

Charles Morley Beaufois DuBois - - - - - *Appellant*

v.

The General Dental Council - - - - - *Respondent*

FROM

**THE DISCIPLINARY COMMITTEE OF THE
GENERAL DENTAL COUNCIL**

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 12TH MARCH 1979

Present at the Hearing :

LORD DIPLOCK

LORD FRASER OF TULLYBELTON

LORD RUSSELL OF KILLOWEN

[Delivered by LORD DIPLOCK]

This is an appeal from a determination of the Disciplinary Committee of the General Dental Council, made on 10th May, 1978, by which the appellant, Mr. Charles Morley Beaufois DuBois, a registered dentist, was found to have been guilty of infamous or disgraceful conduct in a professional respect and it was directed that his name be erased from the Register.

Mr. DuBois does not now dispute the finding of guilt; his appeal is against sentence only.

The finding of guilt of professional misconduct was expressed in the following terms:

“ that being a registered dentist in or about February 1978 you acquiesced in the publication of an article and photographs in the Birmingham Evening Mail and an article in the Wolverhampton Express and Star which drew attention to yourself as a dental surgeon, the address of your surgery, the times at which you practised and the professional services offered by you, and that in relation to the facts found proved you have been guilty of infamous or disgraceful conduct in a professional respect.”

The articles and photographs complained of came to be published in circumstances which their Lordships must briefly describe.

Mr. DuBois qualified as a dentist in 1964. He had practised in Birmingham, originally at an address in Coventry Road, Sheldon, where he carried on a National Health Service practice of a general kind. Since June, 1976, however, he had divided his time between that practice and

a second practice of a specialised character which he carried on at consulting rooms at Hagley Road, Edgbaston, near the city centre. His patients there were almost entirely private patients who had been referred to him by other dentists for full mouth re-construction and occlusal treatments.

In November, 1977, he and his wife, who had been running a fashion shop, decided to apply to take over between them the management of a lock-up public house, "The Matador", situated in the centre of the city not far from his Hagley Road consulting room. With this in view he gave up his National Health Service practice at Coventry Road, Sheldon, but decided to carry on with his specialised practice at Hagley Road since he considered that he would have sufficient time to conduct this during the hours in the morning and afternoon when the public house was closed. The application by him and his wife to take over the management of The Matador was accepted by the Brewers, but they required that Mr. DuBois should be the Licensee, instead of his wife as had been originally intended. He took over the licence early in 1978 and, having by that time disposed of his N.H.S. practice, he remained in practice at Hagley Road only.

Early in February, 1978, an article, written in a light vein, about his having taken over the management of The Matador was published in the Morning Advertiser, the trade paper of the licensed victuallers' trade. This was as a result of information which had been supplied to that paper on the initiative of the Brewers without Mr. DuBois's prior knowledge. The article attracted the attention of the local press who decided to follow it up. A journalist on the staff of the Wolverhampton Express and Star telephoned Mr. DuBois to verify that it was true and to enquire how it was possible for him to combine practice as a dentist with the management of a public house. Mr. DuBois confirmed the truth of the story and explained that the specialised nature of his private practice left him time to manage the public house as well. As a result, a short news item was published in that paper under the heading "Dentist pulls pints".

The following day Mr. DuBois received a similar but more searching telephone inquiry from a journalist on the staff of the Birmingham Evening Mail. In answer to questions put to him he explained what his working hours at the Hagley Road practice were and how he was able to fit them into what were the closing hours for the public house. The story was regarded as sufficiently newsworthy to justify that newspaper's sending round a photographer to The Matador to take a photograph of Mr. DuBois and his wife behind the bar of the public house. To this they consented. Later in the same day another photographer from the same newspaper called on Mr. DuBois at the public house to persuade him to allow a photograph to be taken showing him at work as a dentist in his consulting room. He allowed himself to be beguiled into doing this and accompanied by his sister-in-law he went with the photographer to his consulting room where a number of photographs were taken, in one of which he and his sister-in-law were posed as if he were giving dental treatment to her. This photograph and the one taken in the public house appeared side by side accompanying an article about Mr. DuBois in the Birmingham Evening Mail.

