

# COVID and the Law

with Jonathon Goldrin

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## TRANSCRIPT

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**Steven Bruce**

We had a lot of people talking to us via Facebook or direct to us via email or otherwise, about the legal implications of various aspects of the lockdown. Not just that, but also the legal implications of various other things that go on in practice. And of course, one of the areas that we so rarely address in our CPD is that business of our professionalism, conduct in practice, fitness to practice. It's the Section D of the osteopathic practice standards, Section B and elsewhere in the chiropractic code. And that's why today I have asked Jonathan Goldring to come back and join us. Jonathan has been on the show, I think three times before, certainly once during lockdown. I've described him in my emails as an ace barrister. He has a poster on the wall behind him, a print of a Banksy, which says I fought the law and I won, but I don't think he wants that to be held against him at the Law Society. Jonathan, great to have you with us. How are you?

**Jonathan Goldring**

Hello, Steve. Very well, thank you. Thank you for having me.

**Steven Bruce**

I suppose we ought to clarify things first of all, Jonathan, shouldn't we, in that you said to me separately that you don't want people to think that you're an expert in COVID and a lot of the questions relate to COVID.

**Jonathan Goldring**

Yeah, I'm more than happy to give any advice that I can but I think your viewers should bear in mind that as a lawyer, I'm not giving legal advice specifically to them. I can give a general overview as to what's happening at the moment. And as with COVID, things are changing, as you say very rapidly. I'm not an expert on COVID, I'm an expert obviously at professional discipline in the law. But if I can help and give your viewers some guidance, then of course I will.

**Steven Bruce**

And your expertise is in regulatory law isn't it? And in particular, in defending people, the Professional Conduct Committees.

**Jonathan Goldring**

Yes, I generally act for health professionals that are finding themselves in trouble before their regulators. I do a lot of work with chiropractors, do a lot of work with osteopaths, but also other professions. Work with GMC, ACPC, but at the moment it's predominantly manual therapy.

**Steven Bruce**

Well, starting off with the sort of questions that have been sent in to us. One of the things, which I did mention to you, and I've tried to give you all the questions I can in advance, because obviously, it's not fair to you to say give us a legal opinion, an informal legal opinion, on these things without some prior notice. But one of them was one of our members said that they had an issue with a patient who had refused to wear a face mask and complained to the practice, because the practitioner said, Well, you can't come in if you don't wear a face mask. Where do we stand with that?

### **Jonathan Goldring**

Well, I think the starting point with any of these types of issues is to look at the guidance that's been issued by the government. That tends to direct us as to what we should and shouldn't be doing. But as I'm sure some of your viewers will know, that can be ambiguous at times. And what happens is, it's left to the individual or the associations to try to interpret what is meant. In terms of face masks there is, as I'm sure you know, at the moment, legislation in place that requires us when entering certain public spaces, like shopping centres or restaurants and bars and that sort of thing to wear face masks, certainly when we're walking around in them and as far as I'm aware, that applies to doctor surgeries, it applies to chiropractic clinics and osteopathic clinics as well. So, there's no particular reason to depart from that practice. My personal view is that if a patient refuses to wear a face mask in your practice, you should refuse to treat them. There is an overriding need to protect the public, your staff and indeed, other patients in the clinic. So, I can't I can't speak obviously for the GCC or GOsC but I can't imagine if a complaint was made to them about this type of situation that it would go particularly far because ultimately your job is to protect the wider public, not just one individual patient. So, I think you have to be polite, obviously, and explain why you're not treating them. But certainly, if I was advising a client, I think I'd be saying to them that they have to wear masks.

### **Steven Bruce**

Yeah. And if that patient says then well, you know, I'm going to complain about this, it's unfair treatment because my personal convictions tell me I shouldn't wear a mask. Presumably we would be well advised to say well, this is the route you should go down to complain, either complain to the principal in my practice, if that's not me, or tell them how to complain to the general councils Do we have to be that open?

