

Dasrath Rai

Appellant

v.

The General Medical Council

Respondent

FROM

THE PROFESSIONAL CONDUCT COMMITTEE OF THE  
GENERAL MEDICAL COUNCIL

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REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL OF THE 10TH APRIL 1984,  
DELIVERED THE 14TH MAY 1984

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*Present at the Hearing:*

LORD SCARMAN  
LORD BRANDON OF OAKBROOK  
LORD BRIGHTMAN  
*[Delivered by Lord Scarman]*

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On 5th December 1983 the appellant, at that time a registered medical practitioner, was judged by the Professional Conduct Committee of the General Medical Council, the respondent to the appeal, to have been guilty of serious professional misconduct. The Committee directed that his name should be erased from the register. The appellant has exercised his statutory right to appeal from the decision of the Committee to Her Majesty in Council. The hearing of his appeal was concluded on 10th April 1984, when their Lordships announced that they would humbly advise Her Majesty that the appeal should be dismissed. Their Lordships ordered that the appellant must pay the costs of the appeal. Their Lordships now give their reasons for dismissing the appeal.

The appellant was charged:-

"That, being registered under the Medical Acts,

'Since about 18th March 1982, or earlier, you have abused your professional position as a medical practitioner by issuing numerous prescriptions for dipipanone hydrochloride with cyclizine, methylphenidate and other drugs, in

return for fees, otherwise than in the course of bona fide treatment, including the prescriptions listed in the enclosed schedules;'

"And that in relation to the facts alleged you have been guilty of serious professional misconduct."

The hearing by the Professional Conduct Committee occupied six days. The appellant was represented by leading counsel; not, however, by the counsel who have conducted his appeal before their Lordships' Board. The respondent Council adduced oral evidence and put before the Committee a great deal of documents. Much, but not all, of the evidence was hearsay. Two ex-patients were called to tell of their treatment by the appellant and of the prescriptions which he wrote for them. A Miss James was called to corroborate the evidence of one ex-patient, Witness "A". She was a friend of his; she told the Committee that she had loved him.

The documentary evidence included the report of a Home Office Misuse of Drugs Tribunal (upon which the appellant strongly relied), many medical publications concerned with the treatment of drug addicts, the notes of a number of inquests upon persons who had been patients of the appellant, and evidence derived from the records of some pharmacists from which it was clear that the appellant had issued to patients a very considerable number of prescriptions for controlled as well as for non-controlled drugs. Much of the evidence, though relevant, would have been ruled inadmissible if adduced in a court of law. The Professional Conduct Committee is, however, not bound by the rules of evidence by which courts of law have to abide. Nevertheless, the evidence did clearly reveal the existence of a formidable case in support of the charge as laid.

Counsel for the appellant called before the Committee some 13 patients or patient's relatives, the appellant's receptionist, and the appellant himself. The hearing concluded with full and careful speeches by counsel for both sides and with a short direction by the Legal Assessor on a number of questions of law. There was, without doubt, a full inquiry into the facts and a full opportunity to the appellant to develop his defence.

The Committee, in accordance with usual and accepted practice, gave no reasons when they announced their decision. But they did state what they found to be proved. Their Chairman said to the appellant:-

"Dr. Rai, the Committee have determined that the following facts alleged against you in the charge have been proved to their satisfaction. Since

about 18th March 1982 you have abused your professional position as a medical practitioner by issuing numerous prescriptions for dipipanone hydrochloride with cyclizine, methylphenidate and other drugs in return for fees otherwise than in the course of bona fide treatment, including prescriptions listed in schedules marked A and B."

In an admirably drawn written case (prepared by the junior counsel who had appeared for him at the hearing before the Committee) the appellant put forward four reasons why the appeal should be allowed. His new counsel rely on the written case, but have chosen to supplement it by a number of points not taken in it. Their Lordships have allowed this to be done because of certain exceptional circumstances which will emerge in the course of this judgment. First, however, their Lordships will deal with the points raised in the written case.

