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THE OSTEOPATHS BILL [Bill 13 of 1992-93]

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C O N T E N T S

	Page
Introduction	1
Background	1
The Lords Bill	2
The Commons Bill	3
Government Position	5
Other Complementary Therapies	5
Osteopathy on the NHS	6

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Introduction

The Osteopaths Bill, a Private Member's Bill introduced by Malcolm Moss, creates a statutory framework for the regulation of the practice of osteopathy. The Bill is based on the recommendations of the King's Fund *Report of a Working Party on Osteopathy* chaired by Sir Thomas Bingham which reported in 1991. It is similar to a Bill introduced into the House of Lords on 17 December 1991 [HL Bill 28 of 1991-92] by Lord Walton of Detchant, which fell at the election. The Bill creates a general osteopathic council to be responsible for the education and professional conduct of osteopaths in a similar way to councils which cover other health professions such as the General Medical and General Dental Councils. The Bill has broad support, including from the Government.

Background

An osteopath has been defined as "a practitioner who is an expert in the examination, treatment, and interpretation of abnormalities of function of the musculoskeletal system" [The Handbook of Complementary Medicine by Stephen Fulder, 2nd Edn 1988]. It is said to be the most widely practised of complementary therapy accounting for some 40% of consultations according to Malcolm Moss [House Magazine 15.6.92].

Attempts to regulate osteopathy by legislation date back to 1931, according to Baroness Hooper speaking on the 2nd Reading of the House of Lords Bill [HL Bill 31.1.92 col 1611]. The largest of the several registering bodies, the General Council and Register of Osteopaths, was set up in 1936. The most recent attempt at legislation prior to the House of Lords Bill and the Bingham report was a Private Member's Bill introduced by Roy Galley, then Member for Halifax, on 23 July 1986 but it made no further progress.

The present rules governing osteopathy and the case for change

There is no legislation governing who can set themselves up as osteopaths. As the Bingham report puts it:

"As the law stands, anyone may call him or herself an osteopath and practice as such in the United Kingdom. There is no obligation to undergo formal training of any kind. The courses currently available vary from 4 year full time degree and diploma courses at one extreme to a few weekends instruction in manipulation at the other. The patient has no guarantee whatsoever that a man or woman holding himself or herself out as a practising osteopath is competent or fit to do so".

The law of negligence places a duty of care on osteopaths, as on other professions, although in the absence of an accepted level of training it is not clear who would set that standard. The Supply of Goods and Services Act 1982 imposes a duty on those who have contracted to provide services to act with "reasonable skills and care" [see "How the Law Sees Alternate medicine" by Gill Korgaunkar and Diane Tribe, General Practitioner 7.12.90].

There are nine voluntary bodies with a registering function which the Bingham report identified. Of these much the largest is the General Council and Register of Osteopaths which has 1388 members in 1989-90. Many of the other organisations are very small and there is a considerable degree of overlapping membership. The Bingham report estimated that at the beginning of 1990 there were about 2,000 osteopaths "in membership of one or more of the bodies which maintain a register and exercise some form of discipline over their members" [para 14]. They were unable to give an estimate for the total number of practitioners because there is no obligation to belong to any organisation.

The Bingham report argues that because the existing registers are voluntary "such bodies have in practice no effective sanctions enabling them to enforce minimum standards of education, training or competence" [para 18].

The report sees the benefits to the public of a statutory system of control as being:

- "a) an assurance that in future all practitioners will be trained to a high standard of competence;
- b) a guarantee that appropriate standards of professional conduct will be enforceable by a single statutory governing body;
- c) the establishment of a suitable mechanism for dealing with complaints from the public concerning the conduct of practitioners; and
- d) a guarantee that all practitioners are fully covered by professional indemnity insurance" [para 20].

