

Parviz Faridian - - - - - *Appellant*

v.

General Medical Council - - - - - *Respondent*

FROM

**THE DISCIPLINARY COMMITTEE OF THE GENERAL
MEDICAL COUNCIL**

REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL
COMMITTEE OF THE PRIVY COUNCIL,
DELIVERED THE 22ND JULY 1970

Present at the Hearing :

LORD DONOVAN
VISCOUNT DILHORNE
LORD WILBERFORCE

[*Delivered by* VISCOUNT DILHORNE]

After an inquiry on 29th and 30th July 1969 the Disciplinary Committee of the General Medical Council found the appellant guilty of infamous conduct in a professional respect and directed the Registrar to erase his name from the Register.

The charge preferred against him was in the following terms:

“ That you were and are registered under the Medical Acts, and that :

- (1) Through the medium of two companies known respectively as Parviz Holdings, Limited, and Nurses Night & Day, Limited, in each of which companies you at the material times had directly or indirectly a controlling interest, you have had a controlling interest in a company known as Langham Street Clinic, Limited, whose registered office is situated at 31/35 Langham Street, London, W.1 (hereinafter referred to as “ The Clinic ”), of which you were also a Director at the material times; and by virtue of your shareholdings and directorships in Parviz Holdings, Limited, and Nurses Night & Day, Limited, you have had also at the material times a substantial financial interest in those companies and therefore a substantial financial interest in the Clinic, in which the majority of issued shares were held by those companies;
- (2) The Clinic has sought to attract patients and thereby promote its own financial benefit, whereby your own financial benefit has also been promoted in the manner aforesaid, by advertising the services which it is prepared to offer to women desirous of having their pregnancy terminated, and by offering financial inducements to medical practitioners to refer or introduce patients to the Clinic; and in particular

(i) The Clinic has sought to attract patients, and offered financial inducements to medical practitioners to refer or introduce patients to the Clinic, by circulating to medical practitioners in West Germany in and after the month of December 1968, letters wherein the Clinic offered to each medical practitioner receiving a copy of such a letter an inducement of 200 DM (equivalent to about £20 in English money) in respect of each patient referred or introduced by him to the Clinic, with the possibility in view of an operation for the termination of her pregnancy under the Abortion Act.

(ii) The Matron of the Clinic advertised its services on the BBC television programme Panorama on March 17th, 1969; and more particularly she stated

(a) that patients came to the Clinic, with a view to operations for the termination of pregnancy, from a number of foreign countries including Germany in which similar operations were illegal; and

(b) that the operations performed at the Clinic were performed by "top specialists" and "Under the right conditions";

(3) At the material times you have accordingly been a Director of, and you have had directly or indirectly a controlling interest and a substantial financial interest in, a company which has advertised services connected with the practice of medicine;

And that in relation to the facts alleged you have been guilty of infamous conduct in a professional respect."

There was some controversy about whether the appellant had, as he contended, resigned his directorship of Langham Street Clinic Ltd. on 8th November 1968, the date of incorporation of that company, and of Nurses Night & Day Ltd. on either 7th or 31st January 1969. In minutes of "the first meeting of the company", the Langham Street Clinic Ltd., sent to the Companies Registration Office on 8th January 1969, it was recorded that the meeting was held on "8th November 1969" and that the company was incorporated on "8th November 1969". It was also stated that the appellant had resigned his directorship at that meeting and that a Mr. M. Afsharian had been appointed "the next Director of the Company". Mr. Afsharian's full name was Mahmoud Afsharian Moghaddam but he used the name Afsharian and on occasions the English name of Ashford. It will be convenient to refer to him as Mr. Afsharian.

At the hearing a letter was produced dated 5th December 1968 on paper headed "Langham Street Clinic Ltd" signed by the appellant in the following terms:

"I, Dr. Parviz Faridian as from to-day hereby resign as director of the above Company and that I have no claim against the Company."

The reference in the minutes to 8th November 1969 as the date of incorporation when it was in fact 8th November 1968 suggests that the minutes were written in 1969 and after the letter of 5th December 1968.

Minutes of a Directors' meeting of Nurses Night & Day Ltd. dated 7th January 1969 at which the appellant was chairman and at which Mr. Afsharian was present as general manager, stated

“The Director, Dr. Parviz Faridian, having consistently objected to the way the Company’s business is being run, including that of Langham Street Clinic Ltd in which the Company has a substantial interest tendered his resignation”

and that Mr. Afsharian “be also appointed Director in his place until the next Annual General Meeting.”