### **Jonathan Goldring**

Yeah, I mean, all practitioners should have a complaints procedure in place and that has to be readily available to all patients. And they have to be told about that procedure, the usual thing I mean, most associations will publish a sort of stock complaints procedure. And the usual way is to just explain to the patient that you do have a complaints procedure in place, you would prefer, if you can, to resolve it at a local level first, but they need to know that if they're unhappy with the outcome of the complaint, they can then go to your association and or indeed the General Chiropractic or General Osteopath Council, as well. So, I think there's a need, well I don't think, there is a need to be transparent when it comes to complaints and to explain to patients what routes are available to them. You said about the patient's particular position as far as their own individual feelings about wearing face masks are concerned, obviously, you've got to be very careful in these circumstances that you don't discriminate against patients for age, race, religious belief, the usual types of areas. And it is a difficult position. I'm not thinking so much about their religious beliefs, I'm thinking more about the fact they may be exempt from wearing a mask, because they may have an underlying condition that makes it difficult for them to do that in those circumstances.

### **Steven Bruce**

You've anticipated a question which has just come in to ask what about those with asthma and COPD and so on?

**Jonathan Goldring**

Yeah, it's a very difficult position, again, as I said, I'm not an expert on COVID as such, but you have to take a commonsensical approach, if you're treating 30 to 40 to 50 patients a week and you have one who is refusing to wear a mask because of their underlying condition, I think you need to take a commonsensical approach, try and book their appointment for a time when there are no members of staff in the clinic, other than perhaps you, and make sure that the clinic is properly sanitised. So I think there are circumstances where you might be able to do that. But you've got to be very careful. And you've got to look at the wider picture. And you've got to look at the rest of your staff, to other patients and the members of the public at large.

**Steven Bruce**

It strikes me in my sort of uninformed position that we would have some justification in saying that we're just not equipped to deal with someone who doesn't wear a mask, and therefore, we can't treat you and we can recommend you go somewhere else for treatment. But you can't insist on coming into my building without a mask.

**Jonathan Goldring**

Well, as far as I'm aware there is no, lawyers, barristers, particularly have something we call a cab rank rule, which you may have heard of before, which basically means when a member of the public needs your help, you can't turn them away. As with a taxi, when you wait to get a taxi, they can't turn you away for their own personal reasons. I'm not aware that that exists within your professions. I think you have the right to turn patients down for a number of reasons providing you do it, as I say, not on the basis of any type of race or discriminatory reason. So yeah, I think you can legitimately turn a patient away, who is refusing to wear a mask, if you're not equipped to deal with that individual patient and that's the position. So, I can't imagine you'd be criticised for that. When ultimately, you're looking to protect the wider public.

**Steven Bruce**

Which is clearly embedded in both the chiropractic code and the osteopathic practice standards, we have a duty to do that.

**Jonathan Goldring**

Exactly. I think there is a need to be respectful, there is a need to be polite and if possible, to find a solution for that individual patient that doesn't compromise the health of other people. And if you do have to refer to another clinic that might be better equipped to deal with it, then you should do that. So, it's not simply a question of saying, the doors are locked, you can't come in. I think you have to engage and you have to be respectful. But as I said, I can't imagine you're going to be criticised for effectively doing the right thing.

**Steven Bruce**

A moment ago, you said the law is in place saying that we have to wear masks in shops and other enclosed spaces. What is the current state of the law? I think you said that the original act had now been revoked.

### **Jonathan Goldring**

Yeah, the Coronavirus legislation has been fairly fluid over the past seven or eight months, when we had the first lockdown back in in February, March time, the relevant legal provision was set out, and I'm not going to bore you with the details, but it was what we call SI 350 which was a statutory instrument that set out which businesses had to close, where people could go, where they couldn't go, etc. and chiropractors and osteopaths were specifically provided for in those provisions as places where the public could still visit during lockdown. And indeed, as I'm sure your members will know, members of the public were entitled to travel during lockdown for any medical needs or medical assistance they might need. So that was in place. And on the back of that guidance, the associations for the various bodies gave their advice as to what they thought that meant. But there was clearly a recognition within the government that you played an important role in the management of people's health. And so, dentists and osteopaths, I think veterinary surgeries and other types of institutions were allowed to stay open. Obviously, that lockdown ended. And I think that particular instrument was revoked in July when we came out of lockdown. And since then, there has been a general freedom to go and reopen your practice as normal, providing you're putting certain measures in place. There's been a lot of subsequent legislation that deals with the tier system, that deals with travel corridors and that sort of thing and the wearing of masks. But there hasn't been a specific piece of legislation, and as far as I'm aware, there's no specific legislation in force today, that applies to chiropractors and osteopaths. I suspect come Thursday, if Boris gets his way, and everything is locked down and Parliament approve that, if indeed they're required to, I suspect there will be another piece of legislation similar to that which we had in March. That sets out the rules again. Certainly, the Welsh government, who I think imposed a lockdown a couple of weeks ago, they adopted a similar model to that in March, which again, includes specifically chiropractors and osteopathic clinics and allows them to stay open. So, I don't see any reason why that's going to change. Now, but as it currently stands today, there are no restrictions in place or indeed exemptions in place. But so I'm guessing that we will get a similar piece of legislation and if anyone wants to look at it, as I said, it's statutory instrument 350. The Health Protection Coronavirus Restrictions Regulations 2020.

