

Alexander Robert Doughty

Appellant

v.

The General Dental Council

Respondent

FROM

THE PROFESSIONAL CONDUCT COMMITTEE
OF THE GENERAL DENTAL COUNCIL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 29TH JULY 1987

Present at the Hearing:

LORD BRIDGE OF HARWICH

LORD GRIFFITHS

LORD MACKAY OF CLASHFERN

[Delivered by Lord Mackay of Clashfern]

This is an appeal from a decision of the Professional Conduct Committee of the General Dental Council on 12th March 1987 that the appellant had been guilty of serious professional misconduct in relation to three charges and that his name should be erased from the Dentists' Register. The three charges in question were:-

"That being a registered dentist:

- (1) Between 10th January and 26th October 1984 you accepted 19 patients, whose names and addresses are shown on List 'A' (which is attached to the charge) for dental treatment as National Health Service patients, and thereafter provided them with dental treatment in the course of which, having obtained radiographs of these patients, you:
 - (a) Failed to retain those radiographs for a reasonable period of time after completion of the treatment;
 - (b) Failed to submit those radiographs to the Dental Estimates Board when required to do so by a letter from the Board dated 27th November, 1984.

- (2) Between 5th June and 16th November, 1984, you accepted 6 patients, whose names and addresses are shown on List 'B' (which is attached to the charge) for dental treatment as National Health Service patients and thereafter provided them with dental treatment in the course of which you failed to exercise a proper degree of skill and attention.
- (3) Between 21st August and 5th October, 1984, you accepted 4 patients, whose names and addresses are shown on List 'C' (which is attached to the charge) for dental treatment as National Health Service patients, and thereafter provided them with dental treatment in the course of which you failed satisfactorily to complete the treatment required by the patients. ...

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

At the close of the case for the Council submissions were made on behalf of the appellant. These were successful in relation to charge four which their Lordships have not narrated and with which this appeal is accordingly not concerned and also in relation to one of the patients mentioned in charge two. At the conclusion of the evidence relating to the facts alleged the President announced the decision in the following terms:-

"... the Committee has decided that the facts alleged against you in charge one, which you have admitted, in charge two, in relation to each of the five remaining patients and in charge three with the exception of those in relation to the patient, Mr. Goldberger, have been proved to the satisfaction of the Committee. In relation to the facts alleged against you in respect of Mr. Goldberger, you have not been guilty of serious professional misconduct."

Thereafter the Committee went on to hear evidence led on behalf of the appellant directed to whether the facts found proved constituted serious professional misconduct and heard counsel on that matter. The Committee announced their decision in the following terms:-

"In relation to the facts alleged in head 1 of the charge which have been admitted, the Committee finds that you have been guilty of serious professional misconduct.

In relation to the facts alleged against you in charge 2 in respect of the five remaining

patients and in charge 3 in respect of the three remaining patients, the Committee finds that you have been guilty of serious professional misconduct."

The Committee directed that the appellant's name be erased from the Dentists' Register.

As the Committee decision records, the facts alleged in charge one were admitted on behalf of the appellant. The facts alleged in charge two in respect of two of the named patients were admitted on behalf of the appellant. On charge two evidence was led from the remaining patients and from Mr. Taylor, a qualified dentist who was a member of the Dental Estimates Board and had been in general practice from 1958 until he took up his position with the Dental Estimates Board in August 1978. He gave evidence criticising root canal treatment that had been given by the appellant to the three remaining patients in respect of whom the facts alleged in the charge were found proved. The criticism was offered under two heads, first, that the root canal treatments were not necessary and second, that the root canal treatments were not properly carried out. In respect of one of the patients criticism was offered under both heads and in respect of the remaining patients under one head for each. In relation to charge three, evidence was given by the three patients in respect of whom the facts alleged in the charge were found proved and also by Mrs. Baker, an officer of the dental staff of the Department of Health and Social Security who qualified as a dentist in 1970 and took a Diploma in Orthodontics in 1977. She gave evidence in respect of two of these patients and evidence in respect of the third was given by Mr. Davidson, a registered dental practitioner qualified in 1950 now employed as an officer of the dental staff of the Department of Health and Social Security. Again criticism was offered under the same two heads: under both heads in respect of two of the patients and under the second head in respect of the third.

