NEW ZEALAND HEALTH PRACTITIONERS DISCIPLINARY TRIBUNAL

TE RŌPŪ WHAKATIKA KAIMAHI HAUORA

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BEFORE THE TE RŌPŪ WHAKATIKA KAMAHI HAUORA
HEALTH PRACTITIONERS DISCIPLINARY TRIBUNAL

HPDT NO	**1359/Ost23/578D**
UNDER	the Health Practitioners Competence Assurance Act 2003 ("the Act")
IN THE MATTER	of a disciplinary charge laid against a health practitioner under Part 4 of the Act.
BETWEEN	**DIRECTOR OF PROCEEDINGS,** designated under the Health and Disability Commissioner Act 1994
	Applicant
AND	**JOSEPH GREGORY CROZIER of Morrinsville, registered osteopath**
	Practitioner

Hearing by Audio-visual link on Wednesday 14 June 2023

TRIBUNAL	Mr W McCarthy (Chair) Mr D Ananth, Mr B Evans, Ms V Tate, Ms S Awatere (Members) Ms D Gainey, Executive Officer
IN ATTENDANCE	Ms C McCulloch and Ms J Herschell, Director of Proceedings Mr M Dillon for the practitioner

Introduction

[1] In a Notice of Charge dated 20 February 2023, the Director of Proceedings (**the Director**) laid a disciplinary charge against Mr Joseph Gregory Crozier (**the practitioner**) under ss 100(1)(a) and 100(1)(b) of the Health Practitioners Competence Assurance Act 2003 (**the Act**).

[2] The essence of the charge relates to a series of inappropriate incidents in February 2021, culminating in the practitioner digitally penetrating his patient, Mrs R (**the patient**), while her [child] was in the room.

[3] A panel of the Tribunal convened on 14 June 2023 to hear the charge. As the hearing took place via AVL, a recording was kept of the hearing but no transcript was produced.

The charge

[4] The charge laid by the Director is set out in full in Appendix A of this decision. The particulars of the charge are also set out below:

1. On [date] while providing treatment to Mrs R you breached professional boundaries when you made a sexual comment about her underwear;

AND/OR

2. On [date] while providing treatment to Mrs R you breached professional boundaries when you:
    (i) pulled Mrs R's underwear to the side and digitally penetrated her by putting your finger/s inside her vagina; and/or
    (ii) made a sexual comment towards Mrs R about her genital area.

AND/OR

3. On 10 while providing treatment to Mrs R you failed to ensure she was appropriately covered.

The relevant facts

[5] The summary of the relevant facts below is taken from the agreed summary of facts. The full agreed summary is set out in Appendix B of this decision.

[6] The practitioner is an osteopath who gained his registration on 18 September 2004 after qualifying at the British College of Osteopathy and Naturopathy in London. He emigrated to New Zealand shortly after completing his qualification.

[7] The practitioner was self-employed and ran his practice out of a spare room in his home in Morrinsville. At the time of the events in question, he was a member of Osteopaths New Zealand (**ONZ**).

[8] In [year], the patient, aged [xx], injured herself while [cause of injury] resulting in pain in her [ ] which later progressed to generalised lower back pain.

[9] In [year], the patient sought osteopathic treatment from the practitioner. While the patient did not know the practitioner personally, her husband knew him as an acquaintance. In addition, the patient and her husband lived [].

[10] The patient had not been to an osteopath before and did not know what to expect. She had three hour-long appointments with the practitioner on [dates].

[11] At the first and third appointments, the patient was accompanied by her [age] [child] who was present during the treatment sessions. [They] lay on the floor to the left of the treatment table, playing with [their] electronic tablet.

[12] For all three appointments, the patient was undressed down to her bra and underwear. While she was offered draping when lying on her back, she was not offered draping when lying face down. The practitioner accepts he should have taken more care to protect and respect the patient’s modesty by more circumspect use of towels, and that this was his responsibility.

[13] At the second appointment, the patient's treatment included soft tissue massage to her back, the top of her left thigh and her gluteal muscles. While receiving this treatment she was in her bra and underwear.

[14] At one point the practitioner, referring to the patient's underwear, commented "I bet that keeps Mr R happy".

[15] During the treatment sessions the practitioner and the patient had been chatty with each other. The patient describes herself as a jokey person, and early on in her treatment with the practitioner there had been a conversation about a physiotherapist she had previously seen, who she had described as her "hot physio".

[16] The practitioner and patient disagree over the tenor of their conversations, with the practitioner perceiving them to be sexually charged. For example, the practitioner believed that the patient had expressed disappointment that her physiotherapist had not offered her "extras", which the practitioner understood to mean sexual extras. The patient disputes this.

[17] Before the treatment session started, the practitioner left the room to allow the patient to get undressed. However, he returned before the patient was ready and then stayed in the room while she undressed.

[18] The third treatment session mainly involved soft tissue massage, including to the patient's inner thighs. The practitioner recalls the patient complained of pain in her thigh abductors related to exercise strain. The patient recalls that her muscles were sore, and in particular her "glutes and quads" were sore because of a boot camp she was in.

[19] While massaging the patient's inner thigh, the practitioner pulled her underwear to the side and digitally penetrated her vagina. The practitioner and patient disagree about what occurred immediately previous to the penetration. The patient states the practitioner looked at the clock and then asked if she would be ok with a "bit extra". The patient recalls looking at the clock and either nodding or saying yes. The practitioner then asked "are you sure?" and as the patient assumed that "a bit extra" meant more time, she nodded.

[20] The practitioner states that he had become convinced, due to the perceived sexual content of their earlier conversations, that the patient wanted more. He states that he asked her if she was asking him to provide "extras" (as in the sexual extras that the practitioner believed the patient had said she had wished her physiotherapist had offered) and that the patient said yes. The practitioner accepts he then digitally penetrated the patient's vagina while her [child] was present in the room.

[21] The patient denies giving consent to the practitioner to digitally penetrate her vagina.

[22] The patient stated that she froze, and not having said no, she did not know what to do or how to make it stop. The patient states that she then pretended to orgasm to make it stop.

[23] Subsequent to this, the practitioner stated "I just kept thinking you looked so good down there that I could only imagine that you would taste even better" before handing back her clothing.

[24] The clinical notes from the appointment record do not record the sexual incident.

Evidence

[25] The hearing of the disciplinary charge proceeded on the basis of an agreed bundle of documents and agreed statement of facts.

