satisfied that the allegation is well founded, it shall—
- (a) make an order imposing conditions with which the osteopath concerned must comply while practising as an osteopath (a “conditions of practice order”); or
  - (b) order the Registrar to suspend the osteopath’s registration for such period as may be specified in the order (a “suspension order”).
- (3) Any condition in a conditions of practice order under this section shall be imposed so as to have effect for a period specified in the order.
- (4) At any time while a conditions of practice order is in force under this section or under section 30 or by virtue of a recommendation under section 31(8)(c), the Committee may (whether or not of its own motion)—
- (a) extend, or further extend, the period for which the order has effect; or
  - (b) make a suspension order with respect to the osteopath concerned.
- (5) At any time while a suspension order is in force with respect to an osteopath under this section or under section 30 or by virtue of a recommendation under section 31(8)(c), the Committee may (whether or not of its own motion)—
- (a) extend, or further extend, the period of suspension;
  - (b) replace the order with a conditions of practice order having effect for the remainder of the period of suspension; or
  - (c) make a conditions of practice order with which the osteopath must comply if he resumes the practice of osteopathy after the end of his period of suspension.

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- (6) On the application of the osteopath with respect to whom a conditions of practice order or a suspension order is in force under this section or under section 30 or by virtue of a recommendation under section 31(8)(c), the Committee may—
  - (a) revoke the order;
  - (b) vary the order by reducing the period for which it has effect; or
  - (c) in the case of a conditions of practice order, vary the order by removing or altering any of the conditions.
- (7) Where an osteopath has made an application under subsection (6) which has been refused (“the previous application”), the Committee shall not entertain a further such application unless it is made after the end of the period of twelve months beginning with the date on which the previous application was received by the Committee.
- (8) The period specified in a conditions of practice order or in a suspension order under this section, and any extension of a specified period under subsection (4) or (5), shall not in each case exceed three years.
- (9) Before exercising its powers under subsection (2), (4), (5) or (6), the Committee shall give the osteopath concerned an opportunity to appear before it and to argue his case.
- (10) At any such hearing the osteopath shall be entitled to be legally represented.
- (11) In exercising any of its powers under this section, the Committee shall ensure that any conditions imposed on the osteopath concerned are, or any period of suspension imposed on him is, the minimum which it considers necessary for the protection of members of the public.

VALID FROM 08/03/2000

## **24 Interim suspension powers of the Professional Conduct Committee and the Health Committee.**

- (1) This section applies where—
  - (a) an allegation against a registered osteopath has been referred under section 20, or by virtue of any rule made under section 26(2)(a), to the Professional Conduct Committee or the Health Committee and the Committee has not reached a decision on the matter; or
  - (b) the Professional Conduct Committee or the Health Committee reaches a relevant decision on any such allegation.
- (2) The Committee concerned may, if it is satisfied that it is necessary to do so in order to protect members of the public, order the Registrar to suspend the registration of the osteopath concerned.
- (3) An order under subsection (2) (an “interim suspension order”) shall cease to have effect—
  - (a) in a case falling within subsection (1)(a), when the Committee reaches a decision in respect of the allegation in question; and
  - (b) in a case falling within subsection (1)(b)—
    - (i) if there is no appeal against the decision, when the period for appealing expires; or

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- (ii) if there is an appeal against the decision, when the appeal is withdrawn or otherwise disposed of.
- (4) Before making an interim suspension order, the Committee shall give the osteopath in question an opportunity to appear before it and to argue his case against the making of the proposed order.
- (5) At any such hearing the osteopath shall be entitled to be legally represented.
- (6) Where an interim suspension order has been made, the osteopath concerned may appeal against it to the appropriate court.
- (7) Any such appeal must be brought before the end of the period of 28 days beginning with the date on which the order appealed against is made.
- (8) On an appeal under subsection (6) the court may terminate the suspension.
- (9) On such an appeal the decision of the court shall be final.
- (10) In this section—
- “the appropriate court” means—
- (a) in the case of an osteopath whose registered address is in Scotland, the Court of Session;
- (b) in the case of an osteopath whose registered address is in Northern Ireland, the High Court of Justice in Northern Ireland; and
- (c) in any other case, the High Court of Justice in England and Wales;
- “relevant decision” means an order under section 22(4)(c) or (d), or an order under section 23(2)(b).

