

Peter Fraser Haggart - - - - - *Appellant*

v.

The General Medical Council - - - - - *Respondent*

FROM

**THE DISCIPLINARY COMMITTEE OF THE GENERAL MEDICAL
COUNCIL**

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 8TH DECEMBER 1975

Present at the Hearing :

LORD DIPLOCK

LORD KILBRANDON

LORD RUSSELL OF KILLOWEN

[*Delivered by* LORD KILBRANDON]

The appellant appeared before the Disciplinary Committee of the General Medical Council to answer complaints arising out of his relations with a patient, Mrs. A. He was charged with improper behaviour and adultery with her, and also with improperly disclosing to Mrs. A's husband information about another patient. The appellant did not dispute that he had been guilty of serious professional misconduct in respect of his relations with Mrs. A. The Committee found that the charge of improper disclosure had not been proved. The Committee directed that the appellant's name be erased from the Register. The appeal before their Lordships was thus confined to the question, whether the determination of the Committee was justified, or whether some other lesser penalty ought to have been imposed.

It should not be necessary again to state the principles which must guide their Lordships in reviewing a determination as to penalty made by a Committee whose extensive experience of these cases, coupled with an intimate knowledge of the requirements of professional discipline, necessarily puts them into a much stronger position to judge than can be claimed by their Lordships. In *McCoan v. General Medical Council* [1964] 1 W.L.R. 1107, Lord Upjohn, in giving, with what was clearly some reluctance, the opinion of the Board refusing to interfere with the sentence, said at p.1113:

"If it is to be set aside the sentence of erasure must appear to their Lordships to be wrong and unjustified."

It should be pointed out that that decision was given at a time when erasure was the only form of punishment available, the power to reprimand or suspend not having been yet given by the Medical Act 1969. In *Tarnesby v. General Medical Council* (Privy Council Appeal

No. 21 of 1969) the Board drew attention to a "special feature", namely that the Medical Act had come into force after the sentence had been passed; their Lordships took into account matters of mitigation and altered the sentence to one of suspension, which the Committee had had no power to pronounce. But it seems to their Lordships that, in a situation where alternative sentences were available to the Committee and were not adopted, the principle remains entire, namely, that

"... it would require a very strong case to interfere with sentence in such a case, because the Disciplinary Committee are the best possible people for weighing the seriousness of professional misconduct"—*McCoan v. General Medical Council* (*supra*) at p.1113, approved by Lord Hodson in *Bhattacharya v. General Medical Council* [1967] 2 A.C.259 at p.268.

Counsel for the appellant asked leave of the Board to submit fresh evidence which had not been before the Committee. To this request their Lordships applied the general rule, that fresh evidence will not be admitted if it could have been, and should have been if due diligence had been used, submitted to the court below. While such a rule might not be applied with rigour were it sought to raise a matter of substantive defence, omitted below by inadvertence, the absence of which could cause justice to miscarry, that could not be said of evidence tendered for the purpose of emphasising matters of mitigation which had in substance been already considered. Their Lordships accordingly declined to receive in evidence certain Departmental circulars, which give some indication of why a sentence of erasure, even if the appellant were subsequently restored, would have more grievous consequences to him than would a sentence of suspension. Their Lordships were in any event satisfied that any such distinction must be perfectly familiar to the Committee; indeed those different consequences were specifically adverted to by Lord Pearson in *Tarnesby v. General Medical Council* (*supra*) at p.13. On the other hand their Lordships admitted, and examined, a large number of testimonials from patients and others, since these sources could not reasonably have been expected to be canvassed while the charge of improper disclosure was awaiting trial. So also were admitted recent medical certificates, describing the appellant's present state of psychological health and the prospects of its improvement.

Their Lordships did not feel that the medical opinions, though from a distinguished source which they respect, were sufficient, even in conjunction with other factors, to justify them in saying that the decision of the Committee was wrong. As regards the testimonials, the value of impressive commendations from patients, in a case such as the present, must be limited. The tragic feature of all such cases is that, as a glance at only recent examples will show, they may effect a termination of useful and sometimes brilliant careers. If the charge were one of incompetence, neglect, or even perhaps remediable alcoholic intemperance, much might be made of general professional reputation. But such cases as the present distinguish themselves. Their Lordships, accordingly, did not find the receivable new evidence sufficient to justify them in interfering with the Committee's judgment.

The feature of this appeal which gave their Lordships some difficulty was really the other ground upon which counsel for the appellant relied, namely, that the Committee erred in principle in coming to their decision on sentence. Apart from submissions to the effect that the Committee had paid too little attention to mitigating factors, there was a clear allegation, supported by recent records, that the sentence was wrong and unjustified because it was inconsistent with the policy of the Committee discernible from precedents, that it was "out of line" with

sentences in equivalent cases, and that this showed that the Committee took into account what they should not take, or ignored what they should not ignore, and thus arrived at an anomalous result.

It is the fact that since the passing of the Medical Act 1969 there was, out of 12 cases before the Committee similar to the present, only one in which sentence of erasure was pronounced. (There were two others of persons erased and restored after a year, obviously in order to give effect to the 1969 Act and the powers therein contained.) This caused their Lordships to look narrowly at the penalty imposed in the present appeal. Are there reasons, they asked themselves, why the present case should be treated differently from the run of earlier post-1969 cases? Their Lordships were informed—and the facts alleged are not contradicted by the appellant—that among the considerations which influenced the Committee in imposing the gravest penalty within their power were the following:—

- (i) The overtures by the appellant to Mrs. A. began in his surgery, shortly after Mrs. A. had undergone a major gynaecological operation:
- (ii) At that time it was known to the appellant that Mrs. A. was in an unsettled mental condition:
- (iii) The adultery between the appellant and Mrs. A. went on for a long time at Mrs. A's home in the course of the appellant's professional visits to her:
- (iv) Mrs. A's mental health, during the time the appellant was her medical attendant, suffered from her adultery with him:
- (v) The appellant called on Mrs. A's husband, after committing adultery with Mrs. A, and told him that Mrs. A was in a poor state of mental health, which might cause her to make unfounded allegations against him, the appellant, of a sexual nature:
- (vi) The appellant caused his solicitors to write to Mrs. A's husband, complaining that the husband was falsely accusing the appellant of adultery, and threatening an action for that defamation, the appellant knowing that the charge of adultery was well-founded.

Their Lordships wish to emphasise that they do not for themselves express an opinion on whether those aggravating circumstances are sufficient to justify a sentence of erasure, which, in an adultery case, is admittedly an extreme and unusual penalty. They tender their advice upon the basis that such a conclusion is one at which the professional body were well entitled to arrive, and that their Lordships would not be justified in setting it aside.

Their Lordships will therefore humbly advise Her Majesty that the appeal should be dismissed.

In the Privy Council

PETER FRASER HAGGART

v.

THE GENERAL MEDICAL COUNCIL

DELIVERED BY

LORD KILBRANDON