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GENERAL MEDICAL COUNCIL

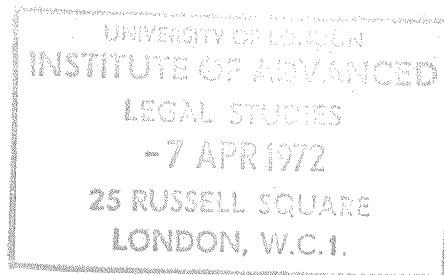
DISCIPLINARY COMMITTEE

Wednesday, November 25, 1970

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Case of

DALLEY, Gilbert



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The President, Lord COHEN OF BIRKENHEAD, in the Chair

Case of

DALLEY, Gilbert

The Committee inquired into the following charge against Gilbert Dalley, registered as of 25 Wimpole Street, London W1, MRCS Eng LRCP Lond 1935:-

"That, being registered under the Medical Acts,

(1) With a view to obtaining patients or otherwise promoting your financial benefit, you advertised your professional services and the services offered by a clinic named Fawkham Manor, Fawkham, Kent, in which you had a substantial financial interest, by despatching during 1969 to medical practitioners in West Germany a circular letter signed by you directing attention to your professional services and the services of the said clinic and canvassing for patients for yourself and the said clinic;

(2) Further, with a view to obtaining patients or otherwise promoting your financial benefit you falsely stated in the said letter that the said Clinic was "registered under the Abortion Act, 1967 in accordance with legal requirements";

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

Dr Dalley was present and was represented by Mr P. Baylis of Messrs Hempsons, Solicitors to the Medical Defence Union.

Mr Robert Alexander, Counsel (instructed by the Solicitors to the Council) appeared in order to place the facts before the Committee.

The REGISTRAR read the charge.

Mr ALEXANDER: The two sets of facts which are constituted in this charge arise from circular letters written to 70 or 80 doctors in the Federal Republic of West Germany towards the end of 1969.

Mr Baylis has been helpful enough to agree a bundle which includes the original letter in German and a translation, and I would like to put that bundle before the Committee immediately.

Document 9 is the letter in the German language which is signed by Dr Dalley. Document 10 is an agreed translation of that letter. It reads as follows:

"Private Women's Clinic,  
Fawkham Manor,  
Fawkham, Kent.  
Tel. Longfield 08-747 2481

London Practice:  
Dr G. Dalley  
22 Upper Wimpole St,  
London W.1.  
Tel. 01 935 4534

Dear Colleague,

This letter is to inform you that I have opened my private women's clinic 'FAWKHAM MANOR'

Although 'FAWKHAM MANOR' is only about 30 km. from London, the well-tended parkland in which it is set offers our patients a real atmosphere of peace and relaxation.

All types of medical and operative cases are dealt with in our special department for women's complaints. Pregnancies, confinements - normal and abnormal - also gynaecological treatment, including irregularities of menstruation, are dealt with.

The women's clinic is registered under the Abortion Act, 1967, in accordance with legal requirements.

'FAWKHAM MANOR' is centrally heated and comfortably furnished. An operating theatre with modern equipment and treatment by first-class specialists under my direction guarantee that my patients receive the best possible treatment. By agreement patients can be met on arrival in London.

I would be pleased if you would give my address to any possible patients to whom we would be pleased to give further details in writing. Thanking you for your efforts,

Yours etc.

(signed) G. Dalley.

P.S. Should you ever be in London I would be pleased to have the opportunity of meeting you personally."

That letter gives rise to two elements. One is that which for present purposes I can generically call the advertising element. The second is that the statement in paragraph 4 of that letter, that the clinic was registered under the Abortion Act 1969, was in fact untrue. For the evidence as to that I would invite the Committee to turn to pages 1, 2, 3 and 4 in the bundle, which is the formal application for a licence under the Abortion Act 1967, the application being for the approval of the Secretary of State for the purposes of Section 1(3) of the Act for treatment for the termination of pregnancy. The only relevant factor to which I would seek to draw attention at this stage is on page 4, where one finds the signature of the proprietor of the clinic, and the date is given as the 11th June 1969. Those two factors indicate Dr Dalley's proprietary interest in the clinic and the date on which application for approval was made.

The history with regard to that application is taken up on page 5 in the letter of 2nd February 1970. This is a letter from Mr Crossman, who was then the relevant Secretary of State. It may be helpful to read this and the reply in the light of certain matters set out in Dr Dalley's letter of explanation. The letter from Mr Crossman to Dr Dalley is as follows:

"My Department has recently received a complaint from the Bundesärztekammer in West Germany that a letter, bearing the address of your nursing home and apparently bearing your signature, has been circulated to certain doctors in West Germany. The letter advertises the treatment and facilities afforded to patients at your nursing home. The Bundesärztekammer consider that since advertising by a doctor in West Germany would constitute a breach of medical ethics, as a matter of principle foreign doctors should also refrain from advertising within the Federal Republic.

They object to the terms of your letter in particular because they consider that it could encourage West German doctors to send patients to England for operations which might be illegal in their own country.

I consider that, in so far as this complaint relates simply to advertising, it involves a question of professional conduct and as such is a matter for the General Medical Council. A copy of the letter received from the Bundesärztekammer has accordingly been forwarded to them. I am, however, gravely concerned that your letter should represent Fawkham Manor as having received my approval under Section 1(3) of the Abortion Act 1967 when, as you are well aware, this is not the case.

Furthermore, the numbers of foreign women who are already coming to this country solely for the purpose of seeking abortion are a source of considerable public concern, and I deprecate most strongly the circulation of a letter which I consider to be tantamount to an invitation to West German doctors to send patients to your nursing home for treatment for termination of pregnancy in circumstances where, as the Bundesärztekammer have pointed out, the operation might be illegal in West Germany. I consider also that one result of such an invitation to foreign nationals to take advantage of the laws of this country to evade the laws of their own might be to offend public opinion in West Germany and thus be detrimental to relations between this country and the Federal Republic.