[26] The agreed bundle included:

(a) notice of charge;

(b) agreed summary of facts;

(c) the practitioner's apology letter to the patient (undated);

(d) the practitioner's clinical notes for the patient dated respectively [dates];

(e) GP Note from the patient's appointment on [date];

(f) Osteopathic Council's Code of Ethics; and

(g) Osteopathic Council's Code of Conduct for Osteopaths (September 2020).

[27] An affidavit of the practitioner dated 25 May 2023 was also filed which addressed penalty and the practitioner's application for name suppression (**the application**), which included:

(a) an expression of regret and acceptance of responsibility;

(b) an explanation why he had not apologised earlier to the patient;

(c) a timeline setting the events that led to the present proceeding; and

(d) an explanation of his personal circumstance and health. The practitioner affirmed that he had moved away from Morrinsville to a retirement village in Tauranga following the incident. He felt that it was the right thing to do as he saw he let the entire community down. Since moving to Tauranga [health condition] which he attributed in part to the complaint process. He indicated that [details of health condition] if his name were published and worried about being alienated from his new community and the church.

[28] Accompanying the affidavit were two [medical reports]. The first report sets out the practitioner's upbringing, background and medical history and diagnoses the practitioner with [health condition]. The second report notes that the practitioner had [details of health condition]. The second report indicates that the practitioner has [details of health condition].

Admission

[29] In the agreed statement of facts, the practitioner admitted aspects of the charge. In summary, the practitioner accepts that:

(a) he failed to ensure the patient was appropriately draped;

(b) he made inappropriate comments to the patient of a sexual nature;

(c) he digitally penetrated the patient's vagina;

(d) his actions as particularised in the charge amount to professional misconduct; and

(e) on the basis of the agreed summary the charge warrants a disciplinary finding against him.

[30] The practitioner's submission on liability reflects this fulsome admission, stating only that:

> On 2 September 2022 Mr Crozier signed an agreed summary of facts whereby he accepts his actions as particularised in the charge amount to professional misconduct and that the charge warrants a disciplinary finding against him.

Discussion on liability

Relevant Law

[31] The practitioner is charged with professional misconduct under s 100(a) and/or s 100(b) of the Act which provide:

> **100 Grounds on which health practitioner may be disciplined**

(1) The Tribunal may make any 1 or more of the orders authorised by section 101 if, after conducting a hearing on a charge laid under section 91 against a health practitioner, it makes 1 or more findings that –

(a) the practitioner has been guilty of professional misconduct because of any act or omission that, in the judgment of the Tribunal, amounts to malpractice or negligence in relation to the scope of practice in respect of which the practitioner was registered at the time that the conduct occurred;

(b) the practitioner has been guilty of professional misconduct because of any act or omission that, in the judgment of the Tribunal, has brought or is likely to bring discredit to the profession that the health practitioner practised at the time that the conduct occurred;

[32] The Tribunal and Courts have considered the term professional misconduct many times. In *Collie v Nursing Council,* Gendall J said:[1]

> Negligence or malpractice may or may not be sufficient to constitute professional misconduct and the guide must be standards applicable by competent, ethical and responsible practitioners and there must be behaviour which falls seriously short of that which is to be considered acceptable and not mere inadvertent error, oversight or for that matter carelessness.

[33] The Tribunal has also consistently adopted common usage definitions of "malpractice" as being:

> the immoral, illegal or unethical conduct or neglect of professional duty. Any incidence of improper professional conduct[2]; and
>
> Improper treatment or culpable negligence of a patient by a physician or of a client by a lawyer… a criminal or illegal action: common misconduct."[3]

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[1] *Collie v Nursing Council of New Zealand*, [2001] NZAR 74 at [21].
[2] Collins English Dictionary, 2nd Edition.
[3] The New Shorter Oxford Dictionary, 1993 Edition.

[34] It is for the Tribunal to determine whether the conduct has or is likely to bring discredit on the osteopathic profession under s 100(1)(b) of the Act. In Collie at [28], Gendall J discussed the meaning of this provision, under the previous legislation, and stated:

> To discredit is to bring harm to the repute or reputation of the profession. The standard must be an objective standard for the question to be asked by the Council being whether reasonable members of the public, informed and with the knowledge of all the factual circumstances, could reasonably conclude that the reputation and good-standing of the nursing profession was lowered by the behaviour of the nurse concerned.

[35] There is a well-established two stage test for determining professional misconduct set out in previous decisions of both this Tribunal and its predecessor.[4] The two key steps involved in assessing what constitutes professional misconduct are:

(a) first, an objective analysis of whether the practitioner's acts or omissions can reasonably be regarded by the Tribunal as constituting malpractice, negligence or otherwise bringing or likely to bring discredit on the profession; and

(b) second, the Tribunal must be satisfied that the practitioner's acts or omissions require a disciplinary sanction for the purposes of protection of the public or maintaining professional standards or punishing the practitioner.

[36] The burden of proof in the present case is on the Director. This means that it is for the Director to establish that the practitioner is guilty of professional misconduct. This remains so even where the charge is accepted[5].

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[4] *McKenzie v MPDT* [2004] NZAR 47 at [71] and *PCC v Nuttall* (8/Med04/03P).
[5] *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1.

[37] The standard of proof is the civil standard of proof, that is proof which satisfies the Tribunal that on the balance of probabilities the particulars of the charge are more likely than not.

[38] The Tribunal is also required to consider each particular independently and then cumulatively, in the context of determining whether the overall charge is established.[6]

Professional obligations

[39] To assist the Tribunal in assessing the standards reasonably expected of an osteopath, the Director set out relevant standards from the Osteopathic Council's (**OCNZ**) Code of Ethics:

> The osteopath must:
>
> **1. Make the care of the patient the main concern**
>
> The quality of the relationship between the osteopath and their patient is a major determinant of successful treatment. Osteopaths as health professionals must set boundaries for their practice that ensure patients feel informed, acknowledged, respected, valued and safe.
>
> …
>
> **4. Understand the concept of duty of care and associated responsibilities**
>
> In order to ensure clear boundaries are established around their practise, osteopaths must conduct themselves in an honourable and professional manner when dealing with their patients, the public, and with other members of the profession.
>
> …
>
> **7. Always respect their patient's rights, dignity, autonomy and requirements for continuity of care.**
>
> …
>
> **9. Act with propriety in, and not breach, the trust arising from the professional relationship with patients.**
>
> Ensure that the relationship with patients remains professional…
>
> **10. Not exploit patients in any way**

[6] *Duncan v Medical Practitioners Disciplinary Committee* [1986] 1 NZLR 513.

