

Barry John Durrant Peatfield

Appellant

v.

The General Medical Council

Respondent

FROM

THE PROFESSIONAL CONDUCT COMMITTEE
OF THE GENERAL MEDICAL COUNCIL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 2ND DECEMBER 1985

Present at the Hearing:

LORD KEITH OF KINKEL

LORD BRANDON OF OAKBROOK

LORD MACKAY OF CLASHFERN

[Delivered by Lord Mackay of Clashfern]

On 12th July 1985 the appellant, who was a registered 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.

Originally the appellant faced two charges but the second was not established and need not be further considered. The first charge was in these terms:-

"That, being registered under the Medical Act,

- (1) Between about June, 1980 and about November, 1984 or later, at your practice premises in Purley and in South Croydon, you abused your professional position as a medical practitioner by supplying to individual patients in return for fees, quantities of drugs including phentermine or amphetamine with dexamphetamine, thyroid extract and other drugs, repeatedly, over extensive periods:

- (a) without first adequately examining each patient, or seeking adequate information as to his or her medical history;
- (b) without first consulting the patients' general practitioners about the proposed treatment, or in all cases notifying those general practitioners after treatment had first commenced of the details of any drugs supplied and the dosages prescribed;
- (c) without making adequate inquiries on each occasion about the effect of the treatment on the patient's health."

The hearing took place on 11th and 12th July 1985. At the hearing, both the appellant and the respondent were represented by leading counsel. Prior to the hearing the statements of the witnesses to be adduced by the respondent were sent to the solicitors for the appellant. These statements referred to patients some of whom had not been mentioned in earlier correspondence between the parties.

After the case was opened by counsel for the respondent, evidence was led from four patients of the appellant, one of whom spoke also about two other members of her family, from a senior inspector at the Home Office Drugs Branch and from seven medical practitioners. The appellant then gave evidence. He was the only witness on his own behalf. In the course of the evidence of the medical practitioners, reference was made to three other patients of the appellant, two of whom were identified only by letters as Mr. X and Mrs. Y.

At the conclusion of the evidence counsel in turn addressed the Committee and after being addressed by their Legal Assessor the Committee was required in terms of Rule 30 of the applicable procedural Rules, the General Medical Council Preliminary Proceedings Committee and Professional Conduct Committee (Procedure) Rules, to consider and determine as respects each charge which remained outstanding which, if any, of the facts alleged in the charge had been proved to their satisfaction. At this stage the Chairman, on behalf of the Committee, announced their decision in these terms:-

"Dr. Peatfield, the Committee have determined that the following facts alleged against you in the charge have been proved to their satisfaction: that between about June 1980 and November 1984 or later, at your practice premises in Purley and in South Croydon you abused your professional position as a medical practitioner by supplying

to individual patients in return for fees, quantities of drugs including phentermine or amphetamine with dexamphetamine, thyroid extract and other drugs, repeatedly, over extensive periods:

- (a) without first adequately examining each patient, or seeking adequate information as to his or her medical history;
- (b) without first consulting the patients' general practitioners about the proposed treatment, or in all cases notifying those general practitioners after treatment had first commenced of the details of any drugs supplied and the dosages prescribed;
- (c) without making adequate inquiries on each occasion about the effect of the treatment on the patient's health."

At this stage they also recorded a finding of not guilty on the other charge which the appellant had faced in respect that the facts alleged in that charge had not been proved.

Counsel for the respondent then addressed the Committee and was followed by counsel for the appellant. At that stage counsel for the appellant pointed out that there were obvious difficulties in his making submissions when the findings of the Committee were bound to be very general in their terms and could cover a very wide spectrum of seriousness. At that stage the main point which he drew to the Committee's attention was that the question of adequacy which was in issue so far as heads (a) and (c) of the charge were concerned were questions of degree and judgment and that it was accordingly not the sort of gross abuse of the appellant's position as a medical practitioner which could amount to serious professional misconduct. So far as head (b) was concerned, he accepted that the appellant admitted that head as being factually correct in any event but he questioned the basis upon which it could be said that head (b) could give rise to serious professional misconduct. Counsel for the appellant also handed to the Committee for their consideration a bundle of documents relating to reports obtained from consultants to whom the appellant had sent patients and with whom he had come into professional contact. One of those may be taken as typical of the tone of this correspondence. A consultant wrote:-

"Those patients whom he has referred to me as a consultant over the years have come with a comprehensive referral letter, indicating that a proper assessment of the patient's whole

condition had been made, appropriate investigations carried out where necessary and suitable drug therapy prescribed."