In view of the above I am doubtful whether I should approve your nursing home under the Abortion Act. However, before taking a final decision I shall consider any observations you may wish to make."

Dr. Dalley  
Dr. Darnley replied to that letter on the 12th February

1970 in the following terms:

"Dear Mr Crossman,

I am in receipt of your letter, the contents of which gave me a severe shock. In view of your action, I cannot comment on this as it is presumably sub judice except to say that I am very sorry. I must add, with respect, that a lot of trouble might have been avoided had it not taken eight months to elicit a reply from a silent and apparently hostile ministry.

The Act officially made abortion legal in this country, but one wonders, just how legal; in practice, Authority appears to regard it as near criminal at best, the effects of which attitude have penetrated to at least some sections of the public (Observer, Jan. 11th, The Times, Febr. 5th). On the other hand, those affected regard it as abortion on demand: I am sure that nobody at the Ministry or in Parliament realises that 40% of new patients presenting at a gynaecological clinic are demanding an abortion, all with equally good, or bad, reasons. I checked the figures at one hospital where three Consultants work and found that in one quarter of last year there were 67 major operations and 54 terminations. No provision has been made for this and it is fatuous to say that this makes no difference to the waiting list. You have not heard the proper indignation of a woman who has waited 6 months for a bed for an operation which may give her a chance to have a much wanted baby only to find that her neighbours (in hospital) have come in at a week's notice to have their (annual) abortion.

I am one of a small minority of National Health Consultants who have any professional contact outside their own hospital group; I correspond with doctors in half a dozen countries besides several states in the U.S.A. I am invited to international conferences (I am reading a paper at one in April). I was at a European congress last autumn where there were many German doctors: those I spoke to were sympathetic and felt that their laws in this respect should and probably would be liberalised. Three years ago I spent a year in an under-developed country at a cost to myself of over £10,000, so am unlikely deliberately to provoke international friction. There are many abuses resulting from the Act more calculated to upset international goodwill, not the least of which is the Mafia like activities with which foreign women are intimidated at London's terminals, regardless of the purpose of their visit; there are very few countries where this would be tolerated.

With regard to Fawkham Manor, I presume you have seen the papers; there is not much I can add and in any case it is probably too late. I cannot expect you to appreciate the sense of achievement one derives from creation, especially if it involves sacrifice. Ever since I returned from abroad I have given up everything, leisure, luxuries, social life, etc., for this. I obtained a large mortgage for which, thanks to the economic situation of the country, I have to pay an astronomical rate of interest. I have done about half of the conversion work with my own hands. I gathered an experienced staff, some of which have left for lack of work; those remaining do so out of personal loyalty to me, but it is problematical how much longer I can afford to pay them. There is a family atmosphere which all patients have appreciated. The result is good and I am not ashamed to show it to anyone, even yourself.

What seems not to have been realised is that this is a general acute nursing home with a bias towards obstetrics and gynaecology. At first I envisaged about 50% of the beds for maternity with a sprinkling of abortions. Now, as a result of the Act, the ratio is reversed; a crude method of birth control for an allegedly advanced country, which I do not like, but one has to face the facts. It also means, unfortunately, that the place is not viable without abortions, at any rate in the immediate future, and I cannot afford to subsidise it any more.

.At least patients who come here are received as human beings and their problems sympathetically respected, instead of the conveyor belt treatment at some London clinics which remind me of pre-war Soviet Russia.

Apart from personal considerations, it would be sad if all this were to be liquidated. We offer patients comfort, safety and sympathy with expert nursing and medical supervision but it seems that this is not what is required."

On page 8 of the bundle there is a letter in reply dated 23rd March 1970, and the stamped signature of Mr Crossman has been somewhat obliterated. I hope it is just visible. The letter reads:

"I have given careful consideration to the points made in your letter of 12 February and to the other circumstances relating to your application. Having done so I have decided that I am unable to approve Fawkham Manor for the purposes of the Abortion Act 1967."

I have read those letters for one effective purpose: to establish the facts set forth in head (2) of the charge. It is perhaps unnecessary but may just be timely to indicate that I do not seek to rely on any of the wider considerations mentioned by Mr Crossman with regard to the facts in head (1) of the charge. In other words, this case is in no sense concerned with the merits of abortion and is in no sense concerned, as I understand it, with the fact that it may have been particularly objectionable to canvass foreign doctors. It is concerned essentially with the advertising element.

So far as the second limb of the facts is concerned, those letters indicate clearly that there has been no approval.

When we come to it I shall read the doctor's letter of explanation in which he points out that the sole reason that approval was refused was the letter he had written. It may be that the impression given by the letters from Mr Crossman is that that certainly was the predominant reason, but it is right to observe that in his letter of 23rd March 1970 Mr Crossman says: "I have given careful consideration to the points made in your letter of 12 February and to the other circumstances relating to your application." It may be putting it somewhat too high for the doctor to suggest that it was necessarily the sole reason for refusal, although it would clearly appear to have been the predominant one.

At page 11 of the bundle there is the Assistant Registrar's request, in accordance with Rule 5(2) of the

1970 Rules, for an explanation. I will not read that because items (1) and (2) which the doctor is invited to explain are identical to the way in which those items are set forth in the charge.

The letter of explanation begins at page 13 and it is dated 18th September 1970. It reads as follows:

"I am writing to reply to your letter of August 7th, 1970.

