Privy Council Appeal No. 30 of 1987

Sharangdhar Prasad *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 OF THE 5TH OCTOBER 1987, DELIVERED THE 19TH OCTOBER 1987

Present at the Hearing:

LORD BRIDGE OF HARWICH
LORD OLIVER OF AYLMERTON
LORD GOFF OF CHIEVELEY

*[Delivered by **Lord Bridge of Harwich**]*

On 29th June 1987 the appellant was judged by the Professional Conduct Committee of the General Medical Council to have been guilty of serious professional misconduct. The Committee ordered that his name be erased from the Register. He appealed to Her Majesty in Council. On 5th October 1987 their Lordships, having heard the appeal, announced that they would humbly advise Her Majesty that the appeal should be dismissed. The appellant was ordered to pay the respondent's costs. Their Lordships indicated that they would give their reasons for their decision later. This they now do.

The charge against the appellant was in the following terms:-

"That, being registered under the Medical Act,

1. Between June, 1981 or earlier, and December, 1986 you repeatedly vaccinated or immunised many patients of your practice against diphtheria, tetanus, pertussis, poliomyelitis, measles and influenza, without due regard for the potential danger to the patients of the administrations of vaccines unnecessarily, since you had on more than one

occasion administered the same vaccines to the same patients in the recent past, and in particular:

(a) Between 4th December, 1983 and 26th March, 1986 you administered vaccinations/immunisations on a number of occasions to patient number three (born 11th July, 1981); and

(b) Between 27th October, 1983 and 2nd December, 1985 you administered vaccinations/immunisations on a number of occasions to patient number one (born 18th October, 1980);

2. By your conduct as aforesaid you:

(a) Neglected your professional responsibilities towards patients for whose medical care you were responsible at the material time; and

(b) Placed an unnecessary burden on the funds of the National Health Service;

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

In advance of the hearing the Council had prepared a schedule showing the names of 51 patients of the appellant with particulars of the allegedly unnecessary and improper vaccinations and immunisations which had been administered to them by the appellant. Before the case was opened to the Professional Conduct Committee this schedule had been the subject of discussion between counsel appearing to present what it is convenient to call the case for the prosecution and counsel for the appellant. An admission was made by the appellant through his counsel of the facts alleged in paragraph 1 of the charge in relation to 27 of the patients listed in the schedule, including the two specific cases referred to in sub-paragraphs (a) and (b) of paragraph 1. It was further admitted, as alleged in paragraph 2 of the charge, that by the conduct admitted under paragraph 1 the appellant neglected his professional responsibilities towards patients for whose medical care he was responsible at the material time, and placed an unnecessary burden on the funds of the National Health Service. It was specifically denied that the admitted conduct amounted to serious professional misconduct. The case was presented on the basis of these admissions and the sole issue for the Professional Conduct Committee was whether what had been admitted amounted to serious professional misconduct. All this was

made crystal clear to the Committee at the outset of the proceedings by counsel for the prosecution and by the very experienced counsel then appearing for the appellant.

Counsel for the appellant before the Board, who did not appear below, takes as his first point a point which was not taken before the Professional Conduct Committee and which is of the utmost technicality.

The General Medical Council Preliminary Proceedings Committee and Professional Conduct Committee (Procedure) Rules Order of Council 1980 (S.I. 1980 No. 858) ("the 1980 Rules") provide by rule 6:-

> "(1) Where a complaint in writing or information in writing is received by the Registrar and it appears to him that a question arises whether conduct of a practitioner constitutes serious professional misconduct the Registrar shall submit the matter to the President.
>
> (2) Unless the complaint or information has been received from a person acting in a public capacity the matter shall not proceed further unless and until there has been furnished to the satisfaction of the President one or more statutory declarations in support thereof; and every such statutory declaration shall state the address and description of the declarant and the grounds for his belief in the truth of any fact declared which is not within his personal knowledge."

The phrase "a person acting in a public capacity" is defined in rule 2 as meaning:-

> "an officer of a Regional Area or District Health Authority, Health Board, Common Services Agency or Board of Governors of a hospital, or of a Government Department or local or public authority, or any person holding judicial office, or any officer attached to a Court, or the Solicitor to the Council."

The complaint against the appellant in this case was made to the General Medical Council by the Administrator of the Birmingham Family Practitioner Committee. It is common ground that there was no statutory declaration. The submission for the appellant is that an officer of a Family Practitioner Committee is not a "person acting in a public capacity" within the definition, that when the complaint was submitted to the President it should not have proceeded further and that, accordingly, the Professional Conduct Committee acted without jurisdiction.

Under the National Health Service Act 1977, as amended by the Health and Social Security Act 1984, a Family Practitioner Committee is an independent authority established by the Secretary of State pursuant to section 10 of the Act of 1977 as substituted by the Act of 1984. The primary duty of a Family Practitioner Committee under section 15(1)(a) (also so substituted) is "to administer the arrangements made in pursuance of this Act for the provision of general medical services, general dental services, general ophthalmic services and pharmaceutical services for their locality ...". Sections 10 and 15 of the Act of 1977, as originally enacted, provided as follows:-

> "10. It is the duty of each Area Health Authority to establish for its area, in accordance with Part II of Schedule 5 to this Act, a body called a Family Practitioner Committee, and each Family Practitioner Committee has the duty described in section 15 below.
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> ...
>
> 15(1) It is the duty of each Family Practitioner Committee in accordance with regulations -
>
> (a) to administer, on behalf of the Area Health Authority by which the Committee was established, the arrangements made in pursuance of this Act for the provision of general medical services, general dental services, general ophthalmic services and pharmaceutical services for the area of the Authority ..."

