

**IN THE GENERAL DIVISION OF  
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

**[2022] SGHC 170**

Suit No 400 of 2020

Between

Tiong Sze Yin Serene

*... Plaintiff*

And

Chan Herng Nieng

*... Defendant*

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**JUDGMENT**

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[Tort — Negligence — Breach of duty]

[Tort — Negligence — Duty of care]

[Tort — Rule in *Wilkinson v Downton*]

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**Tiong Sze Yin Serene**

**v**

**Chan Herng Nieng**

**[2022] SGHC 170**

General Division of the High Court — Suit No 400 of 2020

Tan Siong Thye J

19–22, 26–28 April, 4 July 2022

19 July 2022

Judgment reserved.

**Tan Siong Thye J:**

### **Introduction**

1 The defendant, Dr Chan Herng Nieng (“Dr Chan”), is a psychiatrist with his own psychiatry practice at Capital Mindhealth Clinic. He has been practising medicine for more than 17 years.<sup>1</sup>

2 The plaintiff, Ms Serene Tiong Sze Yin (“Ms Tiong”), is a Senior Business Development Manager in Precious Medical Centre.<sup>2</sup> She met Dr Chan at a social event in or around 21 December 2016.<sup>3</sup> They soon started an intimate

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<sup>1</sup> Defendant’s Opening Statement (“DOS”) at para 2.

<sup>2</sup> DOS at para 1.

<sup>3</sup> Agreed List of Undisputed Facts and Issues (“ALOF”), S/N 3; Plaintiff’s Opening Statement (“POS”) at para 1; DOS at para 6.

relationship in early January 2017.<sup>4</sup> At or around the end of April 2018, the relationship took a dramatic turn for the worse after Ms Tiong discovered WhatsApp messages in Dr Chan’s mobile phone which revealed that he had been unfaithful.<sup>5</sup> The relationship rapidly went south and Dr Chan decided to end the relationship at the end of May 2018.<sup>6</sup>

3 From the time they first met in December 2016 to the end of their relationship in May 2018, Dr Chan was a senior consultant psychiatrist at the Department of Psychiatry of the Singapore General Hospital (“SGH”).<sup>7</sup>

4 This case is, at its core, a lover’s spat. After the relationship of Ms Tiong and Dr Chan came to an end, the actions taken by Ms Tiong resulted in, among others, police investigations against her for attempted extortion. Ms Tiong also complained to the Singapore Medical Council (“SMC”) against Dr Chan and his good friend, Dr Julian Ong Kian Peng (“Dr Ong”). Dr Ong, in turn, sued Ms Tiong for defamation. When Dr Chan spurned Ms Tiong’s love she started a campaign of revenge against Dr Chan and Dr Ong as she concluded that they treated women like sex trophies.

5 Ms Tiong claims that when she and Dr Chan were in a relationship, Dr Chan acted in breach of his duty of care to her as his *de facto* patient when he gave her Xanax, an addictive drug, which was classified as poison under the Poisons Act (Cap 234, 1999 Rev Ed) (“the Poisons Act”).<sup>8</sup> Ms Tiong claims that

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<sup>4</sup> DOS at para 3.

<sup>5</sup> POS at para 2.

<sup>6</sup> DOS at para 3.

<sup>7</sup> ALOF, S/N 1; POS at para 2; DOS at para 2.

<sup>8</sup> POS at para 7.

she suffered side effects from consuming Xanax and became addicted to Xanax.<sup>9</sup>

6 Ms Tiong claims a further and/or alternative cause of action under the rule in *Wilkinson v Downton* [1897] 2 QB 57 (“*Wilkinson*”) for the psychiatric harm Dr Chan allegedly caused to her. She alleges that Dr Chan had told her that he was committed to a long-term and exclusive sexual relationship with her. Subsequently, Ms Tiong suffered a mental and emotional breakdown when she discovered that Dr Chan was having sexual relations with other married women during their relationship.<sup>10</sup>

### **Background to the dispute**

#### ***The relationship between Ms Tiong and Dr Chan***

7 Ms Tiong and Dr Chan first met at a social event on or around 21 December 2016.<sup>11</sup> She was then still married to one Mr Jeremy Ho Wei Chun (“Mr Ho”).<sup>12</sup> However, the marriage was already on the rocks as Ms Tiong had engaged in an extra-marital affair with one Mr Chris Koh (“Mr Koh”) before she met Dr Chan. The affair with Mr Koh ended in 2016.<sup>13</sup> Nevertheless,

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<sup>9</sup> POS at para 11(c); Statement of Claim (Amendment No. 2) (“SOC”) at para 5C.

<sup>10</sup> POS at paras 3–5; SOC at paras 6–12.

<sup>11</sup> ALOF, S/N 3; POS at para 1; DOS at para 6; Defence (Amendment No. 1) (“Defence”) at para 4(a).

<sup>12</sup> DOS at para 7.

<sup>13</sup> DOS at para 7; ALOF, S/N 7.

Ms Tiong filed for divorce against Mr Ho sometime in February 2017.<sup>14</sup> The divorce was finalised on 20 November 2017.<sup>15</sup>

8 Dr Chan, on the other hand, was not married and he is a bachelor.

9 After the first meeting in December 2016, Ms Tiong and Dr Chan started an intimate relationship in or around January 2017.<sup>16</sup> The relationship was generally smooth from January 2017 until April 2018. They would regularly spend time together and engage in physical intimacy.<sup>17</sup>

10 From 7 April 2018 to 25 April 2018, Ms Tiong and Dr Chan went on a trip to Eastern Europe (“the Eastern Europe Trip”).<sup>18</sup> On or around the night of 22 April 2018, while Dr Chan was asleep, Ms Tiong unlocked Dr Chan’s mobile phone using his thumbprint. Ms Tiong then accessed Dr Chan’s WhatsApp conversations with his close friend, Dr Ong, a colorectal surgeon who operates Julian Ong Endoscopy & Surgery Pte Ltd (“JOES”).<sup>19</sup> The conversations contained sordid details which strongly suggested that Dr Chan and Dr Ong were leading highly promiscuous lifestyles by having sexual intercourse with other married women, sometimes in groups (“the Whatsapp Messages”):<sup>20</sup>

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<sup>14</sup> ALOF, S/N 8; Defence at para 4(b); Reply to Defence (“Reply”) at para 6; DOS at para 7.

<sup>15</sup> DOS at para 7.

<sup>16</sup> ALOF, S/N 6.

<sup>17</sup> ALOF, S/N 29; DOS at para 8.

<sup>18</sup> ALOF, S/N 9.

<sup>19</sup> ALOF, S/N 10; DOS at para 9.

<sup>20</sup> POS at para 2; Affidavit of Evidence-in-Chief of Serene Tiong Sze Yin (“ST”) in Plaintiff’s Bundle of Affidavits of Evidence-in-Chief (“PBAEIC”) at pp 28 and 37.

Dr Ong: [nude image]  
Dr Chan: She has tat slut look tat I love :)  
Agree wit u bout the tits  
Dr Ong: Her tits are perfect IMHO  
Dr Chan: Lucky husband :)  
Something bout fucking someone's wife that gets  
me rock hard..  
...  
Dr Chan: I can try to join u threesome in the pm  
...  
Dr Chan: I like married sluts who let other people fuck  
them  
Makes me rock hard

11 Aggrieved that Dr Chan was physically intimate with other women, Ms Tiong took screenshots of the Whatsapp Messages (“the Screenshots”) and confronted Dr Chan with the Screenshots.<sup>21</sup>

12 On 25 April 2018, after Ms Tiong and Dr Chan returned from the Eastern Europe Trip, their relationship began to break down irretrievably. Although Ms Tiong intended to continue with her relationship with Dr Chan with a view to marrying him, Dr Chan was not keen to continue with the relationship. When it was clear to Ms Tiong that Dr Chan wanted to end the relationship, she took matters into her own hands to seek revenge on Dr Chan. Between 29 May 2018 and June 2018, Ms Tiong demanded from Dr Chan a Cartier watch and \$10,000, which was later increased to \$150,000. She also sent the Screenshots to Dr Chan’s family members.<sup>22</sup> Subsequently, Dr Chan made a police report against Ms Tiong for extortion. He stopped responding to

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<sup>21</sup> ALOF, S/N 11 and 13; DOS at para 10.

<sup>22</sup> ALOF, S/N 24–25; DOS at paras 11–12; Reply at para 12.

Ms Tiong on or around 31 May 2018. This marked the end of Ms Tiong and Dr Chan’s relationship.<sup>23</sup>

13 On 15 January 2020, the Singapore Police Force (“SPF”) issued Ms Tiong a written warning in lieu of prosecution for the offence of attempted extortion under s 385 of the Penal Code (Cap 224, 2008 Rev Ed) (“the Penal Code”).<sup>24</sup>

***Dr Chan gave Ms Tiong Xanax tablets***

14 During their relationship, Dr Chan gave Ms Tiong Xanax tablets to help her cope with her anxiety.<sup>25</sup> Xanax, also known as Alprazolam, is listed as a poisonous substance under the Schedule to the Poisons Act.<sup>26</sup> Dr Chan did not register Ms Tiong as his patient at the time he provided her Xanax.<sup>27</sup>

15 By virtue of his profession, Dr Chan was in a position to procure Xanax from the SGH. Upon Dr Chan’s request, his colleague, Associate Professor Lee Tih Shih, prescribed him Xanax. Dr Chan then gave Xanax to Ms Tiong without registering Ms Tiong as his patient of SGH.<sup>28</sup>

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<sup>23</sup> DOS at para 12.

<sup>24</sup> ALOF, S/N 27; DOS at para 13; Affidavit of Evidence-in-Chief of Chan Herng Nieng (“CHN”) at para 54; CHN-25 at p 842; Defence at para 6(g).

<sup>25</sup> ALOF, S/N 17.

<sup>26</sup> ALOF, S/N 32; SOC at para 4.

<sup>27</sup> ALOF, S/N 18.

<sup>28</sup> SOC at para 4.

***Background history***

16 While the following background developments relating to Ms Tiong and Dr Chan’s history are strictly speaking not material to the case at hand, they are relevant to understand the context of the parties’ relationship. Thus, I shall briefly narrate the background history of the parties’ disputes which came about after Dr Chan ended the relationship with Ms Tiong.

*The Singapore Medical Council complaint*

17 On 18 June 2018, Ms Tiong lodged a complaint against Dr Chan to the Disciplinary Tribunal of the SMC. In the complaint, Ms Tiong stated that Dr Chan had failed to highlight the side effects of Xanax and even increased the dosage of Xanax when she raised concerns (“the SMC Complaint”).<sup>29</sup>

18 Between 19 and 23 June 2018, Ms Tiong sent emails attaching the SMC Complaint to several of Dr Chan’s colleagues, claiming, *inter alia*, that Dr Chan and Dr Ong were colluding “to take advantage of other vulnerable woman patients” (“the Defamatory Emails”) (see *Ong Kian Peng Julian v Serene Tiong Sze Yin* [2020] SGDC 94 (“the Defamation Suit”) at [4(a)]).

19 In February 2022, the SMC notified Ms Tiong that it was suspending Dr Chan for five months. Dr Chan has lodged an appeal against the decision.<sup>30</sup>

*The Defamation Suit*

20 Dr Ong brought a claim in libel against Ms Tiong for disseminating the Defamatory Emails to others. In the Defamation Suit, the district judge (“DJ”)

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<sup>29</sup> POS at para 16; Plaintiff’s Bundle of Documents (“PBOD”) Tab 3.

<sup>30</sup> POS at para 17; PBOD Tab 7.

dismissed Dr Ong's claim in libel on the basis that Ms Tiong had successfully proven the defence of justification. The DJ's ruling was overturned on appeal. In *Ong Kian Peng Julian v Tiong Sze Yin Serene* [2021] 3 SLR 980 ("the Defamation Appeal"), See Kee Oon J found at [85] that Ms Tiong failed in her defence of justification. There was insufficient evidence that Dr Chan capitalised on his trusted position as a doctor to target Ms Tiong, as Ms Tiong was in an existing intimate relationship with Dr Chan which developed well before she became Dr Chan's *de facto* patient (the Defamation Appeal at [54]).

#### *The Derivative Action Suit*

21 On 25 September 2019, Ms Tiong bought the minimum traded lot of 100 shares in HC Surgical Specialists Ltd ("the Company"), a company seeking to acquire 19% of the shares in JOES (Dr Ong's company), with a view to attending the Company's annual general meeting to convey her concerns about its acquisition of the 19% stake in JOES. On 27 May 2020, Ms Tiong commenced a statutory derivative action under s 216A(2) of the Companies Act (Cap 50, 2006 Rev Ed) seeking leave to bring an action in the name of the Company against its chief executive officer ("CEO"), alleging that the CEO had breached his director's duties in connection with the Company's acquisition of the 19% stake in JOES.

22 In *Tiong Sze Yin Serene v HC Surgical Specialists Ltd and another* [2020] SGHC 201 ("the Derivative Action Suit"), Chua Lee Ming J dismissed the application. Chua J found, *inter alia*, that Ms Tiong had failed to discharge her burden of proof that she was acting in good faith. Chua J also observed that she was "so motivated by vendetta, perceived or oral, that [her] judgment will be clouded by purely personal considerations" (the Derivative Action Suit at [76]).

23 In Civil Appeal No 129 of 2020 (“CA 129”), the Court of Appeal upheld Chua J’s decision to dismiss Ms Tiong’s claim, finding that Ms Tiong’s claim was “wholly unmeritorious”.

### **The parties’ cases**

#### ***Ms Tiong’s case***

##### *Medical negligence*

24 Ms Tiong’s primary claim is that Dr Chan, as her *de facto* doctor, owed her a duty of care to ensure that she would not be addicted to Xanax. Dr Chan breached his duty of care when he freely gave Xanax to Ms Tiong without (a) ascertaining the suitability of Xanax for her; and (b) ensuring that she would not become addicted to Xanax. Ms Tiong argues that Dr Chan supplied Xanax and Trazodone, which is also listed in the Schedule to the Poisons Act, to her in a “free and easy manner”<sup>31</sup> for “recreational, rather than prescriptive, use”, as he failed to first assess that Ms Tiong was indeed suffering from Generalised Anxiety Disorder (“GAD”) before prescribing the drugs.<sup>32</sup> He also failed to caution her against drug dependency and to keep clinical notes.<sup>33</sup> The fact that she and Dr Chan were in an intimate relationship during the material time made her a vulnerable patient, as she believed that Dr Chan would be attentive to her medical needs.<sup>34</sup>

25 According to Ms Tiong, Dr Chan gave her one strip of Xanax tablets (*ie*, ten tablets of Xanax) per month from February 2017 to March 2018 and

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<sup>31</sup> POS at para 38.

<sup>32</sup> POS at para 27.

<sup>33</sup> POS at para 48.

<sup>34</sup> SOC at para 5B.

approximately 100 tablets of Xanax per month for April and May 2018.<sup>35</sup> However, I must highlight that during the trial, Ms Tiong resiled from this pleaded position on the number of Xanax tablets that Dr Chan gave to her. The exact number of Xanax tablets Dr Chan gave to Ms Tiong is one of the key factual issues of the trial and I shall consider it in full at [93]–[108] below.

26 Ms Tiong also argues that Dr Chan neglected and completely abandoned his continuing duty of care to treat her medical condition when he ended their personal relationship at or around the end of May 2018.<sup>36</sup> Dr Chan should have registered her as a patient of another psychiatrist if he wished to have sexual relations with her.<sup>37</sup>

27 As a result of Dr Chan’s breach of his duty of care, Ms Tiong suffered damage in that she became addicted to Xanax and suffered “side effects of the high dosages of drugs given to [her] by Dr Chan”.<sup>38</sup> These side effects include, in the short term, drowsiness, confusion and slurred speech, and in the long term, cognitive difficulties and aggression.<sup>39</sup> Her increased aggression is evident from the manner in which Ms Tiong confronted Dr Chan at his clinic in front of his staff and patients on 13 June 2018.<sup>40</sup>

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<sup>35</sup> Reply at para 17.

<sup>36</sup> SOC at para 5B.

<sup>37</sup> POS at para 43.

<sup>38</sup> ST at para 14.

<sup>39</sup> SOC at para 5C.

<sup>40</sup> POS at para 36.

*The rule in Wilkinson*

28 Ms Tiong’s alternative cause of action is based on the rule in *Wilkinson*. Ms Tiong argues that Dr Chan induced her to enter into and/or continue with their relationship by intentionally informing her that “he was committed to having a long-term and exclusive sexual relationship with her” (“the Statement”). Dr Chan made the Statement sometime around February 2017 and repeated the Statement on numerous occasions.<sup>41</sup> By virtue of the Statement, Ms Tiong entered into an intimate relationship with Dr Chan.<sup>42</sup> To support her claim that Dr Chan made the Statement, Ms Tiong relies on WhatsApp text messages exchanged between her and Dr Chan in November 2017, some nine months after Dr Chan made the Statement, where Dr Chan repeatedly threatened to end his relationship with Ms Tiong as she had violated his trust that they were seeing and having sexual relations exclusively with each other. They only patched up their relationship when Ms Tiong promised to cut off any further contact with her “exes”, namely Mr Ho and Mr Koh.<sup>43</sup> I pause to note that Ms Tiong has not specified the exact Whatsapp message(s) she relies on as supporting evidence to suggest that Dr Chan made the Statement.

(1) The falsity of the Statement

29 Ms Tiong avers that Dr Chan knew that the Statement was false based on the following grounds. First, the WhatsApp Messages between Dr Chan and Dr Ong show that Dr Chan was in fact having sexual relations with multiple women while he was in a relationship with Ms Tiong.<sup>44</sup> Therefore, he knew that

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<sup>41</sup> SOC at para 6; POS at para 3.

<sup>42</sup> SOC at para 7.

<sup>43</sup> POS at para 22.

<sup>44</sup> SOC at para 9(1).

the Statement was false when he made it. Second, during the Defamation Suit, Dr Chan admitted that he had sexual intercourse with another woman, E, while he was still in a relationship with Ms Tiong (the Defamation Suit at [20(c)]). Dr Chan also admitted during cross-examination that (a) Dr Ong had asked him for someone to bring to a sex party; and (b) Dr Ong had suggested that Dr Chan invite Ms Tiong to engage in a foursome with them.<sup>45</sup>

30 Ms Tiong argues that Dr Chan had no justification or reasonable excuse for making the Statement knowing it was false. In other words, Dr Chan actually had no intention to be in an exclusive relationship with Ms Tiong or consider marriage with her. Ms Tiong avers that Dr Chan's sole motive in making the Statement was to induce her to have sexual relations with him.<sup>46</sup> Subsequently, she was induced into sexual intimacy with Dr Chan by the promise of a long-term exclusive relationship.<sup>47</sup>

(2) Ms Tiong's psychiatric harm

31 Ms Tiong discovered that the Statement was false when she read the WhatsApp Messages on or around the night of 22 April 2018. As a result of the discovery, Ms Tiong suffered adjustment disorder with anxiety.<sup>48</sup>

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<sup>45</sup> SOC at para 9(2).

<sup>46</sup> SOC at para 11.

<sup>47</sup> ST at para 9.

<sup>48</sup> SOC at para 12.

(3) Dr Chan intended to cause Ms Tiong psychiatric harm

32 Ms Tiong argues that Dr Chan intended to cause her psychiatric harm by making the Statement which he knew to be false. Ms Tiong points to the following facts:<sup>49</sup>

(a) When Dr Chan made the Statement, Dr Chan knew that Ms Tiong was experiencing turmoil in her marriage;

(b) Dr Chan was well aware that Ms Tiong was suffering from anxiety;

(c) Dr Chan and Ms Tiong were in a *de facto* doctor-patient relationship; and

(d) Therefore, Dr Chan was well aware that Ms Tiong was in a vulnerable state and any further mental or emotional distress would cause her psychiatric harm.

### ***Dr Chan's case***

#### *Medical negligence*

33 Dr Chan does not dispute that as a medical professional, he owed a duty of care to Ms Tiong to ensure that Xanax provided was appropriate for her consumption and would not cause her harm.<sup>50</sup> However, Dr Chan argues that he did not breach his duty of care to (a) ascertain the suitability of Xanax for her; or (b) ensure that she would not be addicted to Xanax. Dr Chan argues that

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<sup>49</sup> SOC at para 13.

<sup>50</sup> DOS at paras 34–35.

