

ON PAPERS**Interim Orders Committee
Review Hearing****17 April 2024****Name:** VAN DER MERWE, Petrus**Registration number:** 80299**Case number:** CAS-201170-Z9B9R6

General Dental Council: Represented by Rosie Geddes, IHLPS**Registrant:** Unrepresented

Outcome: Interim suspension confirmed**Duration:** For the remainder of the term of the order

Committee members: Andrea Hammond (Chair and DCP member)
Hall Graham (Dentist member)
Jim Hurden (Lay member)**Legal adviser:** Valerie Paterson**Committee Secretary:** Jamie Barge

The role of the Interim Orders Committee (IOC) is to undertake a risk assessment based on the information before it. Its role is to assess the nature and substance of any risk to the public in all the circumstances of the case and to consider whether it is necessary for the protection of the public, is otherwise in the public interest, or is in the registrant's own interests to impose an interim order on their registration. It is not the role of the IOC to make findings of fact in relation to any charge. That is the role of a differently constituted committee at a later stage in the process.

1. This is an Interim Orders Committee (IOC) review hearing in respect of an interim order currently in place on Mr Van Der Merwe's registration. The hearing is being conducted remotely by Microsoft Teams video-link.
2. Neither party is present today, following a request for the review of the interim order to be conducted on the papers. The Committee received written submissions from the GDC in respect of the review.
3. The Committee first considered the issues of service and proceeding with the hearing in the absence of Mr Van Der Merwe and any representatives for either party. The Committee accepted the advice of the Legal Adviser on these matters.

Decision on service

4. The Committee considered whether notice of the hearing had been served on Mr Van Der Merwe in accordance with Rules 35 and 65 of the *GDC (Fitness to Practise) Rules Order of Council 2006* ('the Rules') and section 50A of the *Dentists Act 1984 (as amended)* ('the Act').
5. The Committee received from the GDC an IOC review hearing bundle. This hearing bundle contained a copy of the Notice of Hearing, dated 18 March 2024 ('the notice'), which was sent to Mr Van Der Merwe's registered address by Special Delivery and First-Class post.
6. The Committee took into account that there is no requirement within the Rules for the GDC to prove delivery of the notice, only that it was sent. However, it noted from the Royal Mail 'Track and Trace' receipt provided, that the copy of the notice sent by Special Delivery was delivered and signed for on 20 March 2024 in the printed name of 'MERWE'.
7. The Committee further took into account that on 18 March 2024, a copy of the notice was sent to Mr Van Der Merwe by email.
8. The Committee was satisfied that the notice sent to Mr Van Der Merwe contained proper notification of this review hearing, including that the hearing was scheduled to take place between 15-19 April 2024, and that any hearing would be conducted by Microsoft Teams. Mr Van Der Merwe was also notified that the Committee had the power to proceed with the hearing in his absence.
9. On the basis of all the information provided, the Committee was satisfied that notice of the hearing had been served on Mr Van Der Merwe in accordance with the Rules and the Act. The Committee was also satisfied that the period of notice given was reasonable in all the circumstances.

Decision on whether to proceed with the hearing in the absence of the registrant and on the papers

10. The Committee next considered whether to exercise its discretion under Rule 54 to proceed with the hearing in the absence of Mr Van Der Merwe, and any representative for either party. The Committee took into account the factors to be considered in reaching its decision, as set out in the case of *R v Jones* [2003] 1 AC 1HL, and as affirmed in subsequent regulatory cases.

11. The Committee considered the need to be fair to Mr Van Der Merwe, as well as the GDC. It also took into account the public interest in the expeditious review of the interim order.

12. The Committee was satisfied from the information before it that all reasonable efforts had been made by the GDC to notify Mr Van Der Merwe of this review hearing. It took into account that the notice of 18 March 2024 was sent to him by post and by email. The Committee received no information to suggest that Mr Van Der Merwe responded to the notice.

13. In its written submissions, the GDC submitted that “...it would be appropriate for the hearing to proceed in the absence of the parties and be considered and determined on the basis of the papers placed before the IOC.”

14. In deciding whether to proceed with the review, the Committee took into account that it did not receive a request for an adjournment from Mr Van Der Merwe. It noted that he did not attend any of the previous IOC hearings held in respect of this matter, and there has been no information to indicate that deferring today’s hearing would secure his engagement on a future date. The Committee was satisfied that Mr Van Der Merwe’s absence on this occasion was voluntary. It therefore concluded that an adjournment would serve no meaningful purpose. In reaching its decision, the Committee bore in mind the public interest, and its statutory duty to review the current interim order.

15. In all the circumstances, the Committee determined to proceed with the review hearing on the papers in the absence of both parties.