In a letter dated 14th July 1969 the appellant’s solicitors stated that the appellant had resigned this directorship on 31st January 1969.

The documents filed at the Companies Registration Office in relation to these two companies did not record his resignation as a director of either of these companies.

Mr. McLellan who appeared for the appellant, in his address to the Committee after the hearing of the evidence, conceded that as a matter of law “*vis-à-vis* the outside world” as the necessary documents had not been filed at the Companies Registration Office, the appellant was a director of both companies at the material times.

Mr. Gatehouse, in his opening speech presenting the case against the appellant, submitted that it made no difference if the appellant had in fact resigned his directorships for the shareholding had not changed and the appellant still had effective control; and Mr. McLellan did not dispute that through his holding in Parviz Holdings Ltd. and Nurses Night & Day Ltd. and the holding of these companies in Langham Street Clinic Ltd. the appellant had sufficient interest to control Langham Street Clinic Ltd.

After the evidence had been heard, the President announced that the facts alleged in the charge had been proved to the Committee’s satisfaction. One of the facts alleged in paragraph (1) of the charge was that the appellant was a director of these companies at the material times. But in view of Mr. Gatehouse’s statement that it made no difference if the appellant had resigned the directorships, it may well be that the Committee did not think it necessary to reach a conclusion on this issue.

There was no evidence that the appellant had acted as a Director of Langham Street Clinic Ltd. after 8th November 1968 or that since that date he had taken any part in the conduct of that company. In the circumstances, and having regard to Mr. Gatehouse’s statement, their Lordships think it right to disregard the allegations that the appellant was a director of these companies at the material times and to proceed upon the basis that he had a sufficient shareholding directly and indirectly to have control over Langham Street Clinic Ltd.

Apart from this the allegations of fact in the charge were not disputed. It was admitted that about 50 letters had been sent from the Clinic offering 200 DM (equivalent to about £20) in respect of each patient introduced for an abortion to the doctor responsible for the introduction. The letter was dated December 1968. A Mrs. Burstoff, a lady employed by the Clinic said that she sent the letters off on her own initiative. She left the Clinic in December 1968. The charge alleges that the letters were sent “in and after” December 1968. There was no evidence that any letters had been sent after December.

It was also proved that £20 had been sent from the Clinic to a Dr. Young who had introduced a patient on 21st March 1969 for an abortion. Dr. Young said that he had received the money after 10th April 1969. The money was returned on 21st April.

It appears that the matron was interviewed for the television broadcast and a recording made on about 12th or 13th March 1969.

The journalist who by arrangement with Mr. Afsharian called at the Clinic with a photographer, and who saw Mr. Afsharian and a person whom he took to be the matron but did not see the appellant, must have made his visit before 6th February for the article in the *Sun* newspaper was published on that day. The article stated that the Langham Street Clinic had "four full time Harley Street surgeons" and was used by "20 other surgeons. It has 40 bedrooms and a staff of 65 including 45 state registered nurses." A photograph showing a patient being wheeled into the clinic recovery unit after an abortion was published with the article. Mr. McLellan conceded that the article "was capable of amounting to advertising".

The appellant gave evidence. Mr. Afsharian did not. During 1969 the appellant had been an in-patient at St. Andrews Hospital, Northampton from 18th February to 14th March and from 26th March to 31st March. He had then been a patient in University College Hospital from 2nd to 10th April and in the York Clinic, Guy's Hospital from 21st April to 12th May. He was again in University College Hospital from 14th to 28th May.

The letters to the German doctors must have been sent and the interview with the journalist must have taken place before his admission to St. Andrews but the recording of the interview for the broadcast appears to have taken place while he was there. It would seem that the money sent to Dr. Young was sent during a period when he was out of hospital.

The appellant said that he had no knowledge of the letters sent to the doctors in West Germany until the start of the inquiry; that he had not known that the matron was going to be interviewed for a television broadcast and did not know that she had been until after the broadcast had taken place and that he had not known of the payment to Dr. Young or of the interview with the journalist from the *Sun*.