Xanax was indeed suitable for Ms Tiong's consumption, based on, *inter alia*, the following:

(a) Ms Tiong was prescribed Xanax by subsequent psychiatrists that she consulted after the fallout of her relationship with Dr Chan sometime end of May 2018.<sup>51</sup> It is incredible that Ms Tiong would continue to be prescribed Xanax by different psychiatrists or that she would continue to procure Xanax from different psychiatrists if she suffered side effects from consuming Xanax.<sup>52</sup>

(b) The contemporaneous communications exchanged between Ms Tiong and Dr Chan do not support Ms Tiong's assertion that she suffered side effects from her consumption of Xanax.<sup>53</sup>

34 Dr Chan claims that in or around the second week of May 2018, Ms Tiong told him that she was experiencing bouts of anxiety and verbally requested that he gave Xanax to her. He alleges that Ms Tiong observed that he had taken Xanax to help him rest during the Eastern Europe Trip.<sup>54</sup> He first provided her with one tablet of Xanax. When Ms Tiong found Xanax to be good and there were no side effects, Dr Chan gave her another 13 tablets of Xanax for short-term use.<sup>55</sup> Dr Chan denied giving Ms Tiong the large quantity of Xanax as alleged by her. Furthermore, Dr Chan asserts that the large quantity of Xanax Ms Tiong alleged Dr Chan had provided to her significantly exceeds

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<sup>51</sup> CHN-34 at pp 1179–1187.

<sup>52</sup> DOS at para 40(b).

<sup>53</sup> DOS at para 40(c).

<sup>54</sup> Defence at para 5(h).

<sup>55</sup> DOS at para 42; Transcript (27 April 2022) at p 42 line 25 to p 43 line 1 and p 51 lines 15–22.

the quantity of Xanax procured by Dr Chan from SGH, as evinced by the SGH's prescriptions of Xanax for Dr Chan.<sup>56</sup>

35 In any case, even on Ms Tiong's account of the quantity of Xanax provided to her, there is no evidence that the quantity of Xanax is inappropriate. This is because any associated risk of dependency from the quantity of Xanax she alleged was provided to her is low.<sup>57</sup> In fact, Ms Tiong was prescribed an even larger quantity of Xanax than what she claims Dr Chan had given her over a shorter period of time by one Dr Lee Kae Meng Thomas ("Dr Thomas Lee"), a psychiatrist from Resilienz Clinic Pte Ltd ("Resilienz Clinic") she consulted after her relationship with Dr Chan had ended.<sup>58</sup>

36 Dr Chan denies that Ms Tiong suffered any damage,<sup>59</sup> and avers that Ms Tiong has failed to prove that whatever alleged damage she has suffered was caused by Dr Chan's breach of duty.<sup>60</sup>

### *The rule in Wilkinson*

37 Dr Chan submits that Ms Tiong's claim under the rule in *Wilkinson* is "clearly unmeritorious".<sup>61</sup> First, there is no evidence to prove that Dr Chan made the Statement. The Statement appears to be a figment of Ms Tiong's imagination.<sup>62</sup> Second, "there is no basis to suggest [the Statement] was made

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<sup>56</sup> DOS at para 43(d).

<sup>57</sup> DOS at para 44(b).

<sup>58</sup> DOS at para 44(c).

<sup>59</sup> Defence at para 8.

<sup>60</sup> DOS at paras 47–48.

<sup>61</sup> DOS at para 23.

<sup>62</sup> DOS at para 20.

with the intention to cause [Ms Tiong] physical harm”.<sup>63</sup> Third, Ms Tiong “also falls short of demonstrating that she suffered physical harm as a result of [Dr Chan] conveying the Statement to [her]”.<sup>64</sup>

38 Essentially, Dr Chan submits that Ms Tiong’s case is founded on bare assertions and is aimed at furthering her personal agenda against Dr Chan.<sup>65</sup> Dr Chan points to, among others, Ms Tiong’s (a) attempts to extort money from him while threatening to tarnish his reputation; (b) harassment of his family and colleagues at SGH; (c) surreptitious recording of her conversations with him; (d) sending of emails enclosing the SMC Complaint to various doctors in his previous workplace at SGH; and (e) purchase of shares in the Company in order to commence the Derivative Action Suit against its CEO to stop the Company from acquiring 19% stake in JOES.<sup>66</sup>

### **The joint expert**

39 Initially, before the commencement of the trial, Ms Tiong intended to call two medical experts to testify for her. They are Dr Thomas Lee from Resilienz Clinic and Dr Wong Meng Kong from the Newcastle University Medicine Malaysia. On the other hand, Dr Chan wanted to call Dr Rasaiah Munidasa Winslow from Winslow Clinic, Promises Healthcare as his expert witness. Eventually, the parties decided not to call their respective experts as they had agreed to be bound by the evidence of a single joint expert. The parties came to an agreement to appoint Dr Lim Yun Chin (“Dr Lim”), a consultant in psychological medicine at Raffles Hospital, as their common joint expert.

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<sup>63</sup> DOS at para 21.

<sup>64</sup> DOS at para 22.

<sup>65</sup> DOS at paras 49–50.

<sup>66</sup> DOS at para 50.

Dr Lim gave evidence on, *inter alia*, the applicable ethical rules binding medical professionals like Dr Chan and the risks of Xanax consumption, including the chances of addiction.

### **Issues to be determined**

40 Dr Chan agreed that he owed Ms Tiong a duty of care to ensure Xanax was appropriate for Ms Tiong's consumption even though she was not his registered patient of SGH. Thus, it is not necessary for the court to determine whether Dr Chan owed Ms Tiong a duty of care when he gave her Xanax. The main issues regarding the claim that Dr Chan breached his duty of care to Ms Tiong are as follows:

- (a) Would a reasonably experienced psychiatrist in Dr Chan's position (*ie*, who was in an intimate relationship with Ms Tiong) administer Xanax to Ms Tiong?
- (b) How many tablets of Xanax did Dr Chan give to Ms Tiong, and across what period of time?
- (c) Would a reasonably experienced psychiatrist in Dr Chan's position have foreseen that Ms Tiong would become addicted to Xanax based on the number of tablets given by Dr Chan?
- (d) If Dr Chan had breached his duty of care to Ms Tiong, did the breach result in harm to Ms Tiong?

41 The main issues regarding the claim under the rule in *Wilkinson* are as follows:<sup>67</sup>

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<sup>67</sup> POS at para 6.

- (a) Did Dr Chan make the Statement?
- (b) Was Ms Tiong induced by the Statement to enter into and/or continue with their sexual relationship?
- (c) Did Dr Chan, when making the Statement, intend to cause Ms Tiong psychiatric harm?
- (d) Did Ms Tiong suffer psychiatric harm as a result of her discovery that the Statement was false?

### **My decision**

#### ***Medical negligence***

##### *The applicable law*

42 The present case involves an interesting application of otherwise trite tort law principles, *ie*, the duty of care owed by a doctor to his patient who is simultaneously his paramour. Therefore, it is useful to outline the applicable principles in greater detail.

43 It is axiomatic that to establish a claim under the tort of negligence, the claimant must demonstrate that (a) the defendant owes the claimant a duty of care; (b) the defendant breaches this duty of care by acting (or omitting to act) below the standard of care required of him; (c) the defendant’s breach of duty caused the claimant to suffer losses; (d) the claimant’s losses are not too remote; and (e) such losses can be adequately proved and quantified (*Spandeck Engineering (S) Pte Ltd v Defence Science & Technology Agency* [2007] 4 SLR(R) 100 (“*Spandeck*”) at [21], citing *Clerk & Lindsell on Torts* (Sweet & Maxwell, 19th Ed, 2006) at para 8-04).

44 In *Spandeck* at [73]–[85], the Court of Appeal laid down the applicable test to determine the existence of a duty of care:

- (a) First, the claimant has to satisfy the threshold question of factual foreseeability, *ie*, whether the defendant ought to have known that the claimant would suffer damage from his carelessness.
- (b) Second, there must be sufficient legal proximity between the claimant and the defendant for a duty of care to arise.
- (c) Third, if the first two questions are answered in the affirmative, the *prima facie* duty that arises should not be negated by countervailing policy considerations.

45 As for the standard of care that the defendant in cases of medical negligence is held to, the applicable law is derived from *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582 (“*Bolam*”) and *Bolitho v City and Hackney Health Authority* [1998] AC 232 (“*Bolitho*”). The Court of Appeal in *Hii Chii Kok v Ooi Peng Jin London Lucien and another* [2017] 2 SLR 492 (“*Hii Chii Kok*”) held at [101]–[102] that the *Bolam* test with the *Bolitho* addendum (“the *Bolam-Bolitho* test”) applies to determine the standard of care in the context of diagnosis and treatment. A summary of the *Bolam-Bolitho* test was provided at [76] of *Hii Chii Kok* and I reproduce the relevant excerpts below:

...

- (c) The *Bolam* test only requires that the defendant’s practice was supported by a responsible body of opinion within the profession, even if there is another body of opinion which disagrees.
- (d) The *Bolitho* addendum consists of a two-stage inquiry of, first, whether the experts holding the opinion had directed their minds to the comparative risks and benefits relating to the

matter, and second, whether the opinion was defensible (meaning that it was internally consistent *and* did not contradict proven extrinsic facts relevant to the matter).

...

[emphasis in original]

*My findings*

46 I observe at the outset that Dr Chan also does not dispute that he owes a duty of care to Ms Tiong. Accordingly, whether Dr Chan and Ms Tiong was in a *de facto* doctor-patient relationship may not be pertinent as that inquiry goes only towards supporting Ms Tiong’s case that Dr Chan owed her a duty of care. Therefore, the only issue that is before me is whether Dr Chan has breached his duty of care owed to Ms Tiong by giving her Xanax.

(1) The general professional standard

(A) APPLICABILITY OF THE SMC ETHICAL CODE AND ETHICAL GUIDELINES

47 During the trial, Ms Tiong relied heavily on the SMC Ethical Code and Ethical Guidelines (2016 Edition) (“the ECEG”) and Dr Chan’s admission during the Defamation Suit that he acted in breach of the ECEG by giving medication to Ms Tiong.<sup>68</sup>

48 The Introduction and Preamble of the ECEG states as follows:

...

- (4) The ECEG was developed after consultations with the medical profession and encapsulates the ethical and professional standards expected of medical doctors by your professional peers as well as the community.
- (5) The ECEG will enable the profession to achieve universal standards of medical ethics, with due

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<sup>68</sup> Transcript (27 April 2022) at p 8 line 13 to p 9 line 1; PBOD at pp 844–845.

consideration for our own special circumstances, in order for you to provide good medical care and fulfil your professional roles. The ECEG provides a framework to guide your own professional judgment. It is imperative for doctors to internalise the ethical responsibilities under the ECEG and to discharge such responsibilities in accordance with its underlying spirit and intent.

...

- (8) The application of the ECEG will vary according to individual circumstances but the principles should not be compromised. You are expected to use your judgment in applying the principles to the various situations that you will face as a doctor, and you must be prepared to explain and justify your decisions and actions. The assessment of the appropriateness of your professional conduct vis-à-vis the ECEG is largely a matter of peer review, i.e. the opinions of fair and reasonably minded doctors of suitable qualifications and experience.

49 It is clear from the above that the ECEG was developed with input from members of the medical profession and is influential in guiding a doctor's exercise of his or her clinical judgment. Dr Lim also confirmed that the ECEG is applicable to psychiatrists.<sup>69</sup>

50 In *Ang Peng Tiam v Singapore Medical Council and another matter* [2017] 5 SLR 356 ("*Ang Peng Tiam*") at [78], the High Court with three Judges observed the following of the SMC Ethical Code and Ethical Guidelines (2002 Edition):

We agree that in general, a doctor may and should depart from guidelines when there are good reasons for him to do so. A doctor ought not to suspend his clinical judgment, simply because there are guidelines which, after all, are plainly not intended for slavish adherence, but are there to assist and guide a doctor in the exercise of his clinical judgment. A doctor should evaluate the pros and cons of various treatment options for his patient having regard to the specific circumstances of each case.

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<sup>69</sup> Transcript (22 April 2022) at p 19 lines 25 to p 20 line 2.

51 Reading the above extract together with the Introduction and Preamble of the ECEG cited at [48] above, it is clear that the ECEG functions as a *guide* for doctors in the exercise of their clinical judgment. A breach of the ECEG does not *ipso facto* lead to the automatic conclusion that a doctor has acted in breach of the general professional standard, though it may *suggest* that the general professional standard may not have been complied with. Thus, a professional conduct guide serves as a common accepted practice for professionals in that particular industry to adhere to unless there are good reasons not to do so. While a professional conduct guide may inform the court as to the applicable standard of care that may be expected of that professional, that is not the be all and end all. An inquiry as to whether a professional has breached his or her standard of care is ultimately a fact-centric inquiry that requires the court to consider all the circumstances of the case. Indeed, in *Johnson v Bingley* [1997] PNLR 392, the English High Court held with respect to the UK Law Society's Guide that a breach of the rules in that guide does not *ipso facto* and of necessity lead to the conclusion that the solicitor was negligent.

52 Therefore, this instant case is not about whether Dr Chan had breached the professional standard of a psychiatrist when he gave Ms Tiong Xanax. The governing body that regulates and polices the professional conduct of psychiatrists is the SMC. Instead, Ms Tiong's claim is that Dr Chan was negligent when he gave her Xanax. This resulted in her experiencing several side effects and her consequential addiction to Xanax. In the course of the trial, Ms Tiong's counsel spent a considerable amount of time to show that Dr Chan had breached the ECEG when he gave Xanax to Ms Tiong. Ms Tiong alleges that she is Dr Chan's *de facto* patient.

53 In my view, as I have reiterated above, the central issue is not whether Dr Chan had breached the professional standard as prescribed by the ECEG.

Instead, the issue is whether Dr Chan was negligent when he gave Ms Tiong Xanax. Turning to this inquiry, there can be a situation in which Dr Chan could have complied with the ECEG to the very letter and therefore did not breach any professional standard, but could still be negligent in giving Ms Tiong Xanax. Conversely, there can be a situation in which Dr Chan could have breached the ECEG and yet not be negligent in giving Ms Tiong Xanax. In addition, there can be a situation in which Dr Chan could have breached the professional standard and also be negligent in giving Xanax to Ms Tiong. This third scenario is Ms Tiong's allegation. In this situation, the court should not be concerned about whether Dr Chan breached his professional standard but should focus on whether Dr Chan was negligent when he gave Ms Tiong Xanax.

54 However, as Ms Tiong spent a considerable amount of time at the trial and in her submissions alleging that Dr Chan had breached his professional standard, I shall examine this matter, although I stress that it is clearly not relevant to the outcome of her claim.

55 Ms Tiong argues that Dr Chan breached the following Guidelines in the ECEG when he passed her the Xanax tablets prescribed to him by SGH:<sup>70</sup>

**B1. Decisions about providing services**

In deciding the care and treatment you provide and avail to patients, you have a responsibility to make your decisions in an objective manner and in the patients' best interests. This means:

- (1) You must not unfairly discriminate against patients, or show prejudice or personal bias against any patient characteristic, for example, gender, race, religion, creed, social standing, disability, sexual orientation or socio-economic status.

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<sup>70</sup> Plaintiff's Bundle of Authorities (Volume 1) ("1PBOA"), Tab 12, pp 407, 409, 412, 421; Transcript (28 April 2022) at p 32 line 12 to p 33 line 14.

...

- (4) You must not provide care to yourself or those close to you where this involves controlled drugs, drugs with significant potential for dependence or psychiatric care. In addition, you must not issue medical certificates to yourself.
- (5) Generally, you may provide care to yourself and those close to you when it is for routine continued care for stable conditions, minor conditions, or in an urgent/emergency situation when no other suitable doctor is available in a timely manner. If you choose to provide significant care such as major surgery to those close to you, you must ensure that your objectivity, judgment and professionalism in medical decision making are not compromised to patients' detriment due to your emotional proximity.

...

### **B3. Medical records**

Maintaining clear and accurate medical records enhances good patient care and ensures high quality continuity of care. Keeping good medical records means:

- (1) You must maintain clear, legible, accurate and contemporaneous medical records of sufficient detail to enable a high quality of continuing care.
- (2) You must make your records at the time of your engagement with patients, or as soon as possible afterwards.
- (3) Your medical records must include all clinical details about your patients, discussions of investigation and treatment options, informed consents, results of tests and treatments and other material information. If you are delegated an aspect of care, you may confine your records to what is relevant to your portion of care.

...

### **B5. Prescription of medicine**

Doctors have the unique privilege of prescribing medicine and treatments. This is a serious responsibility and must never be abused. Prescribing responsibly means:

- (1) You must prescribe, dispense or supply medicines only to patients under your care.

...

#### **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. Maintaining propriety means:

- (1) You must not breach sexual boundaries with your patients by inappropriate physical contact or any sexualised behaviour of any kind through words, gestures, actions or other behaviour designed to arouse sexual feelings or desires.
  - (2) When you need to ask intimate questions or examine intimate parts of the body, you must explain the need to do so and be sensitive to any discomfort or hesitancy on patients' part and reconsider your approach if they express discomfort.
  - (3) You must ensure that during clinical examination, your approach would leave reasonable patients feeling safe, secure and comfortable in your presence, without any misconception or fear that their modesty is being compromised or that you are taking advantage of them for your own gratification.
- ...
- (6) If patients exhibit sexualised behaviour towards you, you must not reciprocate. You must discourage such behaviour and if ultimately necessary, you may formally end the patient-doctor relationship.

56 Counsel for Ms Tiong also made reference to the SMC Handbook on Medical Ethics (2016 Edition) ("the Handbook") at B1.2, which appears to be inconsistent with ECEG Guideline B1.5. The Handbook states as follows at B1.2:<sup>71</sup>

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<sup>71</sup> 1PBOA, Tab 13, pp 487–488.

**B1.2 – Care for self and those with whom you have close personal relationships**

Self-prescribing or dispensing of medicines for your own consumption is discouraged, but it is acknowledged that doctors often do treat themselves. You may also be asked to prescribe medicines for or treat relatives or friends for different complaints and medical problems. When this is done on an informal basis without proper and adequate clinical evaluations and documentation, there are inherent risks, such as:

- (a) There may be a history of drug allergy that has not been volunteered or enquired about.
- (b) The medicines may not be, or may no longer be, in terms of type or dosage, appropriate for the medical conditions they are meant to treat.
- (c) The patients may be mistaken in their diagnoses.
- (d) The patients' medical conditions may have changed and require review, but providing medicine leads to complacency.
- (e) There is no continuity of care.

The risk of treating persons emotionally close to you is that your judgment may be impaired and you fail to act in patients' best interests. While you may feel that you have the right to help those close to you, equally, as patients, those close to you have the right to expect clinical objectivity from you. Your obligation to provide objective and appropriate care is not waived even if the patients who are close to you agree to take the risk of not receiving objective care from you. *Where you feel that your judgment may be impaired due to your close relationships with the patients, you should seriously reconsider whether to provide treatment.*

***Certain circumstances are clearly inappropriate for you to treat yourself or those close to you, when they involve:***

- (a) Controlled drugs and any drugs with significant potential for dependence.***
- (b) Psychotropic medicines.***
- (c) Psychiatric treatment.***
- (d) Medical certification for yourself.***

...

You may provide self-care or care to those close to you when:

- (a) It is routine replenishment of medicines for stable conditions.
- (b) It is for simple, minor conditions, such as common colds, gastroenteritis or simple lumps and bumps.
- (c) It is an emergency situation, or you can help save a life until appropriate help is available.
- (d) There is an urgent need to avoid serious deterioration of a medical condition or a need to ensure the patients' health.
- (e) There is a need to alleviate otherwise unbearable pain.

To ensure appropriate care to yourselves and those close to you, you should:

- (a) Make an objective evaluation of the medical condition and maintain objectivity throughout the course of your care.
- (b) Document the diagnosis and management in medical records if the medical condition is serious or chronic. Although it is never good practice to treat without making medical records, for simple treatments for minor acute conditions, it is acknowledged that this may be impractical. You should therefore exercise judgment in this.
- (c) Seek another opinion when indicated and certainly when intervention is a significant one such as surgery.

When in doubt, you should ask the patients to return to see their doctors or refer to other doctors.

