

IN THE REPUBLIC OF SINGAPORE
SINGAPORE MEDICAL COUNCIL INTERIM ORDERS COMMITTEE

Between
Singapore Medical Council

And
Dr Chan Heng Nieng

... Respondent

Interim Orders Committee:

A/Prof Alan Ng (Chairman)
A/Prof Agnes Ng
Dr Subramaniam Suraj Kumar
Ms Engelin Teh SC (Legal Assessor)

Counsel for the Singapore Medical Council:

Mr Chia Voon Jiet
Mr Sim Bing Wen
(M/s Drew & Napier LLC)

Counsel for the Respondent:

Ms Rebecca Chew
Ms Dawn Seow
(M/s Rajah & Tann Singapore LLP)

DECISION OF THE INTERIM ORDERS COMMITTEE

(Note: Certain information may be redacted or anonymised to protect the identity of the parties.)

Purpose of the Inquiry

1. This Interim Orders Committee (“**IOC**”) was appointed under section 59A of the Medical Registration Act (Cap. 174) (“**MRA**”) to inquire into and determine whether an interim order under section 59B(1) of the MRA should be made against Dr Chan Heng Nieng (“**Dr Chan**”).

The Medical Practitioner in question

2. Dr Chan is a 45-year old male medical practitioner registered under the MRA. Dr Chan was a senior consultant psychiatrist practising in Singapore General Hospital at the material time and is now a psychiatrist in private practice.

Relevant facts giving rise to the Inquiry

3. Dr Chan and the Complainant, Ms C (“**Ms C**”) were in an intimate relationship from about January 2017 to May 2018. The relationship broke down after Ms C read and took screenshots (“**Screenshots**”) of Dr Chan’s WhatsApp messages with another medical practitioner, Dr Ong Kian Peng Julian (“**Dr Ong**”) by accessing Dr Chan’s handphone during an overseas trip in April 2018.
4. On 19 June 2018, Ms C filed a complaint (“**Complaint**”) against Dr Chan and Dr Ong. In the Complaint¹, which has since been referred by the Complaint Committee to a Disciplinary Tribunal on 12 May 2020², Ms C alleged that Dr Chan and Dr Ong (a) colluded to take advantage of each other’s female patients; (b) made use of their position to source for and groom patients sexually; and (c) exchanged contact details of patients and colleagues whom they deemed easy to take advantage of to satisfy their “immoral” desires.
5. On 4 July 2018, Dr Ong commenced a defamation suit in the State Courts against Ms C, alleging that the following words in the Complaint³ (“**Offending Words**”), which Ms C had sent to Dr Chan’s colleagues, department heads and the management at Singapore General Hospital as well as 2 doctors in private practice, were defamatory:
 - 5.1. *“I found out that he [Dr Chan] has been colluding with Dr Julian Ong, a surgeon from the private practice to take advantage of other vulnerable woman patients”;*
 - 5.2. *“I suspect Dr Chan uses his reputation as a platform, together with Dr Ong to ‘source’ and ‘groom’ the patients turned victims”;* and
 - 5.3. *“Both doctors exchanged potential patients and colleagues who are deemed to be easily taken advantage to satisfy their immoral desires”.*
6. While Dr Chan was not a party to the defamation suit, he was subpoenaed to testify as a witness for Dr Ong in the trial.

¹ Agreed Bundle of Documents dated 12 June 2020 (“**ABOD**”), Tab 5

² Agreed Statement of Facts dated 12 June 2020 (“**ASOF**”), at [14]