Background to the imposition of the interim order

16. Mr Van Der Merwe’s case was first considered by the IOC on 5 August 2022, when an interim order of suspension was imposed on his registration for a period of 18 months. This was on the basis that an interim order was necessary for the protection of the public and was otherwise in the public interest.

17. In imposing the interim order, the initial IOC considered information arising out of a referral made to the GDC in September 2021 raising concerns about Mr Van Der Merwe. The concerns related to Mr Van Der Merwe’s alleged lack of cooperation with a dental negligence claim made against him, and his alleged lack of indemnity insurance. The initial IOC also considered an allegation that Mr Van Der Merwe had failed to cooperate with the GDC’s investigation into the matters.

Previous reviews of the interim order

18. The interim order first imposed on Mr Van Der Merwe's registration in August 2022 has been subject to three previous reviews by the IOC on 26 January 2023, 3 July 2023 and 14 December 2023, where the interim order of suspension was continued.

19. The matter was extended by the High Court on 2 February 2024 for a further period of 12 months. The order will expire on 8 February 2025.

Today's review

20. This is the fourth review of the interim order. In comprehensively reviewing the interim order today, the Committee considered all the information provided. It accepted the advice of the Legal Adviser.

21. No documents or written submissions were received from, or on behalf of, Mr Van Der Merwe.

22. In its written submissions in respect of this review, the GDC stated as follows:

"The Council's investigation is ongoing, and the case has been passed to the Case Examiners for a decision. The Council submits that an interim order remains necessary on the same grounds and reasons as set out by the Committee at the initial hearing of 5 August 2022 and the reviewing Committees on 26 January 2023, 3 July 2023 and 14 December 2023."

Decision on review of the interim order

23. In reaching its decision in respect of the interim order, the Committee remained mindful that its task is not to find facts, but to conduct an assessment of risk based on the information before it. In all its considerations, the Committee applied the principle of proportionality, balancing the public interest with Mr Van Der Merwe's own interests. It had regard to the GDC's '*Interim orders guidance for decision makers – Interim Orders Committee (October 2016; updated 2019)*'.

24. This Committee is not bound by the decisions of the previous Committees. However, it was satisfied that the information before it indicates there has been no material change in circumstances to undermine the necessity for an interim order on Mr Van Der Merwe's registration. He continues to face a serious allegation relating to a concern that he may have been practising without any professional indemnity. The Committee considered that such a concern clearly raises an issue of public safety. In the absence of appropriate indemnity cover, patients would be unable to claim compensation for any problems arising from dental treatment provided by Mr Van Der Merwe. The Committee also took into account Mr Van Der Merwe's ongoing lack of engagement with the GDC's fitness to practise process. The Committee considered that, in all the circumstances, there would be a risk to the public if he was permitted to return to unrestricted practice pending a full investigation into the concerns in this case. The Committee was therefore satisfied that an interim order on his registration remains necessary for the protection of the public.

25. The Committee was also satisfied that an interim order continues to be otherwise in the public interest. It considered that a well-informed member of the public, aware of the serious allegation

against Mr Van Der Merwe, would be concerned and troubled if an interim order was not maintained on his registration. An interim order is therefore required to maintain public confidence in the dental profession and to uphold proper professional dental standards.

26. The Committee went on to consider the type of interim order. It considered whether the current interim order of suspension should be changed to one of conditions. However, in the light of Mr Van Der Merwe's current lack of engagement, the Committee concluded that interim conditions would not be adequate to address the identified risks in this case even if they could be formulated. The Committee was not satisfied that an interim order of conditions would protect the public and the wider public interest.

27. Accordingly, the Committee determined to continue the current interim order of suspension on Mr Van Der Merwe's registration for the remainder of the term of the order.

Next review of the interim order

28. The Committee noted that the current interim order is due to expire in February 2024, and that it is open to the GDC to apply to the High Court for an extension of the order. Should such an application be made and granted, the interim order will be further reviewed by the IOC in accordance with the relevant statutory provisions under the Act.

29. Unless parties request an oral hearing, any next review of the interim order will be conducted on the papers in the absence of both parties. The Committee will be invited by the GDC to confirm the order and Mr Van Der Merwe will be asked whether there are any written submissions to be put before the Committee on his behalf. He will then be notified of the outcome in writing following the decision of the Committee.

30. Alternatively, Mr Van Der Merwe is entitled to have the interim order reviewed at an oral hearing. This means that he will be able to attend and make representations, send a representative on his behalf, or submit written representations about whether the interim order continues to be necessary. Mr Van Der Merwe must inform the GDC if he would like the interim order to be reviewed at a hearing.

31. Even if Mr Van Der Merwe does not request a hearing, where there has been a material change of circumstances that might mean that the order should be revoked or replaced, a Committee will review the interim order at a hearing to which Mr Van Der Merwe and any representative will be invited.

32. That concludes this determination.