I am naturally most concerned and distressed that any act of mine might raise the question of whether I have committed serious professional misconduct and if I have in any way contravened the ethical rules of my profession I would like to say to the President and the Penal Cases Committee at once that I did so inadvertently and unwittingly and to tender my sincere apologies.

I am Consultant Obstetrician and Gynaecologist to the Darenth & Stone and the Dartford and Medway and Gravesend Groups of Hospitals and I carry on private practice at the above address. Fawkham Manor Nursing Home has been owned and operated by me for the past ten years. It has 24 beds. In about 1967 I decided to upgrade the nursing home to enable it to take acute surgical cases and in particular gynaecological and maternity cases. I installed an operating theatre and other appropriate facilities. The conversion was completed early in 1969 and the home was then licensed for surgery and maternity.

By this time the pattern had changed: the demand for maternity beds had dropped and there was a rapidly growing demand for termination of pregnancy and so in June 1969 I applied for approval of the nursing home under section S.1 (3) of the Abortion Act 1970. The nursing home was certainly equal to other nursing homes with which I am familiar in terms of equipment, facilities and staffing and I have to admit that I assumed that approval was a formality only. It was not until nine months later that I was notified that approval was refused and it was made clear that my application had been rejected, not because of any inadequacy in the nursing home, but simply on account of the letter which I had written to doctors in Germany, which is the subject of this explanation.

The letter in question was printed and sent by me to about 70 or 80 gynaecologists in Germany. This was done on the advice of a number of such doctors in Germany. My wife is of German nationality and I had occasion to meet many German doctors on family visits. In October 1969 I attended a medical conference in Yugoslavia and again met a number of German doctors. The question of abortion was naturally discussed as there was a good deal of interest in the recent changes in the English law on the subject. I mentioned my plans for Fawkham Manor and several of the doctors suggested that I notify doctors in Germany likely to be consulted by patients requiring termination of pregnancy, as this would be of assistance to them. When I returned to England my letter was accordingly composed, translated and printed and copies were sent, as I have said, to 70 or 80 doctors.



On page 15 of the letter the second paragraph deals with whether or not Dr Dalley was doing anything wrong. To that I will return in a moment.

So far as the final paragraph is concerned, that in my submission involves necessarily an admission that he knew when he sent the letter that the clinic had not been approved, and whatever gloss is put on that paragraph it cannot, in my submission, ultimately amount to anything other than an admission that an untruth was deliberately told at the time when the letter was sent, and a serious untruth.

With regard to the third paragraph on page 15 and the first paragraph on page 16, these relate to innocence, for, as the Committee appreciate from this and previous cases, it is an essential part of the charge that one must prove not only that he despatched the letter which advertised his professional services and the services offered by the clinic but that the object of doing that was with a view to obtaining patients or otherwise promoting his financial benefit.

There are two matters in regard to which the Committee will be entitled to consider whether or not I establish - because the burden necessarily rests on those alleging the charge - that the letter was sent with that object. The Committee can first rely on the letter that was despatched and its terms, because the Committee is entitled to consider from the terms of that letter whether that must necessarily have been the object. The Committee can also, of course, look at the explanation of that letter given by Dr Dalley, and also any explanation which may be given by him subsequently in the course of this case.

With that in mind I would invite the Committee's attention again to the details of the letter. The translation is on page 10. The Committee itself are

well aware of the customary bounds of the profession with regard to drawing attention to professional services by, for example, indicating when a practice is being set up in a particular area. I submit that the Committee ultimately will decide that this letter goes well beyond the customary bounds of the profession. He first indicates that he has opened his "private women's clinic 'Fawkham Manor'". Paragraph 2, the Committee may think, sets out details of its attractions so far as convalescence and the surroundings are concerned. Paragraph 3 states the nature of the cases that are dealt with and might well of itself not be objectionable. Paragraph 4 I do not deal with for these purposes because that contains the untrue statement as to registration. Paragraph 5 sets out the details of the central heating and furnishing and also the details of the medical treatment given: "An operating theatre with modern equipment and treatment by first-class specialists under my direction guarantee that my patients receive the best possible treatment. By agreement patients can be met on arrival in London." There - and, indeed, the doctor to some extent recognises it in his letter of explanation - is a reference indicating not merely that specialists give treatment there but that they give "the best possible treatment", and that, in my submission, crosses the border line.

The next paragraph is again important: "I would be pleased if you would give my address to any possible patients to whom we would be pleased to give further details in writing." It is again my submission that the irresistible inference of that is that it is put in with a view to attracting patients and otherwise promoting his own financial benefit; because, one would add, if it did not have that purpose, there could effectively have been

no point in including that sentence in the letter.

Finally, I would draw the attention of the Committee to the relevant passages in the "blue book" of 1969, which is the one current for the year in which the letters were despatched. On page 12 there are two indications of advertising which may be the ones with which the Committee are concerned here. "(1) The professional offence of advertising may arise from the publication (in any form) of matter commending or drawing attention to the professional skill, knowledge, services, or qualifications of one or more doctors, when the doctor or doctors concerned have instigated or sanctioned such publication primarily or to a substantial extent for the purpose of obtaining patients or otherwise promoting their 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." Whilst obviously (3) may be considered to be germane, it is also right to observe that in the charge the burden has been undertaken of proving specifically (1), namely, that he did so with a view to obtaining patients or promoting his financial gain, and that has been done because I would submit to the Committee that on the evidence available at present there is a strong prima facie case for them to consider in due course.

Mr BAYLIS: I call Dr Dalley.

GILBERT DALLEY sworn

Examined by Mr BAYLIS

Q Dr Dalley, what is your address? A. Fawkham Manor,  
Fawkham, Kent.

Q Are you 59 years of age? A. Yes.

Q And a married man with three children? A. Yes.

Q Did you qualify in 1935? A. Yes.