### **Steven Bruce**

It's hard to remember this far back, but I think we actually made it public to people from here last time around. Interestingly, here I've had message in from John, who may have been the origin of this discussion. He says he's got a case of the moment before the GCC investigating committee, not the PCC, about a patient refusing to wear a mask. So, John, if it actually gets to the PCC, I think I can recommend a very good barrister who will do his best to get you off the hook on that one. I'll seek advice from Jonathan on who the good barrister should be. Dawn says she's heard that anyone can go on Etsy and get a card claiming that they're exempt for six quid, have you heard about that? The card saying you're exempt, are they a legal document theoretically?

### **Jonathan Goldring**

I have no idea. I haven't heard about that. But my understanding was that the purpose of saying you're exempt was to stop other members of the public from frowning at you as when you got on and off public

transport. I'm not aware of any specific piece of legislation that says you have to wear a badge or that a badge counts.

**Steven Bruce**

Based on what you said just now it doesn't really matter because if our practices are not equipped to deal with maskless people, then we still have that discussion to be had don't we?

**Jonathan Goldring**

One of the things I think is important to recognise in this climate is that both chiropractors and osteopaths are recognised not as, obviously, frontline workers, but they're being recognised as an important tool in managing public expectations. And one example of that, is the fact that even individuals who have been positively diagnosed with COVID-19, as I'm sure you know, and have been told that they have a positive diagnosis or been in contact with someone, they will be required to self-isolate for between 10 and 14 days but, here's the crucial bit for you guys, they can leave to seek urgent medical assistance, which includes chiropractors and osteopaths. So even patients who currently have COVID-19 are allowed to see you and I think that's a recognition again of the importance of your role throughout this pandemic.

**Steven Bruce**

Marissa has asked a similar question to John, they've had a patient that they turned away because they didn't have a mask on and was wanting your thoughts. Marissa, hope we've answered that question in the part of the discussion so far. Jonathan, if a patient were to say that they had contracted COVID-19 and they believed it was because they contracted it at our practices, is there any way we could be held liable?

**Jonathan Goldring**

I'm not a personal injury lawyer as such. So, I can't give you any definitive advice on that. What I can say is that you have a duty of care to every patient that walks through the door. And in order for them to prove that it was contracted at your clinic, they have to show a causative link. As a matter of common sense, I can't imagine that would be particularly easy to do. Because it's impossible really to say where they contracted it unless they can say that they isolated and the only place they visited in that 14-day period was you clinic, therefore that's the only place it could have possibly been picked up from and nowhere else. Again, I think it's unlikely that anyone is going to be able to prove that but again, as I say, caveat, I'm afraid I'm not a P.I. lawyer.

**Steven Bruce**

Perhaps the more likely avenue would be to say, I've got COVID-19, I don't know where I got it but when I went to see the osteopath or the chiropractor, they definitely did not do this, this or this.

**Jonathan Goldring**

Yeah, I think that's a different position. And I think that's something that we are going to see unfortunately, coming through the Professional Conduct Committees in due course, there will be complaints that the clinicians effectively haven't sanitised, weren't wearing masks themselves, weren't putting into place the

correct procedures. And I think that is going to be something that the regulators will consider to be unprofessional conduct ultimately, it's putting patients at risk unnecessarily. So, I do unfortunately see a potential surgeon complaints in relation to that side of things sanitation and PPE.

