

Dr. Kobina Arba Taylor

Appellant

v.

The General Medical Council

Respondent

FROM

THE PROFESSIONAL CONDUCT COMMITTEE
OF THE GENERAL MEDICAL COUNCIL

REASONS FOR REPORT OF THE LORDS OF
THE JUDICIAL COMMITTEE OF THE PRIVY
COUNCIL, DELIVERED THE
30TH APRIL 1990

Present at the hearing:-

LORD BRIDGE OF HARWICH
LORD BRANDON OF OAKBROOK
LORD OLIVER OF AYLERTON

[Delivered by Lord Bridge of Harwich]

On 22nd March 1990 their Lordships announced that they would humbly advise Her Majesty, for reasons to be given later, that the appellant's appeal against the direction of the Professional Conduct Committee of the General Medical Council, given on 20th November 1989, that the suspension of his registration in the register of medical practitioners be extended for a further period of twelve months from 26th December 1989, should be allowed. They now give their reasons.

The appeal raises important questions with respect to the exercise by the Professional Conduct Committee of their power under section 36 of the Medical Act 1983 to direct successive periods of suspension of a practitioner's registration.

On 26th and 27th November 1987 the appellant appeared before the Professional Conduct Committee charged with serious professional misconduct. The charge related to the appellant's prescribing the drug methadone hydrochloride. It was admitted by him that over a period between December 1984 and June 1985 he had abused his position as a medical practitioner by issuing such prescriptions irresponsibly to some 70 patients. The charge also related to a particular patient, who was in fact a police officer posing as a

drug addict, to whom the appellant admitted issuing prescriptions without carrying out any sufficient examination of the patient to assess his need for the treatment prescribed. The Committee judged him to have been guilty of serious professional misconduct. The appellant had previously been admonished by the Committee in 1986 following his conviction at the Central Criminal Court in 1985 of seven offences of making false statements for the purpose of enabling persons to obtain passports for which he had been sentenced to four months' imprisonment suspended for two years. Shortly before the hearing in November 1987 the appellant was further convicted at Aylesbury Crown Court of four offences of prescribing controlled drugs in contravention of a prohibition which had been made by the Secretary of State. For these offences he was conditionally discharged for twelve months.

With all these matters before them, it is not in the least surprising that the Committee then considering the matter took a serious view of the appellant's case. If they had then directed that the appellant's name be erased from the register, an appeal to Her Majesty in Council would have had no prospect of success. Instead the Committee directed that his registration be suspended for a period of twelve months from 26th December 1987, but intimated that they would resume consideration of the case before the expiry of that period. Consequently the appellant appeared again before the Committee on 14th November 1988 when they directed that the appellant's suspension be extended for a further period of twelve months and again intimated that they would resume consideration of the case before the expiry of that period. Finally on 20th November 1989 the Committee gave the direction for a third successive period of twelve months' suspension which was the subject of the appeal. In this instance the Registrar, in formally notifying the appellant of the Committee's decision, wrote:-

"You will note that on this occasion the Committee have not indicated a desire to resume consideration of your case before the end of the further period of suspension of your registration. As matters stand, therefore, the Committee's consideration of your case will be concluded on expiry of the further period of suspension which they have now directed, and your registration will at that time become effective once again."

The provisions relating to professional conduct and fitness to practise now found in Part V of the Medical Act 1983 can be traced to their origins in the Medical Acts 1956 to 1978 which the Act of 1983 consolidated. Under the Act 1956 the only measure which could be taken by the Disciplinary Committee, as it was then called, to discipline a doctor convicted of crime or found guilty by the Committee of what was then called infamous conduct in a professional respect was to direct

erasure of his name from the register. The Medical Act 1969 substituted the description "serious professional misconduct" for "infamous conduct in a professional respect". More significantly the Act of 1969 gave the Disciplinary Committee the power to suspend a practitioner's registration for a period not exceeding twelve months, from time to time to extend the period of suspension for not more than twelve months at a time and at any time before expiry of a period of suspension to order erasure of the practitioner's name from the register. These provisions are now re-enacted in section 36 of the Act of 1983.