After the President had announced that the facts alleged in the charge were proved to the Committee's satisfaction Mr. McLellan was invited to address the Committee in mitigation. He did so, but first he addressed the Committee on the question whether the facts proved amounted to proof that the appellant had been guilty of infamous conduct in a professional respect. He submitted that the appellant's whole personality had been distorted by recurrent illnesses "which pushed him out from the date of the incorporation of the company from any active running or control of the Langham Street Clinic" and that, before he could be found guilty of infamous professional conduct, it had to be shown that "he had at the very least notice of, and in reality knowledge of and approved of what was done in the name of the company".

After hearing Mr. McLellan and without inviting Mr. Gatehouse to address them on the vital question whether on the facts proved and admitted the appellant was guilty of infamous conduct in a professional respect, the Committee found him guilty.

In *Felix v. General Dental Council* [1960] A.C. 704 Lord Jenkins delivering the judgment of the Board said at p.717 that the Board had been placed in some difficulty by the circumstance that beyond finding the facts alleged proved, the Disciplinary Committee gave no reasons for its determination and

"Their Lordships are thus left without any express guidance as to the view of the facts upon which the Disciplinary Committee proceeded."

Their Lordships are for the same reason in a similar difficulty in this case. They infer that the Committee must have rejected Mr. McLellan's submission that it had to be shown that the appellant had notice or knowledge of what was done in the name of the company for, if they had accepted it, they must have found the appellant not guilty of infamous conduct, there being no evidence that the appellant had notice or knowledge of what was done until after it had been done.

The charge did not allege that the appellant had either knowledge or notice of what was done. It merely said in paragraph (3) that in relation to the facts alleged the appellant had been guilty of infamous conduct.

In the course of his opening speech Mr. Gatehouse made the following observations:

"We put it this way. . . . There are two extremes. First, no one would suggest that because a doctor is a shareholder in some public company which happens to manufacture or market drugs or medical appliances, and because that company is profitable and he receives dividends, he comes within the prohibition. That would be ridiculous. At the other end of the scale, a doctor who is the *alter ego* of a company which advertises its services or products, who is directly in executive control of the company, and who is himself benefiting from the company's profitability, is quite clearly guilty of advertising.

This . . . was the case with Mr. Whitby. Mr. Whitby was the Director of the Cancer Prevention and Detection Centre. Undoubtedly, in that case he was its *alter ego*. He for all practical purposes was the company.

We say that this case now before you, on its facts comes clearly within the second of the instances I have given, because this doctor was exercising complete control via the linking companies and, if not in *de facto* executive control, because he either resigned or preferred to take a passive part, he at least had the power to control at all times, and he has it today".

From these observations the inference might be drawn that it was being suggested that the appellant was the *alter ego* of Langham Street Clinic Ltd. and so responsible for the acts of the Clinic. The reference to the case of Mr. Whitby was perhaps unfortunate for that was not an instance of a doctor being treated as the *alter ego* of a company as the Centre was not a company though Mr. Whitby was described as director.

In the final paragraph of the passage cited the case against the appellant was put in two ways, it being alleged that he was exercising complete control and secondly that he had power to control the Clinic.

There was no evidence that after the incorporation of Langham Street Clinic Ltd. the appellant exercised any control over that company's activities. Consequently, if the Committee found him guilty on the ground that he was exercising control at the time of the acts complained of, that finding could not stand.

Whether in relation to a given matter a doctor has been guilty of infamous conduct is a question of mixed fact and law, the question of law being whether on the facts proved or admitted the doctor has been guilty of infamous conduct (see *Felix v. General Dental Council* (supra) at p. 717). In *Bhattacharya v. General Medical Council* [1967] 2 A.C. 259 Lord Hodson delivering the judgment of the Board said at p. 265:

"In their Lordships' view that jurisdiction on appeal is not confined to considering whether the alleged facts, if proved, are capable of amounting to infamous conduct in a professional respect,

but extends to consideration whether in the particular circumstances of the case these facts justify a finding of infamous conduct in a professional respect; but in the latter case their Lordships' Board would naturally be very slow to differ from the conclusion of the General Medical Council, to whom is entrusted the decision of these matters as representing the responsible body of opinion in the medical profession upon professional matters."