³ ABOD, Tab 5

7. On 3 April 2020, Dr Ong’s defamation suit was dismissed by the State Courts, with the detailed grounds of the decision set out in *Ong Kian Peng Julian v Serene Tiong Sze Yin* [2020] SGDC 94 (“**Decision**”)⁴.
8. In the Decision, District Judge Lynette Yap (“**District Judge**”) determined that the Offending Words were substantially true⁵ and that, as a result, Ms C’s defence of justification succeeded.
9. Amongst other things, the District Judge found that:
 - 9.1. Ms C was *de facto* Dr Chan’s patient. While they remained in a relationship, Dr Chan had supplied her with Xanax, a drug which was only available under prescription, after diagnosing that she was suffering from anxiety⁶.
 - 9.2. Dr Ong had sought to collude with Dr Chan to have sexual activities with her. During cross-examination, Dr Ong admitted that he had suggested that Dr Chan, himself, Ms C and another party have group sex⁷.
 - 9.3. Dr Chan had sought to collude with Dr Ong to take advantage of Dr Ong’s female patient, one K (name redacted in the Decision). Dr Ong had forwarded K’s contact details to Dr Chan via WhatsApp, for Dr Chan to try to have sexual activities with her⁸.
 - 9.4. Dr Ong and Dr Chan had colluded to take advantage of Ms C and at least one other female patient, K, and had passed information about these women to each other⁹.
 - 9.5. Trust is the foundation of a doctor-patient relationship, and *any* doctor who seeks to have sex with his patient or pass a patient to another doctor to have sex with that patient, is interacting with a vulnerable person vis-à-vis that doctor¹⁰.
10. In the circumstances, the District Judge held that Ms C had made out her pleaded defence of justification. Dr Ong is appealing against the Decision.

⁴ ABOD, Tab 9

⁵ Decision at [20]-[25] (ABOD, Tab 9, pages 363-371)

⁶ Decision at [20(a)] (ABOD, Tab 9, page 363)

⁷ Decision at [20(a)] (ABOD, Tab 9, page 363)

⁸ Decision at [20(b)] (ABOD, Tab 9, pages 364-366)

⁹ Decision at [20(c)] (ABOD, Tab 9, pages 366-368)

¹⁰ Decision at [21]-[23] (ABOD, Tab 9, pages 368-370)

11. There was significant media coverage arising from the Decision¹¹. The Decision was reported by the main English language newspaper in Singapore, The Straits Times, which covered the contents of the Decision in detail, describing Ms C as “*both Dr Chan’s lover and patient*”¹². There was swift public reaction in the press which called for Dr Chan and Dr Ong to be dealt with sternly by the profession as evidenced by various articles and editorials published in The Straits Times, The Business Times and Today, indicating sustained and widespread condemnation for the actions of both doctors. A forum letter from the Association of Women for Action and Research (AWARE)¹³ to The Straits Times stated that AWARE was “*appalled*” that Dr Ong was not suspended entirely by the Singapore Medical Council (“SMC”). The forum letter goes on to describe the messages exchanged by Dr Chan and Dr Ong as “*deeply misogynistic*” and “*a betrayal of what their professions stand for and their oath to do no harm*”.
12. In response to an article in The Straits Times which had concluded that “[t]his case of doctors sharing patient information and grooming them for sex is particularly egregious. A lack of disciplinary action against them by regulatory bodies risks eroding confidence in the medical profession”¹⁴, the SMC issued a press statement on 22 April 2020¹⁵ to clarify that the SMC has a standing policy to put in place safeguards to protect patients of doctors being investigated for sexual offences and that both doctors had given signed undertakings to the SMC to, amongst other things, refrain from contacting their female patients for purposes that are outside the scope of their medical practice.
13. On 16 April 2020, Dr Chan provided his signed undertaking¹⁶ to SMC to:-
 - 13.1. refrain from contacting his female patients for purposes that are outside the scope of his medical practice;
 - 13.2. comply fully with the provisions of the 2016 version of the SMC’s Ethical Code and Ethical Guidelines (“**2016 ECEG**”), in particular, Guidelines C4 and C12; and
 - 13.3. refrain from conduct which brings disrepute to the medical profession.
14. A Notice of Inquiry dated 11 May 2020¹⁷ relating to this IOC Inquiry was issued to Dr Chan.