After considering their decision, the Chairman, on behalf of the Committee, announced it in the following terms:-

"Dr. Peatfield, the Committee take a serious view of the evidence which they have heard in this case concerning that part of your practice in which you have accepted patients for a period of treatment for obesity. The Committee are appalled that you prescribed potent drugs to some patients in such circumstances without first adequately examining them, seeking adequate information as to his or her medical history, and without notifying your treatment to other doctors who, over the same periods, were concurrently undertaking responsibility for comprehensive management of the patients' medical care. They deplore the evidence that you supplied repeat prescriptions without making adequate inquiries on each occasion about the effect of the treatment on the patients' health.

The Committee have accordingly judged you to have been guilty of serious professional misconduct in relation to the facts which have been proved against you in the charge and have directed the Registrar to erase your name from the Register."

On the hearing of this appeal before the Board, counsel for the appellant, who was not the counsel who represented the appellant before the Professional Conduct Committee, elaborated on the matters which had been raised in the very clearly drawn case presented for the appellant in this appeal. He did so under five heads.

Counsel first drew attention to the form of the charge. He pointed out that although there was reference therein to "individual" patients, these patients were not particularised in the charge. He went on to submit that the charge should be read as indicating a number of instances of serious professional misconduct in respect of each of the individual patients referred to. He pointed out that it was a well-established principle of English criminal law, which should also apply in proceedings such as those from which this appeal arose, that a charge should allege only one offence and that to allege two distinct offences within one charge rendered the charge bad for duplicity. In support of this submission, counsel referred to a recent decision of Mann J. in *R. v. General Medical Council*, ex parte Gee which had been delivered orally on or

about Friday, 1st November 1985. Counsel presented a typed draft of the judgment which he said had been followed by the learned judge in giving his oral judgment.

That case was concerned with two applications for judicial review at the instance of a doctor who faced a charge under four heads, the first three of which were in terms as to their substance almost identical to the charge in the present case, although the drugs in question were not absolutely identical to those referred to here. In that case it had been submitted to the learned judge that the charge related to the way in which the doctor's practice was carried on and the particular way of which complaint was made was that of irresponsible prescribing and it mattered not whether there were eight patients or one. The learned judge did not agree that the charge was so drawn; he pointed to the reference to "individual patients" and noted that the charge had been particularised by reference to eight patients, material about four of whom had been submitted to the Preliminary Proceedings Committee but material about the balance had not. The judge, in these circumstances and having regard to the correspondence in that case, concluded that the charge in question there alleged separate offences of serious professional misconduct, each being in regard to a different patient and that accordingly the charge in the form before him was bad for duplicity and that the Professional Conduct Committee should not be allowed to proceed to its consideration until that vice was cured. He also considered that it was appropriate that further particulars should be given of the charge in that case before it went to inquiry before the Professional Conduct Committee. In the present case, this matter has been raised for the first time after the inquiry before the Professional Conduct Committee has been concluded.

In terms of Rule 24 (2) of the applicable Rules, the practitioner may, if he so desires after the reading of the charge or charges, object to the Notice of Inquiry, or to any part of it, in point of law. No such objection was taken in the present case.

Their Lordships take the view that, in the present case, the charge can be fairly read as alleging a course of conduct by the appellant in the conduct of his practice over the period stated in which patients were treated with the drugs specified in the three circumstances referred to under heads (a), (b) and (c) and that it was this course of conduct which amounted to serious professional misconduct. They agree, and counsel for the respondent accepted this, that the use of the word "individual" was inappropriate but it is apparent from the record of the hearing that both parties before the Committee

treated the charge as a complaint with regard to a course of conduct and the appellant in his own evidence dealt with the matter very much from the point of view of what his ordinary practice and manner of operation were. Indeed the appellant and his counsel laid stress on the number of patients dealt with in respect of whom there was no complaint.

