

GENERAL OSTEOPATHIC COUNCIL
PROFESSIONAL CONDUCT COMMITTEE

Case No: 591/851

Interim Suspension Order Hearing

DECISION

Case of: Mr Mark Matthews

Committee: Mr Philip Geering (Chair)
Ms Rama Krishnan (Lay member)
Mr Barry Kleinberg (Registrant member)

Legal Assessor: Mr Gary Leong

Representation for Council: Ms Nimi Bruce

Representation for Osteopath: Mr David Freedman

Clerk to the Committee: Ms Jemima Francis

Date of Hearing: 10 November 2017

Decision:

1. The Committee has decided that an Interim Suspension Order (“Interim Suspension Order”) is necessary for the protection of members of the public.

Preliminary Matters:

2. Ms Bruce informed the Committee that the application was being made on the basis of the evidence and admissions that had been heard by this Committee during the factual stage of the substantive hearing. She submitted that it was appropriate for the Committee to hear the application. She submitted that section 24 of the Osteopathic Act 1993 allows for an application for an Interim Suspension Order in these circumstances. She submitted that the circumstances comply with the conditions of section 24 of the 1993 Act.

3. Mr Freedman objected to the application being made. He submitted that it was unfair and not appropriate for this application to be entertained at such short notice. He informed the Committee that he had been informed of this application at only 10am this morning. He had spoke to his client who was content for him to deal with whether the application should be heard at all. He informed the Committee that Mr Matthews was making his way to GOsC and would arrive shortly.
4. Mr Freedman submitted that it was unfair and inappropriate for an Interim Suspension Order to be applied for on such short notice notwithstanding there was no specific notice period prescribed under s.24 of the 1993 Act nor under the General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules 2000 ("the Rules").
5. The Committee accepted the advice of the Legal Assessor. The Committee noted the relevant provisions of s.24 of the 1993 Act which states:

"24 Interim suspension powers of the Professional Conduct Committee and the Health Committee

- (1) *This section applies where--*
 - (a) *an allegation against a registered osteopath has been referred under section 20, or by virtue of any rule made under section 26(2)(a), to the Professional Conduct Committee or the Health Committee and the Committee has not reached a decision on the matter; or*
 - (b) *....*
- (2) *The Committee concerned may, if it is satisfied that it is necessary to do so in order to protect members of the public, order the Registrar to suspend the registration of the osteopath concerned.*
- (3) *An order under subsection (2) (an "interim suspension order") shall cease to have effect--*
 - (a) *in a case falling within subsection (1)(a), when the Committee reaches a decision in respect of the allegation in question; and*
 - (b) *....*
- (4) *Before making an interim suspension order, the Committee shall give the osteopath in question an opportunity to appear before it and to argue his case against the making of the proposed order.*

- (5) *At any such hearing the osteopath shall be entitled to be legally represented.*
 - (6) *Where an interim suspension order has been made, the osteopath concerned may appeal against it to the appropriate court.*
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6. The Committee determined that it had the power to hear the application for an Interim Suspension order. It further determined that it was appropriate to hear the application subject to the arrival of Mr Matthews and sufficient time for Mr Freedman to take instructions in order for him to make representations as to the application itself.

Application for Interim Suspension Order

7. Ms Bruce on behalf of the Council, submitted that an Interim Suspension Order was necessary in this case for the protection of members of the public. She submitted that the Registrant's evidence and demeanour in the substantive hearing demonstrated a number of things, including the following features:
 - a) an inability to understand Patient A's needs;
 - b) an inability to communicate effectively with Patient A in regard to explaining examinations and treatments;
 - c) a lack of understanding of the concept of informed consent and what that means;
 - d) he has a script and he does not deviate from that script when dealing with patients;
 - e) he applies a "one size fits all" treatment to his practice;
 - f) he carried on treating a patient even though he was aware the patient did not follow what he was saying and did not understand the nature of the treatments;
 - g) his general attitude and behaviour towards patients and others when it comes to his practice is bullying, and dominating;
 - h) he does not accept direct responsibility for his practice

8. Mr Freedman submitted that the submissions of Ms Bruce were her interpretation of the evidence given in the substantive case. He submitted that as such the Committee should not rely on that interpretation. He accepted that the Committee was entitled to take the evidence into consideration and make up its own mind.
9. Mr Freedman submitted that an Interim Suspension Order was not necessary to protect the members of the public. He pointed out that the Registrant was a practitioner of osteopathy for 39 years and there has been no complaint made of his practice prior to the matter before the Committee, and that no further complaint has been made since. The only physical injury in this case was minor, and that the IET machine has since been adapted to avoid repetition of the incident. He submitted that there was no necessity for an Interim Suspension Order, nor was any such requirement urgent.
10. Mr Freedman submitted that the imposition of an Interim Suspension Order could lead to the collapse of his practice. This was because the Registrant was the "*fundamental cog in the wheel*" at his practice. If that happened the effect would also affect his patients, his staff, other practitioners and ancillary practitioners at his practice. The adverse effect would be magnified by the short notice of this application and the lack of time for the Registrant to make the appropriate arrangements
11. Mr Freedman pointed out that the Registrant has been aware he is under the spot light and there is no danger of repetition as evidence by the lack of any new complaints being made against the Registrant.
12. The Committee in considering this matter accepted the advice of the Legal Assessor. It has also had regard to the guidance on Interim Suspension Orders issued by the Council.
13. The Committee is very much aware that an unusual feature for this application is that it also is the Committee hearing the substantive matter. It has already heard all the evidence in relation to the factual stage of the allegation. It is in the process of finalising its determination on the facts and is therefore in a good position to ascertain whether there is any risk to members of the public in light of such evidence.
14. The Committee is also very aware the purpose of this application is not to deliver a determination on allegations, nor is it to deliver an in-depth assessment of the evidence it has heard. The Committee reminded itself

that the purpose of today's hearing is to assess whether there is a real risk to the public and, if there is, whether an Interim Suspension Order is necessary to protect the public from such risk.

15. The Committee determined that the evidence it has heard so far, which includes the oral testimony of the Registrant, raises very serious concerns regarding his practice in relation to:
 - a) the adequacy of his case history taking;
 - b) his examination of patients;
 - c) treatment plans;
 - d) his understanding of valid consent; and
 - e) his approach to communicating with patients.
16. The Committee also determined that the evidence it has heard thus far received gives rise to a real concern about the Registrant's insight into the above matters.
17. In the light of the above, the Committee determined that there was a real risk to members of the public. The evidence heard so far demonstrated that the Registrant failed to take an adequate history from a patient who had declared a serious [REDACTED] condition and was on medication for that condition. That incident alone, in the absence of evidence of insight on the part of the Registrant, gives rise to a risk of harm being caused to patients. The evidence received demonstrates a fixed attitude and approach on the part of the Registrant to patients and his practice. There is very limited evidence to suggest that his attitude and approach would be any different in the coming weeks from what has been said in evidence.
18. The Committee is satisfied that there is a real risk of repetition and that, therefore, an Interim Suspension Order is necessary for the protection of the public from that risk.
19. The Committee reminded itself of the principle of proportionality and the need to balance the duty to ensure public protection against the consequence of an order for the Registrant. It is aware that an Interim Suspension Order would have a detrimental effect on the Registrant's interests, both financial and reputational. It took into account his many years of unblemished practice. However the Committee is satisfied, on the

evidence received so far, that the risks to the public outweigh the adverse effect of an Interim Suspension Order being imposed upon the Registrant's practice.

There is a right of appeal in accordance with section 24 of the Osteopaths Act 1993.