Their Lordships have in this appeal to consider two questions which may be stated as follows:

- (1) whether by reason of his shareholding which gave him power to control Langham Street Clinic Ltd., the facts proved, namely (i) the despatch of the letters to doctors in West Germany: (ii) the conduct of the matron in advertising the Clinic in a recording for a television broadcast: (iii) the provision of material for an article in the *Sun* newspaper and (iv) the sending of £20 to Dr. Young, were capable of amounting to infamous conduct on the part of the appellant in a professional respect: and
- (2) if so, whether, in the particular circumstances of the case, such a finding would be justified.

In support of his case Mr. Gatehouse drew attention to the following passages in the booklet issued by the General Medical Council called "Functions, Procedure and Disciplinary Jurisdiction" which appeared among the "Notes on certain Professional Offences".

"(2) Advertising may also be considered to occur if a doctor knowingly acquiesces in the publication (in any form) by other persons of matter which commends or draws attention to his own professional attainments or services, or if a doctor is associated with or employed by persons or organisations which advertise clinical or diagnostic services connected with the practice of medicine. In determining in either set of circumstances whether professional misconduct has occurred, it is relevant to take into account

- (a) the extent, nature and object of the publicity; and
- (b) the question whether the arrangements had served to promote the doctor's own professional advantage or financial benefit.

(3) Advertising may arise from notices or announcements displayed, circulated, or made public by a doctor in connection with his own practice, if such notices or announcements materially exceed the limits customary in the profession. Questions of advertising may also arise in regard to reports or notices or notepaper issued by companies or organisations with which a doctor is associated or by which he is employed."

The words "associated with" are very imprecise. Association may take many forms. The fact that the conduct of an organisation may enure to a doctor's own professional advantage or financial benefit, though relevant, is not conclusive on the question whether the association was of such a character as to render him guilty of infamous conduct. The association may be of such a character as to lead to the conclusion that responsibility rests on the doctor for the conduct complained of. The association may be such as to lead to the conclusion that he must have known of what was done and have acquiesced in it, or such that a doctor could reasonably have been expected to take all reasonable steps to prevent the occurrence of events which might lead to charges of infamous conduct being preferred against him; and if in those circumstances it was shown that he had failed to take those steps, then it might be right to infer and to hold that he had connived at the misconduct.

On the other hand no one would contend that association with a company by the holding of some shares in it would make a doctor responsible for the acts of servants of the company and guilty of infamous conduct. Does it make any difference that his shareholding is sufficiently large to give him power to control the company?

There was evidence that prior to the incorporation of the company the appellant was closely associated with the Clinic which began to take in patients in June or August 1968, but no complaint was made of the conduct of the Clinic until after the incorporation of Langham Street Clinic Ltd. After 8th November 1968 the appellant's case was that he took no part in the running of it or in the management of Langham Street Clinic Ltd. There was no evidence that he had done so nor was it alleged in the charge that he had.

In *Allinson v. General Council of Medical Education* [1894] 1 Q.B. 750 Lord Esher said:

"I adopt the definition which my brother Lopes has drawn up of at any rate one kind of conduct amounting to 'infamous conduct in a professional respect', viz: 'If it is shown that a medical man, in the pursuit of his profession, has done something with regard to it which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency'."

In their Lordships' view it cannot be said that the appellant acted disgracefully or dishonourably in failing to exercise his power by virtue of his shareholding to control Langham Street Clinic Ltd. If there had been any evidence that he knew that the four acts complained of would be perpetrated by those engaged in running the Clinic or had any reason to suspect that they might be, the position would be different.

It may be said that a person so closely associated as the appellant was with the Clinic at its inception, must do all in his power to prevent misconduct such as occurred in this case, and that, if he does not do so, he must have connived at or acquiesced in what was done and so is guilty of infamous conduct. But in this inquiry the appellant was not charged with acquiescing or conniving at what was done and there was no investigation as to what steps, if any, were taken by him to prevent malpractices. His failure to exercise the power he had when it was not shown that he had any prior knowledge of what was done or reason to suspect that it would be done is not, in their Lordships' opinion, capable of being held to be infamous conduct on his part.

Their Lordships have therefore humbly advised Her Majesty that the appeal should be allowed. As the inquiry into the circumstances of this case was fully warranted, they made no order as to costs.

In the Privy Council

PARVIZ FARIDIAN

v.

GENERAL MEDICAL COUNCIL

**DELIVERED BY
VISCOUNT DILHORNE**