"1. BECAUSE the Committee failed to give proper consideration to the large volume of unchallenged evidence in favour of the Appellant."

It is true that the primary evidence of patients being treated, drugs being prescribed, and fees being charged was in very many respects undisputed. The crux of the case always was, and remains, the inference which should be drawn from what the appellant admittedly did in the medical treatment of his many patients who were acknowledged drug addicts and who sought prescriptions for dangerous drugs. The appellant's case was that he prescribed dangerous drugs only for bona fide medical reasons in the treatment of his drug addicted patients. The Committee, however, drew the opposite inference, namely that he had issued numerous prescriptions otherwise than in the course of bona fide medical treatment.

This ground of appeal could succeed only if it could be demonstrated that the Committee could not reasonably have reached the conclusion which they did reach upon the evidence adduced. Their Lordships, after studying the evidence, are left in no doubt at all that there was abundant evidence upon which the Committee, properly directing themselves in law, could reasonably conclude that the appellant was guilty of serious professional misconduct.

"2. BECAUSE the totality of the evidence did not show lack of bona fides on the part of the Appellant."

Precisely the same considerations apply to this ground of appeal. "Irresponsible prescribing", to use the description put upon the appellant's actions by the Misuse of Drugs Tribunal upon whose report the

appellant sought to rely, could well form the basis of a finding of lack of bona fides, if in all the circumstances the Committee could reasonably conclude (as they did) that this was the proper inference to be drawn.

"3. BECAUSE the totality of the evidence was inadequate to support the charge of serious professional misconduct."

For the reasons already given the Board does not doubt that there was evidence upon which the Committee could properly conclude that the charge was made out.

"4. BECAUSE in all the circumstances of the case the penalty of erasure was excessive."

Punishment is for the professional judgment of the Committee, unless the penalty imposed can be demonstrated to be so severe that it was not merited even upon the view of the appellant's conduct which the Committee have felt obliged to take: *McCoan v. G.M.C.* [1964] 1 W.L.R. 1107. In the present case, if the Committee were right to take the view which they did of the appellant's conduct, erasure from the register was plainly an appropriate penalty notwithstanding the previous good record of the doctor. This ground of appeal, therefore, succeeds or fails according to whether the Committee were justified in reaching the view that the appellant had been guilty of serious professional misconduct.

In their Lordships' opinion, there was evidence upon which the Committee could properly reach their conclusion that the appellant was guilty. This is, however, not the end of the appeal. Counsel who appeared before the Board on behalf of the Appellant attacked not only the findings of the Committee but their conduct of the hearing. For the first time there were raised in the course of argument before the Board protests that natural justice had been infringed. Counsel further protested at the lack of a reasoned decision, inviting (by necessary implication) their Lordships to over-rule the well established practice that the Committee gives no reasons, but only states its finding. The thrust of counsel's challenge may be put in these terms: if, contrary to his submission, there was evidence on which the Committee could reach a conclusion adverse to his client, there were certain aspects of the hearing which would render it unjust for their decision to stand. The Board allowed this new attack to be developed because it did appear that there were matters which justice required to be examined before it could be said that the Committee's decision was safe and satisfactory.

Counsel first applied to adduce further evidence. It is, of course, only in most exceptional circumstances that any such application will be granted by the Board. The Board rejected the application save in respect of certain evidence concerning Miss James. Their Lordships allowed to be put before them (and the respondent did not object) a letter from this lady's employers, to which reference will be made later when counsel's point upon her evidence is discussed.

Next, counsel submitted that natural justice had been infringed in three respects. First he pointed out that a member of the Committee, Mrs. Bewley, is the wife of a doctor who had been involved in the Home Office Inquiry related to this case and who had prepared and published an article on the problems of the medical treatment of drug addicts, which was amongst the documents included in evidence. The point fails. At the very opening of the case before the Committee leading counsel for the appellant had expressly stated that he had no objection at all to Mrs. Bewley's presence on the Committee: and he was aware that her husband's article was amongst the documents to be laid before the Committee. Indeed, he raised no objection to the documents which included this article being introduced into the case.

