

Dr. Robert Ellis Jones

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
25TH NOVEMBER 1992

Present at the hearing:-

LORD KEITH OF KINKEL
LORD LOWRY
LORD WOOLF

[Delivered by Lord Keith of Kinkel]

This is an appeal from a determination of the Professional Conduct Committee of the General Medical Council made on 18th March 1992 whereby the appellant was found guilty of serious professional misconduct and it was ordered that his name should be suspended from the medical register for a period of eight months.

The charge against the appellant was in these terms:-

"That, being registered under the Medical Act,

(1) When you were consulted on the 23rd September, 25th September, 3rd October and 6th October, 1989 by Mr. B.A. McGoldrick of 12 Mount Road, Coggeshall, Essex, a patient for whose general medical care you were responsible at the material time, on each occasion you:

(a) failed to undertake any or any adequate physical examination of him,

(b) failed to ensure that the patient was referred promptly to the appropriate hospital and specialist services for investigation and treatment, when his condition so required:

- (2) On the 7th October, 1989, when you received the results of a blood test suggesting that Mr. McGoldrick was suffering from a condition requiring urgent admission to hospital, you failed to take adequate steps to arrange his admission;

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

Evidence was led before the Professional Conduct Committee on 17th and 18th March 1992, both the appellant and the respondent being represented by counsel. The principal matters appearing from the evidence were these. The appellant, then aged 49 years, had been in general medical practice since 1969. Mr. McGoldrick, referred to in the charge, had been a patient registered with the appellant's practice for some fifteen years. He had a history of gastric trouble for which the appellant had over a considerable period prescribed Tagamet tablets, the function of which was to block acid production in the stomach. The prescriptions were normally arranged over the telephone and collected by the patient's wife. Early in 1989 the appellant had referred him to a consultant named Mr. Motson, who performed an endoscopy which resulted in no significant results apart from negating the existence of an ulcer. On Saturday, 23rd September 1989, the appellant was called to Mr. McGoldrick's house, and found him in bed complaining of vomiting and abdominal pain. There was some dispute about the precise site of the pain complained of, but there was evidence from Mr. McGoldrick from which the Committee would have been entitled to accept that he indicated it was in the lower abdomen. Mr. McGoldrick deponed that he was given no physical examination, but the appellant gave evidence that he placed his hand on the upper abdomen and administered some pressure, his purpose being to ascertain whether the patient was febrile and to check that there was no guarding or localised tenderness. The appellant diagnosed a recurrence of the long standing dyspepsia trouble and prescribed Maxalon tablets. Later in the day Mrs. McGoldrick telephoned the appellant and said that her husband was still suffering pain. The appellant advised that he should take some paracetamol tablets.

On Sunday 24th September 1989 Dr. MacNamara, who was on call for the weekend, was summoned to the patient, who had continued to suffer from vomiting. Dr. MacNamara did not physically examine the patient. He administered a Maxalon injection, as the tablets were being vomited up, and later telephoned the appellant to tell him what he had done and that he agreed with the appellant's diagnosis. On 25th September 1989 Mr. McGoldrick visited the appellant's surgery. He told the appellant that the vomiting had stopped and that he felt a little better. The appellant did not examine him, but said that he would refer him again to Mr. Motson, and later took steps to do so.

On Tuesday, 3rd October 1989 Mr. McGoldrick went again to the appellant's surgery, at about 7.00 p.m. He was concerned that the appointment with Mr. Motson should be speeded up, and said that he was still unwell and might be somewhat worse. There was some discussion of going privately to Mr. Motson, but the appellant said that was unnecessary, and that if a blood test were taken, which he advised, the result of it might lead to an earlier appointment. Again, the appellant did not examine the patient, but gave him a prescription for Zantac, a more up-to-date drug designed to reduce acid secretions. On Friday, 6th October 1989 Mr. McGoldrick attended at the surgery again. The appellant observed that he looked unwell, and felt concerned about it, but he did not examine him. He confined himself to taking a blood sample for analysis.