¹¹ ABOD, Tabs 10, 12, 13, 14, 16, 17, 18, 19

¹² ABOD, Tab 10

¹³ ABOD, Tab 18

¹⁴ ABOD, Tab 13

¹⁵ ABOD, Tab 15

¹⁶ ABOD, Tab 11

¹⁷ ABOD, Tab 20

15. On 12 June 2020,
 - 15.1. Counsel for the SMC tendered to the IOC the SMC's written submissions, Bundle of Authorities, Agreed Bundle of Documents and Agreed Statement of Facts.
 - 15.2. Counsel for Dr Chan tendered to the IOC Dr Chan's written submissions, Bundle of Documents and Bundle of Authorities.

Framework adopted by the IOC

16. Section 59B(1) of the MRA¹⁸ states as follows:

"59B.—(1) Where, upon due inquiry into any complaint or information referred to it, an Interim Orders Committee is satisfied that it is necessary for the protection of members of the public or is otherwise in the public interest, or is in the interests of the registered medical practitioner concerned, that his registration be suspended or be made subject to conditions or restrictions, the Interim Orders Committee may make an order —

(a) that his registration in the appropriate register be suspended for such period not exceeding 18 months as may be specified in the order (referred to in this Part as an interim suspension order); or

(b) that his registration be conditional on his compliance, during such period not exceeding 18 months as may be specified in the order, with such conditions or restrictions so specified as the Interim Orders Committee thinks fit to impose (referred to in this Part as an interim restriction order)."

17. From the aforesaid provision, it follows that the IOC can only arrive at a determination to suspend Dr Chan's registration or to subject Dr Chan's registration to conditions, where it is satisfied that it is:
 - 17.1. necessary for the protection of members of the public; or
 - 17.2. otherwise in the public interest; or
 - 17.3. in the interest of Dr Chan.

¹⁸ SMC's Bundle of Authorities dated 12 June 2020, ("BOA"), Tab 1

18. The IOC (or another IOC appointed in its place) is bound by law to review the order within 6 months from the date the order was made: Section 59C of the MRA. At this review hearing, the IOC may revoke or vary the interim order that was previously made: Section 59D of the MRA¹⁹.
19. The interim order will be in force until the end of the specified period or the date on which “relevant proceedings” in relation to the Complaint are concluded, whichever is the earlier: Section 59G(1) of the MRA²⁰. For the purposes of this case, the “relevant proceedings” would conclude with the Disciplinary Tribunal making a finding on the Complaint.
20. As set out in the *Decision of the Interim Orders Committee for Dr Wee Teong Boo* (22 April 2017)²¹ (“**Wee Teong Boo**”) and confirmed in the *Decision of the Interim Orders Committee for Dr Ler Teck Siang* (7 March 2019)²² (“**Ler Teck Siang**”), the following principles are relevant to the IOC’s determination of the appropriate interim order to be made:
 - 20.1. The IOC’s task is not a fact-finding one, nor is its remit to make any judgment on the merit of the criminal charges (**Wee Teong Boo** at [32] and **Ler Teck Siang** at [12]), or, in this case, the merit of the allegations in the Complaint or the potential outcome of the case, pending Disciplinary Tribunal proceedings.
 - 20.2. The IOC’s task is to assess the risk of harm to members of the public, as well as what is in the public interest and what is in the medical practitioner’s interests (**Wee Teong Boo** at [33] and **Ler Teck Siang** at [12]).
 - 20.3. In assessing the risk of harm to members of the public, the IOC will take into consideration the severity of the allegations made against the medical practitioner and the nature of harm to the public (if true). The IOC will also consider whether the Complaint arises from an isolated incident, and whether the doctor has remained free from complaints prior to and after the Complaint. The IOC will also give due weight to considerations of proportionality (**Wee Teong Boo** at [39] and **Ler Teck Siang** at [12]).
 - 20.4. With regard to the public interest and the maintenance of public confidence in the medical profession in Singapore, as the relevant provisions of the MRA on interim orders are closely modelled after section 41A(1) of the UK Medical Act 1983, the IOC can be guided by the experience of the UK (**Wee Teong Boo** at [37]). The applicable test is as stated in the UK case of *NH v General Medical Counsel* [2016] EWHC 2348