**Steven Bruce**

The thing about PPE though, surely, is that we are told that so much of it is down to a risk assessment. So, for example, our own risk assessment might be that we don't need to wear gloves, because actually, they don't provide us any protection from Coronavirus, COVID-19. Is it likely that the council's might take a different view and say we're wrong or would they say well you're entitled to make that judgement?

**Jonathan Goldring**

Well, I mean, there's a degree of autonomy for every practitioner to make their own decisions, of course, but we are all living in a world at the moment where a lot of this information is new, it's novel and we are bound to be guided somewhat by our associations, we're bound to be guided by professional regulation bodies. As far as I'm aware, I think certainly the GCC have published specific guidance on PPE, and I have a feeling GOSc may have done the same, where they have looked at different categories of patients, whether they're vulnerable, the type of treatment that's being offered. And I think there was specific guidance on things like eye masks and aprons and single use gloves, etc, etc. So, in short answer to your question, if you want to make sure that you don't get, not necessarily a complaint, but that you don't get into trouble with your regulator, follow their guidance. And if their guidance says this is what you've got to do and you haven't done it, there's an argument to say that you have acted irresponsibly.

**Steven Bruce**

I'm guessing that the associations, the IO, the BCA, the MCA and the others, they offer periodic guidance about what we should be doing, I guess that if we didn't follow, they have no legal weight I imagine but I guess we'd have to work quite hard to justify why we didn't follow their advice.

**Jonathan Goldring**

I think that's exactly the point, that they don't decide what the regulations are, as I said, the starting point is probably always going to be the statutory instrument or the guidance that we get from government. The individual organisations and we saw this on the last occasion, there's not always a coherent approach between them, they have different device depending on which organisation they're in. I think the BCA, on the last occasion, the Royal College of Chiropractors as an example, gave certain advice about whether clinics should or shouldn't be open. Yet the UCA, MCA, SCA as a combined group gave different advice. And ultimately, there is no right or wrong. But I think yes, an obvious question to any practitioner faced with one of these complaints or hearings in the future is going to be did you look at your associations guidance and did you follow it? And if you didn't, why not? Ultimately, it's going to be expert evidence that decides what was right and what wasn't right. But there has to be a reasonable amount of latitude built into that, because we're all sort of finding our way around in the dark at the moment, and I think the regulator's recognise that and there is a degree of latitude, but you've just got to be sensible.

**Steven Bruce**

I suppose also, because we are required to have medical indemnity insurance, we need to check that, actually, if we don't follow somebody's guidance, are we still insured to treat? Because I think last time round, some of the insurers said, you have to be following the guidance of your professional association.

**Jonathan Goldring**

Well, again, I mean, that makes sense. I can't speak for the insurance companies. But I can imagine that that is the advice that they would give and obviously as it is a legal requirement to have effective insurance in place, if that is a requirement that they have stipulated and you're not following it, then effectively, you're acting uninsured, which in itself is a fairly serious breach in codes.

**Steven Bruce**

Yeah, yeah. Actually, I've just been picked up on the thing I said about gloves. Claire tells me that we've been told that gloves are, yes, risk assessment, but under track and trace, we will have to self-isolate if we're not wearing them when we have contact with a positive patient. So that's probably quite a risk to one's income if you have to shut down for two weeks.

**Jonathan Goldring**

Again, I'm not sure what the guidance specifically from the institutions is on that. But my understanding is that when a patient does have a positive diagnosis of COVID-19 they're entitled to travel, as I said, to see a chiropractor or osteopath, how that sits with what happens to that osteopath or chiropractor after they've seen them, I don't know the answer, but it would seem a little odd that you're entitled to treat them but then have to close down for two weeks.

**Steven Bruce**

Well, I think it was only if you're not wearing gloves because obviously gloves are the final barrier in the protection against Coronavirus. He says somewhat ironically. Just beating the arse out of that particular question, Jan says she's a type one diabetic, she's 60, can she legitimately refuse to treat a patient not wearing a mask for her own safety? And I think going back to what you said earlier on, yeah, you can risk assess that one quite quickly.

**Jonathan Goldring**

And equally, each clinician will have their own specific set of circumstances. And there's nothing wrong at all, if you're putting yourself at risk or other people at risk, you are entitled to say no. But as I said, just bear in mind that patients will be desperate in some circumstances they're going to want a referral elsewhere. So, there's nothing wrong with that.