The Lords Bill

The Osteopaths Bill [HL] 1991-92 [HL Bill 28] was presented on 17 December 1991 by Lord Walton of Detchant who was a member of the Bingham Committee and also a past president of the General Medical Council. The Bill had a 2nd Reading on 31 January 1992 [HL Deb col 1592-1616] and its Committee Stage on 11 March [HL Deb col 1403-1416]. It made no further progress because of the dissolution of Parliament. The Bill follows the recommendations of the Bingham report and was supported by all Peers who spoke. Lord Walton said that it was "enthusiastically endorsed by all the bodies at present representing osteopaths. They see the need to create a unified profession with common educational standards and a single statutory body replacing the present voluntary registration system".

The Government view was put by Baroness Hooper, then junior minister at the Department of Health. In the past the Government has taken the view that, while it is not opposed to statutory regulation of complementary therapies in principle, it is important that the particular profession agreed among itself first. For example, speaking in a debate on complementary medicine in the Lords in 1987 Lord Skelmersdale, then a junior minister at the DHSS said "Regulatory procedures for natural therapies would be useless without consensus among the practitioners" [HL Deb 11.11.87 col 1413]. Baroness Hooper said on 2nd Reading that the necessary conditions had been met and the Government supported the Bill in principle. She

said "The proposals provide a fair and practical basis for statutory regulation which will include all established osteopaths and provide patients with real safeguards for the future" [col 1611-2]. She did, however, say that "a significant number of amendments, mainly technical and consequential" would be needed. A number of particular points were met by amendments during the Committee Stage.

The Commons Bill

The Commons Bill is a Private Member's Bill introduced by Malcolm Moss who came second in the Ballot. It has cross party support. It is due for 2nd Reading on 15 January 1993. There has been a good deal of redrafting but the fundamental principles are the same as the Lords Bill. The long title is a Bill to:

"Establish a body to be known as the General Osteopathic Council; to provide for the regulation of the profession of osteopathy, including making provision as to the registration of osteopaths and as to their professional education and conduct; to make provision in connection with the development and promotion of the profession; and for connected purposes".

The main provisions of the Bill are:

■ **Establishment of the General Osteopathic Council and four Committees**

- The Education Committee
- The Investigating Committee
- The Professional Conduct Committee
- The Health Committee

The council will have 24 members, 12 of them osteopaths elected by the profession. The others must include lay people and at least one doctor [Clause 1, sch 1].

- #### ■ **Provisions for Registration.** Those who have a recognised qualification and meet good character and health requirements can proceed to *full registration*. There is also a transitional arrangement, lasting for two years, to enable those without formal training who have been practising osteopathy safely and competently for 5 of the last 7 years to be fully registered. Provisions for *conditional registration* allow those with more limited experience to be registered but required to undergo a test of competence and take any additional courses needed. A further enabling provision would allow *provisional registration* while a year of supervised practice is carried out to be introduced. This provision was not in the Bingham report.

Further provisions deal with public access to the register and other matters [Clauses 2-9].

- #### ■ **Education Provisions.** The Bill sets out the responsibilities of the Education Committee, and of the Council covering such matters as:

- supervision of educational institutions;
- standards of proficiency;
- recognition of qualifications (including EC qualifications);
- recognition and withdrawal of recognition of institutions;
- post registration training [Clauses 10-17].

■ **Professional Conduct.** The main provisions are:

- The preparation by the Council of a Code of Practice laying down the standards of conduct and practice expected of osteopaths and giving advice on the practice of osteopathy.
- The investigation of allegations that an osteopath:
 - a) has been guilty of conduct falling short of the standard required;
 - b) has been guilty of professional incompetence;
 - c) has been convicted of a criminal offence;
 - d) is unfit to practice because of his physical or mental condition.

Such allegations will be investigated initially by the Investigating Committee. If the Committee decides there is a case to answer the allegation will be referred to the Professional Conduct or Health Committee as appropriate.

- Powers for the Professional Conduct or Health Committees to *suspend* an osteopath from the registrar, or make registration *conditional*. The Professional Conduct Committee would have the power in addition to *admonish* an osteopath or to *erase* him from the register. There is also a power of *interim suspension* given to the Investigating Committee "In order to protect members of the public" [Clauses 18-28].