¹⁹ SMC’s BOA, Tab 1

²⁰ SMC’s BOA, Tab 1

²¹ SMC’s BOA, Tab 4

²² SMC’s BOA, Tab 3

(Admin) at [12]: “[W]ould an average member of the public be shocked or troubled to learn, if there is a conviction in this case, that the doctor had continued to practice whilst on bail awaiting trial?” (Wee Teong Boo at [43]).

The Hearing

21. The SMC in its written submissions, sought an interim order from the IOC that Dr Chan’s registration as a medical practitioner be conditional on his compliance with the following restrictions for a period of 18 months²³:
- (a) Dr Chan is not to contact female patients for any purposes that are outside the scope of his medical practice;
 - (b) If Dr Chan needs to contact his female patients for purposes within the scope of his medical practice, the contact is to be made by a staff member of the clinic at which he is working;
 - (c) Dr Chan is not to send the personal data of his patients to any other person, whether on his own or through another person, unless this is required by his medical practice or by law; and
 - (d) Any other restrictions that the IOC sees fit to impose.
22. On the other hand, it is Dr Chan’s position in his written submissions that no Interim Orders should be made against him from the facts disclosed in the matter as well as based on the legal principles applied under section 59B(1) of the MRA²⁴. It is Dr Chan’s position that he does not accept the findings made in the Decision in so far as it relates to him and that in any event, the Decision is pending an appeal²⁵.
23. Further, Dr Chan submits that the IOC should not make any Interim Orders against him as the Complaint was not made by a patient registered under Dr Chan but was made by Ms C who was his girlfriend²⁶.

²³ SMC’s Written Submissions dated 12 June 2020 at [4]

²⁴ Dr Chan’s Written Submissions dated 12 June 2020 at [4]

²⁵ Dr Chan’s Written Submissions dated 12 June 2020 at [1]

²⁶ Dr Chan’s Written Submissions dated 12 June 2020 at [28]

24. The hearing of the IOC Inquiry was held on 18 June 2020 at 3.00 pm. At the commencement of the hearing, Counsel for the SMC informed the IOC (with the concurrence of Counsel for Dr Chan) that, subject to the IOC's views, an agreement had been reached between the SMC and Dr Chan pursuant to which Dr Chan would agree to an interim order being made where with immediate effect and for a period of 18 months, pending the determination of the Disciplinary Tribunal proceedings, Dr Chan would agree to his registration as a medical practitioner being made conditional on his compliance with the following restrictions:²⁷:
- (a) Dr Chan is not to contact female patients for any purposes that are outside the scope of his medical practice;
 - (b) If Dr Chan needs to contact his female patients for purposes within the scope of his medical practice, but the female patient is not seeing Dr Chan while he is in his clinic or the hospital, the contact is to be made by a staff member of the clinic or hospital at which he is working;
 - (c) Notwithstanding condition (b), where contact with female patients is necessary for Dr Chan to provide psychiatric care and/or treatment to that patient or he is returning or responding to a call or message from the female patient or her family members, he may contact the female patient directly but must contemporaneously record: (i) each instance of contact with the female patient, and (ii) for each instance, the reason for the contact;
 - (d) The record referred to in condition (c) is to be made available for SMC's review upon request;
 - (e) Dr Chan is not to send the personal data of his patients to any other person, whether on his own or through another person, unless this is required by his medical practice or by law; and
 - (f) Any other restrictions that the IOC sees fit to impose.
25. The hearing proceeded with parties' Counsel making their respective oral submissions on the adequacy of the proposed restrictions.

