

In the matter of Section 22 of the Chiropractors Act 1994 ("the Act")

and

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

and

The consideration of an allegation by the Professional Conduct Committee

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

Name of Respondent:
Address of Respondent:

**Michelle Carrington
Haslemere Chiropractic Clinic
40 West Street
Haslemere
Surrey
GU27 2AB
00883**

Registration Number of Respondent:

In the week commencing 29 November 2010, the Professional Conduct Committee ("the Committee") of the General Chiropractic Council met to consider the following allegation against you, referred to it by the Investigating Committee in accordance with Section 20(12)(b)(ii) of the Chiropractors Act 1994 ("the Act"):

THE ALLEGATION:

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

PARTICULARS OF THE ALLEGATION:

That, whilst a registered chiropractor:

1. On or about 7 June 2009 and for an unknown period prior to that date, you practised at Haslemere Chiropractic Clinic, 40 West Street, Haslemere, Surrey, GU40 2AB ("the practice").
2. On or about 7 June 2009 and for an unknown period prior to that date, you caused or permitted the website www.haslemerechiropractic.com, which advertised the practice to contain the statements highlighted in the website extracts in Schedules 1 and 2.

3. The statements highlighted in the website extracts in Schedule 1 were not supported by high or moderate positive evidence from randomised controlled trials.
4. The statements highlighted in the website extract in Schedule 1 were potentially misleading.
5. The statements highlighted in the website extracts in Schedule 2, had the potential to put pressure on members of the public viewing the website to seek chiropractic care, and had the potential to exploit the lack of experience or knowledge of members of the public viewing the website about either health or chiropractic matters.

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

ABUSE OF PROCESS SUBMISSION

This is one of a large number of similar cases being considered by the Professional Conduct Committee ("the Committee") of the General Chiropractic Council ("GCC"). In several of these cases (but not this one) the respondents made submissions to the Professional Conduct Committee that were decided on 17 November 2010. They included a submission that the cases against them be stayed as an abuse of process. In particular, it was argued that the involvement of the Registrar in obtaining a report (the Report referred to below) during the investigation had tainted the process. The respondents also relied on late disclosure of evidence to them by the GCC. The decision of the Professional Conduct Committee on 17 November 2010 was not to stay for an abuse of process.

In this case, the Respondent has provided a document headed 'Further Submissions' partly in response to the decision of the PCC on 17 November 2010. These submissions repeat the argument that the proceedings against the respondent should be stayed as an abuse of process. The material relied on appears to be essentially the same as that previously considered. This Committee sees no reason to disagree with the decision previously taken. However, it considers that a Respondent who wishes to renew an application to stay the proceedings should be allowed to do so at an oral hearing. Such a hearing would be able to consider full legal argument and evidence. It was not clear to the Committee that this is what the Respondent wanted to do. The Committee decided to notify all the respondents that if they wished to make a formal application to stay proceedings on the basis of abuse of process they should do so forthwith.

Rather than adjourn the meeting in this case, the Committee decided to look first at the strength of the evidence in this case. In view of the outcome of this process, any application for a stay is now likely to be academic. Accordingly, the Committee has determined the case, as set out below.

DECISION

In accordance with Rule 3(1) of the General Chiropractic Council (Professional Conduct Committee) Rules 2000, the Professional Conduct Committee had previously determined not to hold a public hearing to deal with the Allegation as notified to Michelle Carrington ("the Respondent") on 17 August 2010.



The Respondent agreed to waive her right to attend and accepted that, if the Committee found the Allegation proved, it could impose a sanction of Admonishment at the meeting without considering any further written or oral representations from her.

The Committee therefore met and considered this Allegation on the basis of documentary evidence with neither party present at this meeting.

The Committee considered all of the documentary evidence provided by the Respondent and by the GCC and accepted the advice of the Legal Assessor. It has borne in mind that the burden of proof on facts is on the GCC and that the standard of proof is the civil standard, which is the balance of probabilities.