■ **Restriction of Use of Title.** The Bill would make it an offence for anyone not registered with the Council to describe him or herself as an osteopath (or variants) [Clause 29].

■ **Role of Privy Council.** The detailed rules under the legislation on such matters as registration and professional conduct would be subject to the approval of the Privy Council which also has broader supervisory functions and, as a last resort, power to take over the Council's functions. These provisions are in line with the law governing other health professions such as doctors, nurses and dentists.

Government Position

The support in principle by the Government for Lord Walton of Detchant's Bill was noted earlier. In a written answer on 3 December 1992 Tom Sackville said:

"The Government are supporting the Private Member's Bill by my hon. Friend the Member for Cambridgeshire, North-East (Mr Moss) to establish a single statutory governing body for osteopaths responsible for developing, promoting and regulating the profession of osteopathy and for setting educational standards and standards of professional conduct" [HC Deb col 320W].

Other Complementary Therapies

The Bill only applies to osteopaths but may lead the way to other therapies. The position of chiropractics has in particular been raised. When he introduced his Bill in the Lords, Lord Walton of Detchant said that the position of chiropractics had been considered by the Bingham Committee "but after detailed consultations it emerged that there were sufficient differences between the two professions to make it impractical for both to be covered by a single Bill". He went on to say that chiropractors supported the Bill and that the King's Fund had established a further working party to consider their position.

As far as other therapists are concerned, the Government view is that they need to agree amongst themselves before the Government would support legislation. In the debate on Complementary Medicine in the Lords on 9 May 1990, Baroness Hooper made it clear that the osteopaths could be showing the way to other therapies. Referring back to what was said by the Government spokesman in a debate in 1987 she said:

As a number of your Lordships have said the osteopaths have made considerable progress in the intervening two and half years. They have secured a large measure of agreement within the profession on common standards of education and training; they have secured the support of the medical profession; and, as we have heard, a Joint working group to look at the mechanics of statutory regulation has been established. The osteopaths have kept Ministers fully informed of developments and we shall await with interest the report of the working group and hope that it will point the way to statutory regulation.

We have eyed developments within the osteopathy profession with considerable interest, not only from the osteopaths' point of view but also as a possible model for other professions, particularly those which have reached an appropriate level of maturity with an established form of voluntary regulation and infrastructure and which wish to pursue the path to regulation. I know that several other groups are interested in statutory regulation; one group of chiropractors in particular has made plain in recent months its desire for regulation. The osteopaths have clearly shown the way forward and it is for others to follow.

[HL Deb col 1432]

Osteopathy on the NHS

The Bill will make no difference to the availability or otherwise of osteopathy on the NHS, being concerned with the regulation of the therapy rather than NHS provision. In response to Peers raising this issue during the 2nd Reading of Lord Walton's Bill, Baroness Hooper said:

As regards the subject raised by my noble friend Lord Rennell of what availability there will be for osteopathy services on the National Health Service, since the Bill is solely concerned with the regulation of the profession, it does not deal with the supply of NHS services. Therefore, it will not directly affect the provision of osteopathy services in the National Health Service. However, in view of my noble friend's remarks and those of the noble Lords, Lord Beaumont of Whitley and Lord Carter, I outline what happens at present regarding the National Health Service and osteopathy services.

Currently, fund-holding general practitioners may already directly employ complementary therapists using the staff element of their practice budget in the same way as they might employ other practice staff such as nurses or chiropodists. Non-fund holding GPs may also employ complementary therapists to provide treatment for NHS patients if their Family Health Service Authority will agree to pay for that provision. We are aware of a growing number of practices where that already takes place. To respond specifically to the noble Lord, Lord Carter, that means that it is a matter for the professional judgment of the GP concerned. I have no doubt that the better the regulation of the profession with the clearer standards that have to be achieved, we shall see that trend continue.

[HL Deb col 1613]