**If you choose to provide significant care to those close to you, such as major surgery, you have an obligation to ensure that your objectivity, judgment and professionalism in medical decision making are not compromised to patients' detriment due to your emotional proximity.**

[emphasis in original in bold; emphasis added in italics]

57 Counsel for Ms Tiong accepted that when the Handbook conflicts with the ECEG, the latter prevails.<sup>72</sup> The Preface to the Handbook makes this clear:

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<sup>72</sup> 1PBOA, Tab 13, p 461; Transcript (22 April 2022) at p 28 lines 19–22.

... You may take reference from this Handbook when evaluating whether you have successfully met your ethical obligations under the 2016 ECEG in a particular set of circumstances. However, *if there are any apparent inconsistencies between the 2016 ECEG and this Handbook, the 2016 ECEG will prevail.*

[emphasis added]

58 Therefore, in my assessment of whether the general professional standard has been breached, I place greater weight on the ECEG. My reliance on the Handbook is limited to when the meaning of the ECEG is unclear.

59 Together with the ECEG Guidelines reproduced at [55] above, Ms Tiong also relies on Dr Lim’s expert opinion that Dr Chan “ought to have formalized [*sic*] her treatment according to the SMC Guidelines or refer [her] to his colleagues” if Dr Chan deemed her to suffer from an adjustment disorder with anxiety.<sup>73</sup> Ms Tiong also relies heavily on Dr Lim’s expert evidence as follows:<sup>74</sup>

It is my considered opinion that if doctors decide to treat family members or close friends, they should be aware of the hazards of an out-of-office consultation and to schedule a formal clinic visit if a discernible clinical entity becomes evident. Moreover, there should be *a low threshold for referral to a colleague if they harbour doubts over their clinical judgment which in this case if the plaintiff appeared to develop physical dependence or tolerance or a diagnostic entity appeared to emerge.*

[emphasis added]

Ms Tiong relies on the expert evidence of Dr Lim to argue that the standard of care of a doctor when treating his loved ones “should be higher than if they were just ordinary patients”.<sup>75</sup> She claims that Dr Chan had “[f]ailed to observe a *low*

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<sup>73</sup> Joint Core Expert Report 2 (“JCER 2”) at p 4; Transcript (27 April 2022) at p 9 lines 9–25.

<sup>74</sup> JCER 2 at p 3.

<sup>75</sup> Plaintiff’s Closing Submissions (“PCS”) at para 116.

*threshold* for referring out when she was emotionally affected by discovering his unfaithfulness through the lurid details from the [S]creenshots” [emphasis in original].<sup>76</sup>

60 Dr Chan claims that while he did conduct a psychiatric assessment on Ms Tiong, he did not deem Ms Tiong to be suffering from “any psychiatric disorder, be it an anxiety disorder or adjustment disorder”, although she might have symptoms of anxiety, stress, chest discomfort, shortness of breath and had trouble sleeping.<sup>77</sup>

61 Considering the ECEG Guidelines cited at [55] above together with Dr Lim’s expert evidence, I find that Dr Chan’s conduct is consistent with and does not infringe the ECEG.

(B) ECEG GUIDELINE B1.5

62 First, according to Dr Lim, ECEG Guideline B1.5 provides that doctors may treat a loved one not registered as a patient if the loved one suffers from a “minor condition”.<sup>78</sup> Dr Lim also opined in his expert report that “[t]he nuances from this statement seem to me that there are rules but no rulebook”.<sup>79</sup> In court, he explained the preceding sentence as follows:<sup>80</sup>

- A. Rulebook is specific, your Honour. Rulebook seems to me a very specific kind of instruction under what condition you should not embark on further treatment, under what condition you should do certain tests. So I thought these

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<sup>76</sup> PCS at para 96(b).

<sup>77</sup> Transcript (27 April 2022) at p 11 lines 10–12, p 13 lines 7–12.

<sup>78</sup> Transcript (22 April 2022) at p 32 lines 13–22.

<sup>79</sup> JCER 2 at p 3.

<sup>80</sup> Transcript (22 April 2022) at p 24 lines 1–7.

are the rules specific rulebook but here is *the statement seems to be a very general statement*, your Honour.

[emphasis added]

63 It is clear from Dr Lim’s testimony that there is no blanket rule prohibiting doctors from providing medical care to their loved ones. On the contrary, ECEG Guideline B1.5 is a permissive rule specifying that doctors may provide medical care to their loved ones where the patient suffers from “stable conditions, minor conditions, or in an urgent/emergency situation when no other suitable doctor is available in a timely manner.” According to Dr Lim’s expert report, the question is whether the patient’s condition fell within one of these descriptions in the view of the doctor at the time he assessed the patient.<sup>81</sup>

Ultimately, the literature on ethics is clear that *physicians have the ultimate say in what they are and are not comfortable with*. If they feel they cannot be objective, they should feel free to say they cannot care for the patient, whoever that patient might be.

In this case, [Dr Chan] for reasons above appeared to determine that he could treat [Ms Tiong] with Xanax in an out of office consultations and not register [Ms Tiong] as a patient.

[emphasis added]

64 According to Dr Chan, he observed that Ms Tiong suffered from symptoms of anxiety, but did not suffer from a psychiatric disorder:<sup>82</sup>

Q. So if she was not suffering any psychiatric illness, why did you prescribe a drug that has a propensity for addiction?

A. Well, Ms Tiong had symptoms of anxiety, including feeling very stressed, chest discomfort, shortness of breath, even trouble sleeping, so I gave her the medication in the hope of alleviating the symptoms, but she does not suffer from any formal psychiatric disorder.

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<sup>81</sup> JCER 2 at p 3.

<sup>82</sup> Transcript (27 April 2022) at p 13 lines 4–12.

65 Given Dr Chan’s view that Ms Tiong did not suffer from a psychiatric disorder, it can be inferred that Dr Chan assessed Ms Tiong to be suffering from, at best, a minor condition. This is consonant with Dr Lim’s expert report:<sup>83</sup>

It is conceivable that [Dr Chan] judged at the time that he was professionally competent and in

- a. the best position to treat someone he was in a close personal relationship with in that specific situation and
- b. that he assumed that he already knew [Ms Tiong]’s history based on their relationship and
- c. he believed that his psychiatric peers would agree that prescribing in this amount and dosage of Xanax situation was consistent with acceptable medical practice.

He might also have believed that he was personally responsible for the well-being of his significant other and possibly that his clinical judgment at the time was that he was dealing with *a self limiting minor episode*.

[emphasis added]

66 According to Dr Lim, the term “self-limiting” describes disorders that run their course in a short-lived manner, *ie*, only over a brief period of time.<sup>84</sup> An example of a self-limiting minor episode is infrequent anxiety attacks.<sup>85</sup> A patient suffering from a self-limiting minor episode would recover without treatment.<sup>86</sup> Dr Lim’s expert evidence supports Dr Chan’s own testimony that he deemed Ms Tiong to only be suffering from *symptoms* of anxiety, a minor condition, and not a formal psychiatric disorder. Accordingly, Dr Chan’s prescription of Xanax to Ms Tiong falls within the permissive rule in ECEG Guideline B1.5.

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<sup>83</sup> JCER 2 at p 3.

<sup>84</sup> Transcript (22 April 2022) at p 10 lines 7–15.

<sup>85</sup> Transcript (22 April 2022) at p 68 lines 1–2.

<sup>86</sup> Transcript (22 April 2022) at p 11 lines 3–12.

67 Further, Dr Lim also gave evidence that he would have been similarly prepared to prescribe Xanax to a loved one:<sup>87</sup>

Q. So my follow-up question, Dr Lim, is if you were in Dr Chan's shoes, would you have administered Xanax to the plaintiff without registering her as a patient?

A. So the question if I were in Dr Chan's shoes.

Q. Would you?

A. Now, it happens that as psychiatrist myself and Dr Chan being a senior psychiatrist have prescribed Xanax in all our careers, because there are so many patients that need Xanax. He and me have seen the therapeutic effect of Xanax. He has seen the adverse effects of Xanax. He has seen the withdrawal effects of Xanax. He has also seen a Xanax patient with dependency and how to treat dependency.

This is our -- there are 270 psychiatrists only in Singapore. This is our bread and butter. *So I would take this position that if it's my family member, if it's self-limiting, I would have prescribed or given Xanax on the belief that there will be a relief of the anxiety*, but if it doesn't, then I may have to think of could there be something else underneath the symptoms of anxiety which Xanax cannot treat.

...

Q. *So would I be correct to say if you were in Dr Chan's shoes you would administer the Xanax to the plaintiff? Yes or no.*

A. *I would if I know my family member or this person very well. I would.*

[emphasis added]

68 Having regard to the above, Dr Chan did not breach ECEG Guideline B1.5 when he gave Xanax to Ms Tiong. It follows that Ms Tiong's claim that Dr Chan's prescription of Xanax to her ran afoul of ECEG Guideline B5,<sup>88</sup>

<sup>87</sup> Transcript (22 April 2022) at p 13 line 11 to p 14 line 24.

<sup>88</sup> PCS at para 98.

which is a *general statement* that doctors must only prescribe medicines to “patients under [their] care”, fails. In any case, I note that Ms Tiong was not registered as Dr Chan’s patient and is best characterised as a loved one. Thus, the applicable rule would be ECEG Guideline B1.5 and not ECEG Guideline B5.1.

(C) ECEG GUIDELINE B1.1

69 As for ECEG Guideline B1.1, the explanatory note in the Handbook provides that doctors “need to be careful not to allow [their] personal prejudices and biases to influence [their] management of [their] patients”. In a similar vein, it is clear that ECEG Guideline B1.1 does not equate to a blanket rule against providing medical care for one’s loved ones. The key inquiry is whether there is evidence that the doctor displayed any personal bias towards his loved one which had a causative link to his management of that person.

70 As stated at [64]–[65] above, Dr Chan had conducted a psychiatric assessment of Ms Tiong and in his judgment, found it appropriate to treat her. There is no evidence that any personal biases had crept into this assessment. In his expert report, Dr Lim also expressed an objective opinion on Dr Chan’s prescription of Xanax to Ms Tiong:<sup>89</sup>

If [Dr Chan], in prescribing the Xanax, communicating to his significant other that it was intended for infrequent use for anxiety relief, there is usually no requirement to register [Ms Tiong] as a patient. The analogy, if I may say so would be the use of Ventolin Inhaler (puffs) that doctors often administer to their significant other only to be used when the latter has breathing problems and to express concern when the inhaler is used more than three times a day. Other examples included doctors prescribing potent analgesics NSAID to their significant others for a variety of pain problems that occurred infrequently in rheumatism, migraine etc.

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<sup>89</sup> JCER 2 at p 4.

## (D) ECEG GUIDELINE B1.4

71 As for ECEG Guideline B1.4, I am of the view that Xanax is neither a “controlled drug” nor a drug “with significant potential for dependence or psychiatric care”. Parties agree that the term “controlled drug” has a specific legal definition in the Misuse of Drugs Act 1973 (2020 Rev Ed), and that Xanax is not a “controlled drug”.<sup>90</sup> As for the second definition, Dr Lim opined in his expert report that the risk of dependency associated with Ms Tiong’s own consumption rate of Xanax in the quantities she alleged is low and the daily intake is “still within the recommended maximum daily dose by the international authorities”.<sup>91</sup> Dr Chan similarly gave evidence that the risk of dependency associated with Ms Tiong’s consumption of Xanax he gave is low.<sup>92</sup> According to Dr Chan, his provision of limited quantities of Xanax for a short period of time does not amount to providing psychiatric care.<sup>93</sup> Given Dr Lim’s expert evidence, which the parties agreed to be bound, the quantity of Xanax allegedly taken by Ms Tiong would not result in “*significant* potential for dependence or psychiatric care” [emphasis added].

72 During the course of the trial, counsel for Ms Tiong continually placed emphasis on the fact that Xanax (Alprazolam) is listed in the Schedule to the Poisons Act. The mere fact that Xanax is listed in the Schedule to the Poisons Act does not mean it is a drug with “significant potential for dependence or psychiatric care”. As counsel for Dr Chan points out, numerous other common drugs are listed in the Schedule to the Poisons Act, such as Amoxycillin which

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<sup>90</sup> Transcript (27 April 2022) at p 38 line 20 to p 39 line 7.

<sup>91</sup> JCER 2 at pp 7–8.

<sup>92</sup> Transcript (27 April 2022) at p 31 lines 13–16.

<sup>93</sup> Transcript (27 April 2022) at p 31 line 19 to p 32 line 5.

is an antibiotic commonly used to treat bacterial infections; Simvastatin which is commonly given to lower cholesterol; and Cetirizine, also known as Zyrtec, an over-the-counter anti-histamine which can be bought from local pharmacies without a prescription.<sup>94</sup> The Schedule to the Poisons Act also lists Salbutamol, otherwise known as Ventolin, which Dr Lim noted that “doctors often administer to their significant other only to be used when the latter has breathing problems”.<sup>95</sup>

73 The above analysis at [62]–[69] also puts to rest Ms Tiong’s claim that Dr Chan acted in breach of ECEG Guideline B1.4. It is clear from Dr Lim’s testimony and the overall tenor of the ECEG that doctors are granted a certain degree of latitude and discretion to determine whether it would be appropriate to treat a loved one.

(E) ECEG GUIDELINE C4

74 Ms Tiong claims that Dr Chan breached ECEG Guideline C4 by continuing to have sexual relations with her after providing medication to her.

75 I agree with the counsel for Dr Chan that Ms Tiong’s interpretation of ECEG Guideline C4 is untenable. Dr Chan and Ms Tiong were lovers *before* he started to give Xanax to her. I agree with Dr Chan’s counsel that it cannot be the case that a doctor who provides medication to his wife to assist her in managing short-term symptoms such as difficulty in sleeping can no longer have sexual relations with her as she would become his “patient”.<sup>96</sup> The correct understanding of this provision is that doctors are prohibited from entering into

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<sup>94</sup> Defendant’s Closing Submissions (“DCS”) at paras 124–125.

<sup>95</sup> JCER 2 at p 4.

<sup>96</sup> DCS at para 140.

a sexual relationship with their patients, *ie*, the situation where the doctor comes to know the patient in his professional capacity as the treating physician. I agree that this prohibition does not apply when a doctor provides medication to a loved one whom they already have a pre-existing sexual relationship with, like in this instant case.<sup>97</sup>

(F) ECEG GUIDELINE B3

76 Ms Tiong argues that Dr Chan had breached ECEG Guideline B3 by failing to maintain clear and accurate medical records when he provided Xanax to Ms Tiong. The failure to maintain proper clinical records is completely irrelevant to the issue of whether Dr Chan was negligent when he gave Xanax to Ms Tiong. As I have stated above, this is a matter going towards the professional conduct of psychiatrists and which is only relevant in an inquiry before a tribunal convened by the SMC.

77 Be that as it may, this argument is in any case contradicted by Dr Lim’s joint expert report. Dr Lim states in his report that it is not necessary to maintain contemporaneous medical records when providing short-term, infrequent treatment.<sup>98</sup> When questioned by Ms Tiong’s counsel (Mr Ong), Dr Lim also noted that Dr Chan was not required to carry clinical notes when he provided Xanax to Ms Tiong as this was done through an “out-of-office consultation between a couple”.<sup>99</sup>

MR ONG: Dr Lim, would you agree that before administering Xanax to the plaintiff, Dr Chan should ensure he has good clinical notes to

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<sup>97</sup> DCS at para 140.

<sup>98</sup> JCER 2 at p 4.

<sup>99</sup> Transcript (22 April 2022) at p 44 lines 3–15.

confirm his diagnosis in case he should have to refer up?

A. Your Honour, as far as I understand this was an out-of-office consultation. *I don't think a doctor carries clinical notes in a (unclear) or out-of-office consultation.*

COURT: Sorry, so what was your answer?

A. I don't think doctors -- the learned counsel asked me whether he should have his clinical notes but *this was an out-of-office consultation between a couple. So doctors don't carry clinical notes in such a setting.*

[emphasis added]

(G) CONTINUED PRESCRIPTION OF XANAX DESPITE MS TIONG'S SUICIDE ATTEMPT

78 Finally, Ms Tiong argues that Dr Chan acted in breach of the general professional standard by continuing to give her Xanax even though she attempted suicide in front of him during the Eastern Europe Trip.<sup>100</sup> I note that this point does not appear to be tied to any of the Guidelines in the ECEG, but appears to be premised on Dr Chan's general duties as a psychiatrist.

79 Ms Tiong's attempted suicide in front of Dr Chan is suspect and unsupported by evidence. Though Dr Chan admitted that there was "an incident in Prague" with "a knife", he denied that it was a violent or suicidal episode. He claimed to have disarmed Ms Tiong "very quickly" and could not confirm that Ms Tiong was holding the knife to her throat.<sup>101</sup>

80 In any event, Ms Tiong's assertion is unsupported by contemporaneous evidence. There was no mention of Ms Tiong attempting suicide in the

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<sup>100</sup> PCS at paras 68, 93.

<sup>101</sup> Transcript (28 April 2022) at p 9 line 18 to p 12 line 17; Transcript (4 July 2022) at p 8 lines 1–9.

transcripts of the WhatsApp conversations between Ms Tiong and Dr Chan. Further, Ms Tiong's claim that she attempted suicide after discovering the WhatsApp Messages between Dr Chan and Dr Ong is incongruous with her desire to still marry Dr Chan, in spite of the salacious contents in the WhatsApp Messages (see [170] below). Ms Tiong has failed to establish, on a balance of probabilities, that she had attempted suicide in front of Dr Chan in the first place. I also accept the oral closing submission of counsel for Dr Chan that this allegation did not feature in any of Ms Tiong's pleadings or her affidavit of evidence-in-chief.<sup>102</sup> Accordingly, this argument is a non-starter and completely irrelevant.

(H) CONCLUSION ON THE GENERAL PROFESSIONAL STANDARD

81 Having regard to the totality of the circumstances and the evidence before me, I find that Dr Chan did not act in breach of the general professional standard when he gave Xanax to Ms Tiong, his then-girlfriend, without registering her as his patient. Dr Chan's actions were consistent with ECEG Guidelines B1, B3, B5 and C4.

(2) Dr Lim's objectivity as a joint expert

82 Counsel for Ms Tiong raised belatedly during reply submissions that Dr Lim's objectivity as a joint expert was in doubt as he, *inter alia*:<sup>103</sup>

- (a) failed to draw the court's attention to ECEG Guidelines B1.4 and B5.1;

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<sup>102</sup> Transcript (4 July 2022) at p 7 lines 1–14 and p 8 lines 9–22.

<sup>103</sup> Plaintiff's Reply Submissions ("PRS") at paras 63–64.

- (b) thought it was acceptable for Dr Chan to continue treating Ms Tiong whilst in the relationship;
- (c) overlooked that Ms Tiong’s “psychological harm was caused by [Dr] Chan’s betrayal”; and
- (d) was “unduly sympathetic to the fact that [Dr] Chan was also treating his own father with Xanax off the books and ignored the difference between [Dr] Chan’s father and [Ms Tiong’s] situation”.

83 I reiterate that parties agreed to be bound by the findings of Dr Lim well before the commencement of the trial. Seen in this light, Ms Tiong cannot now turn around and object to the court’s full consideration of Dr Lim’s evidence on the grounds that the expert evidence he gave was unfavourable to her case. In any event, I find that the alleged shortcomings in Dr Lim’s evidence raised by Ms Tiong at [82] above do not raise any doubts as to the objectivity of his evidence. On the contrary, it is in fact internally consistent with his evidence that “the literature on ethics is clear that physicians have the ultimate say in what they are and are not comfortable with”.<sup>104</sup> It also comports with the High Court’s observations in *Ang Peng Tiam* that the ECEG is meant to *assist* a doctor’s exercise of his clinical judgment (see [50] above). I, therefore, find that Dr Lim’s evidence is credible and objective, and continue to accord considerable weight to his expert evidence. In any event, I note that counsel for Ms Tiong states, in his oral closing submissions, that he “unreservedly withdraw any allegation that [Dr Lim] was biased”.<sup>105</sup>

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<sup>104</sup> JCER 2 at p 3.

<sup>105</sup> Transcript (2 July 2022) at p 32 lines 1–2.

(3) Frequency of Xanax given by Dr Chan

84 Dr Lim wrote in his report that “[w]ithout knowledge of the dosage used per day and how long the duration was the 90 tablets used, it would not be possible to evaluate the risk of tolerance or physical dependency”.<sup>106</sup> Thus, the length of time for which Ms Tiong was given Xanax by Dr Chan is a critical issue. Ms Tiong claims that Dr Chan started providing Xanax to her sometime in the first half of 2017, while Dr Chan claims that he only provided Xanax to Ms Tiong once in early May 2018.