The SMC's Case

²⁷ Agreed Interim Conditions dated 18 June 2020 marked as "C1"

26. From the outset, it was not the SMC’s position that Dr Chan’s registration should be suspended for any period. The SMC in its written submissions, had sought an interim order from the IOC that Dr Chan’s registration as a medical practitioner be conditional on his compliance with the restrictions as set out in [21] for a period of 18 months on the ground that such restrictions were necessary for the protection of members of the public or were otherwise in the public interest.
27. In support of its position that the restrictions were necessary for the protection of members of the public, the SMC made the following arguments:-
- 27.1. The Complaint, while not disclosing any criminal conduct, did allege highly improper behaviour on Dr Chan’s part towards patients. The Complaint had also been referred by a Complaints Committee to a Disciplinary Tribunal and the matters raised in the Complaint were the subject of a civil suit between Dr Ong (plaintiff) and Ms C (defendant) in which the Court had made adverse findings of fact against Dr Chan in respect of these allegations. Pending the Disciplinary Tribunal’s determination, it was necessary for the protection of members of the public that the restrictions proposed be imposed on Dr Chan in the interim²⁸.
- 27.2. The “members of the public” in the present case were the “vulnerable woman patients” that Dr Chan (together with Dr Ong) was alleged to have taken advantage of²⁹.
- 27.3. The key factual findings of the District Judge in this regard³⁰ as set out in the Decision³¹ were that:
- (i) Dr Chan and Ms C were in an extra-marital relationship from about January 2017 to around May 2018 (**Decision** at [1] to [2]) – a period of about 17 months.
 - (ii) Ms C “*was for all practical intents and purposes Dr Chan’s patient, even if they were concurrently in a personal relationship*”. Dr Chan supplied Ms C with Xanax, a prescription drug, while they were in a relationship (**Decision** at [22(a)]).

²⁸ SMC’s Written Submissions dated 12 June 2020 at [21]

²⁹ SMC’s Written Submissions dated 12 June 2020 at [22]

³⁰ SMC’s Written Submissions dated 12 June 2020 at [23]

³¹ ABOD, Tab 9

- (iii) Dr Ong suggested that he, Dr Chan, Ms C and another person have a foursome. Dr Ong sought to collude with Dr Chan to have sexual activities with Ms C (**Decision** at [20(a)]).
- (iv) Dr Ong encouraged Dr Chan to have sexual activities with his (Dr Ong's) patient, K, by sending him a WhatsApp message saying "*feel free to play your game*" and making a reference to Dr Chan having anal sex with K (**Decision** at [20(b)]).
- (v) Dr Chan was unable to join Dr Ong for an activity on one occasion and told Dr Ong to keep the contacts of these women for Dr Chan so that he could try to have sex with them. Dr Chan stated, "*keep their contacts for me can*", and explained that sex was "*never enuff for (him)*", he was "*just horny*", he "*need(s) new chicks also*" and he "*was doing 7 to 8 a day over the weekend*" (**Decision** at [20(c)]).
- (vi) On the basis of these findings, there was "*undisputed evidence that at least the defendant and K (name redacted) were two patients whom Dr Chan and the plaintiff colluded to try to take advantage of*" (**Decision** at [20]).

27.4. In addition, the WhatsApp messages between Dr Ong and Dr Chan, reproduced in the Decision, suggested that Ms C and K may not have been the only patients that Dr Ong and Dr Chan sought to have sex with: "*we need to meet more of **these sluts** leh*", "*Have to say you **haven't provided many** recently bro*", the instruction to Dr Chan to "*buck ... up*", and Dr Chan's request to Dr Ong to "*keep their **contacts** for [him]*". In other words, this might not have been an isolated instance of sexual activity with patients. There might have been a broader pattern of sexually-motivated behaviour³².

27.5. The District Judge found that Dr Chan was in a personal relationship with Ms C despite the fact that she was, for all intents and purposes, his patient. The District Judge also found that he had actively colluded with Dr Ong to allow Dr Ong to engage in sexual activities with his patient (Ms C), and sought to have sex with Dr Ong's patient (K)³³.