At the hearing of this appeal counsel for the appellant in his very clear and forceful submissions first pointed to the distinction in wording between charges two and three. He submitted that charge three was not concerned with whether or not the treatment in question was necessary but only with whether it was satisfactorily completed. This question had been discussed at the hearing before the Committee at the stage when counsel then appearing for the appellant was making submissions at the close of the evidence for the Council. After discussion the legal assessor to the Committee gave his view as follows:-

"The word 'required' is a simple English word which should be given a simple English meaning. It is wide enough to cover this aspect of the matter, namely, the provision of treatment which was not in fact necessary to be completed at all, although the patient may have agreed that it was; so that it is possible for you, under charge 3, to look at, as a head of the charge, the provision of root canal treatment which was not necessary as well as that which was poorly executed."

Counsel for the respondent submitted that the wording of charge three was wide enough to cover allegations that the treatment criticised was unnecessary.

Their Lordships cannot accept the respondent's submission. An allegation of failure "satisfactorily to complete the treatment required by the patient" cannot, by any stretch of language be read as including an allegation of having administered treatment which was not necessary. It follows that the legal assessor's direction was erroneous but not necessarily that the Committee's decision was thereby invalidated. In *Sivarajah v. General Medical Council* [1964] 1 W.L.R. 112 Lord Guest said at 117:-

"Thus what might amount to a misdirection in law by a judge to a jury at a criminal trial does not necessarily invalidate the Committee's decision. The question is whether it can 'fairly be thought to have been of sufficient significance to the result to invalidate the Committee's decision.'"

This was followed in *McEniff v. General Dental Council* [1980] 1 All E.R. 461 at page 465. In the present case there is not and could not have been any suggestion that the evidence given in relation to charge two was not covered by the words of that charge and it is difficult to see why the wording of charge three is different, since the evidence given criticising the appellant's treatment was broadly similar under both charges. No objection was taken to the evidence as it was being led and the appellant had full opportunity to meet it in his own evidence. In the whole circumstances of this appeal their Lordships are satisfied that the misdirection contained in the legal assessor's observations which have been quoted neither prejudiced the appellant nor caused any miscarriage of justice. It did not therefore invalidate the Committee's decision.

The next point taken by counsel for the appellant was that in order to prove the second and third charges it was necessary to show that the opinion held by the appellant in relation to the treatment was not honestly held by him and could not honestly be held by a dentist. This submission was founded principally on the observations of Lord Jenkins

giving the judgment of this Board in *Felix v. General Dental Council* [1960] A.C. 704. At page 721 his Lordship said:-

"With respect to the treatment alleged to have been unnecessary, the evidence (as their Lordships have already observed) showed that according to the appellant, he honestly believed it to be necessary (or likely to be found necessary), while the dentists who disagreed with him did not claim that the opinion expressed by the appellant was one which no dentist could honestly hold. In this state of the evidence their Lordships think it would be wrong to impute to the Disciplinary Committee an implied finding to the effect that the appellant did not honestly hold that opinion. An honestly held opinion, even if wrong, in their Lordships' view plainly cannot amount to infamous or disgraceful conduct."

Counsel for the respondent submitted that the evidence was sufficient to entitle the Committee both to hold the facts alleged in charges two and three proved so far as they had done so and also to hold that those facts constituted serious professional misconduct.

In considering the applicability of Lord Jenkins' observations to the circumstances of the present appeal, it has to be noted that Lord Jenkins was speaking of a case in which dishonesty was very much the issue and in the context of the statutory provision which was the basis of the proceedings in *Felix* namely, section 25 of the Dentists Act 1957. So far as relevant it was in these terms:-

"A registered dentist who either before or after registration - ...

(b) has been guilty of any infamous or disgraceful conduct in a professional respect,

shall be liable to have his name erased from the register."

At that time this was the only penalty available in respect of such conduct. The Dentists Act 1983, section 15(1), provided:-

"For section 25(1) of the principal Act [that is the Dentists Act 1957] (erasure from register for crime or infamous conduct) there shall be substituted

(1) A registered dentist who (whether before or after registration) - ...

(b) has been guilty of serious professional misconduct,

shall be liable to have his name erased from the register, or to have his registration in it suspended, in accordance with section 26(3) of this Act; ..."