In particular, there must be no sexual relationship, nor inappropriate sexual behaviour, with a patient during the professional relationship. Inappropriate sexual behaviour includes, but is not limited to, the use of language (whether spoken or written) of a sexual nature, the use of visual material of a sexual nature, or physical behaviour of a sexual nature.

…

[40] The Director also set out relevant principles from the OCNZ Code of Conduct for Osteopaths (September 2020):

Principle 1: Respect the dignity and individuality of health consumers Standards

1.2 Take steps to ensure the physical environment allows health consumers to maintain their privacy and dignity.

1.9 Take steps to minimise risk and ensure your care does not harm the health or safety of health consumers.

Principle 4: Maintain health consumer trust by providing safe and competent care Standards

4.8 Administer treatment and guidance in accordance with legislation, your scope of practice and established standards or guidelines.

4.9 Practise in accordance with professional standards relating to safety and quality of health care.

Principle 7: Act with integrity to justify health consumers' trust Standards

7.2 Protect all health consumers, particularly vulnerable health consumers, from exploitation and harm.

7.15 Maintain a professional boundary between yourself and the health consumer, their family/whanau and other people nominated by the health consumer to be involved in their care.

7.16 Do not engage in sexual or intimate behaviour or relationships with health consumers in your care or with those close to them "See Guidance: Professional boundaries".

Guidance: Professional boundaries

• Sexual relationships between osteopaths and persons with whom they have previously entered into a professional relationship are inappropriate in most circumstances. Such relationships automatically raise questions of integrity in relation to osteopaths exploiting the vulnerability of persons who are or who have been in their care. Consent is not an acceptable defence in the case of sexual or intimate behaviour within such relationships.

Consideration of liability by the Tribunal

[41] The Tribunal is satisfied that the allegations in particulars 1, 2 and 3 of the charge are sufficiently supported by the agreed summary of facts and are established.

[42] The Tribunal considers that particulars 1 and 2 separately and cumulatively satisfy ss 100(1)(a) and 100(1)(b) and that the established conduct is sufficiently serious to warrant disciplinary sanction.

[43] The majority of the Tribunal considers particular 3 cumulatively with particulars 1 and 2 satisfies both ss 100(1)(a) and 100(1)(b) and that the established conduct is sufficiently serious to warrant disciplinary sanction.

[44] The reasons for these decisions are set out below.

Particular 1: Sexual comment about underwear

[45] The parties have agreed that the practitioner did say "I bet that keeps [Mr R] happy". While the Director has referred to multiple comments in its submission, the Tribunal has only considered the comment stated in the charge.

[46] The Tribunal agrees with the submissions of the Director that the comment was wholly inappropriate and contrary to Goals 7, 9, and 10 of the OCNZ's Code of Ethics, and Principle 7 of the Code of Conduct. The Tribunal considers that the comment amounts to malpractice as defined above.

[47] Making this type of sexual comment in the Tribunal's view falls short of the standards and professional obligations of osteopaths.

[48] The Tribunal also considers that the comment brings discredit to the profession as it is a clear departure from what the public would expect from a member of the osteopathic profession. Patients do not expect to hear the type of comment that was

directed to the patient, particularly given she was in a state of undress at the time. When these types of comments are made, the reputation of the profession as a whole suffers.

[49] Accordingly, the Tribunal has no hesitancy in finding particular 1 established, and that it can be reasonably regarded by the Tribunal as constituting malpractice, and bringing discredit to the profession.

[50] The Tribunal is also satisfied that the conduct warrants disciplinary sanction given the nature of the comment and the clear guidance the Osteopathic Council has issued to the profession.

Particular 2: Digital penetration

[51] There was also significant agreement between the parties on this particular. The practitioner accepts that the digital penetration and subsequent sexual comment occurred and that they amount to professional misconduct, although there is some disagreement as to the conversation that immediately preceded the digital penetration occurring.

[52] As noted in the agreed summary and Director's submissions, the practitioner acknowledged how serious the incident was. He expressed in his apology letter that he accepted his actions were a rank breach of his professional code of conduct and that even in the presence of consent (as the practitioner believed), in no way were his actions appropriate or justifiable[7].

[53] The Tribunal agrees with the Director that in this instance, the conversation immediately preceding the digital penetration is irrelevant to the charge. There is a power imbalance between health practitioners and patients generally, and this is even more pronounced when the patient is in a state of undress.

[7] Agreed summary of facts, at [40].

[54] Whatever the practitioner's understanding was, when viewed objectively, this conduct clearly constitutes malpractice. The Tribunal was particularly concerned about the presence of the patient's child in the room when the digital penetration occurred.

[55] The Tribunal is similarly satisfied that reasonable members of the public, apprised of the penetration, would have no hesitation in finding the conduct unacceptable and inappropriate given the above.

[56] In regard to threshold, it is unnecessary to say more than that there is significant Tribunal jurisprudence on the seriousness of boundary violations of a sexual nature and that the present particular is a very serious violation. The Tribunal has no hesitation in finding the threshold has been met and that the conduct warrants disciplinary sanction.

Particular 3: Failure to adequately drape

[57] There was also significant agreement on particular 3. The practitioner accepts:

(a) that the patient was not offered draping when she was lying face down;

(b) that he should have taken more care to protect and respect the patient's modesty by more circumspect use of towels; and

(c) that it was his responsibility to do so.

[58] The Director submits that the inadequate draping occurred during every treatment session. Whether this arose from a pattern of poor practice or a departure from the practitioner's usual practice, it was not a one-off error. The Director also submits that the inadequate draping was contrary to Goal 7 of the ethics code and conduct code.

[59] The majority of the Tribunal reached the view that the draping was inadequate and that, when viewed objectively, this amounts to negligence.

[60] However, the Tribunal did not conclude that this particular separately warranted disciplinary sanction. If it had occurred over a longer time period, the majority of the Tribunal may have reached a different view. Considered cumulatively alongside particulars 1 and 2, the majority of the Tribunal decided that the disciplinary threshold was met.

[61] Mr Ben Evans an osteopath member of the Tribunal based in Whangarei did not consider that this particular, separately or cumulatively, amounted to professional misconduct under either ground. In his view it is commonplace for patients not to be draped whilst lying face down. Regarding particular 1, had the patient been draped whilst lying face down, this likely would not have prevented the practitioner from seeing the patient's underwear at all, given the areas being treated. The practitioner was also present in the treatment room whilst the patient undressed. Regarding particular 2, the issue of lack of draping whilst lying face down is not relevant as this event evidently occurred whilst the patient was lying on her back and draped.