85 I find that Dr Chan’s version of the facts should be preferred over Ms Tiong’s version. I shall now explain the reasons for my conclusion.

86 Ms Tiong’s evidence on this crucial pillar of her case was gravely inconsistent and irreconcilable. She gave at least five different and inconsistent versions of when Dr Chan first provided her with Xanax:

- (a) February 2017 in her 6<sup>th</sup> Affidavit filed in HC/SUM 5337/2020 dated 4 December 2020<sup>107</sup> (“6<sup>th</sup> Affidavit”) and in the Reply to Defence dated 17 June 2020 (“Reply to Defence”);<sup>108</sup>
- (b) March 2017 in her Affidavit of Evidence-in-Chief affirmed on 4 February 2022 (“AEIC”);<sup>109</sup>
- (c) mid-2017 in her Reply Affidavit filed in HC/SUM 4089/2020 dated 6 October 2020 (“5<sup>th</sup> Affidavit”);<sup>110</sup>

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<sup>106</sup> JCER 2 at p 9.

<sup>107</sup> Bundle of Affidavits (“BA”), Tab 9, p 184 at para 6.

<sup>108</sup> BA, Tab 9, p 233 at para 17.

<sup>109</sup> ST at para 7.

<sup>110</sup> BA, Tab 7, p 72 at para 9.

- (d) May 2017 during cross-examination by counsel for Dr Chan;<sup>111</sup>  
and
- (e) June 2017 in her Further and Better Particulars of the Statement of Claim (Amendment No. 2) and Reply Pursuant to Request dated 3 August 2020, dated 17 August 2020 (“F&BP”).<sup>112</sup>

87 Ms Tiong gave eight different versions on the critical issues of (a) the frequency with which Dr Chan purportedly gave her Xanax and (b) the quantity of Xanax she received from Dr Chan. I summarise these different versions<sup>113</sup> in tabular form and attach as Annex 1 to this Judgment. Counsel for Ms Tiong reviewed the tabular summary and confirmed that it accurately reflected Ms Tiong’s various positions during the course of the proceedings.<sup>114</sup>

88 Ms Tiong herself agreed that she gave inconsistent evidence on oath regarding when Dr Chan first provided her with Xanax.<sup>115</sup> The fact that Ms Tiong gave so many different and inconsistent versions pertaining to this critical issue was highly troubling and raised serious doubts about her reliability and credibility as a witness. Further, Ms Tiong’s claim that Dr Chan started prescribing her Xanax in the first half of 2017 is inconsistent with the contemporaneous evidence.

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<sup>111</sup> Transcript (20 April 2022) at p 51 line 25 to p 52 line 1.

<sup>112</sup> Set Down Bundle, Tab 8, p 106.

<sup>113</sup> Defendant’s Bundle of Documents (“DBOD”), Tab 5.

<sup>114</sup> Transcript (26 April 2022) at p 4 lines 12–14.

<sup>115</sup> Transcript (20 April 2022) at p 26 lines 5–9.

89 First, during the course of their relationship, Ms Tiong and Dr Chan exchanged WhatsApp messages almost on a daily basis.<sup>116</sup> However, the transcripts of the WhatsApp messages between Ms Tiong and Dr Chan over the course of their 16-month relationship only contained *one* mention of Xanax on 8 May 2018 which is not disputed:<sup>117</sup>

[8/5/18, 8:13:13 AM] Hn Chan: Don't worry k

[8/5/18, 8:17:16 AM] Serene Tiong: Ok dear

[8/5/18, 8:17:46 AM] Serene Tiong: What time did u wake up today

[8/5/18, 8:20:08 AM] Serene Tiong: The xanax is good. Can u get me some pls? Thanks

[8/5/18, 8:20:43 AM] Hn Chan: I'm not sure but it was still quite dark when I woke

[8/5/18, 8:20:53 AM] Hn Chan: No prob

[8/5/18, 8:22:04 AM] Serene Tiong: Thanks dear

90 Second, there was no mention of Xanax in the transcripts of their WhatsApp messages even when the pair were communicating about other drugs taken by Ms Tiong:<sup>118</sup>

[20/1/17, 11:09:10 PM] Hn Chan: Wat u doing now?

[20/1/17, 11:09:35 PM] Serene Tiong: Trying to sleep. Took sleeping pill

[20/1/17, 11:09:46 PM] Serene Tiong: Working tomorrow.

[20/1/17, 11:11:31 PM] Hn Chan: Good night dear

[20/1/17, 11:11:42 PM] Hn Chan: *I'll pass u the trazodone tomo*

[20/1/17, 11:11:46 PM] Serene Tiong: Good night dear

[20/1/17, 11:11:50 PM] Serene Tiong: Thanks

<sup>116</sup> Transcript (19 April 2022) at p 86 lines 16–20.

<sup>117</sup> Agreed Bundle of Documents (Volume 1 of 2) (“1AB”) at p 674; Transcript (21 April 2022) at p 84 lines 11–15.

<sup>118</sup> 1AB at pp 173, 196, 442 and 647.

...

[21/1/17, 10:16:53 AM] Hn Chan: U slept well?

[21/1/17, 10:20:16 AM] Serene Tiong: Yes. Took 2 tablets yesterday

[21/1/17, 10:25:36 AM] Hn Chan: Two of wat tablet?

[21/1/17, 10:28:10 AM] Serene Tiong: Different type

[21/1/17, 10:28:27 AM] Serene Tiong: Supplement and sleeping pill

[21/1/17, 10:29:17 AM] Hn Chan: *I wanna have u switched to trazodone*

[21/1/17, 10:29:34 AM] Hn Chan: Don't wan u on sleeping tabs

[21/1/17, 10:30:00 AM] Serene Tiong: Thanks dear

...

[13/2/17, 10:16:21 PM] Hn Chan: Sleeping all right? *Take the trazodone*

[13/2/17, 10:16:40 PM] Serene Tiong: Im sleeping ok.

[13/2/17, 10:16:56 PM] Hn Chan: ok good

[13/2/17, 10:17:02 PM] Hn Chan: Dream.of me :)

...

[6/11/17, 7:51:55 AM] Hn Chan: Morning dear

[6/11/17, 8:25:18 AM] Serene Tiong: Good morning dear

[6/11/17, 8:27:17 AM] Hn Chan: Slept well dear ?

[6/11/17, 8:30:54 AM] Serene Tiong: Good. *Took zopiclone..* Dear?

[6/11/17, 8:31:29 AM] Hn Chan: I slept well dear

[6/11/17, 8:31:36 AM] Hn Chan: How come still need Med ?

[6/11/17, 8:31:52 AM] Serene Tiong: That's great.. Need to adjust that's all

[6/11/17, 8:32:03 AM] Hn Chan: K dear

...

[27/4/18, 10:01:00 AM] Hn Chan: I'm not trying to be anything

...

[27/4/18, 10:01:50 AM] Hn Chan: I will still check in with u later

[27/4/18, 10:01:53 AM] Serene Tiong: *Will take more med*

[27/4/18, 10:02:11 AM] Hn Chan: What are u taking ?

[27/4/18, 10:03:21 AM] Serene Tiong: *Trittico and zopiclone*

[27/4/18, 10:03:38 AM] Serene Tiong: Increase to 2 each

[27/4/18, 10:04:18 AM] Hn Chan: *Don't take so much zopiclone*

[27/4/18, 10:04:32 AM] Hn Chan: *Trittixo can go up to 3*

[27/4/18, 10:04:49 AM] Serene Tiong: *I cut down to 1 zopiclone first then*

[27/4/18, 10:04:58 AM] Hn Chan: Yes please

[27/4/18, 10:05:04 AM] Serene Tiong: Thanks

[27/4/18, 10:05:37 AM] Serene Tiong: Actually Im drowsy now. But need to work. There is afternoon meeting

[27/4/18, 10:06:02 AM] Hn Chan: *It's the zopiclone if u took 2*

[27/4/18, 10:06:10 AM] Hn Chan: So don't take 2 please

[27/4/18, 10:06:13 AM] Serene Tiong: Yes I did

[27/4/18, 10:07:06 AM] Hn Chan: Tonight don't k

[27/4/18, 10:07:29 AM] Serene Tiong: I cant sleep.

[27/4/18, 10:15:28 AM] Hn Chan: I will get something for u

[27/4/18, 10:15:52 AM] Serene Tiong: Thanks

[27/4/18, 10:16:16 AM] Serene Tiong: Can pass me on Sunday

[27/4/18, 10:33:09 AM] Hn Chan: I'll get it first

[emphasis added]

91 The WhatsApp messages at [90] above were sent when Ms Tiong was taking medication to help her sleep. There was no reference to Xanax in the communications, although there were extensive references to other drugs. This suggests that Ms Tiong had not been provided Xanax by Dr Chan from 2017 to 7 May 2018. If she was given Xanax before May 2018, the WhatsApp messages would have mentioned Xanax in their numerous WhatsApp conversations about

what medication to take when she was feeling anxious or had trouble sleeping. This suggests that at the time of the WhatsApp messages, Dr Chan had only provided her with Trazodone and Zopiclone (which are not the subject matters of Ms Tiong's claim), and not Xanax which was only given sometime on or about 7 May 2018.

92 Ms Tiong alleged that she and Dr Chan met almost daily and, therefore, a large portion of their communication, including discussion on Xanax, was oral and not in the WhatsApp messages.<sup>119</sup> This allegation is difficult to believe. Based on Ms Tiong's allegation that Dr Chan gave her Xanax from as early as mid-2017, or even earlier from February 2017 (see [86] above), it is strange that there was no mention of Xanax in the WhatsApp messages at all until 8 May 2018 when other types of drugs were mentioned. The fact that Xanax was only mentioned on 8 May 2018 coheres with Dr Chan's account that he only started giving Ms Tiong Xanax from early May 2018. If Ms Tiong had been given Xanax from early 2017 as she alleged, it is strange that she would respond to Dr Chan that "[t]he [X]anax is good" in May 2018. Therefore, I find that Dr Chan's version of the facts, *ie*, that he only started giving her Xanax in early May 2018 is consistent with the contemporaneous evidence.

(4) Quantity of Xanax

93 On the issue of the quantity of Xanax given by Dr Chan, this is critically important as it will address the pertinent issues of whether Ms Tiong had side effects and whether she is addicted to Xanax. Ms Tiong's position before the trial was that Dr Chan gave her ten tablets of Xanax per month from February 2017 to March 2018 and approximately 100 tablets of Xanax in April 2018 and

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<sup>119</sup> Transcript (20 April 2022) at p 9 lines 2–7; Transcript (26 April 2022) at p 28 line 21 to p 29 line 3.

May 2018.<sup>120</sup> Accordingly, Ms Tiong alleged that Dr Chan gave her 330 tablets of Xanax in total.<sup>121</sup> Dr Chan's position is that he gave her 14 tablets of Xanax for short-term use in early May 2018.<sup>122</sup>

94 Ms Tiong's evidence on the quantity of Xanax is completely devoid of truth as there was a myriad of incredible critical discrepancies and serious inconsistencies. I find that Dr Chan's version of the quantity of Xanax tablets he gave to Ms Tiong should be preferred over Ms Tiong's version. I shall now set out the reasons for my finding.

95 When she took the stand, Ms Tiong vacillated repeatedly in her evidence on the quantity of Xanax tablets Dr Chan provided to her:<sup>123</sup>

| Month         | Number of Xanax tablets (0.5mg) Ms Tiong claims was provided to her by Dr Chan |                                            |                                            |
|---------------|--------------------------------------------------------------------------------|--------------------------------------------|--------------------------------------------|
|               | Position in Reply to Defence dated 17 June 2020                                | Position on 20 April 2022 during the trial | Position on 21 April 2022 during the trial |
| January 2017  | 0                                                                              | 0                                          | 0                                          |
| February 2017 | 10                                                                             | 0                                          | 0                                          |
| March 2017    | 10                                                                             | 0                                          | 0                                          |
| April 2017    | 10                                                                             | 0                                          | 0                                          |

<sup>120</sup> Reply at para 17.

<sup>121</sup> Transcript (21 April 2022) at p 33 lines 11–17.

<sup>122</sup> DOS at para 42.

<sup>123</sup> DBOD, Tabs 3 and 5; Transcript (21 April 2022) at p 9 line 19 to p 22 line 15, p 33 lines 11–17, p 48 line 20 to p 51 line 3.

|                                      |                                                                                 |                  |                  |
|--------------------------------------|---------------------------------------------------------------------------------|------------------|------------------|
| May 2017                             | 10                                                                              | 10               | 10               |
| June 2017                            | 10                                                                              | 10               | 10               |
| July 2017                            | 10                                                                              | 10               | 10               |
| August 2017                          | 10                                                                              | 0                | 0                |
| September 2017                       | 10                                                                              | 0                | 0                |
| October 2017                         | 10                                                                              | 0                | 0 – 10           |
| November 2017                        | 10                                                                              | 10               | 30               |
| December 2017                        | 10                                                                              | 10               | 10               |
| January 2018                         | 10                                                                              | 10               | 30               |
| February 2018                        | 10                                                                              | 10               | 30               |
| March 2018                           | 10                                                                              | 0                | 30               |
| April 2018                           | 100                                                                             | 20 – 30          | 60               |
| May 2018                             | 100                                                                             | 20               | 60               |
| <b>Total number of Xanax tablets</b> | <b>330</b><br>(The aggregate is 340 but Ms Tiong's pleaded case is 330 tablets) | <b>110 – 120</b> | <b>280 – 290</b> |

96 Apart from the above material inconsistencies, there were numerous other serious discrepancies in Ms Tiong's evidence during her cross-examination.

97 First, Ms Tiong's latest and final position on 21 April 2022, *ie*, that Dr Chan gave her 160 tablets of Xanax from May 2017 to March 2018 (see [95] above), is highly inconsistent with the contemporaneous records from SGH which she sought SGH to produce through the discovery process. Ms Tiong agrees that she has no evidence that Dr Chan obtained his supply of Xanax from sources other than SGH.<sup>124</sup> Based on SGH records, between May 2017 and March 2018, *ie* 10 months, Dr Chan was only prescribed 90 tablets of Xanax from Associate Professor Lee Tih Shih.<sup>125</sup> The next time Dr Chan was prescribed Xanax again was on 30 April 2018. The prescriptions from SGH records are summarised as follows:<sup>126</sup>

| <b>Date</b>   | <b>Number of Xanax tablets (0.5mg) prescribed to Dr Chan from SGH</b> |
|---------------|-----------------------------------------------------------------------|
| 8 May 2017    | 90                                                                    |
| 30 April 2018 | 63                                                                    |
| 21 May 2018   | 90                                                                    |
| <b>Total</b>  | <b>243</b>                                                            |

The contemporaneous records from SGH refute Ms Tiong's claim that Dr Chan provided her with 160 tablets of Xanax from May 2017 to March 2018.<sup>127</sup>

98 Second, Ms Tiong's position as of 21 April 2022 is that she had 50 unconsumed Xanax tablets left by end May 2018 and 49 unconsumed Xanax

<sup>124</sup> Transcript (21 April 2022) at p 54 lines 15–18.

<sup>125</sup> 1AB at pp 21 and 25.

<sup>126</sup> CHN at para 96; 1AB at pp 17–37.

<sup>127</sup> Transcript (21 April 2022) at p 54 lines 10–14.

tablets as of 25 September 2020.<sup>128</sup> This position came about on the third day of the trial after Ms Tiong had time to recalculate the number of Xanax tablets Dr Chan had given to her. Ms Tiong's position is, however, seriously internally inconsistent, as she also claimed that she consumed 20 Xanax tablets in total from June to July 2018 – ten in each month.<sup>129</sup> If the latter claim were true, Ms Tiong should have 29 to 30 Xanax tablets left by September 2020, and not 49 Xanax tablets as she submits.<sup>130</sup>

99 Ms Tiong's first explanation for her conflicting evidence was that she and her lawyers had failed to properly track the evidence in her affidavits:<sup>131</sup>

COURT: Ms Tiong, it is very simple. You cannot remember -- you tell us you cannot remember, but why did you give us so many months, so many different dates?

A. I'm so sorry about that. *The affidavit was prepared by my lawyer. Even my lawyers forgot about the time.* I'm so sorry, I signed it and I honour it.

[emphasis added]

100 Ms Tiong later claimed that her inconsistencies were due to “memory impairment, or memory loss”<sup>132</sup> as she was “just popping Xanax like candy”.<sup>133</sup> This explanation is a double-edged sword. Ms Tiong claims that she suffered memory lapses due to her consumption of Xanax to explain the inconsistencies in her evidence regarding the quantity of Xanax. This seems to suggest that her

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<sup>128</sup> Transcript (21 April 2022) at p 24 lines 17–19, p 55 lines 19–25.

<sup>129</sup> Transcript (21 April 2022) at p 66 line 25 to p 67 line 6.

<sup>130</sup> Transcript (21 April 2022) at p 69 lines 5–12.

<sup>131</sup> Transcript (20 April 2022) at p 53 lines 16–22.

<sup>132</sup> PCS at para 101.

<sup>133</sup> Transcript (21 April 2022) at p 53 lines 9–11.

recollection of the events and her testimony in court are unreliable and cannot be believed as she is saying that her memory is impaired. Alternatively, she indulges in selective loss of memory at her convenience.

101 Ms Tiong also suggests that her inability to account for the quantity of Xanax tablets she received from Dr Chan should not be held against her as Dr Chan had acted in breach of ECEG Guideline B5 when he failed to record his prescription to her.<sup>134</sup> As noted by the High Court in *Rathanamalah d/o Shunmugam v Chia Kok Hoong* [2018] 4 SLR 159 at [82], “the SMC Guidelines relate to ethical proceedings; they may be helpful but cannot necessarily dictate the evidential burdens in civil suits”. Therefore, Ms Tiong’s allegation that Dr Chan had breached the ECEG in failing to keep proper records does not surrogate or satisfy her burden of proving the quantity of Xanax provided to her by Dr Chan. The failure to maintain clinical records is completely irrelevant to the issue of whether Dr Chan was negligent when Xanax was given to Ms Tiong.

102 In my view, there is a plausible explanation for the chameleonic nature of Ms Tiong’s evidence. As counsel for Dr Chan suggests, it is likely that Ms Tiong decided to change her evidence on 20 April 2022 to ensure that her position on the quantity of Xanax tablets given by Dr Chan was in line with the quantity Dr Chan was prescribed by SGH, as described in Dr Chan’s AEIC and evinced by the SGH records.<sup>135</sup> However, she had also affirmed on oath that she had at least 49 unconsumed Xanax tablets.<sup>136</sup> The fact that she had affirmed as such was brought to Ms Tiong’s attention during the trial on 20 April 2022.<sup>137</sup>

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<sup>134</sup> PCS at para 113.

<sup>135</sup> Transcript (21 April 2022) at p 34 lines 11–25, p 52 lines 10–14.

<sup>136</sup> 5<sup>th</sup> Affidavit of Serene Tiong Sze Yin (Reply Affidavit filed in HC/SUM 4089/2020) at para 13.

<sup>137</sup> Transcript (20 April 2022) at p 30 lines 4–13.

According to counsel for Dr Chan, after Ms Tiong was reminded of her earlier affirmation, Ms Tiong realised that her new total estimate of approximately 120 Xanax tablets did not take into account the unconsumed tablets of Xanax, which was why she changed her evidence again on 21 April 2022.<sup>138</sup>

103 The quantity of Xanax tablets goes to the heart of Ms Tiong’s claim in medical negligence. Thus, her conflicting evidence on this critical issue is fatal to her claim. Her inconsistent evidence on this foundational point also speaks volumes about her reliability as a witness and the viability of her claim. I agree with the counsel for Dr Chan that Ms Tiong appeared to change her evidence on the fly<sup>139</sup> and tailored her evidence on how many Xanax tablets she was given by Dr Chan to be consistent with the quantity of Xanax tablets Dr Chan was prescribed from SGH.<sup>140</sup> In my view, it is no coincidence that the final numbers of Xanax tablets advanced by Ms Tiong is the closest to the 243 tablets Dr Chan was prescribed from SGH.

104 On 21 April 2022, the third day Ms Tiong took the stand, she sought permission to bring a piece of paper (“the Paper”) and a pen with her to the witness box to perform calculations of the number of Xanax tablets she was given by Dr Chan.<sup>141</sup> The Paper contained some of her calculations done the night before, after the second day of her cross-examination.<sup>142</sup> I note that the Paper contained multiple amendments that suggested an attempt at engineering her evidence in order to match the pleaded position in her Reply to Defence, *ie*,

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<sup>138</sup> Transcript (21 April 2022) at p 52 lines 15–25; DCS at para 28.