The predecessor of the 1980 Rules was the General Medical Council Disciplinary Committee (Procedure) Rules Order of Council 1970 (S.I. 1970 No. 596) ("the 1970 Rules"). The 1970 Rules contained a similar provision to rule 6 of the 1980 Rules requiring submission to the President of a complaint about a doctor's conduct and directing that it should not proceed further unless either supported by a statutory declaration or made by a "person acting in a public capacity", which phrase was defined in the 1970 Rules to mean "an officer of a Government Department or local or public authority or of any of the constituent bodies entitled to choose a member of the Council, acting as such, or any person holding judicial office, or any officer attached to a Court, or the Solicitor".

The submission of counsel for the appellant is that the express references in the relevant definition in the 1980 Rules to "a Regional Area or District Health Authority, Health Board, Common Services Agency or

Board of Governors of a hospital" must have been intended to provide an exhaustive list of authorities operating within the National Health Service to which the definition was capable of applying. Hence, he argues that, whatever the intended ambit of the words "local or public authority", they cannot include a Family Practitioner Committee.

Their Lordships cannot agree. They observe, first, that the purpose of rule 6(2) is manifestly to provide a preliminary filter to ensure that the disciplinary machinery of the General Medical Council is not clogged by the necessity to investigate irresponsible complaints. To this end complaints of misconduct on the part of a doctor made by private citizens, such as aggrieved patients, are not to proceed beyond the President unless the facts are attested by statutory declaration. But this attestation is not thought to be necessary when complaints are received from responsible public bodies. It would seem to their Lordships absurd to suppose that this exemption was not intended to apply to a Family Practitioner Committee, the very public body to which Parliament has entrusted responsibility for the administration of services provided by general practitioners. If the question had arisen at any time after the National Health Service Reorganisation Act 1973 (which first established Regional and Area Health Authorities and Family Practitioner Committees) but when the disciplinary procedure of the General Medical Council was still governed by the 1970 Rules, a Family Practitioner Committee would unquestionably have been held to be a "local or public authority" within the relevant definition in those rules.

Why the draftsman of the 1980 Rules (made by the General Medical Council under powers conferred by the Medical Act 1978) should have thought it necessary to include in the definition a specific list of authorities operating within the National Health Service is not perhaps clear. But the omission of any specific reference to a Family Practitioner Committee is, their Lordships think, probably explained by the fact that, under the Act of 1977 as in force in 1980, a Family Practitioner Committee was established by and acted on behalf of an Area Health Authority in performing its functions. On this basis the draftsman may well have taken the view that an officer of a Family Practitioner Committee was equally an officer of its parent Area Health Authority. However that may be, their Lordships reject without hesitation the submission that the omission was intended to exclude a Family Practitioner Committee from the ambit of the definition. A Family Practitioner Committee being now an independent authority by reason of the amendments to the Act of 1977 made by the Act of

1984, their Lordships have no difficulty in concluding, in the light of all the foregoing considerations, that it is still within the definition as a "local or public authority".

The other grounds argued in support of the appeal relate in part to the manner in which the case was presented to the Professional Conduct Committee in the light of the limited admissions made by the appellant, in part to an alleged failure by the legal assessor to give the Professional Conduct Committee appropriate directions in law. If no admissions had been made, the prosecution would have relied as their principal witness upon an expert, Professor Dudgeon, who had prepared a lengthy report on the record of vaccinations and immunisations administered by the appellant to all 51 of the patients included in the original schedule. On the day of the hearing Professor Dudgeon was ill and unable to attend. After the admissions had been made and after the members of the Committee had been invited to delete from their copies of the schedule all save the 27 admitted cases, it was very sensibly agreed between counsel that Professor Dudgeon's report should be put in, but counsel then appearing for the appellant expressly asked the Committee to ignore references to cases not embraced by the admissions. The Chairman observed: "I am sure there is no difficulty about accepting that." There was also put before the Committee without objection a substantial volume of background material.

Counsel appearing for the appellant before the Board complained that counsel for the prosecution in presenting the case to the Professional Conduct Committee, in particular in some references to the background material, may have induced the Committee to go outside the ambit of the appellant's admissions and matters of background relevant to those admissions. It would be tedious and is quite unnecessary to go through these complaints in detail in this judgment. Their Lordships were satisfied that there was no substance in them. In his address to the Professional Conduct Committee counsel for the appellant repeatedly emphasised the limited scope of the admissions and their Lordships have no reason to doubt that the Committee based their finding on those limited admissions.

In the same context counsel before the Board complained that the course of the submissions before the Professional Conduct Committee was such as to call for specific directions to the Committee by the legal assessor as to precisely what background material they should or should not take into account. It suffices to say that the legal assessor was never invited to give any such direction by counsel then appearing for the appellant, who was evidently content to rely on his own cogent advocacy.

In short, there was abundant material to support the finding of serious professional misconduct and their Lordships could detect no procedural or other defect in the proceedings affording any arguable ground for interfering with that finding.

So far as penalty is concerned, the appellant had twice previously been judged guilty of serious professional misconduct. In February 1974 his name was erased from the Register, but was restored in March 1977. In January 1984, upon a second finding of serious professional misconduct, he was admonished. In the light of this record and in the circumstances of the instant charge proved against him, their Lordships took the view that the only appropriate course open to the Professional Conduct Committee was to direct that his name be again erased from the Register.