Penalty

[62] The Tribunal having been satisfied the charge is established, must go on to consider whether it is appropriate to order any penalty under s 101 of the Act.

[63] The penalties may include, under s 101(1) of the Act:

(a) cancellation of the practitioner's registration as a health practitioner;

(b) suspension of his registration for a period for up to 3 years;

(c) an order that the practitioner may only practise in accordance with any conditions as to employment, supervision or otherwise, such conditions not to be imposed for more than 3 years;

(d) an order that the practitioner is censured;

(e) subject to subsections (2) and (3), order that the health practitioner pay a fine not exceeding $30,000; and

(f) an order that the practitioner pay part or all of the costs of the Tribunal and/or the Director.

[64] The appropriate sentencing principles are those contained in *Roberts v Professional Conduct Committee*[8], where Collins J identified the following eight factors as relevant whenever this Tribunal is determining an appropriate penalty. In particular, the Tribunal is bound to consider what penalty:

(a) most appropriately protects the public and deters others;

(b) facilitates the Tribunal's important role in setting professional standards;

(c) punishes the practitioner;

(d) allows for the rehabilitation of the health practitioner;

(e) promotes consistency with penalties in similar cases;

(f) reflects the seriousness of the misconduct;

(g) is the least restrictive penalty appropriate in the circumstances; and

(h) looked at overall, is the penalty which is "fair, reasonable and proportionate in the circumstances".

[65] The objective when determining penalty is described in *Young v Professional Conduct Committee*:[9]

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[8] Roberts v Professional Conduct Committee of the Nursing Council of New Zealand [2012] NZHC 2254 at [44] – [51].
[9] Young v Professional Conduct Committee HC Wellington CIV 2006-485-1002 1 June 2007.

> The protection and maintenance of professional standards is an important part of the protection of the public. It is through the maintenance of high professional standards that the public is protected. Deterrence is in the same category. This is intended to discourage others from acting the same way reflected in the severity of the punishment imposed.

[66] The Tribunal was also referred to *Katamat v Professional Conduct Committe*e where Williams J gave guidance on the process by which the Tribunal should determine an appropriate penalty:

> In summary, the case law reveals that several factors will be relevant to assessing what penalty is appropriate in the circumstances. Some factors, such as the need to protect the public and to maintain professional standards, are more intuitive in their application. Others, such as the seriousness of the offending and consistency with past cases, are more concrete and capable of precise evaluation. Of all the factors discussed, the primary factor will be what penalty is required to protect the public and deter similar conduct. The need to punish the practitioner can be considered, but is of secondary importance. The objective seriousness of the misconduct, the need for consistency with past cases, the likelihood of rehabilitation and the need to impose the least restrictive penalty that is appropriate will all be relevant to the inquiry. It bears repeating however, that the overall decision is ultimately one involving an exercise of discretion.

[67] Overall, the Tribunal's role is to determine the appropriate penalty considering the nature and seriousness of the conduct and the purposes of the Act to protect the public interest and the integrity of the profession.

Director submissions on penalty

[68] The Director submits the following penalties are appropriate in light of the *Robert* principles:

(a) cancellation of the practitioner's registration;

(b) censure;

(c) a fine of at least $5000.00; and

(d) costs.

[69] In summary, the Director submits that in determining the appropriate penalty, the following aggravating factors are relevant:

(a) *Experience:* The practitioner is very experienced having been registered since 2004. He ought to have been aware of the need for adequate draping as well as his professional ethics.

(b) *Level of vulnerability and related breach of trust:*

(i) there was a significant power imbalance between the practitioner and patient, especially considering the patient was a first-time consumer of osteopathy and the practitioner's aforementioned experience;

(ii) the nature of the treatment involved the patient being in a state of undress which placed her at particular risk of harm; and

(iii) the treatment took place at the practitioner's home which was more secluded and personal in nature.

(c) *Lack of consent*: the digital penetration occurred without the patient's consent, which was eventually accepted by the practitioner.

(d) *Multiple incidents*: The actions cannot be characterised as a one off, given that there are three separate particulars occurring over multiple sessions.

(e) *Presence of [child]:* The practitioner digitally penetrated the patient when her [child] was in the room.

(f) *Harm*: The practitioner's actions have caused pain to the patient with the patient's husband describing her as being "wrecked and ruined" by what has occurred, and she has required counselling.

[70] The Director submits that the following mitigating factors also apply:

(a) *Level of cooperation:* The practitioner accepted that his actions amount to professional misconduct and has cooperated fully in these proceedings. This has reduced the times and costs and avoided the need for oral evidence.

(b) *Apology:* the practitioner has apologised to the patient.

(c) *Retirement*: In response to the complaint, the practitioner brought forward his plan to retire and no longer holds a practising certificate.

[71] Overall, the Director submits that given the circumstances of this case, in particular the gravity of the offending, anything less than cancellation will not address the overarching objectives of the Act. Suspension is not appropriate given the practitioner's retirement. In support of this submission, the Tribunal was referred to *Professional Conduct Committee v Houlding*[10] and *Director of Proceedings v Chum* where the Tribunal considered that suspension was not open to it because of the practitioner's retirement from practice. The Tribunal subsequently ordered cancellation.

[72] The Director also submits that imposing conditions is not a realistic proposition for the same reason that suspension is not. Additionally, the alternative of a fine and censure alone does not address the paramount objectives, would be disproportionate to the offending and out of step with the cases set out previously.

[10] PCC v Houlding HPDT 1061/Phys19/461P.

[73] In relation to the fine sought, the Director submits that a fine is appropriate to mark the seriousness of the practitioner's departure from appropriate standards and to act as a deterrent to other practitioners. In *Houlding,* the Tribunal there imposed a fine as a cancellation alone would have no deterrent consequence and could be regarded as a pyrrhic outcome.

Practitioner submissions on penalty

[74] At the outset, Counsel for the practitioner submits that the Director's submissions do not appear to afford the practitioner meaningful credit for the mitigating factors namely:

(a) his prompt acceptance of responsibility at the earliest opportunity;

(b) his apology to the patient;

(c) his cooperation with authorities, admissions and other efforts to progress the investigation and prosecution of this matter without delay; and

(d) actions in the nature of self-imposed sanctions (i.e. promptly ceasing his practice and moving away from Morrinsville where []).

[75] Counsel for the practitioner agrees that the following penalties are appropriate:

(a) censure (subject to name suppression);

(b) cancellation; and

(c) a moderate costs award.

[76] Counsel submits that these consequences would operate to denounce the practitioner's behaviour, hold him accountable and deter others from similar behaviour.