The Act of 1978, following the Report of the Committee of Inquiry into the Regulation of the Medical Profession (Chairman: Dr. A.W. Merrison F.R.S. - April 1975, Cmnd. 6018), introduced the much more radical reform effected by the establishment of three new committees: the Professional Conduct Committee, the Health Committee and the Preliminary Proceedings Committee. The Professional Conduct Committee was to exercise the same powers as those previously exercised by the Disciplinary Committee. The Health Committee was to deal with cases of unfitness to practise and, when it adjudged a practitioner's fitness to practise to be seriously impaired by reason of his physical or mental condition, it was empowered to exercise precisely the same powers of suspension as those exercisable by the Professional Conduct Committee on a finding of a criminal conviction or of serious professional misconduct, but not of course any power to direct erasure. In any case of a practitioner whose conduct was such as to render him liable to the jurisdiction of the Professional Conduct Committee it was for the Preliminary Proceedings Committee to decide in the first place whether a case should be referred to the Professional Conduct Committee or to the Health Committee. This legislative history is, their Lordships think, important to any understanding of the policy underlying the power now conferred on the Professional Conduct Committee by section 36 of the Act of 1983 to direct successive periods of suspension of not more than twelve months at a time.

It is clear that the exclusive purpose of the power to suspend exercised by the Health Committee is the protection of the public, and this is no doubt also the primary purpose of the powers both of erasure and suspension conferred on the Professional Conduct Committee. But, following a finding of a criminal conviction or of serious professional misconduct, a direction by the Professional Conduct Committee of either erasure or suspension inevitably imports some punitive element. Of the two alternatives erasure will naturally be seen, and has always been seen on appeal to this Board, as the graver punishment warranted by the graver crime or professional misconduct, notwithstanding that the Professional Conduct Committee has power under section 41 of the Act of

1983 to direct restoration to the register of a person whose name has been erased at any time after the expiry of ten months from the date of erasure. From this it must follow that a practitioner who is suspended for up to twelve months in the first place is entitled to conclude that his criminal behaviour or professional misconduct was not regarded by the Committee as sufficiently grave to warrant erasure and that the period of suspension directed was thought sufficient to provide any necessary punitive element in the sentence imposed. It can never be a proper ground for the exercise of the power to extend the period of suspension that the period originally directed was insufficient to reflect the gravity of the original offence or offences.

It will obviously be a proper ground for extending the period of suspension that during the period the practitioner has been convicted of some further criminal offence and it may well be a proper ground that he has been guilty of some other positive misconduct, using that word in a perfectly general sense, which reflects on his fitness to practise medicine. But much the commonest case where the power will be appropriately exercised, and that for which, their Lordships think, both the power to extend a period of suspension and the power to direct erasure following a period of suspension were specifically designed, is where the criminal behaviour or professional misconduct which led to the original suspension was associated with and occasioned by some condition affecting the practitioner's fitness to practise which may or may not be amenable to cure. The most obvious examples which spring to mind are where the practitioner is addicted to alcohol or drugs or suffers from some psychiatric disorder. Such cases since 1978, as has been noted, may be referred by the Preliminary Proceedings Committee either to the Professional Conduct Committee or to the Health Committee. The exercise in such cases by either Committee of the power to extend the period of suspension must, in their Lordships' judgment, be governed by the same principle. The case will be reviewed before the expiry of the first or any subsequent period of suspension for the Committee to determine whether the practitioner is cured of his addiction or other disorder so as to be fit to resume the practice of medicine. If he is not, they will direct a further period of suspension. In a case before the Professional Conduct Committee which would originally justify erasure, but where the Committee have felt it right, in view of the practitioner's condition, to suspend judgment to see if he is able to make use of the opportunity to effect a cure, they may decide, when no cure is effected, to direct erasure.

Their Lordships have based these conclusions on a consideration of both the legislative history and the present structure and scope of the relevant provisions

of the Act of 1983. But, so far as the rules governing the procedure of the Professional Conduct Committee throw any light on the matter, they are wholly consistent with these conclusions. It is sufficient to consider the rules presently in force which are found in the General Medical Council Preliminary Proceedings Committee and Professional Conduct Committee (Procedure) Rules Order of Council 1988 (S.I. 1988 No. 2255). When the Committee have found a criminal conviction proved or judged that a practitioner has been guilty of serious professional misconduct the effect of rules 30 and 31 is to require them, in deciding what, if any, direction to give, to consider each possible course of action open to them in sequence. The steps in the sequence are (1) to give no direction, (2) to direct that the practitioner's registration shall be subject to conditions, (3) to direct suspension, (4) to direct erasure. At each step the Committee are to determine "whether it shall be sufficient" to take that step. Only if they determine that it will not be sufficient are they to proceed to consider the next step. Where the Committee have directed a period of suspension, rule 31(5) provides that:-

"... they may ... intimate that they will, at a meeting to be held before the end of such period, resume consideration of the case with a view to determining whether or not they should then direct that the period of suspension ... should be extended or ... that the name of the practitioner should be erased from the register."