This Committee has decided to receive in evidence under Rule 17(3), a copy of the Bronfort et al report on the effectiveness of manual therapies: the UK evidence report ("the Report"). This Committee has taken account of the decision of the Professional Conduct Committee made on 17 November 2010 in relation to the status and scope of the Report. It agrees with that Committee that the Report is an academic report and not an expert report.

This Committee regarded the Report as a comprehensive statement of those conditions for which randomised controlled trial (RCT) evidence exists for the efficacy of manual therapy. The Report provides a summary of the scientific evidence regarding the effectiveness of 'manual treatment' in relation to a number of conditions.

The Committee considered each of the Particulars of the Allegation and in doing so it was mindful of the provisions of C1.6 of the Code of Practice (effective from 8 December 2005).

Particular 1

On or about 7 June 2009 and for an unknown period prior to that date, you practised at Haslemere Chiropractic Clinic, 40 West Street, Haslemere, Surrey, GU40 2AB ("the practice").

This Particular was admitted and the Committee found it proved.

Particular 2

On or about 7 June 2009 and for an unknown period prior to that date, you caused or permitted the website www.haslemerechiropractic.com, which advertised the practice to contain the statements highlighted in the website extracts in Schedules 1 and 2.

The Respondent admitted "permitting" the website to contain the statements highlighted in Schedules 1 and 2 and the Committee found the Particular proved on that basis.

Particular 3

The statements highlighted in the website extracts in Schedule 1 were not supported by high or moderate positive evidence from randomised controlled trials.

The GCC advised the Committee that it was not pursuing Particulars in respect of infant colic, asthma, sciatica, tension headaches, menstrual pain and digestive disorders. The GCC submitted that it recognised that patient information leaflets published by the GCC in



the past made reference to these conditions. It accepted that chiropractors may have relied on information published by the GCC, as their regulator, about these conditions in preparing their websites. The Committee accepted the GCC's submission that it would have been reasonable for chiropractors to have relied on the GCC's leaflet in relation to claims made on their websites in respect of these conditions.

Particular 3 alleges that the statements highlighted in the website extracts in Schedule 1 were not supported by high or moderate positive evidence from RCTs ("RCT evidence"). Schedule 1 contained printouts of the website with various parts underlined.

The Committee decided that the appropriate way to deal with Particular 3 of the Allegation was to analyse the underlined text and to consider the context in which the underlined passages appeared on the website pages. The Committee then went on to determine the nature of the statement being made and considered that the statements fell into three categories:

- (1) Statements which were incapable of being verified by RCT evidence, such as statements about the usual practice of the registrant or general words and headings.
- (2) Statements which were capable of being verified by RCT evidence but which, in the opinion of the committee, fell within the categories where the GCC had decided to offer no evidence.
- (3) Other statements which were capable of being verified by RCT evidence, typically claims that chiropractic could provide effective treatment for a particular condition.

In relation to statements that fell in to category (1), the Committee determined that it would be unfair to find Particular 3 proved even though it might be literally correct to say that the statements were not supported by RCT evidence. This is because the Committee considered that RCT evidence is irrelevant to such statements.

In relation to statements that fell into category (2), the Committee found Particular 3 not proved because the GCC offered no evidence in respect of these statements. The Committee decided that the conditions where the GCC offered no evidence included conditions and/or associated symptoms which fell into this category but may have been described on the website using different terminology.

On this basis, the Committee considered the highlighted statements as set out in Schedule 1. The Committee's conclusions are set out in **Appendix 1** to this decision.

The Committee went on to consider Particular 3 only in relation to the statements highlighted in Schedule 1 that fell into Category 3. The Committee noted that the Report did not identify any high or moderate positive evidence from RCTs in respect of manual therapy to support a publicised claim in respect of these conditions. Therefore, the Committee has found Particular 3 proved in respect of the statements highlighted in Schedule 1 that fall into Category 3 (as set out in **Appendix 1**). However, the Committee is mindful that this conclusion only relates to manual therapies. The Committee has not been provided with any comprehensive evidence about RCTs relating to other forms of treatment practised by chiropractors.