**Steven Bruce**

It is worth bearing in mind, too, there's lots of evidence that says that the masks don't protect the wearer, they protect everyone else, because they don't stop particles getting in, but they minimise the particles

getting out, which obviously in Jan's case is very significant. Do we need to take special measures about getting valid consent during this particular epidemic?

### **Jonathan Goldring**

I think there's some things you can do. Consent is obviously a very important part of any process. And the legal position on consent changed in 2015, you probably have heard the name before, it's the Montgomery case that changed the position. And very basically, what it did is it ensured that it shifted the focus away from the practitioner, and put the focus on the patient. And the consent now requires you to ensure that you are happy that the patient understands the risks and you have to take into account the patient's subjective position. If you have a patient coming into the clinic that you know, for example, is in a vulnerable group and you know, if they contracted COVID-19, would be at a much higher risk of harm, then you would have a duty to ensure that that patient is aware that the risk of coming to your clinic is probably higher than the risk of a person that didn't have those underlying conditions. So yeah, there is an elevated requirement, I think, on any practitioner at the moment to ensure that patients are aware that putting themselves before you as practitioners may, but ultimately, it's the same as getting on a bus, it's going to possibly increase the risks but because you're treating people, in close contact, day in day out, and although you're doing your best to sanitise and although you're doing your best to make sure that you do put all types of protection in place. Ultimately, you are potentially spreaders of the virus and your patients have to know that.

### **Steven Bruce**

And also, the bus driver isn't regulated by an act of parliament and liable to be held by the PCC to be at fault.

### **Jonathan Goldring**

I don't know if they have their own regulation. But no, certainly not before the chiropractic or osteopathic council. I think it would be, as a matter of prudence at the moment, it might be worth in your consent forms, for example, just adding a sentence to say that you consent, you're aware of the fact that during this pandemic, there is an increased risk of contracting COVID if you come to our clinic, you're aware of this, etc, etc. It's not necessary. I think that's probably using a sledgehammer to crack a nut. But as I said, if you have a very vulnerable patient that you know might be a high risk, I think you have to treat them differently.

### **Steven Bruce**

I think most practices now have got a specific COVID consent form which incorporates the have you done any of these risky things, been in contact with COVID positive patients, other people and so on and incorporate that in their consent. I think, Dawn, you've asked a question about track and trace, which again, I suspect is not Jonathan's area of expertise. Dawn, says she knows if a patient subsequently contracts COVID-19 after treatment as we are in a healthcare setting, we're not required to self-isolate. If we as practitioners test positive for COVID, obviously, we would not go to work for 14 days, do we need to notify all those we've seen in the clinic?

### **Jonathan Goldring**

Again, legally, I'm afraid I don't know the position as far as the legal requirement. As a matter of common sense, yeah, it makes sense. Because not all patients will have the track and trace app or necessarily have given their details across to that application. So yeah, I personally would contact all patients that you've seen in the previous 14 days. I don't know what the regulations are on that, I'm afraid, but that would be a commonsensical thing to do.

### **Steven Bruce**

Let's move on to something else for a little bit of variety. We had this question from one of our members who recalls an incident where a female patient called their male osteopath cute and said that being treated turns her on. The practitioner says to the patient, the relationship has to stay professional. The question is, should that exchange be written up in the notes or could it be recorded elsewhere? What can the practitioner do to protect themselves, especially from a patient who now feels rejected or humiliated and maybe thus inclined to complain? No complaint has been made in this case. It's just a hypothetical possibility.

### **Jonathan Goldring**

Yeah, it does happen. I've certainly represented a number of chiropractors and osteopaths that have been charged with breaching sexual boundaries between them and patients and former patients. So, it's not an unusual scenario. In reality, these things do happen. And the guidance is pretty clear in terms of certainly current patients. The guidance says you cannot cross sexual boundaries with current patients, you can't have relationships with current patients. The guidance in relation to former patients is also relatively clear. And certainly, the GCC have published their own specific separate guidance for breaching sexual boundaries, I think GOsC have incorporated it into their codes. You've got to be very, very careful. If you have a patient who is showing signs of attraction towards you, obviously, number one, don't act on it, and don't cross the boundaries. If you have said to the patient, that you don't think that is appropriate, and you don't think it's appropriate for you to treat them anymore, that needs to be documented somewhere. But you can't just leave a patient high and dry, you have to refer them perhaps to another practitioner in the clinic or to another clinic altogether. Documenting exchanges between you and the patient will always be helpful, whatever circumstances are because it can be used to corroborate that this is what advice you gave. It's a tricky one. Because as you say, the patient might be upset that you haven't necessarily reacted in the way they might have wanted you to and that can in due course lead to complaints from patients that maybe are upset that you haven't engaged with them. And I think in those circumstances, there's not much you can do about it. You have to be as polite as you can. You have to be as courteous as you can. Document everything that happens between you and the patient, but most importantly, don't cross those professional or sexual boundaries. Because ultimately that's a serious allegation, it quite often results in being erased more often than not from the register.