Q In addition to your qualifying diplomas are you a Fellow of the Royal College of Obstetricians and Gynaecologists? A. I am.

Q I think you trained at St Bartholomew's Hospital and after qualification you held appointments at that and other hospitals? A. I did.

Q During the War did you serve in the Royal Army Medical Corps? A. Yes, I was in the RAMC throughout the War.

Q In which theatres did you serve? A. In France from 1939 to 1940, in England, and then in India and Burma until virtually the end of the War.

Q I think you were in the end in charge of a field service unit in the 14th Army? A. I was a surgical specialist in charge of a field surgical unit.

Q After the War, following a short period in general practice, did you obtain an appointment as Consultant in Obstetrics and Gynaecology to the Kent County Council? A. Yes.

Q And that post became a National Health Service post in 1948? A. It did.

Q As you say in your letter of explanation, are you now a Consultant to the Darenth & Stone and the Dartford and Medway and Gravesend Groups of Hospitals? A. Yes.

Q Is that an appointment which you have held since 1948? A. Yes, the Dartford one was first and the others came a little later.

Q Do you carry on private practice in Upper Wimpole Street? A. Yes.

Q Subject to the outcome of these proceedings, what are your plans for the future? A. I shall carry on as a consultant gynaecologist until I am 60, or maybe even a bit longer.

Q But relatively early retirement is in your mind, is it? A. Yes, it is.

Q Was it about ten years ago that you established Fawkham Manor Nursing Home? A. Yes.

Q What was then the purpose of the Nursing Home? A. It was a convalescent and medical home.

Q Was it successful in that way? A. Yes, reasonably so.

Q I want to deal first with the second charge against you, that is to say, that you in your letter to the German doctors, which we will deal with in a minute, falsely claimed that the nursing home was registered under the Abortion Act of 1967. In your letter of explanation to

the Penal Cases Committee which is before the Committee today you said that you upgraded the nursing home?

A. Yes.

Q And made it suitable for the purpose of surgical operations? A. Yes, I had some alterations done and an operating theatre installed, and all the necessary equipment.

Q On the 11th June 1969 did you submit an application for approval of the nursing home under the provisions of the Abortion Act? A. Yes.

Q We will not trouble the Committee with the details but all the relevant information about the nursing home is set out on pages 1 to 4 of the bundle of documents?

A. Yes.

Q Were you familiar with the standards which the Department of Health require in connection with nursing homes licensed under the Abortion Act? A. Yes.

Q Did you have any doubt that from the point of view of the facilities and staffing the nursing home was one which merited approval by the Minister? A. None at all.

Q Can you tell the Committee approximately the date upon which you drafted the letter which forms the subject of the charge against you? A. It was some time in the autumn of 1969 - October, November time.

Q A month or two after you had submitted your application for approval? A. No, it was four or five months after.

Q Was there a delay between the time when you drafted the circular letter and the time when it was actually printed and despatched? A. There was a short delay. I cannot recall exactly.

Q But there was presumably some delay while it was printed? A. Yes, that took quite a while.

Q Why do you tell the Committee that you said in that circular letter - it was presumably in the draft originally prepared for printing - that the nursing home was registered under the Act? A. Well, I thought that it was only a formality that it would pass the medical tests and that approval would be given in due course.

Q You had no doubt that it would be approved? A. I did not see any reason why it should not.

Q It was not until some months later that you received the letter from Mr Crossman, which Mr Alexander has read to the Committee, in which he drew attention to the letter you had written to these German doctors, and you replied to that letter a few days later, that is to say, on the 12th February? A. Yes.

Q I do not need to go into the letter again but would it be right to say that you wrote your reply in a mood of some indignation and bitterness? A. I was bitter.

Q And did you sincerely hold and do you still hold the views set out in your letter to Mr Crossman? A. I may say

that in December I had written to Sir George Godber asking why I had had no reply to my letters concerning this application, and all I got from him was a note from the Secretary/saying that my letter had been received. I wrote again a month later and still got no satisfaction.

Q And it was shortly after that, in March of 1970, that you received the rather short letter of Mr Crossman saying that your application for approval of Fawkham Manor Nursing Home had been turned down? A. After his first letter I hardly expected anything else.

Q Did you have any doubt then that the reason for the rejection of the nursing home was the letter you had written to the doctors in Germany? A. No, it seemed to be the only reason.

Q Is it right that the nursing home is still not approved for the purposes of the Act? A. No, it is not approved.

Q What effect, if any, has that had from the financial point of view? A. It is very hard. I have tried to keep it going but not very successfully.

Q Is there a fair amount of money invested in this property? A. There is.

Q What are your future plans for it? A. Well, one of these days I shall probably sell it, if there is a suitable applicant.

Q Would you now look at page 9 of the bundle? Is that the letter which you sent to a number of doctors in Germany? A. Yes.

Q Turning over the page, are you able to accept that page 10 represents a substantially accurate translation of your letter? A. Yes.

Q Turning on to page 13, is that the letter of explanation which you submitted to the General Medical Council, and does it represent the explanation which you wish to give to the Committee today? A. Yes.

Q On page 14 the last paragraph starts with the words "The letter in question was printed and sent by me to about 70 or 80 gynaecologists in Germany." That is right, is it? A. Yes.

Q Do you say that this was done on the advice of a number of doctors in Germany? A. Yes.

Q Can you explain the circumstances in which they came to give you that advice? A. When I met the German doctors we had discussed this question and they suggested it would be helpful to them if they knew of a reputable place to which they could send their patients.

Q You were aware, of course, that the law relating to abortion at that time was different as between England and Germany? A. Yes, as far as I know it still is.

Q I think you have a fairly substantial connection with Germany, in the sense that your wife is German and her family live in Germany? A. They do.

