

Robert Y. Frempong

Appellant

v.

The General Medical Council

Respondent

FROM

THE PROFESSIONAL CONDUCT COMMITTEE
OF THE GENERAL MEDICAL COUNCIL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 2ND JULY 1984

Present at the Hearing:

LORD BRIDGE OF HARWICH
LORD BRANDON OF OAKBROOK
LORD TEMPLEMAN

[Delivered by Lord Templeman]

By section 36 of the Medical Act 1983, replacing similar legislation to the same effect, where the Professional Conduct Committee of the respondent the General Medical Council judges that a registered medical practitioner has been guilty of serious professional misconduct, the Committee may, if they think fit, direct that his name shall be erased from the register. The Committee has so judged and directed in the case of the appellant Dr. Robert Frempong who now appeals, pursuant to section 40 of the Act, to Her Majesty in Council.

By a letter of complaint dated 22nd August 1983 duly served on the appellant pursuant to The General Medical Council Preliminary Proceedings Committee and Professional Conduct Committee (Procedure) Rules Order of Council 1980, the plaintiff was notified that the respondent Council had received from a Mr. M.A. Higgins and a Miss C.E. Lewis complaints which appeared to raise a question whether, as a registered medical practitioner, the appellant had committed serious professional misconduct. The complaint alleged that the appellant, in return for fees, had treated a number of patients who desired the eradication of tattoo marks by applying laser beams to their skin and, in particular, so treated Miss Lewis in October 1981 and again in May 1982 and Mr. Higgins

in January 1983. The complaints further alleged:-

- "(2) in the cases of each of the above-named patients the treatment administered by you caused full thickness skin loss and resulted in a condition which required extensive treatment, but you failed to make any arrangements for the post-operative medical care of the patients and, on 10 October 1981, you advised Miss Lewis not to attend hospital for treatment of her wound;
- (3) by your conduct as aforesaid,
- (a) you endangered the welfare of patients by persisting in independent practice of a branch of medicine in which you had demonstrated that you did not have the appropriate knowledge and skill and had not acquired the necessary experience, and
 - (b) you disregarded your professional responsibilities to patients whom you had accepted for such treatment."

The complaints were supported by statutory declarations by Mr. Higgins and Miss Lewis and copies of those statutory declarations were enclosed with the letter of complaint.

By a letter dated 15th September 1983, the appellant, who was then in the United States of America, replied at length to the letter of complaint and in particular stated that "...all my patients are given instructions on a leaflet for post-operative care," and that "...I have always followed up my patients, and seen them before my next clinic if they wish, and reviewed them after two or three months for more treatment if necessary".

By a letter dated 21st October 1983 served as required by the Rules on the appellant at his registered address in London, the respondent gave notice that the complaints against the appellant would be the subject of an inquiry by the Professional Conduct Committee on 23rd November 1983. By a letter dated 17th November 1983 the appellant's solicitors sought from the respondent Council an adjournment of the inquiry on the grounds that the appellant had arranged to fly back to the United States on 21st November to attend for a job interview. The request was rejected but on 22nd November 1983 the appellant obtained an order from the Divisional Court of the Queen's Bench Division directing the inquiry not to take place on 23rd November. By a letter dated 3rd February 1984 the respondent Council gave notice that the inquiry into the complaints against the appellant would take place on 13th March 1984. Statements of other patients proposed to be called at that inquiry were served on

the appellant's solicitors on 30th January, 13th February and 15th February. Those statements, inter alia, appeared to show that the appellant did not make arrangements for post-operative care of the patients who received laser treatment at his hands. On 16th February and 9th March further statements by two medical witnesses were served expressing the view, inter alia, that the treatment of burns necessarily caused by laser operations to eradicate tattoo marks should be carried out under medical supervision.

By a letter dated 28th February 1984, the appellant writing from Maryland in the United States wrote to the Council to apologise that he would not be able to attend the hearing of the inquiry and stated that for financial reasons it might take him at least two years before he was able to travel. He expressed the hope that the Council would deal leniently with him. On 12th March 1984 an application was made to the Council on behalf of the appellant for an adjournment of the inquiry fixed for 13th March but this application was refused, the inquiry duly took place, the appellant was represented by solicitors and counsel and one medical witness was called on his behalf.