Particular 4

The statements highlighted in the website extract in Schedule 1 were potentially misleading.

In relation to this Particular, which alleged that statements were "potentially" misleading, the Committee was of the opinion that this added nothing material to an allegation that



statements were "misleading". The Committee considered that a statement can be misleading whether or not someone has actually been misled by it.

The Committee found Particular 4 not proved in respect of the general statements in Category 1. The Committee was not satisfied, on the balance of probabilities, that such statements were inaccurate.

The Committee found Particular 4 not proved in respect of the conditions falling into Category 2 as no evidence was offered by the GCC.

The Committee concluded that the statements highlighted in Schedule 1 which fell into Category 3 were not misleading. These were statements to the effect that chiropractors provide treatment for the conditions in question. The Committee considered the submissions made by the Respondent in relation to these conditions. In each case the respondent provided evidence that there was support from a variety of sources for the chiropractic treatment of these conditions. These included undergraduate and postgraduate training and/or materials by the Anglo European College of Chiropractic ("AECC"); research, peer reviewed journals and publications from a variety of bodies including the GCC and the British Chiropractic Association ("BCA").

On this basis, the Committee has concluded that it was not misleading or potentially misleading for the Respondent to make the statements highlighted in Schedule 1, which fell into Category 3 and, therefore, this Particular is not found proved.

Particular 5

The statements highlighted in the website extracts in Schedule 2, had the potential to put pressure on members of the public viewing the website to seek chiropractic care, and had the potential to exploit the lack of experience or knowledge of members of the public viewing the website about either health or chiropractic matters.

In its submissions, the GCC made an application to amend Particular 5 so that it would read

The statements highlighted in the website extracts in Schedule 2, had the potential to put pressure on members of the public viewing the website to seek chiropractic care, and/or had the potential to exploit the lack of experience or knowledge of members of the public viewing the website about either health or chiropractic matters.

The Committee considered the application and took account of the advice of the Legal Assessor. The Legal Assessor advised that the Committee could allow the application and amend the Particular provided that it could do so without injustice.

The Committee noted that the Respondent had had notice of the application to amend the allegation and had made no submissions in this respect. She had also addressed both parts of the Particular separately in her submissions and would not be prejudiced by the amendment. Therefore, the Committee concluded that it would allow the application because it was satisfied that an amendment could be made without injustice.

The Committee then went on to consider Particular 5 in its amended form.

The Committee first considered whether the statements highlighted in the website extracts in Schedule 2 had the potential to put pressure on members of the public viewing the website. The Committee concluded that some of the highlighted statements in respect of antenatal care could have been worded more conservatively. However, considering the context in



which the statements appeared in Schedule 2, it concluded that the highlighted statements would not put pressure on members of the public viewing the website to seek chiropractic care. In particular, it noted that the statements were set out in conditional terms and did not indicate that chiropractic treatment was necessary for all pregnant women.

The Committee next considered whether the statements highlighted in the website extracts in Schedule 2 had the potential to exploit the lack of experience or knowledge of members of the public viewing the website about either health or chiropractic matters. The Committee considered that the statements highlighted were either factual statements or statements about chiropractic. On that basis, the Committee saw nothing to indicate that the statements had the potential to exploit the lack of knowledge of members of the public viewing the website about either health or chiropractic matters.

Therefore, the Committee found Particular 5 not proved.

UNACCEPTABLE PROFESSIONAL CONDUCT

The Committee went on to consider whether the facts found proved in this case amount to Unacceptable Professional Conduct and determined that they did not. In reaching this decision, the Committee took into account the advice of its Legal Assessor, together with submissions made by the Respondent and those made on behalf of the GCC.