In this circumstance, their Lordships consider that this point taken by itself is not a good reason for allowing this appeal. Their Lordships will later consider its relationship to one of the other matters raised at the hearing.

The next issue raised was based upon Rule 56 (1) of the applicable Rules which is in these terms:-

"The Committee may receive oral, documentary or other evidence of any fact or matter which appears to them relevant to the inquiry into the case before them;

Provided that, where any fact or matter is tendered as evidence which would not be admissible as such if the proceedings were criminal proceedings in England, the Committee shall not receive it unless, after consultation with the Legal Assessor, they are satisfied that their duty of making due inquiry into the case before them makes its reception desirable."

Here it was said that evidence which would not be admissible as such if the proceedings were criminal proceedings in England was tendered. The evidence referred to was the evidence given relating to the patients identified no further than as Mr. X and Mrs. Y. It was accepted by counsel for the respondent that at least some of the evidence tendered relating to Mr. X and Mrs. Y would not have been admissible if the proceedings were criminal proceedings in England. It follows that the procedure laid down in the proviso should have been adopted at least in respect of such evidence.

The Rules make no provision for the consequences of a failure to follow the provisions of this Rule. The Rule imposes an obligation on the Committee whether or not objection is taken on behalf of the doctor. In the present case the appellant, as has been noted, was represented before the Committee by leading counsel who took no objection to the leading of the evidence in question although he did point out very plainly to the Committee that such evidence put him in considerable difficulty and the Chairman stated that he was quite clear about the appellant's position in this matter.

When this point is taken at the present stage, it is possible to consider the evidence which is in question in relation to the other evidence in the case and their Lordships consider that the evidence which is the subject of this objection did not materially add to the case against the appellant and that the appellant, in his evidence, dealt with the matter from the point of view of his ordinary practice in a way which if the Committee had accepted it would have dealt adequately with this particular evidence even although he was not able to identify the particular patients who were the subject of it. It is fairly plain that counsel for the appellant before the Committee took the view that it was not wise to take an objection of this kind in the circumstances and that it was better in the interests of the appellant to deal fully with the whole case tendered against him, pointing out as he did so the special difficulty that prevented him from dealing in detail with this evidence. Their Lordships see the wisdom of the course adopted by counsel and are of opinion that no injustice has in the circumstances resulted from the Committee's omission to follow the procedure laid down in the proviso.

The third point taken on the appeal was that the Committee wrongly received evidence of the alleged effects of the drugs prescribed for his patients by the appellant when there was no allegation facing him of any adverse effect from his supply of these drugs actually having been experienced by any patient.

It is clear that the issue on this aspect of the case was not whether patients had suffered adverse consequences from the supply to them by the appellant of the drugs in question, but whether the potential for damage was such that he should have anticipated it and taken the steps suggested in the charge to guard against such adverse consequences arising. It is true that in the course of the evidence the question of effects experienced by patients was canvassed but on this aspect, in his closing submission on the facts, counsel for the appellant before the Committee said:-

"The important point is that there are assertions made without any supporting expert evidence which makes it impossible for us to answer the points. I hope you will feel, at the end of the day, that it would be quite wrong to conclude that there is any evidence here at all that there were deleterious effects being sustained by the patients of any significance, which were caused by a failure to monitor the treatment that was being provided by Dr. Peatfield and his colleagues. One would have expected, had there been such a lack of monitoring, to have had some indication from doctors of patients for whom

there were such problems which were identifiable, but we have not heard them - particularly when you consider the concern that was obviously being expressed by general practitioners in Croydon who, you can bet your bottom dollar, have been watching this situation of patients of Dr. Peatfield with eagle eye!"

The question of whether or not there were deleterious effects shown in the case of any patient was thought to be relevant as indicating whether or not there had been a lack of monitoring and in this passage we find counsel for Dr. Peatfield founding strongly on the absence of any identifiable consequence as indicating that the case of inadequate monitoring was not established.

There is nothing in the findings made by the Committee to suggest that they went beyond the matters referred to in the charge and their Lordships consider that evidence relating to actual effects admitted in a way which made it possible for the appellant's counsel to make submissions on the lines just indicated was not improperly admitted.