Q So you go over there fairly regularly? A. Yes.

Q And you also attend medical conferences and such-like in Germany? A. Yes.

Q Therefore you have occasion to meet German doctors fairly regularly? A. I do.

Q Are you a member of the British Medical Association? A. Yes.

Q And as such do you receive the "British Medical Journal"? A. I do.

Q Would you be good enough to look at these? Is one a copy of the "British Medical Journal" for the 27th June of this year and the other a copy of the "British Medical Journal" for the 7th November 1970? A. That is correct.

Q Look at the pages which carry the advertisements. Is there a space for the advertising of nursing homes? A. Yes, there is.

Q Look at the first one just by way of example. Is the second entry there a reference to a nursing home in which the name and qualifications of the medical director are given? A. That is right.

Q Is there then set out a reference to the nursing home, its situation, its facilities, its charges and so on? A. Yes.

Q Looking at the other copy of the "Journal", are there two similar entries relating to other nursing homes? A. Yes.

Q I do not want to mention the names of any of these - they are not relevant to these proceedings - but is there a reference to a nursing home, and the name and qualifications of the superintendent are given? A. Yes.

Q "This excellent appointed hospital receives all types of patients who are suffering from psychological and senile illness. The most modern psychiatric treatments are available. Special geriatric unit for mild and senile patients." A. Yes.

Q Were you aware that it is perfectly permissible to advertise private nursing homes in the medical press in this country? A. Yes.

Q And that there is no objection, it appears, to the inclusion of the name of the medical director or proprietor of the nursing home? A. No.

Q As a matter of interest, have you ever advertised Fawkhman Manor in the "British Medical Journal"? A. Yes, I have.

Q Do you do it regularly? A. I have not done it recently.

Q But you have done from time to time? A. I have done in the past.

Q Turning to another matter mentioned in your letter of explanation, what is your understanding of the position as to what a consultant may do when he starts up in practice in a new area? A. He may circulate doctors in that area, notifying them that he has established consulting rooms or a practice in that area and is prepared to see patients.

Q When you came to send this printed letter to the 70 or 80 doctors in Germany did you have in mind these limits to the rules that you can operate in respect of nursing homes? A. Yes.

Q And in respect of your own specialty practice? A. Yes.

Q Looking for a moment at page 10, the translation, the final paragraph reads: "I would be pleased if you would give my address to any possible patients to whom we would be pleased to give further details in writing." You will agree that it is a substantially accurate translation from the German. At the time did you recognise that that could be said to be a canvassing of patients? A. I did not think so but I think it suffers by being translated and re-translated. It gains each way.

Q In what way does it "gain"? A. If one writes a letter to a colleague one puts slightly more in the way of personal details than in an advertisement in the newspaper.

Q When you drafted this letter you had in mind that it was only going to go to medical practitioners? A. Yes.

Q Before you drafted this letter and had it printed and sent out did you consult your medical defence organisation? A. No.

Q Did you talk it over with any of your professional colleagues? A. Not in England, no.

Q In fact, did it enter your head at the time that you were laying yourself open to criticism? A. No.

Q Finally, do you wish before this Committee to repeat the assurance which perhaps goes without saying and which is at the conclusion of your letter of explanation, that you would in no circumstances send any similar letter or anything of this sort to anyone in connection with Fawkham Nursing Home or your practice? A. No, I certainly will not.

Cross-examined by Mr ALEXANDER:

Q Would I be right in understanding that you yourself drafted the initial version of the letter for translation? A. Yes, I suppose so.

Q Is there any qualification you wish to place upon that answer? A. Well, English and German are languages which are not easily interchangeable. One cannot translate English word-for-word into German, and vice versa.



Q But the initial draft of this letter was done in English for translation into German, was it? A. It was done with a German doctor. We did it together.

Q Could we go a little into the mechanics of this? Where was the initial draft prepared? A. Partly in a hotel in Yugoslavia and partly at home in London.

Q In the hotel in Yugoslavia who were the participants in the preparation? A. Myself and a doctor, and I think my wife, were present.

Q Was this done in English or in German? A. In both.

Q And then you said partly at home? A. Yes.

Q How long after the part that was done in Yugoslavia was the part at home carried out? A. Three or four weeks.

Q Would it follow from that that by the time you left Yugoslavia the letter was not complete? A. No.

Q What part of it was complete so far as the English version is concerned when you left Yugoslavia? A. It was just the main headings.

Q So would it be fair to say that what was dealt with by the time you left Yugoslavia was basically a list of points that had to go into the letter? A. Yes.

Q So in England the drafting of the letter to include those points was then executed? A. Yes.

Q Who did that drafting in England? A. I had a German-speaking secretary.

Q Did you ever do in English a draft of this letter? A. No.

Q How did your secretary come to produce a German version of the letter? A. From the points we had made.

Q Do you speak German yourself? A. Not very well.

Q Do you speak it well enough to dictate or draft a letter in German? A. No.

Q Did you tell your secretary the precise wording of this letter? A. Not the precise wording.

Q Did you tell her what to put in the letter? A. Yes.

Q Did she then draft the letter in German? A. Yes.

Q What steps did you take to see whether the German draft corresponded with whatever intention you had with regard to the contents? A. It was roughly translated back to me. I could understand the sense of it.

Q You knew, for example, that it stated that the clinic had been approved in accordance with the Abortion Act 1967? A. Yes.

Q When it was roughly translated to you you felt you knew enough of its contents to be responsible for them by adding your signature. Now, when was this process

complete? When was the letter in final draft? A. About November 1969.

Q Did it then go to be printed? A. Yes.

Q So was it printed some time after the time in November 1969 to which you have just referred? It was printed not earlier than November of 1969? A. No.