The Committee noted that the Code of Practice C1.6 states that chiropractors:

"may publicise their practices or permit another person to do so consistent with the law and the guidance issued by the Advertising Standards Authority. If chiropractors, or others on their behalf, do publicise, the information used must be factual and verifiable. The information must not be misleading or inaccurate in any way. It must not, in any way, abuse the trust of members of the public nor exploit their lack of experience or knowledge about either health or chiropractic matters. It must not put pressure on people to use chiropractic".

The GCC submitted that it is unacceptable for chiropractors to make statements on websites which cannot be supported by at least moderate positive evidence from RCTs. In submissions, the GCC accepted that this requirement has not previously been articulated, but submitted that this was not necessary.

The Committee noted that the GCC's current published Advertising Guidance for Chiropractors, which was published in March 2010, states that:

"When you or someone else on your behalf advertise your services, in whatever medium, any claims you make must be based on best research of the highest standard. This will almost certainly mean randomised controlled trials that produce high or moderate quality positive evidence".

The Report stated (in the section headed **Discussion: Making Claims**) that the best evidence for efficacy/effectiveness that meets society's standards comes from well-designed RCTs. The authors accepted that other study designs and clinical observations do offer insight into the plausibility and potential value of treatments, but the concepts of plausibility and evidence of efficacy/effectiveness should not be confused when making claims.

The Committee accepted the submissions of the Respondent that the scope of the Report was limited to examining evidence relating to manual therapy, which is defined as "massage, mobilisation and manipulation". It also accepted that the scope of chiropractic care extends



beyond this narrow focus. The Committee is aware that the Report is submitted to it on the basis that it is a single academic paper, which was commissioned and published after the complaint. The Committee accepted that it was not an expert report, nor a complete and definitive guide for chiropractic practice.

The Committee accepted that the Report may well set out relevant guidance for chiropractors as to current and future practice. The Committee considered however that, in determining the issue of unacceptable professional conduct in this case, it is bound to consider the position as it stood in June 2009. It accepted that, at that time, the standard in the Code of Practice had not been defined beyond the terms of paragraph C1.6. Therefore, the central principle was that advertising claims should consist of 'factual and verifiable' information.

The Committee noted that, whilst the authors of the Report offer the opinion that the use of well-designed RCTs would amount to the best evidence, they do not offer an opinion on the question of whether the use of other evidence constitutes a failure to attain the standard of the reasonable chiropractor.

In its submissions, the GCC placed some reliance on the Consumer Protection from Unfair Trading Regulations 2008 ("CPUTR") and stated that it did not rely on any particular allegation of breach of the regulations, but rather that the CPUTR represented part of the "relevant law". The Committee noted the regulations and their general effect when considering the question of Unacceptable Professional Conduct in relation to Particular 3 of the Allegation.

As already stated, the GCC offered no evidence in relation to a number of conditions which had appeared in their own patient information leaflets. There was no RCT evidence in respect of these conditions. The fact that the GCC considered it appropriate to publish information concerning treatment for which there was no RCT evidence, indicated to the Committee that it is not correct to say, that in 2009, RCT evidence was the only acceptable form of evidence for justifying advertised information.

In June 2009 the GCC had issued no condition-specific guidance to chiropractors regarding advertising. The Respondent submitted that she had been entitled to rely on publications of the GCC, the BCA, other chiropractic bodies and other reputable journals and also her undergraduate training with the AECC. The Committee accepts that in judging the standard of the reasonable chiropractor, at that time, it is right that reliance on such sources could make published information "factual and verifiable", within the terms of Code of Practice C1.6.

Further, the guidance of the Advertising Standards Authority at that time required robust evidence but no explicit reference to high or moderate positive evidence from RCTs. The Committee noted the advice of the Trading Standards Officer to the GCC's Registrar in an e-mail dated 1 December 2009 which referred to a need for evidence to support claims, did not set the standard as a requirement for high or moderate positive evidence from RCTs.