### **Steven Bruce**

And you made the point, I think, probably in one of our previous broadcast that if it's not in the notes then it will be assumed that it didn't happen.

**Jonathan Goldring**

Yeah, I think it's important to make as good a note as you can, it doesn't have to be verbatim, but you have to show that you have done something to try to discourage that patient. I mean, the bottom line is if a patient feels attracted towards you, you've got to sit back and think why is that? Is it because I've done something? Is it because I've shared information perhaps that's personal or intimate that I shouldn't have done? Am I being too pally with the patient? And there is very clear guidance on what amounts to crossing sexual boundaries. And it's not limited to physical interaction. It can be as simple as telling someone that you have a particular interest in something outside of the professional environment and being too friendly with that patient and I think if a patient does display those types of feelings towards you, the first thing you need to do is ask yourself, why is that? Is there something I can do to improve my behaviour to make sure that they don't feel that this is a pally relationship? It's got to stay professional.

**Steven Bruce**

Somebody has just sent in an observation or a question about that. And it starts: Woooah! So you'd pass a boundary breaking patient to another practitioner, even if you think they're making inappropriate comments?

**Jonathan Goldring**

Yeah, you actually have a duty, certainly in some of the codes of practice, to consider that. The guidance is pretty clear, if a patient is attracted towards you or if you're attracted towards a patient, you have a duty effectively to end that professional relationship. And the duty doesn't stop there, you have to try to find that patient alternative treatment. It might be that yes, ultimately, you have to pass them potentially to another practitioner. But the guidance is pretty clear on that, that you can't leave them high and dry. You've got to try to remember that the way that the regulator's look at this is that it's never the patient's fault. And you've got to do your best to try to accommodate them. And you've got to think in those terms. So yes, unfortunately, if that does happen, you can't just say, I'm not gonna treat you, goodbye. You have to try to find an alternative for them.

**Steven Bruce**

Yeah, and of course, having written this up in your notes, any practitioner, you suggest has the right to refuse to treat anyway, if they want to do so.

**Jonathan Goldring**

Yeah. Yeah, ultimately. Obviously, if you're going to pass it on to another colleague in your clinic, the chances are, you may have discussed that patient with them before you do that and they say, Well, I'm happy to do it or not. But if you're passing it to another clinic than yours, I don't know if you're sending your notes with you, I don't think that happens very often, then, yes, it's up to the individual clinician whether or not they want to take the patient.

**Steven Bruce**

Again, possibly outside your area of expertise, Jonathan, Vanessa says mask and/or visor, she says her spectacles fog up when she's wearing a mask, can she just wear a visor instead?

**Jonathan Goldring**

I don't know, I'm afraid.

**Steven Bruce**

What are the rules for how many people are allowed in the clinic? If there are two practitioners and two patients in the same building at the same time in separate rooms but using common parts, that means four people not in a bubble. Is that allowed?

**Jonathan Goldring**

As far as I'm aware, there is no limit as to how many patients need to be in a clinic at any one time. I don't think there's any guidance in place that says that the rule of six applies to clinics or that the bubbles only apply to clinics. As I understand it, you simply have to practice good safeguarding measures, I would imagine two metres apart, two square metres apart for your seating arrangements. But I don't think there's any limit on the number of patients in a practice at any given time. Certainly, as far as shops are concerned, I think they take their own square footage and work out how many people they want to let in at any one time. So, I think you need to demonstrate that you've considered that and I think you need to demonstrate that you have proper safeguarding in place. But I don't think there's a specific number certainly at the moment.