Q At the time of printing, the statement that the clinic was registered under the Act was untrue, was it not? A. It was untrue but then I was expecting this approval, and printing takes time.

Q How long did the printing take on this occasion? A. I think three or four weeks.

Q So is it right that the letter was despatched in December? A. Yes.

Q Did you give instructions for it to be sent? A. I suppose so, yes.

Q When you gave those instructions you had not forgotten its contents? A. No.

Q How did you gain the addresses and names of the doctors to whom it was to be sent? A. They had come from a German register.

Q Found by whom? A. My secretary.

Q What was the German register? A. I think the register of practitioners.

Q Did your secretary keep a record of the doctors to whom the letter was sent? A. I do not think so.

Q You said in your letter of explanation that it was sent to 70 or 80 doctors. How did you know the number to whom it was sent? A. Well, this is an estimate.

Q Had you met any of the doctors to whom this letter was sent? A. Only three or four of them.

Q When the letter was sent you were aware, as you have already said, of its contents or remembered them. You therefore knew, did you, that when the letter was sent the statement in paragraph 4 as to registration was quite untrue? A. Yes.

Q Did you expect that fairly shortly after receipt of that letter some German doctors might recommend a patient to come to your clinic? A. Yes.

Q What guarantee did you have that the statement in paragraph 4, which was untrue when you sent the letter, would have ceased to be untrue? A. I had no guarantee.

Q Why did you not delay the sending of the letter until you had got the approval under the 1967 Act? A. As I said, I was expecting it at any time and I had no indication that it was not going to come. I know these matters take a long long time but one expects an answer some time.

Q Did you appreciate the influence that paragraph might have on the recipients? A. Yes, and in fact several doctors did write to me and I had to write back to them correcting it.

Q What was the obstacle, if you were expecting approval at any time, to delaying sending that letter until you had approval? A. I suppose ---

Q Would it be unfair to suggest that the obstacle was that you urgently needed to attract patients to the clinic? A. I needed to attract patients.

Q Would you agree that the purpose of that letter was to seek to attract patients for the clinic? A. Yes.

Q Would you agree also that the effect of attracting patients to that clinic would be to procure your own financial advantage? A. That is the object of all advertisements.

Q Would you be good enough to turn to your letter to Mr Crossman of 12th February? I think you answered Mr Baylis by saying that that letter was written in a mood of indignation and bitterness, and that might, of course, colour your expressions of opinion, but, so far as the facts are concerned, were the facts stated in that letter true? Do please take your time and read it through if you want to before giving an answer. A. Yes.

Q So the facts in the letter are accurate. If we turn to page 2 of that letter, on page 7 of the bundle, it would seem - would you say if this is the right or the wrong impression as to the state of the clinic at the time - that the clinic was approaching desperate financial straits? A. I was subsidising it to the limit of what I could afford.

Q You say that "it is problematical how much longer I can afford to pay them"? A. It is - or it was.

Q This was February, and by then would it be fair to say that the overall state of the clinic was a fairly desperate one financially? A. Well, it was not mortally desperate.

Q Reading the paragraph starting "What seems not to have been realised", is it right to derive from that a picture that this clinic was not viable without abortions? A. Yes, that is correct.

Q At any rate in the immediate future? A. Yes.

Q Would it be wrong to suggest that the reason why you despatched the letter before you had any approval under the Abortion Act was that you had a very urgent need of patients indeed? A. One has to have patients to run a nursing home.

Q I would like to put that again to seek a specific answer. Would it be right that the reason you despatched the letter before you had approval under the Abortion Act, and could not wait until after approval, was that you had a very urgent need of patients indeed? A. No, that was not so.

Q Why did you send the letter only to German doctors and not to English doctors? A. I had already sent a letter to most of my colleagues in England who were likely to use a nursing home.

Q Was it at all because you thought that Germany, owing to its laws, was a good catchment area for girls coming to England for abortions? A. German doctors have this problem, as we have, and if they are desperate enough to come they will come.

Q Did you think Germany was a good catchment country for patients? A. Well, I had connections there.

Q Concentrate on the specific question. Did you think Germany was a good country with regard to patient possibilities - a country likely to send a lot of patients? A. I suppose so, yes.

Q Had you read in the press prior to this time that a large number of German girls were coming to England for abortions? A. I had heard something.

Q Would you turn, please, to the translation on page 10 of the bundle? I think you said that the letter suffered in double translation, that is, from English to German and back again into English, but as I understand it there was never an initial English draft of this letter. A. I did not say there was.

Q Because this letter was basically written in German? A. Yes.

Q So there has been one translation of an actual letter, that is, from German into English? A. Yes.

Q Is there any respect in which, so far as you can see, the translation from the German to the English is unfair or does injustice to the sentiments expressed? A. I suppose not.

Q Could we then go to the first paragraph: "This letter is to inform you that I have opened my private women's clinic". How long had the clinic in fact been open? A. Since June.

Q Going to the fifth paragraph one finds the reference to "An operating theatre with modern equipment and treatment by first-class specialists under my direction guarantee that my patients receive the best possible treatment." I refer you now to page 15 of the bundle, to the last paragraph in your letter of explanation, and before I ask you a question I should remind you that you said that you realised that the wording was unwise in the sense that it referred to you personally. Would you have a look at that paragraph? When you are ready, the question I want to ask you is this: Did you think, at the time you sent your letter, that it was acceptable within the custom of the profession not only to say that treatment was available but that it was "the best possible treatment"? A. I am sorry?

Q When you sent the letter (page 10) did you think it was acceptable, according to the standards of the profession, to say not only that medical treatment was to be available but that it was the "best possible treatment"? A. I did not see anything wrong in it.