An overall theme of the submissions is that appropriate credit needs to be afforded to the actions the practitioner has taken since the events of the charge have taken place. Overlooking these actions would serve as a disincentive to admitting responsibility, cooperating with authorities and taking steps to make amends. During the course of the hearing the practitioner made clear that he would not return to the profession.

Comparative cases

[77] When considering penalty, the Tribunal must have regard to other decisions to ensure a degree of consistency. Counsel for both parties referred the Tribunal to a number of previous decisions where sexual relations occurred between a health practitioner and their patients.

[78] The Director refers the Tribunal to a number of cases where health practitioners had a sexual relationship with their patient and their registration was either suspended or cancelled:

(a) *Director of Proceedings v Derry*[11] – this case involved a physiotherapist engaging in a possibly inappropriate conversation with a patient and subsequently exposing her breasts. The Tribunal ordered conditions on the practitioner's practice for a period of 12 months, a $5,000 fine, censure and costs. The Director submits this case is significantly less serious than the present.

(b) *Director of Proceedings v Samiyullah*[12] – this case involved a postgraduate physiotherapy student registered with a limited/special purpose scope practising certificate. During the treatment of a women for an ankle injury, the practitioner in that case touched several parts of her body including her thighs and breasts without clinical cause. As the practitioner did not have full registration, the Tribunal was unable to order cancellation or suspension, instead imposing a censure and fine. It is submitted that the

[11] HPDT 143/Phys07/79D.

[12] HPDT 169/Phys08/90D.

Tribunal's discussions suggest that it would have looked to those penalties had they been available.

(c) *Professional Conduct Committee v Chand*[13] - in this case a nurse acted inappropriately towards two female patients in his care and a female nurse. The conduct included caressing the back of the nurse and attempting to kiss her, asking a patient if she was married and telling her he would be her husband, accessing a telephone number of a patient to call her after discharge (and doing so) as well as hugging that patient while she was lying on a bed waiting for surgery. The Tribunal in this case ordered cancellation given the seriousness of the conduct and the events occurring over multiple occasions.

(d) *Professional Conduct Committee v Mr Sheela* – this case related to a registered nurse, who while providing care to a patient in hospital, hugged her on two occasions, kissed her on the cheek, neck and lips and requested to get into bed with her. In this case cancellation was imposed due to the seriousness of the conduct, lack of insight and lack of a commitment to rehabilitation. The Director submits that the conduct in this case is more serious.

(e) *Director of Proceedings v Chum* – in this case the practitioner advised the patient to take off all of her clothes when she consulted with him regarding difficulty swallowing and a change to her voice following a traumatic brain injury. He proceeded to massage various parts of the back, pelvic, upper and inner thigh, failed to adequately drape and asked to massage the patient's clitoral region. The Tribunal cancelled the practitioner's registration and imposed conditions.

[13] HPDT Nur06/49P.

(f) In *Kurth*[14], although there was no evidence of a sexual relationship, a registered nurse was found to have failed to maintain appropriate boundaries with a previous patient, due to frequently exchanging text messages, meeting her at a motel on multiple occasions, going camping with her and maintaining a level of physical contact. The Tribunal censured him, cancelled his registration and imposed conditions if he wished to seek re-registration.

Tribunal consideration of penalty

[79] There is considerable agreement between the parties as to the relevant aggravating and mitigating factors, and the appropriate penalty. The main area of disagreement is the degree to which these factors should be weighed.

[80] Of the aggravating factors identified, the Tribunal considers the patient's vulnerability, the lack of consent and the presence of the patient's [child] in the room at the time of the patient being digitally penetrated as being very serious. The Tribunal was particularly concerned about the last factor and is unaware of this circumstance coming before the Tribunal previously.

[81] When considering mitigating factors, the Tribunal agrees with Counsel for the practitioner that the practitioner has acted appropriately as the disciplinary process has progressed. However, in the Tribunal's view, there is a limited degree to which this can mitigate the seriousness of the established charge.

[82] In referring to the comparative cases, we observe that none are directly analogous. As observed above, none had the presence of a minor in the room at the time of the offending. In the Tribunal's view, this makes the present case more serious than any cited case. However, we do not agree that a cancellation in this instance would be a "pyrrhic" outcome as it was in *Houlding*. The Tribunal agrees with Counsel for the practitioner that it was the events in question that led to the practitioner's retirement,

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[14] 651/Nur14/285D.

and this should be factored when considering whether to impose penalties in addition to cancellation.

[83] Having accepted these submissions, the Tribunal considers that cancellation is the only possible outcome. No other less restrictive penalty would be appropriate given the seriousness of the facts. While the practitioner is retired, the protection of the public requires that this serious behaviour be deterred by imposing the most serious sanction available. The Tribunal did consider imposing conditions if the practitioner was to return to practice. However, the practitioner through his Counsel made it clear that he was retired and would not return to practice. As such the impositions in this case would be unnecessary.

[84] The Tribunal does not consider that the imposition of fine is appropriate in this instance. As noted above, we do not agree that this is a case of a "pyrrhic outcome". The practitioner has already imposed sanctions on himself, and credit should be given to the way in which he has conducted himself in this proceeding, and the investigation leading up to it.

[85] Both parties agree that censure is appropriate in this instance to signal the seriousness of the offending.

Non-publication orders

[86] The practitioner consented to a permanent non-publication order prohibiting publication of the patient's name and identifying details and a previous chair had already ordered this prior to the current hearing. The Tribunal after hearing input from the patient through the director, considers it prudent to specifically note that this should include the date of the patient's injuries, date of appointments, her age and any identifying information regarding the patient's child including its gender name and age in this decision.

[87] Counsel for the practitioner also applied for a permanent non-publication order prohibiting publication of the practitioner's name and identifying details. Counsel explicitly identified the location of the practitioner's former practice in Morrinsville and his age and the fact he has retired as particulars that should be prohibited from publication.

[88] The Director, while setting out the relevant principles, took essentially no position on the application. However, after seeking the patient's view during the course of the hearing in regard to her privacy interest, the Director noted that the patient was opposed to name suppression. The patient felt that publication would ensure safety within and outside of the profession.

Principles

[89] Section 95(1) of the Act provides that all Tribunal hearings are to be in public. Section 95(2) provides:

> (2) If, after having regard to the interests of any person (including, without limitation, the privacy of any patient) and to the public interest, the Tribunal is satisfied that it is desirable to do so, it may (on application by any of the parties or on its own initiative) make any 1 or more of the following orders:
>
> …
>
> (d) an order prohibiting the publication of the name, or any particulars of the affairs, of any person.