At this point their Lordships think it right to draw attention to the published views of the General Dental Council, the governing body of the profession, on advertising and personal publicity by dentists. It issues periodic notices about professional conduct for the guidance of dentists,

of which the most recent had been received by Mr. DuBois in December, 1977. Under the heading "Advertising and Canvassing", it sets out the general rule as follows:

"The Council considers that it is contrary to the public interest and discreditable to the profession of dentistry for a dentist to advertise or canvass for the purpose of obtaining patients or promoting his own professional advantage."

In a paragraph dealing specifically with "Newspaper Articles, Television and Radio Broadcasts etc." it was stated:

"It is the view of the Council that a dentist should avoid all forms of personal publicity, whether in the press, in radio, or television broadcasts, or in other media. The Council recognises, however, that there are occasions when it may be reasonable that a dentist should allow his name and profession (but not his practising address) to be disclosed. The guiding principle is therefore that the name and profession of a dentist may be published where publicity would be in the interests of the general public or of the dental profession as a whole, but that publicity is to be avoided if it would serve only or mainly the personal interests of the individual dentist."

Although Mr. DuBois had filed this notice away without reading it, he admitted that he was aware of the general policy of the Council on publicity.

The professional misconduct with which Mr. DuBois was charged was not the more serious offence of advertising for the purpose of obtaining patients or promoting his own professional advantage. Indeed it appears to their Lordships that, looked at from the point of view of potential patients, the articles could hardly fail to have the contrary effect. The gravamen of the charge of which he was found guilty was that he had acquiesced in the publication of newspaper articles in which he was given personal publicity of a kind that could not be justified as being in the interests of the general public or of the dental profession as a whole.

Mr. DuBois concedes that he acted with the utmost folly in yielding to the persuasion of the journalists to provide them with material for a newsworthy story, and particularly in allowing himself to be photographed as giving dental treatment—which their Lordships regard as the most serious feature of his offence. He accepts that what he did amounted to professional misconduct; but he submits that the penalty of removal of his name from the Register is too severe a punishment for what was a temporary aberration of judgment.

Their Lordships on at least one previous occasion have drawn attention to the fact, which they consider to be unfortunate, that under s.25 of the Dentists Act 1957 the only punishment for professional misconduct which the Disciplinary Committee has jurisdiction to impose is to erase the dentist's name from the Register. Unlike the corresponding statutory provisions applicable to doctors the Act has not been amended to permit the imposition of the milder penalty of suspension for a period not longer than twelve months in cases involving what may properly be regarded as the less serious breaches of the professional code. In the case of dentists the only way in which the gravity of the offence can be reflected in the punishment he is compelled to undergo by reason of the erasure of his name from the Register, is in the length of time that he is made to wait

before an application for restoration of his name to the Register, under s.30 of the Act, is granted; but the minimum period that must elapse before he can make such application is ten months.

The Disciplinary Committee of the General Dental Council has in practice sought to mitigate the draconian character of the only penal sanction for professional misconduct that they have jurisdiction to impose, by adopting the device of postponing sentence after a finding of guilt, until an adjourned hearing to be held after what they regard as being a suitable period of probation, and at the adjourned hearing administering an admonition to the dentist but not directing the erasure of his name.

In the instant case the Disciplinary Committee did not think fit to adopt that course. Their Lordships would not themselves have regarded it as an inappropriate way of dealing with Mr. DuBois's offence, which they consider to be an act of temporary folly rather than an intentional flouting of the high standards of his profession. It is a not uncommon human weakness to enjoy finding oneself "in the news". But as was stated by this Board in *McCoan v. General Medical Council* [1964] 1 W.L.R. 1107 at p.1113, the Disciplinary Committee are the best possible people for weighing the seriousness of the professional misconduct. It would require a very strong case to justify the Judicial Committee of the Privy Council in interfering with a sentence that the Disciplinary Committee have thought it proper to impose.

Their Lordships, though not without reluctance, have come to the conclusion that this case is not sufficiently exceptional to justify departing from their usual rule. The sentence of the Disciplinary Committee must stand; but their Lordships would, nevertheless, express the hope that when the time arrives when it is open to Mr. DuBois to apply for restoration of his name to the Register his application will be sympathetically considered.

Their Lordships will humbly advise Her Majesty that this appeal should be dismissed. There will be no order as to costs.

In the Privy Council

CHARLES MORLEY BEAUFOIS
DUBOIS

v.

THE GENERAL DENTAL COUNCIL

DELIVERED BY
LORD DIPLOCK