Secondly, counsel submitted that it was improper that a member of the Committee should have withdrawn from the hearing after the first day. A quorum, however, remained: and he did not return. There is nothing in the point.

Thirdly, counsel protested that the publicity which the case attracted was so adverse to his client that a fair hearing was impossible. Their Lordships have found in their study of the proceedings no trace of any indication that the Committee was influenced by this publicity. This point, therefore, like the two preceding points of natural justice, fails.

The Board now turns to the more substantial points made by counsel for the appellant. The first concerned the evidence of Miss James. She was an important witness. She was not a patient, but the friend of a patient: indeed she told the Committee that she had loved Witness "A". She told the Committee that she was a social worker employed by the Berkshire County Council Social Services Department, that she had met Witness "A" in a rehabilitation centre for drug addicts, and that she knew him to be an addict. She knew that he was obtaining Diconal tablets from "the doctor in London", namely the appellant, that he was crushing them, mixing them in water, and injecting himself. According to her evidence she became so apprehensive that she telephoned the doctor and suggested that he should be "a

little more thorough in his checks, in his physical examination of his patients". She was making the point that the doctor should not prescribe unless he was satisfied that the patient was not injecting. She spoke of accompanying Witness "A" to the doctor's: sometimes he would see the doctor, but sometimes not, on which occasions, however, he still picked up a prescription from the receptionist. He paid a fee on each occasion, whether he saw the doctor or not. The evidence that Witness "A" was injecting himself was plain to see, she said, on any physical examination - puncture marks and, sometimes, abscesses.

Cross-examined, she admitted that she had been living with Witness "A" and that she had been in love with him. She said that she had left her job because of her involvement with him but had returned to her employment, "doing a different job". Her evidence as to her telephoning the doctor was strongly challenged. She was asked whether she had been "involved on the drug scene herself" and her answer was "no". No specific allegation of drug-taking was put to her.

This sketch of her evidence suffices to show that, if the Committee believed her, the case against the appellant would be greatly strengthened. She clearly spoke of conduct which could properly be described as irresponsible prescribing. According to her there was plain evidence of Witness "A" injecting himself, a practice which the appellant made clear in his evidence was abhorrent and not to be countenanced or allowed to continue. If faced with evidence of injecting, the appellant said that he would and should have refused to prescribe, unless satisfied that his patient would heed his advice not to do so. The appellant was, therefore, left by her evidence (if true) in a dilemma. Either he examined his patient, in which event he would see the evidence of injection, or he did not. In either event, prescribing Diconal would be irresponsible.

Miss James gave evidence on the second day of the hearing. On the third day the appellant called a Mrs. G. Examined in chief, Mrs G. spoke of herself and her husband as drug addicts. She ultimately went to the appellant for treatment. If she was to be believed, the treatment by him could not be faulted; full physical examination, counselling against injection (he examined carefully her injection marks), and reasonable fees charged for treatment, which included prescribing Diconal. She was not asked any questions about Miss James. When, however, leading counsel for the appellant re-examined her, he sought leave to put a document before her, which had on it two names, those of Witness "A" and Miss James. He asked her whether she knew Miss James' approach to drugs. She answered "yes": she said that Miss James

held the same views as Witness "A". Counsel then put a leading question. Though he was re-examining, he asked:-

"But you have no doubt that she was an addict?"

to which, after objection, the witness replied:-

"Shall I say that I know that she has injected a drug."