[90] Thus, the starting point is that all Tribunal hearings are public. If an application is made, the Tribunal's overall task is to consider the interests of the practitioner and the public interest. If the Tribunal considers it desirable, it may then exercise its discretion. This is a lower threshold than that of exceptionality[15] required in other jurisdictions.

[91] The Tribunal has established public interest factors to take of account, including:

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[15] *Johns v Director of Proceedings* [2017] NZHC 2843, at [166].

(a) openness and transparency of disciplinary proceedings;

(b) accountability of the disciplinary process;

(c) the public interest in knowing the identity of a health practitioner charged with a disciplinary offence;

(d) importance of free speech (enshrined in s 14 of the New Zealand Bill of Rights Act 1990); and

(e) the risk of unfairly impugning other practitioners.

[92] In regard to the principle of open justice generally, the Supreme Court in *Erceg v Erceg*[16] stated:

> [2] The principle of open justice is fundamental to the common law system of civil and criminal justice. It is a principle of constitutional importance, and has been described as "an almost priceless inheritance". The principle's underlying rationale is that transparency of court proceedings maintains public confidence in the administration of justice by guarding against arbitrariness or partiality, and suspicion of arbitrariness or partiality, on the part of courts. Open justice "imposes a certain self-discipline on all who are engaged in the adjudicatory process – parties, witnesses, counsel, Court officers and Judges". The principle means not only that judicial proceedings should be held in open court, accessible by the public, but also that media representatives should be free to provide fair and accurate reports of what occurs in court. Given the reality that few members of the public will be able to attend particular hearings, the media carry an important responsibility in this respect. The courts have confirmed these propositions on many occasions, often in stirring language.
>
> [3] However it is well established that there are circumstances in which the interests of justice require that the general rule of open justice be departed from, but only to the extent necessary to serve the ends of justice.

[16] *Erceg v Erceg* [2016] NZSC 135.

[93] In *Nuttall,* the Tribunal observed that a disciplinary process needs to be accountable so that members of the public and profession can have confidence in its processes[17].

[94] The public interest in knowing the identity of a practitioner charged with a disciplinary offence includes the right to know about proceedings affecting a practitioner, but also the protection of the public and their right to make an informed choice.[18]

[95] While in the preponderance[19] of cases the practitioner will be named, in some cases personal interests can displace the presumption of openness. Private interests can include:

(a) the health interests of a practitioner;

(b) matters that affect the practitioner's family and their well-being; and

(c) the practitioner's rehabilitation.

Practitioner grounds

[96] Counsel for the practitioner acknowledges that the starting point is one of openness and that the threshold in this jurisdiction is lower than that generally applicable in the civil context.

[97] The practitioner outlined the following grounds:

(a) publication may serve to alienate the practitioner from others in the retirement community he has recently entered and is unlikely to be able to leave due to his financial circumstances;

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[17] *Nuttall* 8Med04/03P para [26].

[18] *A v Director of Proceedings* CIV-2005-409-2244, Christchurch 21 February 2006 at [42] (also known as *T v Director of Proceedings and Tonga v Director of Proceedings*).

[19] *A v Director of Proceedings* HC Auckland 2005-409-2244.

(b) publication may risk harm to the practitioner's [health]. The practitioner provided an affidavit appended to which were two [medical records] referred to above; and

(c) publication would not operate to protect the public as the practitioner has agreed that his registration should be cancelled.

Discussion

[98] Weighing the public interest against the private interest of a health practitioner is not an easy exercise. The more serious the charge, the more significant mental stress to a practitioner when their name is published, especially where there is an unethical and/or sexual component. However, the seriousness of a charge may make public interest factors stronger. Relevant to this case, publication of charges where there is a sexual component may flush out any unknown similar complaints, and the profession as a whole is impugned where no-one is named.

[99] The present case is at the more serious end of charges that come before us. While the practitioner is now retired, the Tribunal considers that publication can serve to protect the public as there may be unknown similar complaintants who could come forward.

[100] Against this, we must weigh the practitioner's private interest. The Tribunal has read the practitioner's affidavit and accompanying [medical records]. The reports detail that the practitioner has experienced [health symptoms] after receiving the complaint, has ongoing [health condition]. The second report does note improvements in the practitioner's [] health. At the time of the second report [details of health condition] .

[101] The Tribunal has also considered the practitioner's affidavit in regard to the practitioner's potential alienation from the community he lives in and his inability to leave. While the Tribunal agrees that it would be difficult to leave, the Tribunal does not understand it to be an impossibility based on the information provided.

[102] Ultimately, the Tribunal considers that it would not be desirable to make an order in this instance. The Tribunal did not reach this decision lightly and it was finely balanced. The public interest in particular, weighed in our decision. The seriousness of the established charge points to a significant public interest in ensuring there are no other unknown complaints. Publication of the practitioner's name would ensure this.

[103] The Tribunal was sensitive to the practitioner's private interests, particularly the effect this may have on his [] health. However, the Tribunal considers that this is outweighed by the public interest in this instance and appropriate support can be put in place prior to the decision's publication.

Costs

[104] In relation to costs, the Tribunal records that it has used a starting point that a health practitioner will generally be expected to contribute 50% of the actual and reasonable costs of the Tribunal and PCC.

[105] After considering Counsels' submissions, the Tribunal considers it appropriate in this instance that reduction is made from the starting point given the extent of the practitioner's co-operation.

[106] In the present case, the Tribunal has determined a 20% discount is appropriate to reflect the practitioner's significant cooperation with the PCC and Tribunal in the conduct of this proceeding.

Orders of the Tribunal

[107] The charge and its associated particulars are established. The Tribunal finds that particulars 1 and 2 separately and cumulatively amounts to professional misconduct under ss 101(a) and (b) of the Act. The majority of the Tribunal also finds that particular 3 cumulatively with particulars 1 and 2 amounts to professional misconduct under ss 101(a) and (b) of the Act.

[108] The Tribunal makes the following penalty orders:

(a) The practitioner's registration is cancelled under s 101(1)(a).

(b) The practitioner is censured under s 101(1)(d).

[109] The practitioner is to pay a 30% contribution of costs to both the Director and the Tribunal. The practitioner is to therefore ordered to pay $3,459.30 contribution to the Tribunal's costs and $7,065.00 to the Director's costs.

[110] The Tribunal makes an order under s 95 for permanent name suppression of:

(a) the practitioner's medical conditions and health records referred to in his application for permanent name suppression; and

(b) the patient and any identifying details. Specifically, this includes the date of the patient's injuries, date of appointments, her age and any identifying information regarding the patient's child including its gender name and age.