<sup>139</sup> Transcript (21 April 2022) at p 53 lines 12–17.

<sup>140</sup> Transcript (21 April 2022) at p 53 line 21 to p 54 line 5.

<sup>141</sup> Transcript (21 April 2022) at p 2 lines 8–14.

<sup>142</sup> Transcript (21 April 2022) at p 2 lines 17–23.

that she received 330 tablets of Xanax from Dr Chan. Ms Tiong also confirmed that she made further changes to the entries in the Paper while being cross-examined.<sup>143</sup> I reproduce the Paper below, with the entries that were made in court during the course of the cross-examination highlighted in yellow by Ms Tiong.<sup>144</sup>

|          |                  |    |                             |
|----------|------------------|----|-----------------------------|
| July '17 | 10               | .. | consumed all                |
| Jun '17  | 10               | .. | <del>5</del> consumed all   |
| May '17  | 10               | .. | (5) (emergency)             |
| Oct '17  | 10               | .. |                             |
| Nov '17  | 30               | .. | Yes <del>10</del> Ate all   |
| Dec '17  | <del>30</del> 10 | →  | <del>10</del> he gave to me |
| Jan '18  | 30               | →  | <del>10</del> Ate all       |
| Feb '18  | 30               | →  | <del>10</del> (5) estimate  |
| Mar '18  | 30               | →  | <del>10</del> → (30) (25)   |
| Apr '18  | 30 + 30          | →  | <del>10</del> → 3 + 3       |
| May '18  | 30 + 30          | →  | <del>10</del> → (15) (10)   |
| Uneaten  | 50               |    |                             |
| Total    | 320              |    |                             |

26 April (

6 Expiry date 08/2020 T 9 6 7 9 9

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105 I note, in particular, the entries for January 2018 and February 2018. Ms Tiong confirmed that the original figure she wrote for these entries was “20”

<sup>143</sup> Transcript (26 April 2022) at p 48 lines 16–20.

<sup>144</sup> DBOD, Tab 4A.

but she later changed the figure to “30”.<sup>145</sup> She also confirmed that she amended the entry for December 2017 from “30” tablets to “10” tablets.<sup>146</sup> When asked why she made the multiple corrections, Ms Tiong admitted that she worked backwards from the final pleaded figure in order to arrive at the breakdown on the Paper:<sup>147</sup>

COURT: What is it that you tried to achieve by making those changes?

A. Because by [sic] AEIC I written -- the AIEC [sic] was written, I remember I received at least 200 tablets, so I'm trying to recall the breakdown of the Xanax by month, average.

COURT: So are you working backwards?

A. Yes, I am trying to do the breakdown by the number of tablets I received.

COURT: So if for example, you received 200, you go backwards?

A. Yes.

COURT: In order to –

A. Give the breakdown.

COURT: -- come to the final figure?

A. Yes, to give the breakdown.

106 When she was further questioned on the Paper, Ms Tiong confirmed her position was that taken on 21 April 2022, *ie*, she was given around 280 tablets (see [95] above). However, she could not satisfactorily explain why she wrote a different total figure of 320 tablets on the Paper.<sup>148</sup>

COURT: So here, the total is 320, right?

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<sup>145</sup> Transcript (26 April 2022) at p 50 lines 17–22.

<sup>146</sup> Transcript (26 April 2022) at p 50 lines 23–25.

<sup>147</sup> Transcript (26 April 2022) at p 52 lines 10–25.

<sup>148</sup> Transcript (26 April 2022) at p 53 line 1 to p 54 line 1.

- A. The calculations – I need to calculate, that was based on mental calculation, I think there is some error to it.
- COURT: So is the total correct here?
- A. It's 280, as -- yes, 280.
- COURT: So it's not 320?
- A. It's not, it's not.
- COURT: Then why you put 320 here?
- A. It's meant for my records. I just -- it's only meant for my records, to do an estimation, but the actual figure is 280. Because my mental calculation, I'm not able to do a mental calculation, so I could have written wrongly when I calculate at the point of time.
- COURT: So everything we look at 280.
- A. Yes.
- COURT: You get 280 from that table [DBOD, Tab 3] here?
- A. Yes.
- COURT: Then why did you put 320 here?
- A. Because I calculate wrongly, so I actually brought a calculator. I was not able to do mental calculation correctly.
- COURT: But you did all these entries before you went to the witness box on 21 April.
- A. Yes, I just do an estimation. I cannot -- I am unable to give the exact figure.

107 I find that Ms Tiong is a thoroughly unreliable witness. At one point, Ms Tiong herself seemed aware of the persistently conflicting nature of her evidence, agreeing during cross-examination that she was re-engineering her evidence on the quantity of Xanax to fit her case.<sup>149</sup> Ms Tiong's admission confirmed my impression that she was making active attempts to tailor and

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<sup>149</sup> Transcript (21 April 2022) at p 11 line 18 to p 12 line 19.

massage her evidence while on the stand in order to fit her previously pleaded position and resolve any inconsistencies that surface in the course of questioning.

108 Given the lack of contemporaneous evidence supporting Ms Tiong's case and the ever-changing nature of her evidence, it is highly unsafe to rely on her allegation that Dr Chan gave her 280 or 330 tablets. On the other hand, Dr Chan's version that (a) he only gave her 14 tablets in May 2018; and (b) he could not have given her Xanax tablets as she alleged as he was only prescribed 243 tablets of Xanax from SGH from 8 May 2017 to 21 May 2018 is more credible. Further, Dr Chan's version is supported by the contemporaneous evidence.

(5) Dr Chan's alleged breach of duty

109 Having ascertained that Dr Chan's version of the facts should be believed over Ms Tiong's, I shall now consider whether Dr Chan breached his duty of care when he gave 14 Xanax tablets to Ms Tiong in early May 2018. According to Dr Lim, if the 14 tablets of Xanax were taken "over a period of several days or weeks as short-term use, the risk of physical dependency will be very low".<sup>150</sup> It follows that a reasonably experienced psychiatrist in Dr Chan's position would not have foreseen that Ms Tiong would become addicted to Xanax just because Dr Chan gave 14 Xanax tablets to her in May 2018. Accordingly, Dr Chan has not breached his duty of care to ensure that Ms Tiong would not become addicted to Xanax or to ascertain its suitability for her.

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<sup>150</sup> JCER 2 at p 8.

110 For completeness, I note that even on Ms Tiong's account of the *highest* quantity of Xanax prescribed to her, *ie*, 330 tablets (see [95] above), Dr Lim's expert evidence is that the risk of dependency is low. Accordingly, a reasonably experienced psychiatrist in Dr Chan's position would not have foreseen or would not have thought that there was a good likelihood that Ms Tiong might become addicted to Xanax based on the number of tablets given by Dr Chan. Regarding Ms Tiong's claim that Dr Chan gave her ten tablets of Xanax per month from February 2017 to March 2018, Dr Lim's expert opinion is as follows:<sup>151</sup>

My calculation is that 10 tablets of Xanax 0.5 mg a month is approximately 2 or 3 tablets a week, a total of approximately 1 mg to 1.5 mg a week. At this dose the *risk of susceptibility to physical dependency would be extremely low*.

[emphasis added]

111 On Ms Tiong's claim that Dr Chan gave her approximately 100 tablets of Xanax per month for April 2018 and May 2018, Dr Lim's expert opinion is as follows:<sup>152</sup>

This equals roughly to 3 tablets of 0.5 mg a day, a total of 1.5 mg a day from April 2018 to May 2018. *This is still within the recommended maximum daily dose by the international authorities*. The recommended maximum dose by most regulatory bodies including the Food and Drug Administration of USA and British National Formulary is 4 mg a day.

[emphasis added]

112 Further, Ms Tiong was prescribed 330 Xanax tablets by Dr Thomas Lee over a shorter period of eight months between 23 August 2018 and 25 April

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<sup>151</sup> JCER 2 at p 7.

<sup>152</sup> JCER 2 at p 8.

2019 (see [126] below).<sup>153</sup> Ms Tiong alleges that Dr Chan gave her *the same number* of tablets over a longer 15-month period (see [25] above). Ms Tiong did not allege that Dr Thomas Lee’s prescription of Xanax was excessive or otherwise a breach of his duty. In these circumstances, it is incongruous for Ms Tiong to allege that Dr Chan had given her excessive Xanax.

113 Moreover, Ms Tiong confirmed during cross-examination by Dr Chan’s counsel (Ms Chew) that when Dr Chan provided her with Xanax, he had advised her on the appropriate dosage of Xanax to consume:<sup>154</sup>

MS CHEW: What was Dr Chan’s instruction to you as to the amount of Xanax to take in May 2017?

A. Between one to two --

COURT: Hold on, hold on. Sorry what was the answer, Ms Tiong?

A. Between one to two.

COURT: One to two what?

A. Tablets of Xanax.

MS CHEW: And this is one to two per day?

A. Yes.

114 Dr Chan’s advice to Ms Tiong to take one to two Xanax tablets a day is well within the recommended maximum dosage of up to 4mg of Xanax, *ie* four tablets of Xanax a day, by most regulatory bodies including the Food and Drug Administration of the USA and the British National Formulary. This was also supported in Dr Lim’s joint expert report.<sup>155</sup> Ms Tiong also agreed during cross-examination that Dr Chan was “always very careful to ensure” that she did not

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<sup>153</sup> Agreed Bundle of Documents (Volume 2 of 2) (“2AB”) at pp 861–885; CHN-33 at pp 1179–1184.

<sup>154</sup> Transcript (21 April 2022) at p 5 line 25 to p 6 line 9.

<sup>155</sup> JCER 2 at p 8.

“take any medicine unnecessarily”.<sup>156</sup> Having regard to the above, it is incongruous for Ms Tiong to still allege that Dr Chan had failed to ensure that she would not become addicted to Xanax.

115 Ms Tiong acknowledged in court that before April 2018 when her relationship with Dr Chan began to crumble, Dr Chan was caring and had her best interests at heart:<sup>157</sup>

COURT: I am looking at the period when you and Dr Chan were in a very good relationship, probably from December 2016 all the way up to even the Eastern Europe trip, before your discovery, right?

In that sort of period, that is December 2016 to April 2018, *was Dr Chan caring?*

A. Yes.

COURT: Did he have your best interests during this period? I'm not talking about after the discovery.

A. In November 2017, he picked a quarrel, so ever since then, everything just went downhill, it wasn't as good as before.

COURT: *So before November, was he looking after your best interests?*

A. Yes.

COURT: So from November to April, was he still caring and looking after your interests?

A. He wasn't as before, he wasn't as good as before.

COURT: *Wasn't as good, but was he still looking after your best interests?*

A. Yes, I think so. I would believe so.

[emphasis added]

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<sup>156</sup> Transcript (20 April 2022) at p 11 lines 20–23.

<sup>157</sup> Transcript (26 April 2022) at p 54 lines 2–22.

116 Hence, even assuming it was true that Dr Chan had given her Xanax since February 2017 he would not have harmed Ms Tiong as they were in a romantic relationship and as Ms Tiong admitted he was caring and had her best interests at heart.

117 I, therefore, find that Dr Chan has not acted in breach of his duty of care when he gave Xanax to Ms Tiong.

(6) Harm suffered by Ms Tiong

118 Since I have found that Dr Chan did not breach his duty of care to Ms Tiong, it would be unnecessary to consider the alleged harm suffered by Ms Tiong because of Dr Chan’s breach. Nevertheless, for completeness, I shall now consider the harm, if any, suffered by Ms Tiong as a result of Dr Chan giving her Xanax.

119 Ms Tiong claims that because of Dr Chan’s breach of duty, she suffered (a) side effects from consuming high dosages of Xanax; and (b) withdrawal symptoms from addiction to Xanax. The side effects from her consumption of and dependency on Xanax include, *inter alia*, memory loss, suicidal thoughts,<sup>158</sup> breathing difficulties, stress and an inability to fall asleep.<sup>159</sup> Ms Tiong also asserts in her pleadings that she suffered “adjustment disorder with anxiety”,<sup>160</sup> and in her closing submissions she further alleges that she suffered from GAD.<sup>161</sup>

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<sup>158</sup> ST at para 14.

<sup>159</sup> Transcript (21 April 2022) at p 70 line 17–25.

<sup>160</sup> SOC at para 12.

<sup>161</sup> PCS at para 64.

120 I shall first consider Ms Tiong’s claim that she suffered side effects from her consumption of Xanax. Dr Lim testified that the possible side effects caused by consuming Xanax are drowsiness, cognitive difficulty and slurred speech.<sup>162</sup> Symptoms such as breathing difficulties, stress, suicidal thoughts and an inability to fall asleep are not caused by Xanax.<sup>163</sup> Rather, breathing difficulties are a symptom of anxiety.<sup>164</sup> Dr Lim went further to state that it is *not possible* for the consumption of Xanax to cause suicidal thoughts,<sup>165</sup> which decisively rebutted Ms Tiong’s claim that she suffered suicidal thoughts as a result of consuming Xanax in high quantities.<sup>166</sup> Dr Lim further testified that the risk of suffering side effects from consuming Xanax is low.<sup>167</sup>

- A. By and large, to me Xanax has -- to me *if they say they have side effects I think the chances are over-inflated*. Most people take Xanax no problems at all. I will even, if you ask me, I will say *80 per cent of people take Xanax no problems at all*.

[emphasis added]

121 Ms Tiong claims that she began suffering adverse side effects “[a]fter more than a year of consuming” Xanax Dr Chan gave her<sup>168</sup> and that she “had previously shared [her] concerns about these symptoms with [Dr Chan] in November 2017 when [their] relationship was intimate”.<sup>169</sup> However, this claim is contradicted by Dr Lim’s expert evidence. Dr Lim testified that adverse side

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<sup>162</sup> Transcript (22 April 2022) at p 72 line 12 to p 76 line 21.

<sup>163</sup> Transcript (22 April 2022) at p 80 at lines 20–24 and p 81 line 19 to p 82 line 18.

<sup>164</sup> Transcript (22 April 2022) at p 82 lines 4–11.

<sup>165</sup> Transcript (22 April 2022) at p 80 lines 20–24.

<sup>166</sup> ST at para 14.

<sup>167</sup> Transcript (22 April 2022) at p 109 lines 14–18.

<sup>168</sup> ST at para 14.

<sup>169</sup> ST at para 15.

effects from consuming Xanax, such as drowsiness and cognitive difficulties, would arise shortly after consumption and persist only up to the time Xanax is eliminated from the body. Such side effects would last for approximately four to five hours.<sup>170</sup> As counsel for Dr Chan points out, it is therefore inexplicable how Ms Tiong could suffer such adverse side effects after a year of consuming Xanax.<sup>171</sup>

122 Dr Lim's testimony, taken together with Ms Tiong's lack of objective evidence that she suffered side effects from consuming Xanax, cast serious doubt on her claim that she suffered side effects from consuming Xanax. None of the numerous WhatsApp messages between Ms Tiong and Dr Chan reveal that Ms Tiong had experienced some side effects from the consumption of Xanax.

123 The vast majority of medical literature put forward by both parties also do not support Ms Tiong's claim that she suffered side effects. The medical literature cited by Ms Tiong supports Dr Lim's expert opinion that more than 80% of patients consuming Xanax would not suffer any side effects. For instance, the studies cited in the Medication Guide on Alprazolam by the Federal Drug Administration of the United States of America demonstrate that more patients claim to suffer side effects arising from placebo as compared to alprazolam tablets, and that the side effects from alprazolam occur in less than 20% of individuals.<sup>172</sup> Although the percentage of patients experienced side effects after consuming Xanax is only 20%, I accept that it does not rule out the possibilities that Ms Tiong could fall within this group of Xanax sensitive

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<sup>170</sup> Transcript (22 April 2022) at p 72 line 12 to p 76 line 21.

<sup>171</sup> DCS at para 182.

<sup>172</sup> PCS at p 34; Plaintiff's Bundle of Authorities (Volume 2) at Tab 16.

patients. However, the evidence in this case does not support her claim which was based on self-assertion. Thus, Ms Tiong's claim that she suffered side effects from consuming Xanax is doubtful.<sup>173</sup>

124 Finally, I accept the oral closing submission of counsel for Dr Chan that, if it were true that Ms Tiong was suffering from these side effects, no reasonable psychiatrist would have continued prescribing Xanax to Ms Tiong. The fact remains that Ms Tiong continued to be prescribed Xanax by other psychiatrist whom she consulted after May 2018. These include Ms Tiong's prescription of Xanax by Resilienz Clinic between 23 August 2018 and 25 April 2019<sup>174</sup> and from BetterLife Psychological Medicine Clinic on 28 May 2020 and 19 June 2020.<sup>175</sup> I accept that, if Xanax was unsuitable for Ms Tiong's consumption as alleged, there would be no reason why different medical practitioners of her choice would continue prescribing it to her. This was also confirmed by Dr Lim's evidence at trial.<sup>176</sup> The fact that Ms Tiong continues to receive prescriptions for Xanax from her own doctors after May 2018 clearly suggests that Ms Tiong's allegation that she suffers the side effects of Xanax cannot be true.

125 Ms Tiong further alleges that she suffered withdrawal symptoms as a result of Xanax dependency. Dr Lim explained that if a person were addicted to Xanax and he or she continues to have access to Xanax, he or she will not suffer withdrawal symptoms.<sup>177</sup> It is only when the person is deprived of Xanax will

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<sup>173</sup> DCS at para 185.

<sup>174</sup> 2 AB at pp 861–885.

<sup>175</sup> 2 AB at pp 891–895.

<sup>176</sup> Transcript (22 April 2022) at p 83 line 3 to p 84 line 7.

<sup>177</sup> Transcript (22 April 2022) at p 111 line 24 to p 112 line 2.

withdrawal symptoms manifest in the form of “abdominal cramps, blurred, vision, dizziness, headache and so forth”.<sup>178</sup> Thus, a person addicted to Xanax would *increase* their dosage of Xanax.<sup>179</sup> If the dosage of Xanax was reduced or if there were prolonged breaks between the periods of Xanax consumption, these indicate that there is no Xanax addiction.<sup>180</sup>

126 On the face of the evidence, there were reductions in the dosages of Xanax prescribed to Ms Tiong and prolonged breaks in Ms Tiong’s consumption of Xanax after May 2018. After her break-up with Dr Chan in May 2018, Ms Tiong was prescribed Xanax from two clinics, Resilienz Clinic and BetterLife Psychological Medicine Clinic, as follows:<sup>181</sup>

| <b>Date</b>       | <b>Quantity of Xanax tablets<br/>(0.5mg) prescribed to<br/>Ms Tiong</b>                            |
|-------------------|----------------------------------------------------------------------------------------------------|
| 23 August 2018    | 60                                                                                                 |
| 28 September 2018 | 90                                                                                                 |
| 8 November 2018   | 90                                                                                                 |
| 19 December 2018  | 30                                                                                                 |
| 30 January 2019   | 30                                                                                                 |
| 25 April 2019     | 30                                                                                                 |
| 28 May 2020       | 20                                                                                                 |
| 19 June 2020      | 20                                                                                                 |
| <b>Total</b>      | <b>370</b><br>(330 from Resilienz Clinic<br>+ 40 from BetterLife<br>Psychological Medicine Clinic) |

<sup>178</sup> Transcript (22 April 2022) at p 112 lines 5–14.

<sup>179</sup> Transcript (22 April 2022) at p 112 lines 20–25.

<sup>180</sup> Transcript (22 April 2022) at p 86 lines 12–18, p 87 lines 2–15, p 113 lines 3–5.

<sup>181</sup> 2AB at pp 861–895.

127 Ms Tiong was not prescribed any Xanax from 25 April 2019 to 28 May 2020, *ie*, slightly more than a year. Further, the quantity of Xanax she was prescribed reduced drastically from 90 tablets on 8 November 2018 to 30 tablets on 19 December 2018. Ms Tiong claimed that during the period from 25 April 2019 to 28 May 2020 when she was not prescribed any Xanax, she still needed Xanax but could not afford to receive further prescriptions from clinics as she was short of money from defending herself in the Defamation Suit.<sup>182</sup> However, Ms Tiong did not consume the 49 unconsumed tablets of Xanax she was in possession of.<sup>183</sup> According to Dr Lim, the fact that Ms Tiong did not consume the 49 tablets she had in her possession “is definitely, in [his] opinion, not suggestive of a dependent patient”.<sup>184</sup> If indeed she was addicted to Xanax there would not be any unconsumed tablets of Xanax as she would have had to satisfy her addiction craving.

