

Dr. Niaz Mand Cairn

*Appellant.*

v.

The General Medical Council

*Respondent*

FROM

THE PROFESSIONAL CONDUCT COMMITTEE  
OF THE GENERAL MEDICAL COUNCIL

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ORAL JUDGMENT OF THE LORDS OF THE JUDICIAL  
COMMITTEE OF THE PRIVY COUNCIL,  
DELIVERED THE 19TH JUNE 1991

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*Present at the hearing:-*

LORD BRIDGE OF HARWICH  
LORD GRIFFITHS  
LORD JAUNCEY OF TULLICHETTLE

*[Delivered by Lord Bridge of Harwich]*

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Dr. Niaz Mand Cairn appeals against the determination of the Professional Conduct Committee of the General Medical Council made on 30th January 1991 that his name should be suspended from the Medical Register for a period of twelve months. He appeared before the Committee on that date charged with two cases of serious professional misconduct in relation to two patients to whom he had paid home visits in October 1986 and May 1987 respectively.

What was alleged against him in each case was that he had made an inadequate examination of the patient, failed to take an adequate medical history and failed to put himself in a position to determine what treatment was required by the patient's condition. In fact the first patient in October 1986 was a lady who was suffering from an acute condition urgently requiring operative treatment which the appellant failed to discover. Fortunately, the lady was seen later the same day by another doctor and admitted to hospital where an emergency operation was performed.

The patient concerned in the second case in May 1987 was a man who was also suffering from an acute condition which the appellant failed to discover and from which unhappily he died on the day following the appellant's visit.

Before the Professional Conduct Committee the appellant had the advantage of being represented by learned counsel. Prior to the hearing there had been correspondence between the General Medical Council and the appellant's solicitor and it had been admitted, on the appellant's behalf, that his conduct on these two occasions fell below the appropriate professional standard which was required of him. Those admissions were affirmed by his learned counsel at the outset of the hearing and, indeed, in substance were accepted by the appellant in answer to questions put to him when he was giving evidence. Notwithstanding the admissions, there were substantial issues as to precisely what had happened and what had passed in each case as between the appellant and the patient. Evidence was led from the lady patient who was the subject of the first charge and from the widow of the deceased patient who was the subject of the second charge and, as already indicated, the appellant himself gave evidence.

At the conclusion of the evidence and having heard elaborate submissions on the appellant's behalf by his counsel both on the facts and on the appropriate disposal of the case after the Committee had indicated that they found the facts of the charges proved, the Committee through their Chairman announced their decision finding that the facts proved in each case amounted to serious professional misconduct and, as stated, directing that the appellant's name be suspended from the Register for twelve months.

The appellant, in now appealing against that determination and presenting his appeal in person, has in effect invited the Board to retry the case upon the evidence and, indeed, has presented afresh, with much elaboration and argument about medical issues, his own account of what he says happened and his own version of the inferences and conclusions which he submits the Committee should have drawn from the evidence. Unfortunately that presentation of the appeal proceeds upon a total misunderstanding of the nature of the jurisdiction exercised by this Board.

This Board does not retry the case upon the facts, more particularly when the issues of fact were issues of credibility. The appellant has relied in particular upon the circumstance that the lady patient, as appeared from her medical record, had suffered in the past from some degree of mental instability, and has submitted that on that ground the Professional Conduct Committee should have rejected her evidence and preferred his own. But of course the Professional Conduct Committee, made up of highly qualified doctors, heard and saw the witnesses, which this Board has not. It was for them to find the facts. This Board's jurisdiction to interfere with their findings is exercised only where the Professional Conduct Committee have reached a conclusion which is erroneous in law or have made a

finding of fact which is not supported by the evidence which they heard. Neither of those circumstances apply here. Consequently, it would be quite impossible for this Board to interfere with the Professional Conduct Committee's conclusion that the facts of the two charges were established and that they amounted to serious professional misconduct.

Then the appellant further complains that in all the circumstances and in particular having regard to his record and the testimonials which were before the Committee the disposal by suspending him from the Register was an excessive penalty. As is well known, this Board is always extremely slow to interfere with the assessment by this highly qualified medical committee of the gravity of the professional misconduct of a fellow member of their profession and does so only where it appears that, in determining what the penalty should be, the Professional Conduct Committee have erred in principle or imposed a penalty which was manifestly excessive. The Board is quite unable to say either of those things in this case. The Chairman of the Committee, when announcing the Committee's decision, described the appellant's conduct in relation to these two patients as "deplorable" and on the evidence it is impossible for their Lordships to say that that was an inaccurate description. The penalty was, in the circumstances, a perfectly proper one with which their Lordships can find no fault. Accordingly they will humbly advise Her Majesty that this appeal should be dismissed. The appellant must pay the respondent's costs.