A resumed hearing may take place either pursuant to an intimation given under rule 31(5) or pursuant to a decision made by the President of the Professional Conduct Committee under rule 37(1) "as a consequence of the receipt ... of information as to the conduct or a conviction of the practitioner since the date of the direction" for suspension.

In the instant case their Lordships are at a loss to understand why the Committee before whom the appellant appeared in November 1987, having determined that it would be sufficient to direct suspension for a period of twelve months, went on to intimate, pursuant to what is now rule 31(5), that they would reconsider the case before the end of that period. The appellant's record, his conduct in prescribing drugs irresponsibly which formed the subject matter of the charge and his subsequent contravention of the order of the Secretary of State which prohibited him from issuing prescriptions for controlled drugs were all thoroughly reprehensible. But there was no material before the Committee relating to the appellant's physical or mental condition or his habits or way of life which could afford any discernible reason why the Committee should think it appropriate to re-assess his fitness to resume practice following a probationary period, so to speak, of twelve months.

At the original hearing in 1987 the appellant had been represented by counsel who made a very effective plea in mitigation on his behalf. At the subsequent hearings in 1988 and 1989 the appellant appeared unrepresented and, when asked if he wished to make a statement, on each occasion took the imprudent course of criticising the way his case had been conducted by his counsel, suggesting that the facts had not been correctly presented to the Committee and criticising the police officer who had deceived him by masquerading as a drug addict. On each occasion the Committee may well have felt that the appellant was insufficiently penitent or, as counsel before the Board put it, that "he had not learned his lesson;" but their Lordships are quite unable to accept, in the light of the principles discussed earlier in this judgment, that this could have justified a direction of a further period of suspension for what would have been essentially a punitive purpose.

Before the hearing in November 1989 the appellant had been required, pursuant to rule 49(1) of the Rules of 1988, to give the names and addresses of "professional colleagues and other persons of standing to whom the Council will be able to apply for information, to be given confidentially, as to their knowledge of his conduct since the time of the original or of any previous hearing". The appellant had named three other medical practitioners, a solicitor and a methodist minister. One of the practitioners and the solicitor replied that they had had no recent contact with the appellant, but the other two practitioners described his conduct during the period of suspension as "exemplary" and "entirely blameless". The methodist minister described him in positively glowing terms as a regular member of his congregation.

At the hearing one member of the Committee put to the appellant this somewhat curious question:-

"For the last two years you have been out of practice. What steps have you taken to continue and improve your medical practice, if at all?"

Another member asked about his future plans. Their Lordships can find nothing in the appellant's answers to these questions which reflected in any way adversely upon him.

Their Lordships were driven to the conclusion that, whatever may have been the reason for giving the direction for a second period of suspension in 1988, the only explanation for the Committee's decision in 1989 to direct a third such period was that they regarded the original decision to direct suspension instead of erasure as having been too lenient. This view seems to be fully confirmed by the fact that the Committee on this occasion did not intimate that they would re-consider the case before the expiry of the further period of suspension. If the Committee had

concluded that, for the protection of the public, there was some reason why the appellant could not yet be regarded as fit to resume practice, it would have been wholly inconsistent to direct a third and final period of twelve months' suspension without reserving the case yet again for re-consideration before the expiry of that period. In the light of these considerations their Lordships have no doubt that the direction was wrong in principle.

Once the Professional Conduct Committee has decided, following proof of a criminal conviction or a finding of serious professional misconduct, that a period of suspension of the practitioner's registration up to twelve months is sufficient to mark the gravity of the case, it can never, in their Lordships' judgment, be appropriate to reserve the possibility of an extension of the period under rule 31(5) unless the Committee conclude that there is a positive reason why they should monitor the practitioner's progress in some particular respect during the period of suspension with a view to deciding, in the light of that progress, whether he can safely be permitted to resume practice when the period expires. It will always be desirable for the Committee to indicate in general terms what their reasons are for reserving a case for re-consideration and to tell the practitioner what are the specific matters on which they will require to be satisfied before he will be permitted to resume practice.