VALID FROM 08/03/2000

## **25 Revocation of interim suspension orders.**

- (1) On an application made by the osteopath concerned, in a case falling within section 24(1)(a), an interim suspension order may be revoked by the Committee which made it on the ground that a change in the circumstances of the case has made the order unnecessary.
- (2) Where an osteopath has made an application under subsection (1) which has been refused, he may appeal to the appropriate court against the refusal.
- (3) Where, in relation to an interim suspension order—
- (a) an appeal has been made under section 24(6) against the making of the order, or
- (b) a further application for the order to be revoked has been made after an unsuccessful appeal under this section against the refusal of an earlier application,
- leave of the appropriate court shall be required for any appeal under subsection (2) in relation to that order.
- (4) Except in a case falling within subsection (5), no application under subsection (1) shall be entertained by the Committee concerned if it is made before the end of the period of six months beginning—

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- (a) with the date on which the order was imposed; or
  - (b) where an unsuccessful appeal against the order has been made under section 24(6), the date on which the appeal was dismissed.
- (5) Where a previous application has been made under subsection (1) in relation to an interim suspension order, no further such application shall be entertained by the Committee concerned if it is made before the end of the period of six months beginning with the date on which the previous application was finally disposed of.
- (6) Any appeal under subsection (2) must be brought before the end of the period of 28 days beginning with the date on which notice of the refusal is sent to the osteopath.
- (7) On an appeal under subsection (2) the court may terminate the suspension.
- (8) On such an appeal the decision of the court shall be final.
- (9) In this section “the appropriate court” has the same meaning as in section 24.

VALID FROM 08/03/2000

## **26 Investigation of allegations: procedural rules.**

- (1) The General Council shall make rules as to the procedure to be followed by the Professional Conduct Committee or the Health Committee in considering any allegation under section 22 or 23.
- (2) The rules shall, in particular, include provision—
- (a) empowering each Committee to refer to the other any allegation which it considers would be better dealt with by that other Committee;
  - (b) requiring the osteopath to whom the allegation relates to be given notice of the allegation;
  - (c) giving the osteopath an opportunity to put his case at a hearing if—
    - (i) before the end of the period of 28 days beginning with the date on which notice of the allegation is sent to him, he asks for a hearing; or
    - (ii) the Committee considers that a hearing is desirable;
  - (d) entitling the osteopath to be legally represented at any hearing in respect of the allegation;
  - (e) securing that—
    - (i) any hearing before the Professional Conduct Committee is held in public unless the Committee decides that it is in the interests of the person making the allegation, or of any person giving evidence or of any patient, to hold the hearing or any part of it in private; and
    - (ii) any hearing before the Health Committee is held in private unless the Committee considers that it is appropriate to hold the hearing or any part of it in public;
  - (f) requiring the osteopath to be notified by the Committee of its decision, its reasons for reaching that decision and of his right of appeal;
  - (g) requiring the person by whom the allegation was made to be notified by the Committee of its decision and of its reasons for reaching that decision;
  - (h) empowering the Committee to require persons to attend and give evidence or to produce documents;



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- (i) about the admissibility of evidence;
  - (j) enabling the Committee to administer oaths.
- (3) No person shall be required by any rules made under this section to give any evidence or produce any document or other material at a hearing held by either Committee which he could not be compelled to give or produce in civil proceedings in any court in that part of the United Kingdom in which the hearing takes place.

## 27 Legal assessors.

- (1) The General Council shall appoint persons to be legal assessors.
- (2) They shall have the general function of giving advice to—
- (a) any person appointed in accordance with rules made under section 20(4),
  - (b) the Investigating Committee,
  - (c) the Professional Conduct Committee, or
  - (d) the Health Committee,
- on questions of law arising in connection with any matter which he or (as the case may be) the committee is considering.
- (3) They shall also have such other functions as may be conferred on them by rules made by the General Council.
- (4) To be qualified for appointment as a legal assessor under this section, a person must—
- (a) have a 10 year general qualification (within the meaning of section 71 of the <sup>M1</sup>Courts and Legal Services Act 1990);
  - (b) be an advocate or solicitor in Scotland of at least 10 years' standing; or
  - (c) be a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least 10 years' standing.
- (5) The General Council may pay such fees, allowances and expenses to persons appointed as legal assessors as it may determine.
- (6) In the case of a legal assessor who is also a member of the General Council or of any of its committees, any such payment made to him in his capacity as a legal assessor shall be in addition to any to which he is entitled as such a member.

### Marginal Citations

M1 1990 c. 41.

## 28 Medical assessors.

- (1) The General Council may appoint registered medical practitioners to be medical assessors.
- (2) They shall have the general function of giving advice to—
- (a) any person appointed in accordance with rules made under section 20(4),
  - (b) the Investigating Committee,
  - (c) the Professional Conduct Committee, or
  - (d) the Health Committee,

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on matters within their professional competence arising in connection with any matter which he or (as the case may be) the committee is considering.

- (3) They shall also have such other functions as may be conferred on them by rules made by the General Council.
- (4) The General Council may pay such fees, allowances and expenses to persons appointed as medical assessors as it may determine.
- (5) In the case of a medical assessor who is also a member of the General Council or of any of its committees, any such payment made to him in his capacity as a medical assessor shall be in addition to any to which he is entitled as such a member.

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