[111] Interim name suppression for the practitioner is to continue until 21 days from the date of this decision.

[112] Pursuant to s 157 of the Act the Tribunal directs the Executive Officer:

(a) to publish this decision and a summary on the Tribunal's website; and
(b) to request the Osteopathic Council of New Zealand to publish either a summary of, or a reference to, the Tribunal's decision in its professional publications to members, in either case including a reference to the Tribunal's website so as to enable interested parties to access the decision.

DATED at Auckland this 19th day of November 2023

Winston McCarthy
Deputy Chairperson
Health Practitioners Disciplinary Tribunal

APPENDIX A: The Charge

TAKE NOTICE that pursuant to sections 91 and 100(1)(a) and 100(1)(b) of the Health Practitioners Competence Assurance Act 2003, the Director of Proceedings has reason to believe that a ground exists entitling the Tribunal to exercise its powers against you and charges that between [date] and [date], whilst caring for your patient Mrs R you, being a registered osteopath, acted in such a way that amounted to professional misconduct.

IN PARTICULAR:

1. On [date] while providing treatment to Mrs R you breached professional boundaries when you made a sexual comment about her underwear;

AND/OR

2. On [date] while providing treatment to Mrs R you breached professional boundaries when you:

    (i) pulled Mrs R's underwear to the side and digitally penetrated her by putting your finger/s inside her vagina; and/or

    (ii) made a sexual comment towards Mrs R about her genital area.

AND/OR

3. On [dates] while providing treatment to Mrs R you failed to ensure she was appropriately covered.

The conduct alleged in the above three particulars separately or cumulatively amounts to professional misconduct. The conduct is alleged to amount to malpractice and/or negligence and/or conduct that brings discredit to the osteopathic profession under s100(1)(a) and s100(1)(b).

DATED at Wellington this 20th day of February 2023

APPENDIX B: Agreed Summary of Facts

AGREED SUMMARY OF FACTS

THE PROVIDER

Joseph Gregory Crozier

1. At all material times, Mr Joseph Crozier ("Mr Crozier") was a practising osteopath registered with the Osteopathic Council of New Zealand ("the Osteopathic Council"). Mr Crozier was self-employed and ran his practice – "Osteopath Morrinsville" – out of a spare room in his house.

2. Mr Crozier qualified as an osteopath at the British College of Osteopathy and Naturopathy in London. Shortly after qualifying as an osteopath Mr Crozier migrated to New Zealand. He first registered with the Osteopathic Council on 18 September 2004.

3. At the time of the events in question, Mr Crozier was a member of Osteopaths New Zealand ("ONZ").

BACKGROUND

6. In [date] Mrs R ("Mrs R"), aged [xx] at the time of these events, injured her [location of injury] when she [details of cause of injury]. In the immediate aftermath Mrs R suffered severe pain in her [location of injury] which gradually reduced to generalised lower back pain.

7. In [month, year] Mrs R sought osteopathic treatment from Mr Crozier. Mrs R did not know Mr Crozier personally but her husband knew Mr Crozier as an acquaintance. In addition, Mrs R and her husband lived [details of residence].

8. Mrs R had never been to an osteopath before and had no idea what to expect.

9. Mrs R saw Mr Crozier three times at three separate hour-long appointments on [dates].

10. At the first and third appointments, Mrs R was accompanied by her [age] [child]. During these treatment sessions Mrs R's [child] was present in the treatment room.

11. For treatment during all three appointments, Mrs R was undressed down to her bra and underwear. While Mrs R was offered draping while lying on her back, she was not offered draping while lying face down. Mr Crozier accepts he should have taken more care to protect and respect Mrs R's modesty by more circumspect use of towels and that this was his responsibility.

First and Second Appointments – [dates]

12. By the time of Mrs R's first appointment on [date], her presentation was one of generalised lower back pain. Mrs R also indicated pain at her gluteal folds. Mr Crozier performed a series of assessments and recorded that the only elicited pain and restriction was in Mrs R's lumber side bending left and right.

13. Mr Crozier explained to Mrs R that his treatment would consist of massage, mobilisation and, if necessary, manipulation and that this could necessitate removal of clothes down to underwear.

14. After the first appointment Mrs R's [location of injury] pain had eased and she had started to feel better, however, by the time of her second appointment on [date], she was experiencing pain in the [location of pain].

15. At the second appointment Mrs R's treatment included soft tissue massage to her [areas of treatment]. While receiving this treatment Mrs R was in her bra and underwear.

16. At one point, Mr Crozier, referring to Mrs R's underwear, commented, "I bet that keeps Mr R happy".

17. During the treatment sessions Mr Crozier and Mrs R had been chatty with each other. Mrs R describes herself as a jokey person and early on in her treatment with Mr Crozier, there had been a conversation about a physiotherapist she had previously seen and who she had described as her "hot physio". Mr Crozier and Mrs R disagree over the tenor of their conversations with Mr Crozier perceiving them to be sexually charged. For example, Mr Crozier believed that Mrs R had expressed disappointment that her physiotherapist had not offered "extras" which Mr Crozier believed meant sexual extras. Mrs R disputes this.

Third Appointment – [date]

18. At the third and last appointment Mrs R's [age] [child] was present in the room. [They] lay on the floor to the left of the treatment table, playing with [their] electronic tablet.

19. Before the treatment session started Mr Crozier left the room to allow Mrs R to get undressed. However, he returned before Mrs R was ready and then stayed in the room while Mrs R undressed.

20. This treatment session mainly involved soft tissue massage including to Mrs R's inner thighs. Mr Crozier recalls Mrs R had complained of pain in her thigh adductors related to exercise strain. Mrs R recalls that she had said her muscles were sore, and in particular her "glutes and quads" were sore, because of a boot camp she was in. At one point during the massage, Mr Crozier enquired about Mrs R's abdominal muscles and then lifted the towel that was draped across Mrs R's stomach and began touching her stomach.

21. Then, while massaging Mrs R's inner thigh, Mr Crozier pulled her underwear to the side and digitally penetrated her vagina.

22. Mr Crozier and Mrs R disagree about what happened immediately before this occurred.

23. Mrs R states that Mr Crozier looked at the clock and then asked if she would be ok with a "bit extra". Mrs R recalls looking at the clock and either nodding or saying yes. Mr Crozier then asked, "are you sure?", and as Mrs R assumed that "a bit extra" meant more time, she nodded.