128 When confronted with the fact that she did not consume the 49 unconsumed tablets she possessed, Ms Tiong claimed that she did not consume the 49 unconsumed tablets as she wanted to use them as evidence for the SMC Complaint<sup>185</sup> and adduced them as physical evidence before the SMC.<sup>186</sup> It is curious then that the SMC Complaint appended a picture of only four Xanax tablets.<sup>187</sup> If Dr Chan had indeed given her so many tablets of Xanax as alleged, an ordinary person in Ms Tiong’s position would have taken a

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<sup>182</sup> Transcript (21 April 2022) at p 61 lines 10–19.

<sup>183</sup> Transcript (21 April 2022) at p 62 lines 9–14.

<sup>184</sup> Transcript (22 April 2022) at p 87 lines 2–15.

<sup>185</sup> Transcript (21 April 2022) at p 62 lines 9–14.

<sup>186</sup> Transcript (21 April 2022) at p 64 lines 12–18.

<sup>187</sup> DBOD, Tab 1, Annex A; Transcript (20 April 2022) at p 43 lines 2–6.

picture of all or as many of them as possible, as opposed to simply a fraction or a “sample” as Ms Tiong describes.<sup>188</sup>

129 There is no indication that Ms Tiong had sought to increase her supply of Xanax, which would be a clear sign of addiction according to Dr Lim. On the contrary, the facts that (a) Ms Tiong purportedly went “cold turkey” from Xanax for more than a year; (b) the quantity of Xanax she was prescribed decreased drastically from 8 November 2018 to 19 December 2018; and (c) she did not consume the remaining tablets she had are, in line with Dr Lim’s evidence, clear indications that she was not addicted to Xanax. Dr Lim’s opinion is logically convincing and reliable.

130 As counsel for Dr Chan points out, Ms Tiong’s consumption pattern also reveals that she could not have been addicted to Xanax. During cross-examination, Ms Tiong stated that she consumed Xanax tablets as follows:<sup>189</sup>

| Month          | Quantity of Xanax tablets (0.5mg) allegedly consumed |
|----------------|------------------------------------------------------|
| May 2017       | 5                                                    |
| June 2017      | 10                                                   |
| July 2017      | 10                                                   |
| August 2017    | 0                                                    |
| September 2017 | 0                                                    |
| October 2017   | 0                                                    |
| November 2017  | 30                                                   |

<sup>188</sup> Transcript (20 April 2022) at p 45 lines 9–14.

<sup>189</sup> Transcript (21 April 2022) at p 5 line 13 to p 17 line 16; DCS at para 195.

|               |                |
|---------------|----------------|
| December 2017 | 10             |
| January 2018  | 30             |
| February 2018 | 5              |
| March 2018    | 5              |
| April 2018    | 60             |
| May 2018      | 60–70          |
| June 2018     | 10             |
| July 2018     | 10             |
| <b>Total</b>  | <b>245–255</b> |

131 The above consumption pattern, taken together with Dr Lim’s testimony, decisively rebuts Ms Tiong’s claim that she was addicted to Xanax:

(a) Between May 2017 to July 2017, Ms Tiong allegedly consumed only five to ten tablets a month. Dr Lim notes that consuming this dosage of Xanax leads to an extremely low risk of susceptibility to physical dependency.<sup>190</sup>

(b) From August 2017 to October 2017, Ms Tiong allegedly did not consume any Xanax tablets. Her ability to stop her consumption of Xanax plainly demonstrates that she was not experiencing dependency on Xanax.

(c) While Ms Tiong consumed 30 tablets of Xanax in November 2017, she claims that she lowered her consumption to ten

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<sup>190</sup> JCER 2 at p 7.

tablets of Xanax in December 2017. Dr Lim confirmed that a person's ability to voluntarily break her continuous consumption of Xanax indicates that that person does not suffer from a Xanax addiction.<sup>191</sup>

(d) In a similar vein, while Ms Tiong increased her consumption to 30 tablets of Xanax in January 2018, she again voluntarily lowered her consumption to five tablets of Xanax per month in both February 2018 and March 2018, demonstrating that she was not addicted to Xanax.

(e) In April 2018 and May 2018, Ms Tiong then increased her Xanax intake to 60 tablets and 60 to 70 tablets respectively. Counsel for Dr Chan points out that this works out to approximately two tablets of Xanax (0.5mg) a day, which is still well within the recommended maximum dosage of 4mg (*ie*, eight tablets of Xanax) noted by Dr Lim.<sup>192</sup> In any case, this period of increased Xanax intake is still less than ten weeks, which is the period of time that Dr Lim notes an individual would have to regularly consume Xanax for over ten weeks in order to be at a higher risk of physical dependency.<sup>193</sup>

(f) In June 2018 and July 2018, Ms Tiong reduced her consumption of Xanax to ten tablets in each month, while also holding onto 49 to 50 unconsumed Xanax tablets during this period.<sup>194</sup> This demonstrates that Ms Tiong was able to reduce her intake while simultaneously resisting the urge to consume the remaining 49 to 50 tablets. I reiterate Dr Lim's expert evidence that the fact that Ms Tiong did not consume the

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<sup>191</sup> Transcript (22 April 2022) at p 86 lines 6–18.

<sup>192</sup> JCER 2 at p 8; DCS at para 196(g).

<sup>193</sup> JCER 2 at p 8.

<sup>194</sup> PBOD Tab 2 at pp 18–19.

unconsumed tablets she had with her “is definitely, in [his] opinion, not suggestive of a dependent patient”.<sup>195</sup>

132 During the trial, counsel for Ms Tiong referred to a diagnosis by Dr Thomas Lee that Ms Tiong developed a Xanax dependency as at mid-2018.<sup>196</sup> However, the reliability of the diagnosis from Dr Thomas Lee is also suspect. The report of Dr Thomas Lee is hearsay as the doctor who made the diagnosis was not called since parties agreed to have the opinion of the joint expert, *ie*, Dr Lim. The evidence indicates that Ms Tiong exaggerated the extent of her Xanax consumption to Dr Thomas Lee. Ms Tiong claimed that she told Dr Thomas Lee she was consuming three to six tablets of Xanax daily by mid-2018.<sup>197</sup> This is inconsistent with her evidence on her consumption pattern (see [130] above) where she claimed to have consumed 60 to 70 tablets of Xanax in May 2018 and only ten tablets of Xanax per month in June 2018 and July 2018. Ms Tiong’s account to Dr Thomas Lee of consuming three to six tablets daily would yield a total of approximately 90 to 180 tablets consumed per month. Ms Tiong also confirmed during cross-examination that she did not inform Dr Thomas Lee that she had only consumed ten tablets of Xanax per month in both June 2018 and July 2018:<sup>198</sup>

Q. Ms Tiong, I refer you to your answer that you gave his Honour on 21 April 2022 ... Ms Tiong, you told his Honour on 21 April 2022 that you consumed about ten Xanax tablets in the whole of June 2018, agree?

A. Agree.

Q. Agree that you did not tell Resilienz Clinic that you took ten Xanax tablets in June 2018, correct?

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<sup>195</sup> Transcript (22 April 2022) at p 87 lines 2–15.

<sup>196</sup> Transcript (22 April 2022) at p 56 line 16 to p 57 line 21.

<sup>197</sup> Transcript (26 April 2022) at p 21 line 10 to p 22 line 25.

<sup>198</sup> Transcript (26 April 2022) at p 25 line 8 to p 26 line 3.

- A. Correct, in this case, correct.
- Q. In an answer to a question raised by me on 21 April 2022, you said that you took ten Xanax tablets in July 2018, agree?
- A. Agree.
- Q. Agree that during your consultations with Resilienz Clinic, you also did not tell Resilienz Clinic that you took ten Xanax tablets in July 2018, correct?
- A. Correct.

133 Ms Tiong’s claim that she suffered from a Xanax dependency was unsupported by the evidence. She has failed to prove on a balance of probabilities that she suffered from a dependency on Xanax.

134 Ms Tiong claims that the symptoms she suffered from taking Xanax became apparent from April 2018.<sup>199</sup> However, this claim is incongruous with the contemporaneous evidence. On 8 May 2018, Ms Tiong sent a WhatsApp message to Dr Chan informing him that “[t]he [X]anax is good” and requesting that he obtain more for her (see [89] above). I agree with the counsel for Dr Chan that it makes no sense for Ms Tiong to express such positive feelings about Xanax if indeed she was suffering symptoms such as memory loss and suicidal thoughts.<sup>200</sup>

135 Turning to Ms Tiong’s claim that she suffered from anxiety as a result of consuming Xanax or from being addicted to Xanax, I find that Ms Tiong was inconsistent on exactly what form of anxiety she suffered from. While she stated in her pleadings that she suffered from “adjustment disorder with anxiety”,<sup>201</sup>

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<sup>199</sup> Transcript (21 April 2022) at p 93 lines 13–16.

<sup>200</sup> Transcript (21 April 2022) at p 93 line 17 to p 94 line 9.

<sup>201</sup> SOC at para 12.

she asserted during closing submissions that she suffered from GAD.<sup>202</sup> Ms Tiong also confirmed that there is nothing in her WhatsApp communications with Dr Chan to suggest to Dr Chan that she was suffering from any anxiety disorder or psychiatric illness.<sup>203</sup> The key evidence Ms Tiong relies on to support her claim that she suffered from GAD are the “couple’s quarrels” between her and Dr Chan in April, July, September and November 2017.<sup>204</sup> This argument stands on extremely shaky ground. As counsel for Dr Chan points out, “just because Dr Chan and Ms Tiong had disagreements in their relationship cannot equate to her suffering from GAD”.<sup>205</sup>

136 Finally, I should also add that, following the parties’ filing of their respective Reply submissions, Ms Tiong sought to raise, for the first time, the issue regarding an alleged “cocktail of different medications” which Dr Chan had prescribed to her in June 2018, and which she claimed to have contributed to her allegedly suffering from withdrawal symptoms and addiction.<sup>206</sup> Counsel for Ms Tiong submits that the court should consider this issue, despite the fact that it was not raised earlier, because this is “a matter of causation and evidence” which need not be pleaded.<sup>207</sup> This is because of the possibility that Ms Tiong’s alleged addiction to Xanax could be caused by Xanax and the cocktail of medications.<sup>208</sup>

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<sup>202</sup> PCS at para 64.

<sup>203</sup> Transcript (20 April 2022) at p 10 lines 4–14.

<sup>204</sup> PCS at paras 64 and 65.

<sup>205</sup> Defendant’s Reply Closing Submissions (“DRS”) at para 20.

<sup>206</sup> PRS at paras 20 and 49; Transcript (4 July 2022) at p 27 lines 4–11.

<sup>207</sup> PRS at para 59.

<sup>208</sup> Transcript (4 July 2022) at p 26 lines 3–17.

137 I do not accept this submission. In my judgment, Ms Tiong’s allegation regarding the purported “cocktail of different medications” is not simply a matter of evidence. Rather, it is a matter of putting forward a factual basis in support of her allegation that harmed was suffered as a result of Dr Chan’s alleged negligence. This would, in turn, and if it had been pleaded, possibly affect the manner in which Dr Chan would have pleaded and defend his case, or would have affected the evidence which Dr Chan would have put forth to rebut this factual allegation. It may also have affected the content of Dr Lim’s expert evidence, and whether there was a possibility that a cocktail of drugs prescribed to Ms Tiong would have caused the alleged addiction.

138 Whatever the case may be, it is incumbent on Ms Tiong to have raised this in her statement of claim, or to have sought an amendment of her statement of claim, early in the proceedings. However, this was not done. And as pointed out by counsel for Dr Chan in her oral closing submissions, it remains that Ms Tiong’s statement of claim only reflected her allegations against Dr Chan in negligence premised on the prescription and use of Xanax.<sup>209</sup> This issue being raised belatedly and for which little or no opportunity was provided to Dr Chan to make submissions in response, I therefore disregard this line of submission made by counsel for Ms Tiong.

139 Having regard to the above, I find that Ms Tiong has failed to prove, on a balance of probabilities, that she suffered harm as a result of Dr Chan giving her Xanax, either in the form of side effects from consuming Xanax or from developing a dependency on Xanax.

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<sup>209</sup> Transcript (4 July 2022) at p 4 lines 4–12.

(7) Quantification of losses suffered by Ms Tiong

140 During the trial, I asked parties about the issue of damages, Ms Tiong's counsel raised belatedly that Dr Chan was liable to Ms Tiong for \$250,000 worth of damages. This was on the basis that she requires *lifelong* treatment to recover from her addiction to Xanax.<sup>210</sup> Ms Tiong claims that the sum is arrived at by multiplying the number of years of her remaining life expectancy (*ie*, 30 to 40 years) by the estimated annual costs of treatment given by Dr Lim, which come up to around \$4,800 a year in counselling costs. Multiplying \$4,800 a year over 30 to 40 years gives a sum in the range of \$144,000 to \$192,000.<sup>211</sup>

141 Even if Ms Tiong had suffered psychiatric harm, there is no evidence that the harm suffered is tantamount to \$250,000, the minimum civil jurisdiction of the High Court. Dr Lim testified that his suggested treatment for Xanax dependency is a treatment package involving therapy, counselling and alternative medication.<sup>212</sup> The programme would last only four to six weeks<sup>213</sup> with another six to nine months for counselling and would cost around \$5,400 in total excluding medication costs.<sup>214</sup> This sum is a far cry from the \$250,000 claimed by Ms Tiong.

142 Even if the medication costs are included to the sum, the claim would still be far short of the \$250,000 claimed by Ms Tiong. The total costs of

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<sup>210</sup> ST at para 48; Transcript (26 April 2022) at p 2 lines 16–17.

<sup>211</sup> Transcript (27 April 2022) at p 103 line 11 to p 104 line 15.

<sup>212</sup> Transcript (22 April 2022) at p 99 line 21 to p 101 line 6.

<sup>213</sup> Transcript (22 April 2022) at p 100 lines 12–19.

<sup>214</sup> Transcript (22 April 2022) at p 102 line 1 to p 103 line 23.

medication obtained by Ms Tiong from Resilienz Clinic over the course of almost ten months only amounted to \$1,152.50:<sup>215</sup>

| <b>Resilienz Clinic<br/>Invoice Date</b> | <b>Resilienz Clinic<br/>Invoice No.</b> | <b>Medication Costs<br/>(S\$)</b> |
|------------------------------------------|-----------------------------------------|-----------------------------------|
| 2 July 2018                              | INV-002403                              | 100.80                            |
| 27 July 2018                             | INV-002597                              | 61.60                             |
| 23 August 2018                           | INV-002772                              | 121.60                            |
| 28 September 2018                        | INV-003044                              | 193                               |
| 8 November 2018                          | INV-003363                              | 200.90                            |
| 19 December 2018                         | INV-003655                              | 200.40                            |
| 30 January 2019                          | INV-003931                              | 101.40                            |
| 13 March 2019                            | INV-004285                              | 71.40                             |
| 25 April 2019                            | INV-004702                              | 101.40                            |
| <b>Total Costs (S\$)</b>                 |                                         | <b>1,152.50</b>                   |

143 In any event, Ms Tiong could only provide an explanation for, at most, \$192,000 in damages (see [140] above). Ms Tiong’s claim that she suffered harm amounting to \$250,000 is a bare assertion and unsupported by any evidence.

144 Having regard to all of the above, I find that Ms Tiong has failed to prove on a balance of probabilities that she suffered harm amounting to \$250,000 as a result of Dr Chan’s prescription, namely side effects from Xanax consumption

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<sup>215</sup> 2AB at pp 853–885.

and dependency. Hence, this case should not have been commenced in the High Court.

*Conclusion on medical negligence claim*

145 In summary, I find that Ms Tiong has failed to establish her claim in medical negligence on a balance of probabilities. Ms Tiong’s final version of the facts is that Dr Chan gave her 280 tablets starting from May 2017 (see [95] above). However, Ms Tiong vacillated repeatedly in her evidence before arriving at this final version. Her claim is also unsupported by contemporaneous evidence, namely the transcripts of the parties’ WhatsApp exchanges across more than a year. On the other hand, Dr Chan’s version of the events that he gave Ms Tiong 14 tablets of Xanax for short-term use in early May 2018 is more consistent with the contemporaneous evidence. Dr Lim’s expert assessment of Dr Chan’s prescription is that the associated risk of dependency is “very low”.<sup>216</sup> Accordingly, I find that Dr Chan has not breached his duty of care to Ms Tiong.

146 In any case, Ms Tiong has failed to show that she suffered harm as a result of Dr Chan’s negligence. Ms Tiong’s claim that she suffered side effects due to consuming high dosages of Xanax and a lifelong Xanax dependency caused by Dr Chan’s negligence is clearly unsupported by the evidence. There is also no evidence that the harm Ms Tiong suffered, if any, is quantified at \$250,000.

147 I therefore dismiss Ms Tiong’s claim for medical negligence.

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<sup>216</sup> JCER 2 at p 8.

***The rule in Wilkinson***

*The applicable law*

148 In *Wilkinson*, the defendant played a practical joke on the plaintiff by falsely representing to the plaintiff that her husband, who had gone to a race-meeting, had met with an accident and both his legs were broken. The defendant made the statement intending for the plaintiff to believe him. The plaintiff, believing the defendant’s falsehood, suffered a violent nervous shock. The English court held that the defendant was liable to the plaintiff for wilfully communicating false information which resulted in psychiatric harm.

149 The rule in *Wilkinson* can give rise to an actionable claim in Singapore. However, the precise contours and elements of the rule have yet to be explored fully by the Singapore courts.

150 In *Ngiam Kong Seng and another v Lim Chiew Hock* [2008] 3 SLR(R) 674, the Court of Appeal recognised at [138] that “*Wilkinson* is authority for the principle that wilfully communicating false information is actionable if it causes physical, including psychiatric, harm.” The defendant must commit an act with the intention to cause physical or psychiatric harm which results in the plaintiff suffering such physical or psychiatric harm. However, the Court of Appeal also stated at [140] that “[t]he court should be slow to allow recovery for psychiatric harm arising from the communication of information in cases where no ‘malign intention’... on the part of the person communicating the information is present.”

151 In an earlier decision, the High Court in *Malcomson Nicholas Hugh Bertram and another v Mehta Naresh Kumar* [2001] 3 SLR(R) 379 also observed at [40] that *Wilkinson* is one of “the well-known cases which

established that false words or verbal threats calculated to cause, and uttered with the knowledge that they are likely to cause, and actually causing physical injury to the person to whom they are uttered are actionable.”

152 The necessary elements to make out a claim under the rule in *Wilkinson* were decisively summarised by the UK Supreme Court in *O (A Child) v Rhodes and another (English PEN and others intervening)* [2016] AC 219 (“*Rhodes*”). The court found at [73] that the tort in *Wilkinson* has three elements: a conduct element, a mental element and a consequence element. The conduct element “requires words or conduct directed towards the claimant for which there is no justification or reasonable excuse” (*Rhodes* at [74]). The mental element refers to the “intention to cause physical harm or severe mental or emotional distress” (*Rhodes* at [87]). Such intention “excludes not merely negligently harmful statements, but also recklessly harmful statements” (*Rhodes* at [113]). In other words, recklessness or negligence is insufficient to satisfy the mental element. Finally, the consequence element requires that the claimant suffered “physical harm or recognised psychiatric illness” (*Rhodes* at [73]).

153 The only Singapore case where the rule in *Wilkinson* was applied is *Nina Duwi Koriah v Noor Hayah binte Gulam and another* [2019] SGDC 285 (“*Nina*”). There, the District Court, when considering the rule in *Wilkinson*, arrived at a similar test to *Rhodes*. The District Court held (at [20]) that the four elements in a *Wilkinson* claim are as follows:

- (a) that the defendant committed an act with an intention to cause physical harm;
- (b) that the act was likely to cause physical harm (including psychiatric harm) to the plaintiff;

- (c) that such physical harm was in fact caused to the plaintiff; and
- (d) that the harm was not too remote in that the consequences of the act were within the reasonable contemplation of the defendant.