**Steven Bruce**

Abby's asked about difficult patients, returning that theme early on, I think, she says it's common to have a difficult patient but when that patient is rude to the point that you no longer want to treat them, how do you end the consultation while protecting yourself from ending up in front of a PCC?

**Jonathan Goldring**

Again, you have a duty to be respectful towards your patients and you have a duty to treat them respectfully. If you have a patient that is rude to you, you don't have to carry on treating them. You obviously want to try to resolve any issues that you may have between yourself and the patient. But if you can't, you can't. Ultimately you don't have to sit there in sufferance and take abuse from a patient, no professional does. So how do you stop yourself getting a complaint? I'm afraid you can't. If you end that relationship with the patient and they want to complain about you, they will. Obviously the more diplomatic you are in the way that you end that relationship is likely to affect things but if a patient wants to complain, they will. I said this before there's very few ways of stopping patients from complaining if that's what they want to do. And in fact, it could be considered unprofessional to try to stop a patient from complaining if they have a legitimate reason to.

**Steven Bruce**

Alex has asked, rather optimistically I think, what about a patient who gives you a bottle of wine or some other present for Christmas, is that an acceptable procedure within a code of conduct?

**Jonathan Goldring**

Yeah, as long as you're not breaching your professional bounds. My own view is that I would be tempted to decline those types of gifts because you have an ongoing relationship with that patient, certainly as lawyers, when a case has ended sometimes the client might send a bottle of wine or a bottle of whiskey to us, but we don't have a continuing relationship with them. As practitioners, if that's continuing, I think you've got to be a little bit careful, I don't think a Christmas card is gonna be a problem, thanks for your help this year, or sending one back. But you've got to maintain that space and that distance, things have to remain professional. So, as draconian as it might sound, if a patient wants to give you a gift, my advice would be say thanks very much, but I really shouldn't accept this and give it back to them that just maintains that barrier of friendship.

**Steven Bruce**

That's a tough one to do, isn't it, because they rarely say can I give you a gift, they usually say that here you are happy Christmas.

**Jonathan Goldring**

Exactly. It is tough. And I don't want to be the bearer of bad news. And I know that practitioners have friendships, sometimes, with their patients, they get to know them over the course of the years, they get to know their families. But at all times the practitioner, regardless of what the patient wants to volunteer to you, you have to maintain your professionalism. And one easy way to do that is to make sure that you don't divulge any information about yourself outside of the professional relationship and to make sure that you don't appear to be too friendly with them. I know that's a very difficult thing to advise. But if you want to avoid the risk of complaints, that's a good way to do it. So yeah, I'm afraid personally, I would reject the gift, gracefully.

**Steven Bruce**

Just on that subject of disclosing information, I can't remember whether it's the osteopathic practice standards or the chiropractic code, but certainly one of them says it is okay to disclose information under certain circumstances. And I can't remember what those are. But Jonathan will probably know the detail of that but yeah, I can't.

**Jonathon Goldring**

Disclose information about what, sorry?

**Steven Bruce**

It says there's a degree to which you can reveal personal information in terms of expressing empathy with a patient and things like that, in order to build relationships. You have to be cautious. We've had some people,

some really good osteopaths on the show recently who've been talking about interpreting MRIs and we've been doing it by looking at MRIs which have been misdiagnosed by the radiologist, or I say misdiagnosed, the radiologist has missed some important diagnoses. Now, the question that arises from that is that the temptation when talking to a patient would be to say, Oh, yeah, this blokes done this before, he's always missing these things. Whatever it is. I suppose that we've got to be a little bit more professional that I'm making up there in dealing with our professional colleagues?

### **Jonathan Goldring**

Yeah, I mean, you're not to denigrate and disparage your colleagues or other health professionals. It's not professional to do that, particularly in a profession that encourages integration with those other professions. So yeah, you could get in trouble if you start disparaging or being rude about other health professionals. I think that's, again, pretty commonsensical. I know it happens but however, you may or may not feel about a particular piece of information that you've seen that another health professional has dealt with, keep it to yourself. If you have particular concerns that something's been missed, or you have concerns that they haven't done their job correctly, then of course, there's nothing to stop you referring the patient back to them with questions, or back to the GP with questions. But yeah, I don't think it's professional to disparage them.