The next matter raised on the appeal was that the Professional Conduct Committee had given no reason for their decision and had not indicated in detail what facts they had found established. Observations of this Board in *Dasrath Rai v. The General Medical Council* (Privy Council Appeal No. 54 of 1983), (Reasons for Report delivered 14th May 1984), *David Jon Rodgers v. The General Medical Council* (Privy Council Appeal No. 46 of 1984), (Judgment delivered 19th November 1984), and *Mary Lesley Bebbington v. The General Optical Council* (Privy Council Appeal No. 55 of 1984), (Reasons for Report delivered 22nd May 1985), were referred to. Counsel submitted that having regard to the form of the charge in the present case to which he referred in his first submission, it was particularly necessary for the Committee to make findings that dealt separately with the facts found relating to each patient who had been dealt with in the evidence. While there are cases in which it would be extremely helpful if the Committee gave reasons for their decision, their Lordships have no difficulty in appreciating how in the present case the Committee could have reached their decision and they take that decision to amount to a finding that the facts alleged in the charge were substantially proved against the appellant. While their Lordships appreciate that after the announcement of findings in fact, the appellant's counsel stated that he had some difficulty in making submissions, they see no reason to doubt that he was able adequately to represent to the Committee the appellant's position in the light of their findings. In a case such as the present it would have been open to the Committee if they so

chose to make more detailed findings in fact, but in the circumstances of the present case, their Lordships consider that the Committee's findings were made in sufficient detail to discharge the obligation imposed upon them by Rule 30 (1) of the Procedure Rules.

Their Lordships consider that counsel for the appellant, in making his submissions at this stage, said everything that could have been urged on behalf of the appellant and they cannot see that he was in any way prejudiced in making his submissions by the form that the findings took. It was open to him to urge, as he did, that the findings in the circumstances should not yield the inference that there had been serious professional misconduct on the appellant's part.

Their Lordships would only add that the decision which the Committee intimated on the question whether the appellant had been guilty of serious professional misconduct makes it clear that the Committee did not attribute any significance to their finding that the appellant had prescribed without first consulting the patients' general practitioners about the proposed treatment, while on the other hand they did attribute significance to the absence of adequate examination, to the absence of adequate information about the patients' medical history, to the absence of notification of the appellant's treatment of the patients to other doctors who, over the same period, were concurrently undertaking responsibility for comprehensive management of the patients' medical care, and to the absence of adequate inquiries about the effect of the treatment on the patients' health before the supply of repeat prescriptions. It is clear further that the absence occurred according to the Committee's findings in the case of more than one patient and in their Lordships' opinion it is clear that the Committee had sufficient evidence before them on the points that they regarded as critical to enable them properly to reach the verdict which they announced that the appellant had been guilty of serious professional misconduct.

Their Lordships are mindful, in the light of the authorities to which they have been referred, of the critical importance to a person in the appellant's position of the decision of the Committee but they are satisfied that the points made by the appellant taken singly or together do not justify their Lordships interfering with the decision to which the Committee has come. Taking a comprehensive view of the evidence as a whole and endeavouring to form their own conclusion upon it in accordance with the duty imposed under the present statute and its predecessors as it has been interpreted for example in *Fox v. General Medical Council* [1960] 3 All E.R.

225 at page 227, the Board have reached the conclusion that a fair and proper inquiry was held and a proper finding made upon it.

The final point made by the appellant was that the sentence imposed was unduly severe and the appellant invited their Lordships to substitute either a suspension or a direction that the appellant's registration should be conditional on his observance of conditions to be prescribed.

The question of the appropriate penalty to be imposed in respect of serious professional misconduct is a matter peculiarly within the discretion of the Committee and interference would be justified only if it was plain that the sentence imposed was inappropriate. On a consideration of the whole circumstances here including in particular those relied upon by the appellant's counsel at the hearing, their Lordships are of opinion that no ground has been put forward which would justify their interference.

For these reasons their Lordships will humbly advise Her Majesty that the appeal should be dismissed. The appellant must pay the costs of the respondent Council before the Board.