The Committee, therefore, did not accept the submission of the GCC that, at June 2009 it was unacceptable for chiropractors to make statements on a website which could not be supported by at least moderate positive evidence from RCTs. The GCC's submissions made the assumption that claims that do not rely on RCT evidence are relying on inconclusive evidence. The Committee did not accept this assumption.

The Committee took account of the principles of natural justice; a person should know what he/she is required to do at the time of acting. In the view of the Committee, it could not be said that the explicit requirements had been made clear to the Respondent in advance of her



actions in permitting the website to contain the statements highlighted in the Schedules to the Allegation.

The proper standard was set out in the Code of Practice, paragraph C1.6 and was the 'factual and verifiable' standard for information. The Committee accepted that at the relevant time this may have included evidence from a range of sources, as well as high or moderate positive evidence from RCTs.

Accordingly, the Committee has determined that the matters found proved in respect of Particulars 2 and 3 do not amount to unacceptable professional conduct.

This concludes the matter.

Chair of the Professional Conduct Committee


In accordance with provision of Rule 18(1)(a) of the General Chiropractic Council (Professional Conduct Committee) Rules 2000, we must remind you of your right of appeal under Section 31 of the Chiropractors Act 1994, as amended by Section 34 of the National Health Service Reform and Health Care Provisions Act 2002, to the High Court of Justice in England and Wales against this decision of the Committee. Any such appeal must be made before the end of the period of 28 days, beginning with the date upon which this notice is served upon you.

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

As of 1 January 2009, the Council for Healthcare Regulatory Excellence has a period of 40 days, in addition to any appeal period provided to the chiropractor, in which to lodge an appeal.

Signed:

Dated: 06 December 2010



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

Explanatory Notes:

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



Appendix 1: Michelle Carrington

Page Header	Statements made	Conclusions
'Welcome'	Either general words, or a statement about the training and qualifications of the chiropractors at the practice.	Category (1)
'What is chiropractic?'	Claim to treat sciatica and tension headaches.	Category (2)
	Claim to treat golfer's elbow and jaw pain.	Category (3).
'Antenatal care'	Claims to treat sciatica and indigestion.	Category (2).
	Claims to treat pubic symphysis pain, abdominal discomfort and poor foetal positioning.	The Committee considered that indigestion fell within 'Digestive Disorders'.
	Assisting with optimal foetal positioning, achieving optimal positioning of your baby, aching between the shoulder blades.	Category (3).
		While the Committee did note that there was no specific claim to be able to treat these conditions, the Committee concluded that there was an inference that the Practice could provide treatment for these conditions.
'Babies Children' and	General words and statements that chiropractors at the clinic can provide care and help with a range of common childhood and baby complaints.	Category (1).

Appendix 1: Michelle Carrington

	Colic, vomiting and wind. Constipation.	<p>Category (2).</p> <p>Within this context the Committee linked the reference to vomiting and wind to colic.</p> <p>The Committee considered that constipation fell within 'Digestive Disorders'.</p> <p>While the Committee did note that there was no specific claim to be able to treat these conditions, the Committee concluded that there was an inference that the Practice could provide treatment for these conditions.</p>
	Asthma	<p>Category (2).</p> <p>While the Committee did note that there was no specific claim to be able to treat these conditions, the Committee concluded that there was an inference that the Practice could provide treatment for these conditions.</p>
	Sleep disturbance, birth trauma, feeding problems, positional discomfort, irritability and persistent crying, ear infections, crawling and gait problems and cranial support for orthotic work.	<p>Category (3).</p> <p>While the Committee did note that there was no specific claim to be able to treat these conditions, the Committee concluded that there was an inference</p>

Appendix 1: Michelle Carrington

		that the Practice could provide treatment for these conditions.
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