

Sheikh Mosehuddin Mahmood

Appellant

v.

The General Medical Council

Respondent

FROM

THE PROFESSIONAL CONDUCT COMMITTEE
OF THE GENERAL MEDICAL COUNCIL

ORAL JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 12TH FEBRUARY 1986

Present at the Hearing:

LORD BRIDGE OF HARWICH

LORD MACKAY OF CLASHFERN

LORD GOFF OF CHIEVELEY

[Delivered by Lord Bridge of Harwich]

This is an appeal from an order of the Professional Conduct Committee of the General Medical Council made on 17th July 1985 that the appellant's name be erased from the Register of Medical Practitioners. On 17th July 1985 the appellant appeared before the Professional Conduct Committee charged in the following terms:-

"That, being registered under the Medical Acts, between 4th January 1982, or earlier, and 1st January 1983, or later, you abused your professional position as a medical practitioner by issuing numerous prescriptions for controlled drugs, in return for fees: (a) in an irresponsible manner, and (b) otherwise than in the course of *bona fide* treatment, including the prescriptions listed in the enclosed schedule; and that in relation to the alleged facts you have been guilty of serious professional misconduct."

The Schedule set out all the prescriptions of controlled drugs which the appellant had issued during the period covered by the charge. Some 90 patients were involved and the vast majority of the drugs which had been prescribed for them had been in Class A under the Second Schedule to the Misuse of Drugs Act 1971, although in some cases the prescribed drugs were Class B.

At the hearing before the Professional Conduct Committee, admissions were made in terms on the appellant's behalf by counsel that the pattern shown by the prescriptions listed in the Schedule indicated that he had prescribed drugs in an irresponsible manner and otherwise than in the course of *bona fide* treatment. Albeit, it was made clear that not every instance in the Schedule was accepted as being a case of improper prescription. It was however admitted, and this was of the first importance, that the appellant's conduct in relation to the course of prescription indicated by the Schedule amounted to serious professional misconduct on his part.

It is significant, in their Lordships' judgment, to note that the appellant had first come to the notice of the inspectorate in the Home Office concerned with matters relating to the control of drugs as long ago as 1980. He had been seen by a member of the inspectorate, warned in relation to the prescription of controlled drugs to addicts and that oral warning had been followed by a letter dated 29th April 1980 from a Chief Inspector of the Home Office which contained two very important statements. First was a statement pointing out to the appellant the need for extreme caution in prescribing to patients, previously unknown to his practice, who claimed, but could not readily confirm, that they needed the controlled drugs. The second statement drew the appellant's attention to the requirements of the Misuse of Drugs (Notification and Supply to Addicts) Regulations 1973 which requires any doctor who considers, or has reasonable grounds to suspect, that a person is addicted to any of the drugs listed in the Schedule to the Regulations to notify the name of that addict to the Chief Medical Officer at the Home Office.

The facts found by the Professional Conduct Committee, who heard in evidence the details of an interview with the appellant by an Inspector of the Home Office early in 1983, included the following findings which are in terms accepted as proper findings by counsel for the appellant:

- (i) that the appellant had been prescribing controlled drugs virtually on demand to a majority of young people of the 90 odd patients who had approached him for treatment of addiction or for some other alleged injury.
- (ii) that the appellant had issued prescriptions enabling these people, not in all cases but in some, to exceed their own stated dosages.

- (iii) that on occasions the appellant had issued prescriptions simply to get rid of people from his surgery.
- (iv) that in all but a few cases the appellant, notwithstanding the warning he had been given in 1980, had failed to notify the patients' addiction to the Chief Medical Officer as the regulations referred to required him to do.
- (v) that the appellant had failed to keep any records in respect of some 50 of the 90 odd patients whose names appeared on the Schedule referred to in the charge of professional misconduct.

The history of the matter shows that following the interview with the appellant by the Home Office Inspector, who testified at the hearing before the Professional Conduct Committee, proceedings were taken against the appellant under provisions of the Misuse of Drugs Act which empower the Secretary of State in certain circumstances to prohibit a doctor from prescribing controlled drugs. At a hearing in June 1983 before the Misuse of Drugs Tribunal, established under that statutory procedure, the appellant to his credit made a full and frank admission of the irresponsible prescription of drugs alleged against him and in consequence of that in October 1983 the Secretary of State, acting under section 13 of the Misuse of Drugs Act 1971, made an order under section 14 prohibiting the appellant from prescribing, administering and supplying and from authorising the administration and supply of any controlled drugs within the meaning of the Misuse of Drugs Act 1971. Following the making of that order, it was not until the month of April 1985 that the appellant was notified by the General Medical Council that it was proposed to institute disciplinary proceedings against him under the Medical Act.