The suspension referred to is suspension for such period not exceeding twelve months as may be specified in the Committee's determination. Counsel for the appellant suggests that this change in language was not intended to effect a change in substance. In *Rex v. General Medical Council* [1930] 1 K.B. 562 at 569, referring to the statutory provision there applicable, namely "infamous conduct in a professional respect", Lord Justice Scrutton said:-

"It is a great pity that the word 'infamous' is used to describe the conduct of a medical practitioner who advertises. As in the case of the Bar so in the medical profession advertising is serious misconduct in a professional respect and that is all that is meant by the phrase 'infamous conduct'; it means no more than serious misconduct judged according to the rules written or unwritten governing the profession."

In the General Medical Council's booklet entitled *Professional Conduct and Discipline: Fitness to Practice* (April 1985) the Council stated "In proposing the substitution of the expression 'serious professional misconduct' for the phrase 'infamous conduct in a professional respect' the Council intended that the phrases should have the same significance".

Their Lordships readily accept that what was infamous or disgraceful conduct in a professional respect would also constitute serious professional misconduct but they consider that it would not be right to require the respondent to establish now that the conduct complained of was infamous or disgraceful and therefore not right to apply the criteria which Lord Jenkins derived from the dictionary definitions of these words which he quoted in *Felix*. Their Lordships consider it relevant, in reaching a conclusion upon whether Parliament intended by the change of wording to make a change of substance, to notice that in addition to this change and in close conjunction with it the additional and much less severe penalty of suspension for a period not exceeding twelve months was provided. Further, in terms of section 1(2) of the Dentists Act 1984 which is the statute presently applicable "it shall be the general concern of the Council to promote high standards of dental education at all its stages and

high standards of professional conduct among dentists". In the light of these considerations in their Lordships' view what is now required is that the Council should establish conduct connected with his profession in which the dentist concerned has fallen short, by omission or commission, of the standards of conduct expected among dentists and that such falling short as is established should be serious. On an appeal to this Board, the Board has the responsibility of deciding whether the Committee were entitled to take the view that the evidence established that there had been a falling short of these standards and also entitled to take the view that such falling short as was established was serious.

In the present case the three charges of serious professional misconduct of which the appellant has been found guilty do not impute any dishonesty on his part. It was not suggested that he was carrying out unnecessary treatments for the purpose of enhancing his remuneration. What was suggested was that, judged by proper professional standards in the light of the objective facts about the individual patients that were presented in evidence to the Committee, the dental treatments criticised as unnecessary would be treatments that no dentist of reasonable skill exercising reasonable care would carry out. It was for the Committee with their expertise in this matter to judge as between the witnesses called by the Council and the appellant, who had every opportunity to give his own reasons and explanations for what he did, and to judge whether the allegation was made out subject to the matter already dealt with in relation to charge three. The point taken by counsel for the appellant at this stage of his submission was pressed primarily in relation to the criticisms of the appellant's treatment as unnecessary. With regard to the other criticisms it appears to their Lordships that the failures admitted in relation to charge one and admitted in part and proved to a further extent in relation to charge two and proved in relation to charge three amounted to professional misconduct. Whether the misconduct was serious depended on a number of factors, for example in relation to charge one on the number of patients in respect of whom the failure occurred and the importance of preserving the record for the well being of the patient and as a basis for decision on future treatment of the patient. In relation to charges two and three the seriousness of the conduct depended on the appreciation of such factors as the number of patients involved, the number of treatments criticised in relation to each patient and particularly in relation to unsatisfactory treatments, the nature and extent of the failure to complete the treatment properly. On all of these matters the Committee were particularly well

qualified to reach a view and their Lordships see no reason to disagree with their findings.

Counsel for the appellant stated that the appellant had ceased practising in the middle of 1986 and that he had no present intention to return to practice but he was prosecuting this appeal in order to clear his name. Their Lordships are happy to make clear that in their judgment the findings against the appellant do not import any moral stigma. All the failures found proved related only to work which the appellant carried out as a dentist but in their Lordships' opinion these were failures of a kind which the Committee were entitled to hold rendered it right for them to direct erasure of the appellant's name from the Register of Dentists. This is a matter very much for the professional judgment of the Committee with which their Lordships see no cause to interfere.

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