27.6. A doctor who has sex with his own patient, facilitates another doctor having sex with his patient, or tries to have sex with his or another doctor's patient, creates an appreciable risk of harm to a patient in all three scenarios. As the District Judge

³² SMC's Written Submissions dated 12 June 2020 at [24]

³³ SMC's Written Submissions dated 12 June 2020 at [25]

observed: “*any doctor who seeks to have sex with his patient or pass a patient to another doctor to have sex with that patient, is interacting with a vulnerable person vis-à-vis that doctor*” (**Decision** at [21], emphasis in original). The District Judge did not distinguish between the vulnerability of the patient in either scenario³⁴.

27.7. Based on the findings in the Decision³⁵, there was an appreciable risk that Dr Chan may seek to engage in sexual activities with other patients (his own or those of others) if no restrictions were placed on his practice³⁶. The need for restrictions in Dr Chan’s case was arguably stronger than in Dr Ong’s because Dr Chan’s practice of psychiatry “*involves patients with mental health issues, such as anxiety or depression, where a high level of trust between doctor and patient is required*” (**Decision** at [21]).

27.8. The proposed conditions would substantially reduce the risk of other female patients being the object of Dr Chan’s sexual advances³⁷.

28. In addition, the SMC also made three broad points in support of its submission that the proposed conditions are necessary in the public interest:-

28.1. The SMC’s 2016 ECEG emphasise the importance of sexual boundaries for upholding trust in the medical profession.

(i) Maintaining proper sexual boundaries with patients is essential to upholding public trust in the medical profession³⁸. The SMC’s 2016 ECEG emphasises this³⁹:-

“C4. Propriety and sexual boundaries

In order to ***uphold the trust that patients and the community repose in doctors***, it is critical that you maintain propriety and observe appropriate boundaries in your relationships with patients. Having an inappropriate or sexual relationship with patients is unprofessional as it exploits the patient-doctor relationship and may cause profound psychological harm to patients and compromise their medical care.”

The SMC highlighted that although the specific guidance which followed this statement in the 2016 ECEG dealt with situations in which sexual boundaries

³⁴ SMC’s Written Submissions dated 12 June 2020 at [26]

³⁵ ABOD, Tab 9

³⁶ SMC’s Written Submissions dated 12 June 2020 at [27]

³⁷ SMC’s Written Submissions dated 12 June 2020 at [28]

³⁸ SMC’s Written Submissions dated 12 June 2020 at [30]

³⁹ SMC’s BOA, Tab 9

between a doctor and his patient could be crossed, the wording of the statement was broad enough to apply to patients of all kinds, regardless of whether the patient in question was the doctor's own patient or another doctor's patient. Public confidence in the medical profession could still be shaken if it was known that doctors referred their patients to other doctors for sex. This was especially so where the sexual contact was not the result of a momentary lapse in proper conduct but was attributable to a broader, regular pattern of sexually-motivated behaviour⁴⁰.

- (ii) The allegations by Ms C, which had been given added weight by the findings of the District Judge, suggested that Dr Chan may have breached the 2016 ECEG. Therefore, the imposition of appropriate restrictions on Dr Chan's practice was necessary to maintain the trust that patients and the community reposed in doctors⁴¹.

28.2. Particular consideration should be given to interim conditions when sexual impropriety was alleged:

- (i) The SMC argued that where allegations of sexual impropriety against a doctor had been made, an interim order containing restrictions on practice was necessary in the public interest⁴². Counsel referred to *Imposing Interim Orders: Guidance for the Interim Orders Tribunal, Tribunal Chair and Medical Practitioners' Tribunal* issued by the UK's General Medical Council ("GMC")⁴³. Guidelines 29 – 30 from the section on "Allegations of Sexual Misconduct" were pertinent:

"Allegations of sexual misconduct

29 In general, where allegations involve **sexually inappropriate behaviour towards patients** or the doctor is under police investigation for a sexual criminal offence, **particular consideration should be given to the impact on public confidence** if the doctor were to continue working unrestricted in the meantime.