154 The tests in *Rhodes* and *Nina* are similar. The first element in *Nina* corresponds with the mental element in *Rhodes*. The second element in *Nina* is also the mental element in *Rhodes* as the defendant must have known that the act was likely to cause physical harm (including psychiatric harm) to the plaintiff. The third element in *Nina* corresponds with the conduct element in *Rhodes*, and the fourth element in *Nina* mirrors the consequence element in *Rhodes*. None of the parties made submissions on *Nina*. Counsel for Dr Chan submitted that the test in *Rhodes* should be followed and the counsel for Ms Tiong did not raise any objections to this. Therefore, I shall consider whether Ms Tiong has proven on a balance of probabilities that her claim under the rule in *Wilkinson* meets the test in *Rhodes*.

#### *My findings*

155 Ms Tiong's claim under the rule in *Wilkinson* raises interesting questions about the limits of the rule. Can one take one's ex-lover to court for his broken promises during the relationship?

156 In my view, Ms Tiong's claim under the rule in *Wilkinson* is factually unsustainable as none of the elements under the rule in *Wilkinson* as laid out in *Rhodes* are satisfied.

157 As a preliminary point, I note that the rule in *Wilkinson* does not fit Ms Tiong's claim. According to Ms Tiong, she suffered adjustment disorder with anxiety following her discovery that the Statement was false in April

2018.<sup>217</sup> Thus, Ms Tiong claims that it was not the Statement itself that caused her psychiatric harm, but her subsequent realisation of its false nature after she was induced by the Statement into entering sexual relations with Dr Chan. This is materially different from the rule in *Wilkinson*, where the *content* of the statements made to the plaintiff directly caused the plaintiff harm, *ie*, the plaintiff's husband had met with an accident and both his legs were broken. Nevertheless, I shall consider whether (a) Dr Chan made the Statement and (b) whether Ms Tiong was induced by the Statement to enter into sexual relations with him.

(1) The conduct element

158 I find that Ms Tiong has not proven on a balance of probabilities that Dr Chan made the Statement, *ie*, that he “intentionally informed [her] that he was committed to having a long-term and exclusive sexual relationship with her”<sup>218</sup> “with a view towards marriage”.<sup>219</sup> Ms Tiong's evidence on this critical prong of her claim under the rule in *Wilkinson* was contradictory and unreliable. Ms Tiong could not point to an instance when Dr Chan had explicitly made the Statement. In cross-examination, Ms Tiong said that Dr Chan did not make the Statement; however, it was her *belief* that Dr Chan's conduct led her to believe that he was committed to a long-term and exclusive sexual relationship with her.<sup>220</sup>

Q. I'm just referring to your AEIC at paragraph 9 where you said, and I'm repeating your words:

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<sup>217</sup> SOC at para 12.

<sup>218</sup> SOC at para 6.

<sup>219</sup> ST at para 9; Transcript (19 April 2022) at p 91 lines 17–21.

<sup>220</sup> Transcript (19 April 2022) at p 107 lines 15–24.

“I was led to believe that Dr Chan and I were in an exclusive relationship with each other and that he would eventually be married after my divorce proceedings were over.”

So I asked you this is what you were led to believe; it's not a statement specifically made by Dr Chan, agree?

A. Agree.

159 However, when Ms Tiong was questioned by the court, she changed her version of the facts and stated that Dr Chan had guaranteed to her that he was not seeing anyone but her:<sup>221</sup>

A. So I did tell him in person, one particular incident was in Botanic Gardens, where we have a walk. That I remember very clearly, he questioned me whether we should have exclusive relationship, and I told him clearly, I'm not seeing anyone, and he did guarantee me that he wasn't seeing anyone.

Court: When was that?

A. Probably around mid 2017.

160 It is clear from the above that Ms Tiong vacillated in her evidence on this basic issue of whether Dr Chan expressly made the Statement or whether she arrived at the belief that he was committed to a long-term and exclusive relationship with her based on his conduct. This further diminishes her credibility as a witness and weakens her case. Nevertheless, I shall consider whether Ms Tiong has proven, on a balance of probabilities, that Dr Chan's conduct led her to believe that he was committed to a long-term and exclusive relationship with her.

161 A “long-term and exclusive” relationship has different shades. At the far end of the spectrum, there are relationships that are both long-term and

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<sup>221</sup> Transcript (26 April 2022) at p 38 lines 17–24.

exclusive and this is best typified by parties in a serious relationship with a view towards marriage. At the opposite end of the spectrum, there are relationships that are neither long-term nor exclusive, such as one-night stands. And then we have the ones in between, which may be exclusive but not yet long-term. For instance, a couple in the early stages of their relationship may agree that they will not see other people outside of the relationship. They may, however, have yet to come to an understanding that they wish the relationship to last for the distant future or to lead to long-lasting commitments such as marriage.

162 In my view, the objective evidence indicates that the parties' relationship lay somewhere along the middle of the spectrum. In particular, the parties may have agreed to have some semblance of exclusivity, but they certainly did not enter into the relationship with the intention that it would be a long term one. Neither did they intend the level of exclusivity expected in a marriage. I infer my conclusion from the following facts:

- (a) First, Dr Chan expressed displeasure in November 2017 that Ms Tiong was still in contact with her exes, *ie*, Mr Ho and Mr Koh.<sup>222</sup> This shows that Dr Chan did expect some degree of exclusivity in their relationship. However, according to Dr Chan, he made it clear to Ms Tiong while they were on a holiday in the Cameron Highlands in 2017 that he was not looking to settle down or get married.<sup>223</sup> Dr Chan clarified that he was “fine” if Ms Tiong wished to see other men, “as long as she [was] upfront with [him] about it”.<sup>224</sup> This appears to suggest that parties were in an open relationship.

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<sup>222</sup> POS at para 22; Transcript (19 April 2022) at p 19 lines 3–20.

<sup>223</sup> Transcript (28 April 2022) at p 47 lines 12–23.

<sup>224</sup> Transcript (28 April 2022) at p 43 lines 19–21; Transcript (27 April 2022) at p 70 lines 3–9.

(b) Second, Dr Chan’s position that they were in an open relationship appears to be shared by Ms Tiong. Ms Tiong sent a WhatsApp message to Dr Chan on 25 November 2017 at 10.23.39am, stating:<sup>225</sup>

If u found someone u want to date just tell me.  
Meanwhile just continue to see each other.

(c) Third, Ms Tiong testified that Dr Chan raised the topic of having group sex with her a few times. The first time was about three months into the relationship,<sup>226</sup> around March or April 2017.<sup>227</sup> Once the topic of group sex was raised so early on in the relationship as alleged by Ms Tiong, it would and should have been clear to Ms Tiong that Dr Chan had no intention to have a completely exclusive relationship with her.<sup>228</sup>

163 It is clear on the face of the evidence that the parties were not in consensus as to the stage or the underlying terms of their relationship. Both parties agree that during the course of their relationship, they continued to argue about whether their relationship was exclusive or not.<sup>229</sup> While Ms Tiong believed that the relationship lay on the further end of the spectrum towards being both long-term and exclusive, Dr Chan had a more nuanced and qualified interpretation of “exclusive”, *ie*, that the parties owed it to each other to inform the other person if they wished to have sexual relations with another person

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<sup>225</sup> 1AB at p 537.

<sup>226</sup> Transcript (26 April 2022) at p 37 lines 3–6.

<sup>227</sup> Transcript (26 April 2022) at p 37 lines 16–18.

<sup>228</sup> Transcript (7 July 2022) at p 22 lines 17–24.

<sup>229</sup> Transcript (28 April 2022) at p 46 line 10 to p 47 line 2.

outside of the relationship.<sup>230</sup> In my view, the objective evidence indicates that Ms Tiong and Dr Chan had, at best, a relationship where each of them were expected to inform the other if they wished to have sexual relations with another person outside of the relationship. I pause to note the double standard at play. While Dr Chan stated that this was his expectation of Ms Tiong, he did not think that *he* was bound by the same terms, as he had sexual relations with E while dating Ms Tiong, without Ms Tiong’s knowledge.<sup>231</sup>

164 Ms Tiong and Dr Chan’s relationship was a messy one. On the one hand, Ms Tiong held a one-sided belief that they were in a long-term and exclusive relationship. On the other, Dr Chan’s belief was that they were in an exclusive relationship but were allowed to have sexual relations outside of the relationship if the other person were informed. It would therefore be incorrect to say that both parties had agreed to a “long-term and exclusive” relationship “with a view to marriage”. This might have been Ms Tiong’s desire or intention. But this was merely an unreciprocated one-sided intention. The evidence plainly does not indicate that Dr Chan expressly told her or impliedly suggested that he wanted a long-term and exclusive relationship with a view to marriage. There is no evidence that Dr Chan, through his conduct or otherwise, made the Statement to Ms Tiong.

165 *Even if* Dr Chan had given Ms Tiong the impression that he intended to pursue a long-term and exclusive relationship with her, Ms Tiong could not have been induced into physical intimacy with Dr Chan by the promise of a long-term and exclusive relationship as pleaded.<sup>232</sup> Her claim is decisively

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<sup>230</sup> Transcript (28 April 2022) at p 43 lines 11–21.

<sup>231</sup> Transcript (28 April 2022) at p 41 line 24 to p 42 line 7.

<sup>232</sup> ST at para 9.

rebutted by the contemporaneous evidence. Ms Tiong and Dr Chan engaged in physical intimacy from as early as 6 January 2017. This is evident from their text messages on the morning of 7 January 2017, where they alluded to having sexual intercourse the night before.<sup>233</sup> This would have been about two weeks after they had first met on 21 December 2016. Therefore, it cannot be the case that Ms Tiong was induced by the prospect of an exclusive relationship to be physically intimate with Dr Chan. Ms Tiong herself also admitted that she could not have been induced by any belief of an exclusive relationship with Dr Chan to enter into physical intimacy with him because she was already intimate with him as of 6 January 2017.<sup>234</sup>

166 In fact, during cross-examination, Ms Tiong gave evidence that the relationship “was for fun”. She then confirmed that her characterisation of the relationship as initially “for fun” contradicted her evidence in her AEIC that she was induced by Dr Chan’s words and actions to enter into intimate sexual relations with him.<sup>235</sup>

A. Initially, *the relationship was for fun* and it has evolved to a serious relationship and we discussed about being exclusive, meeting parents. It was not serious, we did not take the relationship seriously when we first have intimate relationship. Subsequently, the relationship had evolved.

MS CHEW: Actually, if you read your own evidence at paragraph 9, the last sentence, you were talking about the start of the sexual -- intimate sexual relations. You said:

"I was thus induced by his words and action to enter into intimate sexual relations with Dr Chan and continued to do so until we broke up."

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<sup>233</sup> 1AB at p 153.

<sup>234</sup> Transcript (19 April 2022) at p 112 lines 4–16.

<sup>235</sup> Transcript (19 April 2022) at p 113 lines 5–22.

*So what you have just said contradicts your last sentence at paragraph 9?*

A. Okay.

Q. You agree?

A. I agree.

[emphasis added]

167 Having regard to all of the above, I find that Ms Tiong has failed to prove, on a balance of probabilities, that Dr Chan “intentionally informed [her] that he was committed to having a long-term and exclusive sexual relationship with her”, and that this induced her to be sexually intimate with him.

(2) The mental element

168 Even assuming Dr Chan had made the Statement, I find that on a balance of probabilities, Dr Chan did not have the “intention to cause physical harm or severe mental or emotional distress” (*Rhodes* at [87]) to Ms Tiong when he made the Statement. Counsel for Dr Chan furthered an alternative interpretation of the Statement during opening statements on the first day of the trial:<sup>236</sup>

In fact, if one were to look at the statement itself, "I assure you that I would be in a long-term exclusive sexual relation with you", that sort of statement is often made with the intention of reassuring or comforting the individual that you are speaking of the existing relationship. The suggestion that a statement like this is made to maliciously harm the individual is not a plausible interpretation of that statement.

169 Ms Tiong claims that the Statement was made in February 2017.<sup>237</sup> The parties would already have been in an intimate relationship at that time. Reading the content of the Statement against the backdrop of the parties’ relationship at

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<sup>236</sup> Transcript (19 April 2022) at p 42 line 24 to p 43 line 7.

<sup>237</sup> SOC at para 6; POS at para 3.

that time, I am of the view that Dr Chan’s counsel’s suggested interpretation is a reasonable one and is the more likely intention of Dr Chan, as opposed to Ms Tiong’s claim that Dr Chan had *intended* to cause her psychiatric harm with the Statement. At the time the Statement was allegedly made by Dr Chan, *ie*, February 2017, he and Ms Tiong were in a romantic relationship. Clearly, Dr Chan would not have any intention or thought of causing harm to Ms Tiong, who admitted that before the breakup in May 2018, Dr Chan was caring and he looked after her best interests (see [115] above). I, therefore, find that the mental element of the rule in *Wilkinson* is not satisfied.

(3) The consequence element

170 Even assuming Dr Chan had made the Statement with intent to cause her harm, I am not satisfied that Ms Tiong suffered “physical harm or recognised psychiatric illness” (*Rhodes* at [73]) as a result of her discovery that the Statement was false. In the course of the trial Ms Tiong’s counsel even suggested that as a result of her discovery that the Statement was false, she suffered life-long psychiatric harm. The claim that Ms Tiong suffered such psychiatric harm is clearly unsupported by the evidence. The most crucial piece of evidence in this regard is Ms Tiong’s position that she still intended to maintain her relationship with Dr Chan with a view to marrying him. This is despite her discovery of the WhatsApp Messages, although she might have been disappointed with what Dr Chan had done:<sup>238</sup>

Q.                    *So if Dr Chan did pledge to marry you with an engagement ring, you would be prepared to overlook his unfaithfulness and his failure to meet your expectation of an exclusive sexual relationship?*

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<sup>238</sup> Transcript (21 April 2022) at p 97 line 25 to p 99 line 3; Transcript (26 April 2022) at p 35 line 22 to p 36 line 16.

- A. *Yes, I was prepared.*
- Q. Ms Tiong, I think that I must admire you because this shows that you could not have been adversely affected by the discovery of the private screenshots between Dr Ong and Dr Chan. Do you agree?
- A. I disagree.
- Q. So can you then explain to me why you disagree with my suggestion that you could not have been adversely affected and were even prepared to marry him?
- A. After the discovery end of April 2018 we were still together trying out the relationship for another one month. Although we are together for a month what I meant is I was with Dr Chan after the discovery for a month. We were still very loving. Unfortunately there were a lot of quarrels over the one month. It was a very conflicting kind of feeling. One moment I was angry with him, one moment we were very lovely. So this type of emotions is like a rollercoaster. I wish I was not -- I can't explain.
- Q. *Ms Tiong, despite what you say as the rollercoaster, you agree that you were still prepared --*
- A. Yes.
- Q. *-- to marry him knowing that he was unfaithful to you during the relationship. Agree?*
- A. *Agree.*
- ...
- COURT: Now, then you came to the discovery, which is the Eastern European trip.
- A. Yes.
- COURT: *You told us that notwithstanding the discovery, you still had the intention to marry him?*
- A. I wouldn't say -- I think it's just to see him as my partner. Marriage would be on the way, but it was not now. I just want to be with him. *I want him to be committed then.*
- COURT: No, no --

A. I do consider marriage.

COURT: Sorry?

A. I do consider marriage too.

COURT: If my recollection holds, I remember Ms Chew asked you, *and you told Ms Chew that even notwithstanding the discovery, you still had the intention to maintain your relationship with a view to marrying him?*

A. Yes.

COURT: *So am I correct to say that?*

A. *Yes, that's correct.*

[emphasis added]

171 The above exchanges show that any harm Ms Tiong might have purportedly suffered from realising that Dr Chan did not intend to carry on a long-term, exclusive relationship with her is, at best, minimal. The harm purportedly suffered by Ms Tiong, if any, is drastically different from that suffered by the plaintiff in *Wilkinson*. The plaintiff in *Wilkinson* suffered a violent nervous shock and became seriously ill when she was told that her husband had a bad accident and had broken both his legs. Because of the shock to her nervous system, the plaintiff in *Wilkinson* suffered vomiting “and other more serious and permanent physical consequences at one time threatening her reason, and entailing weeks of suffering and incapacity to her” (*Wilkinson* at p 58). There is no evidence that Ms Tiong suffered any “physical harm or recognised psychiatric illness” as a result of Dr Chan’s infidelity. On the contrary, the fact that she was still willing and wished to carry on a long-term relationship with him means that she had not suffered any harm although she was angry and disappointed with the discovery.

*Conclusion on claim under the rule in Wilkinson*

172 In summary, I find that Ms Tiong has failed to establish her claim under the rule in *Wilkinson*. There is no evidence that Dr Chan made the Statement to her. Even if Dr Chan did make the Statement, there is no evidence that he did so with the intention to cause her harm as they were in a romantic relationship. In any case, Ms Tiong did not suffer physical harm or any recognised psychiatric illness as a result of Dr Chan's infidelity.

*Assessment of the witnesses**General observations regarding Ms Tiong's credibility and reliability*

173 Ms Tiong's evidence was confusing, contradictory and highly unreliable. She gave egregious and gravely inconsistent accounts on key aspects of her case. She also appeared to embellish her evidence on critical points. I shall illustrate with an example. On 20 April 2022, while on the stand, Ms Tiong brought to court and sought to adduce eight to nine strips of Xanax which were not disclosed before the trial.<sup>239</sup> These Xanax tablets were purportedly given to her by Dr Chan. These eight to nine strips of Xanax would have added another 80 to 90 tablets to the count allegedly provided to her by Dr Chan. Her explanation for this sudden appearance of more Xanax tablets was that she unwittingly found them while moving house.<sup>240</sup> However, her own lawyer stated in court that he was not aware of the extra tablets of Xanax Ms Tiong was in possession of.<sup>241</sup> When asked further *when* she moved house, Ms Tiong stated that she did so in January 2021.<sup>242</sup> Despite finding the extra tablets of Xanax in

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<sup>239</sup> Transcript (20 April 2022) at p 27 lines 14–19.

<sup>240</sup> Transcript (20 April 2022) at p 30 lines 17–22.

<sup>241</sup> Transcript (20 April 2022) at p 31 lines 9–11.

<sup>242</sup> Transcript (26 April 2022) at p 40 lines 22–23.

January 2021, Ms Tiong did not raise them to anyone until more than a year later during the trial. In these circumstances, Ms Tiong's account that she found these extra tablets of Xanax given to her by Dr Chan was extremely suspicious. Taken together with the rest of the material inconsistencies in her evidence, this raised serious doubts about her credibility and reliability as a witness.

174 Moreover, as counsel for Dr Chan points out, if Dr Chan had indeed provided her these eight to nine Xanax strips as alleged, this would have seriously contradicted her earlier position that she was given 120 to 150 tablets of Xanax by Dr Chan.<sup>243</sup> At the same time, her latest allegation that she found the eight and nine Xanax strips would also further seriously contradict her earlier various versions as illustrated in the table above at [91]. This arises from how Ms Tiong had previously disclosed to the court the packaging of 84 tablets of Xanax.<sup>244</sup> Adding the disclosed amount of 84 tablets together with the subsequent 80 to 90 tablets from the new eight to nine strips of Xanax she unexpectedly produced while on the stand would bring the alleged total to 164 to 174 tablets of Xanax. This new total of 164 to 174 tablets is a marked difference from her versions at [95] above.

175 Further, material inconsistencies were almost ubiquitous in Ms Tiong's evidence during cross-examination on pertinent issues related to her claims. I have analysed the inconsistencies in her evidence on the material issues of the frequency with which Dr Chan gave Ms Tiong Xanax and the quantity of Xanax she was given (see [86]–[107] above). I further note that Ms Tiong agreed during cross-examination that (a) Dr Chan was very careful to ensure she did

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<sup>243</sup> DCS at para 29.

<sup>244</sup> PBOD Tab 2.

not take medication unnecessarily;<sup>245</sup> and (b) Dr Chan did not want to expose her to the risk of dependence on medication.<sup>246</sup> These positions are inconsistent with her pleaded position in the Plaintiff’s Opening Statement, where she argued that Dr Chan gave her Xanax in a “free and easy manner”.<sup>247</sup>

176 Another example that Ms Tiong is parsimonious with the truth relates to her motive for the present suit. During cross-examination, Ms Tiong disagreed that she was out to damage Dr Chan’s reputation.<sup>248</sup> This is patently inconsistent with numerous contemporaneous text messages where Ms Tiong demanded that Dr Chan transfer money to her as compensation for the legal fees she incurred in her divorce, lest she takes action against him in “wave[s]” and causes Dr Chan to lose his reputation:<sup>249</sup>

[27/5/18, 9:26:49 PM] Serene Tiong: [Ms Tiong’s POSB account number]

...