Mr. Adams, on behalf of the appellant, has urged their Lordships' board to take the view that in the circumstances of this case an order of erasure of the appellant's name from the Register of Medical Practitioners was an excessively harsh and unnecessary disciplinary measure. In this judgment it is unnecessary, and Mr. Adams will, their Lordships feel confident, think it no discourtesy, to set out *in extenso* all the submissions which he has urged. He has said most persuasively everything that could be said on the appellant's behalf. He has emphasised rightly that it is on the extent of the prescription of drugs which he admits, not on the basis of some allegations in the proceedings which the appellant does not admit, that the appellant is to be judged. It is said on his behalf that their

Lordships should look at the Schedule on which the charge is based covering the year 1982. During that period the number of addicts was reducing, he was not encouraging addicts, but a number of addicts were receiving repeated prescriptions from him over a long period and the appellant was not making large profits out of his prescription of drugs. Then it is said rightly that he is entitled to credit for the frank admission which he made both before the Misuse of Drugs Tribunal and before the Professional Conduct Committee. He was, their Lordships are told and accept, acting under pressure. At the time he was single handed and had no full time receptionist and the finding in particular that on occasions he had issued prescriptions simply to get rid of people from his surgery, serious as it sounds, is not, as it is submitted on his behalf, as serious as might be thought since this was his only recourse, when persistent addicts were pressing him to prescribe for them, to enable him to free himself for his legitimate national health service practice with other patients. Then it is said, and their Lordships accept, that this is not a case of a man whose sole practice was concerned with the improper prescription of drugs for drug addicts. The point is also fairly made that for a member of the medical profession erasure from the Register is a graver and more disabling penal measure than the disqualification of some other professionals by professional disciplinary procedures from practising that profession because, if prevented from practising his profession, a doctor really has no other means of livelihood available to him.

Their Lordships take note of all those valid points which are made in mitigation on the appellant's behalf. The aspect of this matter which has caused their Lordships most concern is the apparently somewhat protracted delay which occurred between the date when the Secretary of State, acting under the Misuse of Drugs Act, made his prohibition order in October 1983 and the date some 18 months later when the appellant, having perhaps been lulled into a sense of false security and assumed that he would be able to continue his practice as a doctor, albeit unable to prescribe controlled drugs, was informed in April 1985 that proceedings were to be taken against him before the Professional Conduct Committee.

Their Lordships have been told by Mr. Robinson, on behalf of the General Medical Council, that in this field there are large numbers of cases which are from time to time reported to the General Medical Council following just such proceedings against a doctor and investigation by the Home Office as those with which this case is concerned, that all call for punctilious investigation by the limited staff whom the General Medical Council are able to employ in this work, and

that the whole background must be considered before a decision is taken as to whether, in the discretion of the medical authorities, disciplinary proceedings should or should not be instituted. Their Lordships are told that such delays as this are not uncommon. It is not for the members of this lay Board, who do not know the full measure of the difficulties under which the staff concerned with this matter employed by the General Medical Council have to encounter, to pontificate about the regrettable and undesirable character of long delays. It must be well appreciated however that any delay in disciplinary proceedings of this nature is to be deplored if it can reasonably be avoided. Their Lordships venture to express the view that, particularly in cases where as here the appellant doctor, against whom it is eventually decided to institute disciplinary proceedings, has already appeared before the Misuse of Drugs Tribunal and has there frankly admitted all the facts on which the subsequent disciplinary proceedings are founded, it is highly desirable that there should be no undue delay. It is perhaps more difficult to see why in these cases such an extensive investigation should be required.

But when all that has been said their Lordships remind themselves of what Mr. Adams, for the appellant, readily accepted at the outset of his address to the Board, that it is only in wholly exceptional cases that this Board considers it appropriate to reverse a decision of the competent body of professional men to whom judgment of their professional peers is entrusted in deciding what disciplinary measure is appropriate in relation to a particular course of undisputed professional misconduct. It has been urged on the appellant's behalf that the appropriate course to take here would be to set aside the order of erasure and to substitute a suspension of the appellant from the practice of his profession for a fixed period. Their Lordships are unable to take that view. Giving full weight to all the points which have been made on the appellant's behalf and expressing regret that there should have been an 18 month delay between the Secretary of State's prohibition order and the intimation that the Professional Conduct Committee were going to proceed, their Lordships are quite unable to say that this is a case where the Professional Conduct Committee have in any way erred in principle so as to justify a decision by this Board to set aside the order which that Committee made. Again, it is not for this Board to determine when it will be appropriate to permit the appellant to resume practice as a medical practitioner. It has been pointed out in the course of the submissions made before the Board that a doctor whose name is erased from the Register is eligible to apply for re-admission and re-registration after a period of 10

months has elapsed from the date when the erasure takes effect. Quite independently of that consideration their Lordships can detect here no such error of principle as would, in accordance with well established precedent, justify a decision by the Board to set aside a decision of the Professional Conduct Committee.

Their Lordships are satisfied that in all the circumstances the Professional Conduct Committee to whom it falls to decide whether and when the appellant's name should once again be admitted to the Register are very much better qualified to judge when that course would be appropriate than this lay Board could possibly be.

Accordingly their Lordships will humbly advise Her Majesty that this appeal ought to be dismissed.