On the morning of the following day, Saturday, 7th October, the appellant received the result of the analysis. It showed a white blood cell count approximately two and a half times the upper limit of normality. The appellant appreciated that this indicated that the patient had an infectious condition attributable to an appendix abscess. He telephoned the local hospital to say that he would be sending a man in, and then endeavoured to contact Mr. McGoldrick by telephone. Unfortunately the latter had unplugged his instrument in order to avoid being vexed by customers of his driving instructor business ringing up about missed appointments. The result was that the telephone appeared to the caller to be ringing when it was in fact disconnected, and no response was received. The appellant himself dialled twice and got his secretary to do so three times. After that he did nothing further, believing that Mr. McGoldrick and his wife must be out. He had arranged for Mr. McGoldrick to attend at his surgery on Monday, 9th October. On Sunday, 8th October Mrs. McGoldrick called in the doctor on call for the weekend, Dr. Thompson, who came to the house and after a physical examination at once diagnosed an appendix abscess. He arranged for Mr. McGoldrick to be admitted to hospital immediately, and he was operated upon that evening for an appendix abscess which proved to be about 300 to 400 mls in size. The patient was discharged from hospital on 14th October 1989.

Towards the close of his evidence the appellant agreed that the facts stated in paragraph (1)(a) of the charge were correct as regards 25th September, 3rd and 6th October 1989 (but not as regards 23rd September) and also that the facts in paragraph (1)(b) were correct as regards 3rd and 6th October. He also agreed that the facts in paragraph (2) were correct.

The Committee found the facts alleged against the appellant on Head 1 of the charge to have been proved in their entirety in relation to the dates of 3rd and 6th October 1989. With regard to the dates of 23rd and 25th

September 1989, the Committee found it proved in relation to Head 1 only that the appellant failed to make any adequate physical examination of Mr. McGoldrick on these dates. The facts alleged in Head 2 were also found proved.

The Committee then heard counsel on the question whether the proved facts amounted to serious professional misconduct. In the course of doing so the Committee was informed that the Medical Services Committee had investigated the matters the subject of the charge in August 1990 and recommended that £1,500 should be withheld from the appellant's remuneration. On 16th October 1991 the Secretary of State had increased this sum to £2,000.

The Committee then deliberated and thereafter the Chairman announced:-

"Dr. Jones the Committee take a very serious view of the evidence they have heard in this case of your defective clinical methods and, in particular, your repeated failure to carry out a proper examination of the patient in this case, and your failure to secure his prompt admission to hospital.

The Committee have judged you to have been guilty of serious professional misconduct in relation to the facts proved against you in the charge and have directed the Registrar to suspend your registration for a period of eight months.

The Committee will resume consideration of your case at a meeting to be held before the end of that period. They will then consider whether they should take further action in relation to your registration. You will be informed of the date of that meeting, which you will be expected to attend. During the period of your suspension the Committee will expect you to take steps under the guidance of your Regional Adviser in General Practice to review and improve your general clinical skills, including clinical problem-solving, and the management systems in your practice. Shortly before the resumed hearing of your case, you will be asked to furnish the Council with the names of professional colleagues and other persons of standing to whom the Council may apply for information, to be given confidentially, as to their knowledge of your conduct in the interval. The names furnished should include that of your Regional Adviser in General Practice.

The effect of the foregoing direction is that, unless you exercise your right of appeal, your registration will be suspended for a period of eight months, beginning 28 days from today."

In presenting his case to the Board counsel for the appellant made two submissions: first, that although some blame was admittedly to be attributed to the appellant in the

circumstances of the case, the Professional Conduct Committee did not give proper consideration to the dividing line between mere errors in diagnosis and treatment on the one hand and serious professional misconduct on the other hand; and second, that the Committee made a fundamental error by proceeding, not on the basis of the specific facts of the charge against the appellant, but on the basis that the quality of the appellant's general clinical methods were in issue. Reference was made to the opinion expressed by Lord Hailsham of St. Marylebone in *Libman v. General Medical Council* [1972] A.C. 217, 221, where he said:-

"... the only circumstances in which an appellate court can reverse a view of the facts taken by the Disciplinary Committee would be a case where, on examination, it would appear that the committee had misread the evidence to such an extent that they were not entitled to make a finding in the state of the evidence presented before them."

and later:-

"In the result, although the jurisdiction conferred by the statute is unlimited, the circumstances in which it is exercised in accordance with the rules approved by Parliament are such as to make it difficult for an appellant to displace a finding or order of the committee unless it can be shown that something was clearly wrong either (i) in the conduct of the trial or (ii) in the legal principles applied or (iii) unless it can be shown that the findings or the committee were sufficiently out of tune with the evidence to indicate with reasonable certainty that the evidence had been misread."