### **Steven Bruce**

Yeah. And Rob and Darren the guys who were doing the MRI interpretations, they made it very clear that in those cases, they'd always revert it to the radiologist and said, well, would you have another look? And what do you think about this? And come up with a satisfactory solution? I promised I'd ask this on behalf of one of our members, and it's something which rings a bell from my memory long ago, just after I graduated, I think, not I must emphasise it affected me, I'm convinced that I was told that if under the requirement to be financially appropriate and all that stuff, if you become bankrupt, you have to tell the GOsC or GCC that you have become bankrupt. Is that the case?

### **Jonathan Goldring**

Okay, not one I've come across before. Certainly, if you have a criminal conviction or you have a caution, you have a duty to tell them. There's nothing in the code specifically, that I'm aware of that says that you have to disclose that information and a failure to do so would amount to a breach of the codes. But there is a general obviously duty to ensure that you act with integrity. And there is a duty to be sure that you act professionally so it's out of an abundance of caution, I think it's probably a good idea to disclose that sort of information. I can't think of any case that I've come across where they then proceeded against the individual as a result of that, but personally, I would disclose it, I would be as open as you can. But as I said, I don't think there's any specific duty to do that. One of the tests, whenever a regulator was looking at the conduct of an individual is to ask themselves, what would their colleagues think? How would they consider this type of behaviour? Would it be considered deplorable? Is one of the tests and if you find yourself in a position where you look at yourself and think, Well, if that was me in that position and I had a bankruptcy, I would have definitely disclosed it to my regulator and failing to do so lacks integrity, then that gives you an answer.

Nine out of 10 times. Ask your colleagues, what do they think? But yeah, I don't think there's a specific provision but I would,

### **Steven Bruce**

I suppose people would be worried that by disclosing something like that the general council might take some action, which they themselves will feel is inappropriate with regard to practice. No one wants to be suspended or struck off because financial events have happened outside their control, but they might be worried that it would happen.

### **Jonathan Goldring**

Well, ultimately, the job of the council is to protect the public and also the reputation of the profession and confidence in the profession. Whether or not you would choose to stop going to see your chiropractor or osteopath because you knew that they had a bankruptcy order in relation to a separate company, I doubt that's necessarily going to dissuade someone from getting treatment. I can't speak for the council, I've never come across a case, and I've been doing this for a fair amount of time now, where the council have proceeded against someone for financial irregularities outside of their practice. I was gonna say you have to act with integrity but you don't have to be a paragon of virtue in every single sphere of your life, things happen, things go wrong from time to time. If it is connected to the practice that may be different. But I think if it's a separate company, I still would disclose it. I can't imagine that there would necessarily be proceedings.

### **Steven Bruce**

One of your colleagues, Jonathan, and I think this may be the John I referred to earlier on, who's also watching us by Vimeo. I'm told that the people watching us on Vimeo being very well behaved at the moment as a result. He says that you guys are seeing more cases where the GCC experts, I'd have put that in inverted commas, are critical of not giving patients a copy of the complaints procedure when they complain, so I presume a physical copy of it.

### **Jonathan Goldring**

Yeah, that happens. I think the John you're referring to is John at Bankside Law. I do a lot of work with him with patients. Yes. Again, he's absolutely right. We do get that as part of the allegations quite regularly now. My advice is you don't have to have it on show but make sure you've got a copy of your complaints procedure and also make sure that the patient is aware of the fact that there is a complaints procedure in place, all you have to do is stick a line somewhere on your intake form or on your consent form explaining what that procedure is and where the policy is. If they want to ask for it, they can have it but you've got to have one in place.

### **Steven Bruce**

One very quick question before we finish, Jonathan, Lucretia has asked about testing, would it be seen as disparaging if a patient asks about the covid antibody tests, which holistic therapists are offering, and you offer an opinion on the validity of those tests?

**Jonathan Goldring**

You've got to act within your own skill and expertise and that's something that regularly comes up before both the osteopathic and chiropractic council. I personally would advise any clients I had to refrain from giving advice on epidemiology matters, unless they have specific training in that field and can prove they've got specific training in that field.

**Steven Bruce**

Okay. Jonathan, that's taken us right up to the end. Thank you very much indeed for your time. As always, I seriously hope that none of us have to have any dealings with you professionally in the future, but I'm sure we'll have you on the show again, at some point.