24. Mr Crozier states that he had become convinced, due to the perceived sexual content of their earlier conversations, that Mrs R wanted more, and states that he asked her if she was asking him to provide "extras" (as in the sexual extras that Mr Crozier believed Mrs R had said she wished her physiotherapist had offered), and that Mrs R said yes. Mr Crozier accepts he then digitally penetrated Mrs R's vagina while her [child] was present in the room.

25. Mrs R denies giving Mr Crozier consent to digitally penetrate her vagina.

26. Mrs R states that she froze, and having not said no, she did not know what to do or how to make it stop. Mrs R states that she then pretended to orgasm to make it stop.

27. After Mrs R had "orgasmed" Mr Crozier said, "I just kept thinking you looked so good down there that I could only imagine that you would taste even better", before handing her clothing to her.

28. When Mrs R went to pay for the session as she had done on the previous two occasions, Mr Crozier said something along the lines of, "no charge for that one, ACC can pay for that". Mr Crozier asked Mrs R if she would like to book the next appointment. Mrs R replied that she would book online, and then left.

29. The clinical notes from this appointment record that Mrs R was continuing to improve with very little pain in all areas. There is no record of the sexual events that occurred during this appointment.

Subsequent Events

30. That evening Mrs R spoke to her husband about what had occurred. Mrs R's husband recalls that when he came home Mrs R was a mess.

31. Mrs R did not make a further appointment to see Mr Crozier.

32. On [date] Mrs R attended her general practitioner ("GP") and discussed what had occurred at her appointments with Mr Crozier, including that he had touched her genital region. Mrs R's GP gave her a range of options with respect to dealing with what had occurred, including contacting the Osteopathic Council, the Health and Disability Commissioner, the Accident Compensation Corporation, or the Police, or being referred for local counselling.

33. Mrs R subsequently made a complaint to the Osteopathic Council on [date]. In her complaint Mrs R recorded that inappropriate sexual touching had occurred during

a treatment session and while a [ld was in the room. Mrs R further complained that she was not offered appropriate draping during the treatment session.

34. On 19 April 2021 Mrs R wrote an email to Mr Crozier to let him know that she had filed a complaint. In her email Mrs R stated: "You may not aware [sic] of this but what happened has had a major impact on me and was unprofessional and harmful. I don't want to see other clients put in the same position and that is the sole purpose of my complaint".

35. On 11 May 2021 the Osteopathic Council referred the complaint to the Health and Disability Commissioner under section 64(1) of the Health Practitioners Competence Assurance Act 2003 ("HPCAA 2003"). In the letter of referral the Osteopathic Council noted that should the matter be referred back, it would then be referred to a Professional Conduct Committee with an assessment of high risk to the public safety. The Osteopathic Council also noted that it would consider whether to make interim orders under section 69(a)(i)(ii) of the HPCAA 2003 suspending Mr Crozier's annual practising certificate or including conditions on his scope of practice.

IMPACT ON MRS R

36. While Mrs R believes that Mr Crozier was not intentionally trying to hurt her and that if she had been able to find her voice to tell Mr Crozier to stop, he would have, she also believes some serious miscommunication and unprofessionalism occurred.

37. Mrs R's husband told HDC that these events have been very difficult for his wife, and while she is an empathetic person who sees the best in everyone, he has seen her wrecked and ruined from what occurred.

38. Mrs R has since received counselling funded by the ACC.

MR CROZIER'S RESPONSE TO THE COMPLAINT

39. Mr Crozier maintains his belief that what occurred was consensual.

40. That notwithstanding, to the HDC, Mr Crozier stated he accepted full responsibility for his actions and expressed regret for what occurred. Mr Crozier has provided a written apology to Mrs R in which he accepts his actions were a "rank breach" of his professional code of conduct, and that even in the presence of consent (as Mr Crozier believed), that in no way were his actions appropriate or justifiable.

41. Prior to these events, and at the age of 67, Mr Crozier had been considering retirement and had been winding down his practice for several years. In May 2021 Mr Crozier resigned from the Osteopathic register and surrendered his annual practising certificate.

42. As a result of Mr Crozier's voluntary withdrawal from practice the Osteopathic Council did not impose any interim conditions under section 69(a)(i)(ii) of the HPCAA 2003.

RELEVANT STANDARDS

43. The Osteopathic Council's Code of Ethics ("the Code of Ethics") records that the osteopath must make the care of the patient their main concern. This includes setting boundaries for their practice that ensure patients feel informed, acknowledged, respected, valued and safe.

44. The Code of Ethics specifically stipulates that an osteopath must not exploit patients in any way. In particular, there must be no sexual relationship, nor inappropriate sexual behaviour, with a patient during the professional relationship.

45. The Code of Ethics states that inappropriate sexual behaviour includes, but is not limited to, the use of language (whether spoken or written) of a sexual nature, the use of visual material of a sexual nature, or physical behaviour of a sexual nature.

46. The Osteopathic Council's Code of Conduct for Osteopaths (September 2020) includes the following principles of practice:

Principle 1: Respect the dignity and individuality of health consumers
Standards

…

1.2 Take steps to ensure the physical environment allows health consumers to maintain their privacy and dignity.

…

1.9 Take steps to minimise risk and ensure your care does not harm the health or safety of health consumers.

…

Principle 4: Maintain health consumer trust by providing safe and competent care
Standards

…

4.8 Administer treatment and guidance in accordance with legislation, your scope of practice and established standards or guidelines.

4.9 Practice in accordance with professional standards relating to safety and quality of health care.

…

Principle 7: Act with integrity to justify health consumers' trust
Standards

…

7.2 Protect all health consumers, particularly vulnerable health consumers, from exploitation and harm.

…

7.15 Maintain a professional boundary between yourself and the health consumer, their family/whanau and other people nominated by the health consumer to be involved in their care.

7.16 Do not engage in sexual or intimate behaviour or relationships with health consumers in your care or with those close to them "See Guidance: Professional boundaries".

Guidance: Professional boundaries

…

- Sexual relationships between osteopaths and persons with whom they have previously entered into a professional relationship are inappropriate in most circumstances. Such relationships automatically raise questions of integrity in relation to osteopaths exploiting the vulnerability of persons who are or who have been in their care. Consent is not an acceptable defence in the case of sexual or intimate behaviour within such relationships.

PROFESSIONAL MISCONDUCT

47. Mr Crozier accepts that his actions as particularised in the charge amount to professional misconduct.

48. For the removal of doubt, Mr Crozier accepts that on the basis of the above facts the charge warrants a disciplinary finding against him.

49. Mr Crozier consents to an order suppressing Mrs R's name and identifying details.