[29/5/18, 6:54:35 PM] Serene Tiong: 1st wave

[29/5/18, 7:39:26 PM] Serene Tiong: You are totally a disappointment. Thinking you can get away easily from fucking other's wives. Because its free and require no responsibility

[29/5/18, 7:40:42 PM] Hn Chan: Tats what u keep insisting but I’m not

[29/5/18, 7:41:05 PM] Serene Tiong: Dont worry. I have all the evidence

[29/5/18, 7:41:37 PM] Serene Tiong: Please be assured that whatever I say is true

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<sup>245</sup> Transcript (20 April 2022) at p 11 lines 20–23.

<sup>246</sup> Transcript (20 April 2022) at p 21 lines 4–7.

<sup>247</sup> POS at para 38.

<sup>248</sup> Transcript (21 April 2022) at p 115 lines 20–24.

<sup>249</sup> 1AB at pp 705–714; Transcript (21 April 2022) at p 105 line 20 to p 118 line 22.

[29/5/18, 7:42:33 PM] Serene Tiong: *You need to be responsible on my legal fees.* If you have not fuck [E] the married [sic] woman, I wouldn't ask u to pay for it

[29/5/18, 7:44:35 PM] Serene Tiong: Its not the first day that you are fucking other's wives. You have been fucking married women for YEARS.... [emoji]

[29/5/18, 8:40:25 PM] Serene Tiong: U just hang up the phone like that. Very rude

[29/5/18, 9:49:04 PM] Serene Tiong: ?

[29/5/18, 9:58:49 PM] Serene Tiong: *Wave 2 later*

...

[29/5/18, 10:51:32 PM] Serene Tiong: When do u want to get it done or should I go wave 2 first?

[29/5/18, 10:51:52 PM] Serene Tiong: Its 150k. With your lawyee

[29/5/18, 10:52:12 PM] Serene Tiong: I will increase again if u bargain some more

...

[29/5/18, 11:03:23 PM] Serene Tiong: U have to agreed on my terms today. Bec I will change my mind tomorrow. It will be much worst

...

[29/5/18, 11:06:21 PM] Serene Tiong: You are a medical doctor

[29/5/18, 11:06:29 PM] Serene Tiong: Your reputation is important

...

[29/5/18, 11:25:45 PM] Serene Tiong: Media attention is require too

[29/5/18, 11:26:04 PM] Serene Tiong: Unfortunately u cant settle it by yourself

[29/5/18, 11:26:28 PM] Serene Tiong: *Think about how much income its [sic] going to be lost. Reputation*

[emphasis added]

177 During cross-examination, Ms Tiong confirmed that she was threatening Dr Chan during the above exchanges:<sup>250</sup>

Q. Now, I refer you to 1AB 707. 1AB 707 at 6.54.35 pm. ...

A. Yes.

Q. Now, you said to Dr Chan that -- first, you mentioned first wave and you said to Dr Chan that he's a disappointment, and then you said at 7.42 pm that Dr Chan needs to be responsible for your legal fees and that if he did not have sex with a married woman you would not ask him to pay for the legal fees.

...

Q. So my question to you: what do you mean by the first wave?

A. Honestly I don't know I'm talking about. *I just want to be very upset and just want to threaten him*, I guess.

Q. So what do you mean -- so what were you going to do to threaten him?

A. Maybe tell his parents.

MS CHEW: Your Honour, I'm now going to move down to 8.40 pm on the same page, 8.40.25 at 1AB 707?

COURT: Yes.

MS CHEW: Ms Tiong, you told -- you referred to Dr Chan and you said -- you made a reference to wave 2. What do you mean by wave 2?

A. Maybe tell somebody. Probably [E]'s(?)husband.

...

Q. *So you would agree that your wave 2 is another threat made to Dr Chan, correct?*

A. *Correct.*

[emphasis added]

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<sup>250</sup> Transcript (21 April 2022) at p 106 line 15 to p 107 line 25.

178 Ms Tiong later backtracked in her position and stated that she did not intend to damage Dr Chan’s reputation as she was deeply in love with him at that time:<sup>251</sup>

MS CHEW: 11.06.21 pm, your Honour, going down where she says:

“You are medical doctor. Your reputation is important.”

COURT: Yes.

MS CHEW: In other words, you are threatening Dr Chan that if he did not agree to your terms you were going to damage his reputation. Agree?

A. I disagree. I would not destroy a person I would love so much at that point of time, even after the discovery I have never circulated the WhatsApp messages to his colleagues even though there's some wave 1 or wave 2, that was just some kind of like a story line just to get his attention.

179 I find that this claim is inherently at odds with the contemporaneous evidence at [176] above, where Ms Tiong clearly alluded to the importance of Dr Chan’s reputation as a medical doctor. Read in context with the previous message that Dr Chan must agree to her terms that day or “[i]t will be much wors[e]”, the logical conclusion to be drawn is that Ms Tiong would take steps to hurt Dr Chan’s reputation if he did not agree to her terms. Further, a few minutes later, Ms Tiong again changed her position and agreed that she was threatening Dr Chan to damage his reputation:<sup>252</sup>

MS CHEW: You will see at 11.25.17 pm at 1AB 714.

A. Yes, I saw.

Q. Ms Tiong, you said to [sic]:

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<sup>251</sup> Transcript (21 April 2022) at p 116 lines 9–22.

<sup>252</sup> Transcript (21 April 2022) at p 118 lines 4–23.

“Both of you have to go down together since both of you are best friends.”

Ms Tiong, when you say that, you are referring, am I right, to Dr Chan and Dr Ong, correct?

A. Correct.

Q. Then Dr Chan in response at 11.25.40 pm, he said:

“Nothing to do with Julian K.”

And then you responded at 11.25.45 pm:

"Media attention is required too."

And at 11.26.04 pm you said:

"Unfortunately you can't settle it by yourself", and then you went on to say at 11.26.28 pm:

"Think about how much income is going to be lost reputation."

*So do you agree that in this exchange you were threatening Dr Chan to damage his reputation?*

A. *I agree.*

[emphasis added]

180 From the above, it is clear that Ms Tiong’s evidence on whether she intended to damage Dr Chan’s reputation fluctuated and this further gravely undermined her credibility as a witness.

181 Ms Tiong also embellished her account of key events. For instance, regarding the incident on 13 June 2018 when she confronted Dr Chan at his office, Ms Tiong alleged during cross-examination that she was of unsound mind at the time.<sup>253</sup> Not only was this allegation raised belatedly, it is also inconsistent with the contemporaneous evidence. Ms Tiong also attributed her aggression for this incident to consuming Xanax. Viewed in the correct context,

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<sup>253</sup> Transcript (20 April 2022) at p 34 line 24 to p 35 line 23.

the aggression was not purportedly due to the side effects of Xanax. Instead, it was her personal vendetta and her anger that Dr Chan had spurned her love for him, which drove her to take revenge. Ms Tiong clearly had the presence of mind to surreptitiously record the conversation with Dr Chan *and* submitted the recording with her complaint to the SMC six days later, *ie*, 18 June 2018.<sup>254</sup> This is not the behaviour consistent with someone of unsound mind. Rather, these appear to be the premeditated and calculated actions of a scorned lover out for revenge as Dr Chan decided to end the relationship with Ms Tiong in May 2018.

182 In CA 129, the Court of Appeal, in upholding Chua J's decision to dismiss Ms Tiong's application for leave to commence the Derivative Action Suit, stated as follows:

3 The central motif in CA 129 and the proceedings below is revenge. ...

4 Ms Tiong's actions are only explicable when one views them in the context of her unfortunate history of conflict with Dr Ong and Dr Chan which began when she discovered various offending WhatsApp messages on Dr Chan's phone. The present appeal and the proceedings below are but *a single pitstop in Ms Tiong's quest for revenge* against the two doctors and all others who are directly or indirectly related to them, including Dr Heah. This collateral purpose is inconsistent with the purpose of doing justice to the Company and is, in essence, a flagrant abuse of the statutory remedy under s 216A of the Companies Act (Cap 50, 2006 Rev Ed).

5 We recognise that Ms Tiong has suffered deep emotional scars from her interactions with the two doctors, but *legal relief must come via the correct route*. The appropriate forum for Ms Tiong to air her grievances is the Singapore Medical Council which is presently investigating the Complaint, and not the statutory derivative action under s 216A of the Companies Act.

[emphasis added]

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<sup>254</sup> Transcript (20 April 2022) at p 35 line 24 to p 36 line 18.

183 I agree with and reiterate the Court of Appeal’s sentiments. In my view, Ms Tiong displayed a willing readiness to compromise the court process for her own personal vendetta. This became crystal clear when she took the stand. Ms Tiong exaggerated her answers in court and appeared insouciant when relaying the basic facts of her case, most pertinently the quantity of Xanax she was provided. She even admitted that she had not calculated the precise number of Xanax tablets provided to her before filing her claim for medical negligence and only did so the night before the third day of the trial. This was after she was put on the spot by counsel for Dr Chan on the second day of the trial.<sup>255</sup> The final death knell came when Ms Tiong affirmed that she would not have commenced the present suit if she were in a relationship with Dr Chan:<sup>256</sup>

COURT: If he had agreed to continue this relationship, can I assume that you would not have taken this suit against him?

A. Yes, because he would have looked after me, I don’t need to pay for my own medical fees. (Pause).

184 Regarding the numerous inconsistencies in Ms Tiong’s case, she attempted to explain that she was suffering from memory loss as a result of consuming Xanax. But as I have found above at [100], her reliance on “memory loss” as an explanation at best suggests that her recollection of the events and her testimony in court are unreliable and cannot be believed as she is saying that her memory is impaired, and at worst suggests that she indulges in selective loss of memory at her convenience.

185 The above exchange, taken together with the context of the dispute and the evidence surfaced during the trial, confirmed that Ms Tiong’s

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<sup>255</sup> Transcript (21 April 2022) at p 35 lines 1–11.

<sup>256</sup> Transcript (26 April 2022) at p 55 lines 10–14.

commencement of the present suit was borne out of personal spite or a vendetta. Ms Tiong has no doubt been deeply hurt by Dr Chan's infidelity and this is understandable. However, pursuing court action without merit just to drag Dr Chan's name through the mud is an abuse of the court process.

186 Given the circumstances, I find that Ms Tiong was an unreliable witness whose evidence on the stand was coloured by her bitter feelings and the desire to publicly punish and shame Dr Chan.

*General observations regarding Dr Chan's behaviour*

187 Ms Tiong claims that Dr Chan's account of the events should be doubted on the following grounds:

- (a) Dr Chan's allegations that Ms Tiong had extorted him is untrue as he did not pursue a counterclaim against Ms Tiong for malicious prosecution;<sup>257</sup> and
- (b) Dr Chan lied as to whether Ms Tiong had attempted to commit suicide.<sup>258</sup>

188 The fact that Dr Chan did not pursue a counterclaim against Ms Tiong for malicious prosecution does not render his account that Ms Tiong had extorted him less believable. The SPF, after investigating the matter, concluded that Ms Tiong had committed the offence of attempted extortion under s 385 of the Penal Code and issued Ms Tiong a warning in lieu of prosecution. Further, Dr Chan's account is plainly supported by contemporaneous evidence, *ie*, the

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<sup>257</sup> PRS at para 65.

<sup>258</sup> PCS at paras 69 and 75.

transcripts of their WhatsApp messages where Ms Tiong had demanded money from him (see [176] above).

189 I have already dealt with the evidence on Ms Tiong's alleged suicide attempt at [79] above and concluded that it is inconclusive as to whether Ms Tiong did attempt suicide in front of Dr Chan. Dr Chan did not admit that there was specifically a suicide attempt, though he accepted that there was an "incident with a knife" where Ms Tiong was disarmed quickly:<sup>259</sup>

- MR ONG: There was a suicide incident where she was holding a knife to her throat, so the "to your", and then the words trail off, am I correct to say it was "to your throat"?
- A. I can't remember.
- Q. *But would you agree there appears to have been a violent threatening episode involving the use of a knife?*
- A. *I wouldn't say it's violent.*
- Q. Threatening?
- A. Threatening --
- Q. That's your words in there.
- A. Yes. Yes, Mr Ong.
- COURT: Yes what?
- A. Yes, it was threatening.
- COURT: Using a knife to her throat?
- A. *I'm not sure whether it was to her throat.*
- ...
- A. Your Honour, *I can't remember whether it was to her -- whether the knife was to her throat.*
- COURT: So was there a knife?
- A. Yes, there was a knife.

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<sup>259</sup> Transcript (28 April 2022) at p 9 line 18 to p 12 line 17.

COURT: So this knife, who was holding the knife? You were holding the knife or she was holding the knife?

A. She was holding the knife.

MR ONG: Dr Chan, can you remember what you did in that threatening incident where Ms Tiong was holding a knife?

A. I think I took away that knife, and tried to calm her down.

...

Q. Would you agree, Dr Chan, that this contradicts your earlier answer that there was no violent incident involving the use of a knife, after Ms Tiong discovered the screenshot messages?

A. *I disagree, Mr Ong, because I don't interpret the incident as violent.*

...

Q. So could you tell us, how did you interpret that situation?

A. I think in that situation, she was holding onto a knife, *but she was just holding onto a knife, not anything else.*

Q. Could you tell us how you disarmed her?

A. I think I just took the knife out of her hand.

Q. Were you confident that you would be so fast as to disarm her ***before she could stab either herself or you?***

A. *Yes, I did disarm her very quickly.*

[emphasis added in italics and bold italics]

190 Based on Dr Chan's account of the event, Ms Tiong could *either* have been threatening to hurt herself *or* Dr Chan. In these circumstances, asserting that Dr Chan lied about the matter is an overstatement.

191 On the whole, I find that Dr Chan's testimony was largely untarnished by inconsistencies when weighed against Ms Tiong's testimony. However, this

does not in any way excuse or vindicate Dr Chan's disturbing conduct. In this regard, I reiterate the words of See J in the Defamation Appeal at [86]:

Nevertheless, I am unable to say that [Dr Ong] has been fully vindicated. What [Dr Ong] and Dr Chan have done outside their professional roles with their various sex partners is entirely a matter of their own personal choice. But [Dr Ong] and Dr Chan do not have any reason to hold their heads high, for there is no moral victory that either they or [Ms Tiong] can lay claim to.

192 Doctors such as Dr Chan, who are entrusted with the care of physically or mentally vulnerable patients, are subject to high levels of professional scrutiny in the discharge of their duties. Dr Chan does not dispute that he owed Ms Tiong a duty of care by virtue of his medical expertise.<sup>260</sup> *A fortiori*, Dr Chan's disgraceful use of women including Ms Tiong as his sex objects and the disturbing pride with which he gloated about his sexual conquests in the WhatsApp exchanges with Dr Ong suggest that he is a person with serious and grave character defects. Dr Chan's conduct in exploiting Ms Tiong and other women for his own perverse desires is debauched, degenerate and highly deserving of censure.

## Conclusion

193 For the above reasons, I dismiss Ms Tiong's claims against Dr Chan. I make the following findings:

- (a) Ms Tiong has failed to prove on a balance of probabilities that Dr Chan was negligent in giving her Xanax. Dr Chan's version of the facts is to be preferred over Ms Tiong's. Dr Lim's expert opinion is that the associated risk of dependency from Dr Chan's 14 tablets of Xanax to Ms Tiong is very low. In any case, there is no objective evidence

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<sup>260</sup> DOS at para 34.

supporting Ms Tiong's claim that she suffered harm in the form of side effects from consuming high quantities of Xanax and a Xanax addiction.

(b) Ms Tiong has failed to prove her claim under the rule in *Wilkinson* on a balance of probabilities. There is no evidence that Dr Chan made the Statement to her or that she was induced by the Statement to enter into sexual relations with Dr Chan. In any event, it has not been proven that Dr Chan made the Statement with the intention to cause Ms Tiong psychiatric harm or that Ms Tiong suffered psychiatric harm as a result of her subsequent discovery that the Statement was false arising from Dr Chan's infidelity.

194 Indeed, the adage that hell hath no fury like a woman scorned best describes the vitriolic actions of Ms Tiong. This case is the latest episode in Ms Tiong's plot for revenge against the one who spurned her. Ultimately, no true winner has emerged from this entire debacle. Although I have ruled against Ms Tiong, Dr Chan has borne, and will continue to bear, the shame of having his wanton and depraved behaviour aired in public for all to see.

195 Ms Tiong is to pay costs, to be agreed or taxed, to Dr Chan.

Tan Siong Thye  
Judge of the High Court

Ong Ying Ping (Ong Ying Ping Esq) for the plaintiff;  
Chew Ming Hsien Rebecca, Lim Wee Teck Darren and Benedict  
Tedjopranoto (Rajah & Tann Singapore LLP) for the defendant.

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**Annex 1: Ms Tiong's differing accounts of Xanax tablets allegedly provided by Dr Chan from February 2017 to May 2018**

|          | Version 1                                                     | Version 2                                                                                                        | Version 3                             | Version 4                             | Version 5                                            | Version 6     | Version 7          | Version 8          |
|----------|---------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------|---------------------------------------|---------------------------------------|------------------------------------------------------|---------------|--------------------|--------------------|
| Date     | 17 June 2020                                                  | 17 August 2020                                                                                                   | 6 October 2020                        | 4 February 2022                       | 20 April 2022                                        | 20 April 2022 | 21 April 2022 (AM) | 21 April 2022 (PM) |
|          | Reply to Defence                                              | F&BP                                                                                                             | 5 <sup>th</sup> Affidavit             | AEIC                                  | During cross-examination                             |               |                    |                    |
| Feb 2017 | 10                                                            | 0                                                                                                                | 0                                     | 0                                     | 0                                                    | 0             | 0                  | 0                  |
| Mar 2017 | 10                                                            | 0                                                                                                                | 0                                     | Unspecified quantity since March 2017 | 0                                                    | 0             | 0                  | 0                  |
| Apr 2017 | 10                                                            | 0                                                                                                                | 0                                     |                                       | 0                                                    | 0             | 0                  | 0                  |
| May 2017 | 10                                                            | 0                                                                                                                | 0                                     |                                       | About 150 tablets in the period May 2017 to May 2018 | 10            | 10                 | 10                 |
| Jun 2017 | 10                                                            | Xanax was given in June 2017, a year before Ms Tiong complained to the SMC in June 2018. Quantity not specified. | Unspecified quantity since “mid-2017” |                                       |                                                      | 10            | 10                 | 10                 |
| Jul 2017 | 10                                                            |                                                                                                                  |                                       |                                       |                                                      | 10            | 10                 | 10                 |
| Aug 2017 | 10                                                            |                                                                                                                  |                                       |                                       |                                                      | 0             | 0                  | 0                  |
| Sep 2017 | 10                                                            |                                                                                                                  |                                       |                                       |                                                      | 0             | 0                  | 0                  |
| Oct 2017 | 10                                                            |                                                                                                                  |                                       |                                       |                                                      | 0             | 0                  | 10                 |
| Nov 2017 | 10                                                            |                                                                                                                  |                                       |                                       |                                                      | 10            | 30                 | 30                 |
| Dec 2017 | 10                                                            |                                                                                                                  |                                       |                                       |                                                      | 10            | 10                 | 10                 |
| Jan 2018 | 10                                                            |                                                                                                                  |                                       |                                       |                                                      | 10            | 30                 | 30                 |
| Feb 2018 | 10                                                            |                                                                                                                  |                                       |                                       |                                                      | 10            | 30                 | 30                 |
| Mar 2018 | 10                                                            |                                                                                                                  |                                       |                                       |                                                      | 0             | 30                 | 30                 |
| Apr 2018 | 20–30 tablets per week, “approximately 100 tablets per month” |                                                                                                                  |                                       |                                       |                                                      | 20–30         | 60                 | 60                 |

|              |                                                                                                               |                      |                      |                      |     |         |     |     |
|--------------|---------------------------------------------------------------------------------------------------------------|----------------------|----------------------|----------------------|-----|---------|-----|-----|
| May 2018     | 20–30 tablets per week, “approximately 100 tablets per month”                                                 |                      |                      |                      |     | 20      | 60  | 60  |
| <b>Total</b> | Approximately 330 tablets given (based on calculation, though not explicitly pleaded in the Reply to Defence) | Unspecified quantity | Unspecified quantity | Unspecified quantity | 150 | 110–120 | 280 | 290 |