Q Did you think it acceptable to describe the specialists not only as specialists but as being first-class? A. Both of these words are exaggerated in the German. One would not use them in English.

Q Assuming that is the effect of the German letter, would you, when you sent it, have regarded it as acceptable? A. Yes.

Q To describe the specialists as first-class and the treatment as "the best possible"? A. Only consultants were going to use the place.

Q You have pointed to certain advertisements in the "British Medical Journal" which deal with the qualities of nursing homes and in one case describing the nursing home as excellently appointed. Are you able to point to a single advertisement in the journals referring to treatment as being "the best possible" or in any other way putting in a matter of comparison with other practitioners? A. No, I cannot say that.

Q The last paragraph says, "I would be pleased if you would give my address to any possible patients to whom we would be pleased to give further details in writing". Did you at that time have further details available? A. No..

Q Had you seen anything in the medical journals addressed to the profession to the effect of "Please give our name to all patients", or words similar to that? A. No, but an advert obviously is aimed at that.

Q Would you agree that those words are the clearest possible tout for patients? A. I am sorry, I may be very dense, but there seems to me to be a knife-edge difference between an advert which appears regularly at great cost, obviously with a successful name attracting patients, and writing a letter to doctors saying "Send the patients".

The PRESIDENT: These letters were not dated, were they? A. No.

Mr BAYLIS: I have no questions in re-examination.

Witness withdrew

Mr BAYLIS: With your permission, I will tender as a part of my evidence certain testimonials. I would like you to take into account the observations of these colleagues as a part of Mr Dalley's defence to the charge against him. They do not relate directly to the defence of the matter with which the charge is dealing.

The first testimonial is from Mr A.W. Chester, a consultant colleague at Dartford. He writes: "I have known Mr Dalley for over thirty years and have been his colleague during the last twenty. He has always been a

most honourable man, meticulous in his dealings with his colleagues, general practitioners and patients, scrupulous in the conduct of his affairs, both private and public. His attention to detail is impressive. He is a first-class gynaecologist and does not spare himself in the care of his patients, in the business of the department or in committee. I have often sought his advice in consultation and in professional matters, when his opinion has been most valuable. Mr Dalley is a sober, trustworthy man who is highly regarded by people who know him."

The next is from Mr J. Aubrey Watts, Chairman of the Group Medical Committee to the Dartford Group of Hospitals: "I understand that Mr G. Dalley is in some trouble with the General <sup>M</sup>edical Council and I would like to record the fact that I have known Mr Dalley for twenty-three years and during all this time I have always found him to be a most agreeable colleague. He has taken a very active part in the running of the Dartford Hospital Group and is a most eminent gynaecologist, being in charge of the large Obstetric and Gynaecological Unit in this Group. I have always considered his standard of medical ethics to be very high and I am sure whatever trouble he is now in could not be due to any ulterior motive. I have every confidence in his integrity as a man and as a doctor."

Finally, Dr J.C. Hogarth, Consultant Physician, Dartford Hospital Group, writes: "I have known and worked with Mr G. Dalley for more than twenty years. He is a tough and outspoken man. In my relationship with him, which has been entirely in hospital and not in private work, I have found him to be ethical, competent and professional. I have had an interchange of patients with him over these years and he has shared the care of my wife when our daughter was born."

That is all the evidence I propose to call for the defence.

Mr ALEXANDER: There is only one matter on which I can assist at the present stage. In my submission all the basic facts are effectively admitted. Looking at head (1) of the charge, there is first the advertising, that is, the letter dealing with both the professional services and the services of the clinic. Then the substantial financial interest is admitted, and then there are the details of the sending of the letter which was, in my submission, as stated in the charge, for the purpose of directing attention to the professional services and the services of the clinic and canvassing for patients.

In head (2) the basic fact that the clinic was not registered is effectively admitted. The only matter on which I can perhaps assist a little is intention. I said in opening that it was crucial to show under both heads the object with which the letter was sent, and I said that object could be inferred from the terms of the letter itself and could also be assessed in the light of the evidence given by the doctor. It is only as to the evidence given by the doctor that I address the Committee now, because anything else would be repetitive. So far as that is concerned, when asked questions about it he indicated that the purpose of the letter was to seek to attract patients, and when asked whether it was with a view to securing his financial advantage he replied that the object of all advertising is to procure financial advantage, so in my submission, in assessing the effect of that letter, the Committee has the benefit of the doctor's frank concessions as to what the intent was, those admissions having been made in evidence.

Mr BAYLIS: There is very little that I need add to what Mr Dalley has quite frankly said in his letter of explanation and to the answers he gave to me and to my learned friend in his evidence. Mr Dalley cannot dispute and has never attempted to dispute that he, to use Mr Alexander's phrase, went beyond the customary bounds of the profession in terms of the letter which he sent to these doctors in Germany, and he equally cannot dispute that one of the purposes of sending this letter to the doctors in Germany was to promote the financial advantage of the nursing home and consequently to a degree himself as the owner or part-owner of the nursing home. Thirdly, Mr Dalley cannot possibly dispute that in drafting this letter in the way in which he has described it in the answer to the question put by Mr Alexander, he has been most unwise in the phraseology he used - so unwise, in fact, I would respectfully suggest, as to demonstrate that he really gave no thought to the possibility that what he was doing laid himself open not only to severe criticism by his colleagues but exposed him to the humiliation and danger of proceedings before this Committee. It would have been easy enough, in my submission, to have wrapped up this letter in such a way as not to expose him to these problems, but he did not do so. He drafted the letter in a careless and, one may think, foolish way in the sense of having it prepared by the secretary in German, having the sense of it translated back into English, and then having a letter sent off to these 70 or 80 doctors, selected from this register, in German.