30 The following factors are likely to indicate, balanced alongside other considerations, that a case is likely to raise significant public confidence issues if no interim action is taken:

⁴⁰ SMC's Written Submissions dated 12 June 2020 at [31]

⁴¹ SMC's Written Submissions dated 12 June 2020 at [32]

⁴² SMC's Written Submissions dated 12 June 2020 at [34]

⁴³ SMC's BOA, Tab 7

- a Information that a doctor is under investigation by police in connection to serious offences such as rape or attempted rape, sexual assault or attempted sexual assault or sexual abuse of children.
 - b ***Allegations that a doctor exhibited predatory behaviour in seeking or establishing an inappropriate sexual or emotional relationship with a vulnerable patient.***
 - c Serious concerns about a doctor's sexualised behaviour towards a patient in a single episode.
 - d ***Allegations of a pattern of sexually motivated behaviour towards patients."***
- (ii) On the basis of the allegations by Ms C, which the District Judge had determined to be substantially true in the civil suit, factors (b) and (d) as set out at paragraph 30 of the GMC's guidance were present in this case. Thus, the allegations were likely to weaken public confidence in the profession if the profession did nothing and granted the doctors full liberty to continue practising uninhibited⁴⁴.

28.3. Media coverage of the Decision amplified the potential for public confidence in the profession to be undermined if nothing is done:

- (i) The extensive coverage of the Decision by local media made it more likely that public confidence in the medical profession would be dampened if Dr Chan was allowed to continue practising without restrictions. The Decision was reported by the main English language newspaper in Singapore, The Straits Times⁴⁵. The article covered the contents of the Decision in detail⁴⁶. In particular, it described Ms C as "*both Dr Chan's lover and patient*". It also described the WhatsApp messages exchanged by the doctors as "*quite damning*" and made reference to Dr Chan's messages about needing "*new chicks*" and "*doing seven to eight a day over the weekend*".
- (ii) Through this and other articles including those referred to in the next paragraph, the impression given to the public was that a court of law in Singapore had heard evidence touching on the Complaint and found it to be substantially true that Dr Chan and Dr Ong had colluded to have sex with vulnerable women patients, abused their position to take advantage of these

⁴⁴ SMC's Written Submissions dated 12 June 2020 at [35]

⁴⁵ SMC's Written Submissions dated 12 June 2020 at [36]

⁴⁶ ABOD, Tab 10

patients, and also exchanged information relating to patients and colleagues for the purposes of engaging in sexual relations with them. That the media had made public some of the lewd messages between the doctors amplified the risk of public opprobrium⁴⁷.

- (iii) Shortly after the Decision was reported, there was swift public reaction in the press calling for Dr Chan and Dr Ong to be dealt with sternly by the profession. They indicated sustained and widespread condemnation for the actions of the doctors, and pointed to a risk of public confidence in the profession being undermined if their conduct was left unchecked⁴⁸.
- (iv) Although Dr Chan's (actual or planned) sexual interactions with female patients (particularly Ms C) may have been consensual, that did not detract from the potential damage to public confidence. The onus was on doctors to ensure that sexual propriety was observed. The 2016 ECEG⁴⁹ stated: "If patients exhibit sexualised behaviour towards you, *you must not reciprocate*". The SMC Handbook of Medical Ethics (2016)'s commentary on Guideline C4 of the 2016 ECEG⁵⁰ directed doctors as follows: "*You should be very careful to avoid... making an unsolicited request, either directly or by implication, for sexual favours*"⁵¹.
- (v) The underlying principle was clear: doctors must scrupulously avoid sexual contact with patients, whether their own or those of others. Whether those patients were willing to engage in sexual activities was beside the point. Once sexual boundaries between doctors and patients were transgressed, the medical profession's image suffered a stain – one which it cannot simply ignore⁵².