The Legal Assessor intervened, emphasising that there was a substantial difference between the general question put in cross-examination to Miss James and the specific allegation now being made. He reminded the Committee that they had power to recall Miss James. The Committee ruled that Miss James should be invited (emphasis supplied) to appear again before the Committee and reply to the allegation. Miss James did not accept the invitation. On the fourth day of the hearing junior counsel for the respondent informed the Committee that:-

"...due to her work commitment and the fear of losing her job, coupled with problems that she has with her child, she does not feel as though she is able to attend the chamber."

The Chairman commented that she had been given the opportunity and the Committee refrained from exercising their power to recall her.

The evidence of Miss James was clearly important. Their Lordships would, however, observe that it did not stand alone. There was a volume of other evidence which, if believed, would support the Committee's finding of serious professional misconduct. Nevertheless, it was right that counsel for both sides and the Legal Assessor should assist the Committee by dealing with it and this was done in their speeches and in his advice, before the Committee retired to consider the case.

In his speech, leading counsel for the appellant, with complete propriety, had queried the independence of Miss James as a witness; and he observed, but without comment, that she claimed not to be on drugs. In effect, he invited the Committee to place no reliance on her evidence.

Junior counsel for the respondent had left the issue of Miss James' credibility fairly and squarely with the Committee. He reminded them that she did not come back to confirm or reject the suggestion that she was on drugs.

The Legal Assessor's advice was more detailed. He told the Committee that it was for them to decide whether they should regard her evidence as "independent testimony". And he said that Miss James had no opportunity of dealing with the specific allegation against her of drug-taking.

In his argument before the Board, counsel for the appellant has developed very strongly the case that the Legal Assessor's advice was incorrect, or at the very least misleading. And he has supported his attack upon the credibility of Miss James by referring to the letter from her employers, which has been introduced before the Board by consent of the parties and by permission of the Board. In a letter of 30th March 1984 the Divisional Director of the Wokingham Division of the Berkshire Social Services Department confirmed a number of matters including:-

- (a) that Miss James has been continuously employed by the County Council since 7th September 1981, and remains in employment by them, and
- (b) that she was on leave (maternity then annual, and finally sick leave) from 25th July 1983 until 4th February 1984.

The letter clearly disposes of the suggestion, made by counsel on opening the appeal, that Miss James had lied when she said that she remained in the employment of the County Council. But it does reveal that, contrary to the information given to the Committee by counsel for the respondent, there was no work commitment at the time of the hearing to prevent Miss James from responding to the invitation to return to the witness box to repel the allegation that she took drugs herself and the suggestion that she had lied when she denied that she was involved in the drug scene. Counsel, therefore, submitted that Miss James was not an independent witness, and that she had misled the Committee by communicating to the legal advisers of the General Medical Council a false reason for not returning to give evidence. Further, the Legal Assessor should have reminded the Committee of her refusal of the Committee's invitation to return, and should have directed the Committee that she was not to be treated as an independent witness.

Their Lordships do not accept that the matters concerned with the evidence of Miss James provide any good reason for reversing the judgment of the Committee. The only serious criticism of the Legal Assessor's advice is his failure to remind the Committee that Miss James did not accept the Committee's invitation to return to the witness-box. But it is inconceivable that the Committee could have overlooked it. The Chairman had mentioned it on the fourth day when counsel told the Committee that she would not be returning: and counsel for the respondent adverted to it in his final speech. And in their Lordships' view far too much has been sought to be made of the letter from the employers. There was, indeed, no "work commitment" making it impossible for her to come to the hearing to give further evidence: but she may well have feared for her job, and she certainly had a young child to look after. The



letter supports her evidence that she was employed. It is, therefore, in their Lordships' view no basis for an attack on her credibility. But more significantly, while it can never be known whether the Committee relied on, or rejected, Miss James' evidence, the other evidence called was sufficient to justify the Committee's finding.