In the present case, so it was maintained, the Committee had misread the evidence and had also taken into account an improper consideration, namely whether the appellant's conduct in the case before it was typical of his clinical approach.

As regards the first submission, it appears to their Lordships that the matters at issue before the Committee were not concerned merely with whether the appellant had made errors in diagnosis and treatment, but with whether he had been guilty of serious dereliction of duty by failing repeatedly to make a careful and thorough examination of his patient such as would have enabled him to make a proper assessment of the patient's condition, and furthermore by failing to take any effective steps to have the patient admitted to hospital after he had become aware that the patient was suffering from a potentially life threatening illness. Their Lordships have no doubt that the Committee was well entitled, if not indeed bound, to take the view that the appellant's conduct on the occasions in question fell far below what was properly to be expected of a conscientious and competent practitioner. While it would appear that up until he

received the result of the blood test on 7th October the appellant was proceeding in the fixed belief that his patient was suffering from no more than a recurrence of his long-standing gastric trouble, it was open to the Committee to consider that a properly conscientious practitioner would, as a matter of routine, have carried out on each of the occasions specified in the charge a thorough physical examination in order to exclude the possibility of a pathological condition not related to the gastric trouble. The Committee no doubt took a particularly serious view, and rightly, of the appellant's failure to examine the patient at all during the visit on 6th October, when according to his own evidence the patient's appearance caused him concern. It is clear from the evidence that Mr. McGoldrick must have been suffering from the appendix abscess on 3rd and 6th October, and that a proper physical examination would have revealed it. The Committee negatived paragraph (b) of Head 1 of the charge as regards 23rd and 25th September, and it follows that the Committee took the view that proper examination on these dates would not necessarily have revealed an abscess. But even so, a proper examination should have been carried out.

In support of the second submission counsel sought colour from a passage in the cross-examination of the appellant where he was asked questions directed to whether or not what he did in the course of his visit to the patient's house on 23rd September was typical of his clinical methods. This was later taken up by one of the members of the Committee in asking the appellant to describe exactly what he did by way of examination on that date. Another member of the Committee asked him some questions about his record keeping. The Chairman of the Committee, in announcing its determination, spoke of "the evidence they have heard in this case of your defective clinical methods" and later imposed a requirement that the appellant should take steps "to review and improve your general clinical skills, including clinical problem solving, and the management systems in your practice". These passages were founded upon as indicating that the Committee was proceeding as if the charge against the appellant was not one of specific incidents of misconduct but one of general laxity and incompetence in clinical skills and practice management.

Their Lordships reject this submission. They consider that the Committee was fully entitled to take the view that the particular failures on the part of the appellant identified in the evidence constituted serious professional misconduct, that there was no assurance that failure of similar character would not occur again, and that in the interests of the public the appellant should be required to take the steps referred to by the Chairman. It is apparent that the Committee formed the opinion that the appellant's behaviour towards Mr. McGoldrick fell far short of the standard of general skill and care to be expected of a competent and conscientious practitioner and that his failure to secure the patient's admission to hospital after becoming aware of the result of the blood test on 7th October was a serious defect

in practice management. Their Lordships are satisfied that the Committee, far from misreading the evidence, took the only view of it which was reasonably open.

As regards the penalty of eight months' suspension from the register, their Lordships do not consider that there are any grounds upon which they might properly interfere with it. They were informed that the appellant is now in sole practice, whereas at the time of the proceedings he was in partnership with another practitioner, so that the consequences of suspension will be more serious for him than they would otherwise have been. That is so, but there has to be weighed on the other side the protection of the public, which may be of more significance in the case of a sole practitioner than in that of one in partnership.

Their Lordships will humbly advise Her Majesty that the appeal should be dismissed. The appellant must pay the respondent's costs.