29. Counsel for the SMC further submits that the IOC must give due weight to considerations of proportionality and in that regard,

29.1. the proposed conditions are proportionate because they are no more restrictive than necessary to mitigate the risk of harm to the public or damage to public confidence⁵³;

⁴⁷ SMC's Written Submissions dated 12 June 2020 at [37]

⁴⁸ SMC's Written Submissions dated 12 June 2020 at [38]

⁴⁹ SMC's BOA, Tab 9

⁵⁰ SMC's BOA, Tab 10

⁵¹ SMC's Written Submissions dated 12 June 2020 at [39]

⁵² SMC's Written Submissions dated 12 June 2020 at [40]

⁵³ SMC's Written Submissions dated 12 June 2020 at [41]

- 29.2. the proposed conditions are not intrusive. They are prohibitory rather than mandatory: they only require that Dr Chan not make contact with female patients, or pass on patient data, for purposes unrelated to medical practices, and that if contact is required for medical purposes, it should be made indirectly. Dr Chan will still be able to continue his medical practice and to continue treating his patients. That Dr Chan had already signed a written undertaking in relation to the first of these proposed conditions goes towards showing that they are not unduly onerous⁵⁴; and
- 29.3. the proposed conditions are clear and leave no ambiguity as to how compliance is to be achieved⁵⁵.

Dr Chan's case

30. Whilst Dr Chan's position in his written submissions is that no Interim Order under Section 59B(1) of the MRA (whether an interim suspension order or an interim restriction order) should be made against him, his arguments and legal authorities were focused mainly on why a suspension order should not be made against him.
31. In light of the agreement reached between the SMC and Dr Chan where the SMC has proposed that Dr Chan's registration as a medical practitioner be conditional on his compliance with the restrictions as set out in [24] above for a period of 18 months and Dr Chan has agreed to the same, it remains for the IOC in considering the legislative framework of the MRA and the purpose and intent of section 59B(1) to decide whether the proposed restrictions are sufficient for the protection of members of the public or is otherwise in the public interest.

Decision of the IOC

32. Having fully considered all the facts and circumstances and the respective written and oral submissions of the parties, we are satisfied that it is not necessary for the protection of members of the public and in the public interest that Dr Chan's registration as a medical practitioner should be suspended. However, the IOC is of the view that it is necessary for the protection of members of the public and in the public interest that Dr Chan's registration as a medical practitioner should with immediate effect be made subject to the conditions or restrictions as set out (at [33]) below for a period of 18 months.

The Order of the IOC

⁵⁴ SMC's Written Submissions dated 12 June 2020 at [42]

⁵⁵ SMC's Written Submissions dated 12 June 2020 at [43]

33. We order that with effect from 18 June 2020, the registration of Dr Chan as a medical practitioner is to be made subject to the following conditions or restrictions, for a period of 18 months or until the conclusion of the proceedings against Dr Chan under Part 7 of the MRA, whichever is sooner:
- (a) Dr Chan is not to contact female patients for any purposes that are outside the scope of his medical practice;
 - (b) If Dr Chan needs to contact a female patient for purposes within the scope of his medical practice, the contact is to be made by a staff member of the clinic at which he is working, unless the female patient is in the hospital under Dr Chan's care or at Dr Chan's clinic for consultation or treatment;
 - (c) Notwithstanding condition (b), where contact with female patients is necessary for Dr Chan to provide psychiatric care and/or treatment to that patient or he is responding to a call from the female patient or her family members in connection with such psychiatric care and/or treatment, he may contact the female patient directly but must contemporaneously record in a separate log: (i) each instance of contact with the female patient, and (ii) for each instance, the reason for the contact;
 - (d) The log referred to in condition (c) is to be submitted to SMC for review on a fortnightly basis; and
 - (e) Dr Chan is not to send the personal data of his patients to any other person, whether on his own or through another person, unless this is required by his medical practice or by law.

Publication of Decision

34. We order that the Grounds of Decision be published with the necessary redaction of identities and personal particulars of persons involved.

Dated this 18th day of June 2020.