Mr Dalley was equally wrong in assuming that the Secretary of State would grant approval to this nursing home being used for the purposes of the Abortion Act.



As to that he can do no more than offer his apologies to the Committee for including in that letter a statement which was manifestly untrue. But it is in a sense slightly ironical in that he now faces a charge of serious professional misconduct for having made that incorrect statement in this letter, and the letter itself was the very reason - there can be no doubt about this - why approval of the nursing home was withheld. There is nothing to suggest that this nursing home is not up to standard, and your Lordship and the Committee can see the facts about it. So the ironical result of that is that in a sense Mr Dalley is being penalised twice for the same offence.

I have made these concessions as frankly as Mr Dalley has in the witness box, but in judging the case I would ask you to bear in mind certain points which can be taken into account in considering this case on behalf of Mr Dalley.

The first, as we demonstrated in evidence, is that there is nothing improper in nursing homes being advertised, even in relatively glowing terms, to the medical profession by the insertion of paid ~~advertis~~<sup>advertisements</sup> in the medical press, and there is no objection to those ~~advertis~~<sup>advertisements</sup> including the name and qualifications of the person who runs and owns the nursing home. Examples have been produced before you from one of the most reputable medical publications. I do not think there can be any doubt that a carefully worded ~~advertis~~<sup>advertisements</sup>, not of course using the careless and foolish terms in the letter, could perfectly properly have been inserted in medical journals published in Germany. These would not only have been read, of course, by the 70 or 80 doctors concerned but by everyone who took the journal in question, and would probably therefore have reached the eyes of most of the doctors in Germany interested in this subject.

I hope you will bear in mind - this is obviously the point which must have moved Mr Dalley in acting in the way he did - that this was a letter sent only to professional colleagues and medical practitioners, and only to a limited number of those. There is no question of wholesale publication of this advertisement or commendation for himself and his nursing home broadcast throughout Germany. It was sent only to doctors, and Mr Dalley thought that therefore it was perfectly all right. He had in mind the rule which applies in relation to what a consultant setting up in private practice in a new area may do by way of notifying his colleagues that he has done so. It is not strictly comparable but does indicate that there is no total ban on information being given to professional colleagues which may attract patients and, indeed, is obviously designed only to attract patients. I appreciate that it is not comparable in any strict sense with this letter but it was a matter he was justified in having in mind when he came to write this letter.

Next I would ask the Committee to bear in mind that the letter itself was written and to some extent drafted at the suggestion of a number of doctors in Germany, and indeed it was drafted to some extent in Yugoslavia in association with a German doctor or doctors whom Dr Dalley had met at a conference there. One may like this or not but the fact of the matter, as your Lordship and the Committee are aware, is that the law relating to abortion in Germany is quite different from that relating to abortion in this country, and doctors in Germany are approached by patients asking that they should be referred in the proper circumstances to doctors in England possibly for termination of pregnancy under the terms of the Act. It is therefore not, in my submission, surprising that

doctors in Germany hearing about this nursing home should suggest to Mr Dalley that it would be a good idea if he would let them know, and it was upon their suggestion that he wrote this letter.

Finally, I would ask you to bear in mind that hitherto Mr Dalley has been a man of good character who is highly regarded by the consultant colleagues whose testimonials I have read to you. He has held a senior consultant post for over 20 years and he is now approaching the age when he is thinking about retirement. This whole business has already produced a disastrous financial outcome for him in the sense that he is saddled with what can only be described as a white elephant in the nursing home. When asked for an explanation by the General Medical Council he has never sought to evade the issue or to hide behind any excuses. He has given his explanation perfectly frankly and has answered Mr Alexander's searching questions in cross-examination with, in my submission, perfect frankness. It was no doubt extremely unwise and foolish of Mr Dalley to have drafted, printed and sent off this letter to these doctors in Germany, but I would ask you to take into account the factors which I have enumerated to your Lordship, and I hope that the Committee will feel able to say that although this was essentially a matter on which it was proper that Mr Dalley should be called before this Committee to give his explanation, and although you may say that it is right that his conduct in writing this letter merits the disapproval of this Committee, you will feel that in doing so Mr Dalley has not shown such reckless disregard of his ethical obligations to his profession as to merit the use of the term "serious professional misconduct".

Strangers then, by direction from the Chair, withdrew and the Committee deliberated in camera.

Strangers having been readmitted:

The PRESIDENT: Dr Dalley, I have to announce that the Committee have determined that the facts alleged against you in the charge have been proved to their satisfaction. I now have to invite Mr Alexander to address the Committee and to adduce evidence, if he wishes to do so, as to the circumstances leading up to the facts which have been found proved and as to the character and previous history of the practitioner.

Mr ALEXANDER: I have nothing to add to what is before the Committee.

The PRESIDENT: Mr Baylis, I have to invite you to address the Committee by way of mitigation - though some of your final remarks on the facts were, I think, by way of mitigation - and to adduce evidence, if you wish, as to the circumstances leading up to the facts which have been found and as to the character and previous history of the practitioner.

Mr BAYLIS: I think there is nothing I can usefully add to what I have already said, and I would ask you to take into account, in determining how this matter should be dealt with, the factors that I have already raised in my defence.

Strangers then, by direction from the Chair, again withdrew and the Committee deliberated in camera.

Strangers having been readmitted:

The PRESIDENT: Dr Dalley, I have to announce that the Committee have judged you to have been guilty of serious professional misconduct in relation to the facts which have been proved against you in the charge, and have directed the Registrar to suspend the registration of Gilbert Dalley

for a period of 12 months.

The Committee will expect you to appear before them at a meeting to be held before the end of the period of suspension, when they will 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 your name should be erased from the Register. You will be informed of the date of the meeting at which you will be expected to appear.