It was, of course, basic to the appellant's case that the other evidence so far from being reliable was so flawed that it was unsafe for the Committee to rely on it. This part of the appeal was developed by reference to a finding by the Home Office Misuse of Drugs Tribunal, whose report was admitted into evidence before the Committee. The Tribunal had sat for four days in 1983 to investigate the conduct of the appellant in issuing the prescriptions listed in the first of the two schedules included in the charge. In their report dated 5th August 1983 the Tribunal found that:-

- "(i) the prescribing of these controlled drugs [Diconal, Palfium, and Ritalin] in tablet form, with Dr. Rai's admitted knowledge of the inherent dangers;
  - (ii) the inadequacies of his practice arrangements; and
  - (iii) the specific aspects which we have set out....
- together justify a finding of irresponsible prescribing."

They went on, however, to speak of evidence which showed that he had the gift of counselling and supporting difficult patients: and the Tribunal concluded that it would be wrong to exclude him from practice in the field of drug addiction by a total prohibition on the prescribing of controlled drugs. The Tribunal recommended a prohibition limited to Diconal, Palfium and Ritalin.

Counsel submitted that a finding of serious professional misconduct was inconsistent with the findings of the Tribunal. But it is not. The Tribunal was concerned with the misuse of controlled drugs (which they found proved), but not with the ethical standards of the medical profession. It would have been an impertinence amounting to a misconception of its function for the Tribunal to make any finding as to professional misconduct. That is for the Professional Conduct Committee, subject only to appeal to Her Majesty in Council. The Tribunal's findings as to drug misuse are, however, important and damaging to the appellant's case. Irresponsible prescribing, which the Tribunal found, may well constitute serious professional misconduct. It is, however, for the Professional Conduct Committee, after considering all the circumstances, to decide whether, if proved, it does or does not.

At the end of the day their Lordships are satisfied that the appeal should be dismissed. The case, however, illustrates what is meant by the many references in the case law to an appeal being a genuine re-hearing:-

"...the Board should take a comprehensive view of the evidence as a whole and endeavour to form its own conclusion whether a proper inquiry was held and a proper finding made on it....":

(Lord Radcliffe, *Fox v. G.M.C.* [1960] 3 All E.R. 225 at page 227). In an appeal the Board is not limited to questions of law or of natural justice. Although the Committee does not give reasons, cases do arise (and this is one) in which it is necessary to consider the evidence as a whole with a view to discovering whether in all the circumstances a finding of serious professional misconduct is a safe and satisfactory conclusion upon the evidence. Justice requires no less.

For many years the relevant legislation provided that if "after due inquiry" a registered practitioner was judged by the Disciplinary Committee to have been guilty of "infamous conduct in any professional respect", the Committee might direct erasure from the register: section 33, Medical Act 1956 which consolidated previous enactments. The law was changed in 1978. By section 7 of the Medical Act of that year the Professional Conduct Committee was substituted for the Disciplinary Committee, the words "after due inquiry" were omitted, and a new offence of "serious professional misconduct" was substituted for "infamous conduct".

The law has now been re-enacted in the consolidating statute, Medical Act 1983: section 36 refers. It is unlikely, though their Lordships express no final opinion, that the omission in the current provision of the words "after due inquiry" was intended in any way to widen the scope of the appeal process or to impose upon the Committee a duty to give reasons for their decision. But it does indicate that due inquiry is not the only appealable point. An appeal is a re-hearing: and in some cases, of which the present is one, a full study of the evidence is necessary. Further, though no obligation rests upon the Professional Conduct Committee to give reasons, in some cases where an acute conflict of evidence arises or where an important difference of opinion emerges, the Committee may find it helpful to do so. Though there is no obligation, the Committee has the power to give reasons: and their Lordships suggest that giving reasons can be beneficial, and assist justice:-

(1) in a complex case to enable the doctor to understand the Committee's reasons for finding against him;

(2) where guidance can usefully be provided to the profession, especially in difficult fields of practice such as the treatment of drug addicts; and  
(3) because a reasoned finding can improve and strengthen the appeal process.