The Committee heard oral evidence from Mr. Higgins and Miss Lewis and from the patients and medical witnesses whose statements had been supplied to the appellant's solicitors. Miss Lewis and Mr. Higgins gave evidence consistent with their statements, and to the effect that the appellant did not make any arrangements for their post-operative medical care and had advised Miss Lewis not to attend hospital for treatment of her wound on the grounds that a general hospital was not accustomed to the treatment of burns caused by lasers. They explained the pain and treatment which became necessary following laser operations carried out by the appellant. The medical witnesses, including the witness called on behalf of the appellant said that in each case there was some full thickness skin loss; the Committee inspected the scars which resulted from the laser treatment. The medical witnesses were agreed that proper post-operative medical attention should have been arranged. Mr. Davis was a plastic surgeon working at St. Thomas' Hospital and Queen Mary's Hospital, Roehampton. Dealing with the instructions given by the appellant to Miss Lewis for self-treatment of her wound caused by the laser, he commented that:-

"I think it is extremely unlikely that any lay person, or anybody not connected with carbon dioxide laser treatment, would know what they were looking at in the burned area that had been treated. For somebody who is not familiar with them, the burns even in a satisfactory case are

quite appalling to look at; they are sharp cut, deep and unpleasant. I think it is unlikely that anybody in the lay capacity could tell whether that wound was progressing satisfactorily or notSelf-medication with supervision would be appropriate: self-medication without supervision I think would not be appropriate."

Mr. Harrison was a consultant plastic surgeon at Burnham Hospital. He had carried out an examination of one of the appellant's patients. He said that:-

"....a skin graft or a superficial burn would heal in about two weeks and should technically leave you with no scar. If you are burned with the laser or shaven too deeply, or it has become infected, or something like that, then it is going to take much longer to heal up....she had the carbon dioxide laser treatment in October and she was not healed, as I understand it, until at least December. Obviously it seemed to me that basically she had a full-thickness burn and she really needed to be treated as such, in the respect that she wanted quite a lot of help with dressings, and either the surgeon would have to carry out the dressing, or the nurse would have to carry out the dressings. After a certain time she might require a skin graft....you really have got to take quite a lot of care if you are going to burn someone deeply, which is what has obviously happened here."

Mr. Hiles was a senior consultant plastic surgeon working at Frenchay Hospital, Bristol, and was called on behalf of the appellant. He said he did not have the benefit of treating people with lasers but would hazard a guess as to what his practice would be in laser treatment namely:-

"....that I would review the patient at least at the end of a week. I think it would depend on numbers and the pressures on both the patient and the surgeon as to how frequently one saw them. I do not think it is necessarily wrong to encourage them to do some self treatment.... I would personally be unhappy not to follow up, but I am bound to say that in most of these cases, I think in all these cases, nothing flowed from any absence of follow up."

The Committee found that in the case of Miss Lewis and Mr. Higgins treatment administered by the appellant "....caused full thickness skin loss and resulted in a condition which required extensive treatment, but he failed to make any arrangements for the post-operative medical care of the patients and on 10th October 1981, he advised Miss Lewis not to attend hospital for treatment of her wound". On the evidence before the Committee such a finding was

inevitable. The Committee acquitted the Appellant of the allegations contained in para (3)(a), of the complaint.

The Committee held that on the facts proved the appellant had disregarded his professional responsibilities to Miss Lewis and Mr. Higgins and had been guilty of serious professional misconduct. The Committee included distinguished members of the medical profession, well qualified to judge whether the facts found against the appellant amounted to serious professional misconduct. In addition to their own experience, they had the evidence of medical witnesses called by both sides. Before the Board it was urged by Counsel for the appellant that the appellant had only been employed by private organisations to perform laser operations on tattoos and that he should not suffer for the shortcomings of those organisations. The exact relationship between the appellant and the organisations in question was not proved, but in any event, the pamphlet issued by the respondent Council entitled "Professional Conduct and Discipline" makes it quite clear that the appellant is not entitled to shelter behind the shortcomings of any organisation. The edition of the pamphlet issued in September 1981 stresses that:-

"Apart from a doctor's personal responsibility to his patients, doctors who undertake to manage, or to direct, or to perform clinical work for organisations offering private medical services should satisfy themselves that those organisations provide adequate clinical and therapeutic facilities for the services offered."

The same pamphlet affirmed the view that where a specialist decides to accept a patient without reference from the patient's general practitioner, the specialist has a duty immediately to inform the general practitioner of his findings and recommendations before embarking on treatment, except in emergency unless the patient expressly withholds consent or has no general practitioner. In such cases the specialist must be responsible for the patient's subsequent care until another doctor has agreed to take over that responsibility. In the present case it is clear that the appellant did not himself provide for post-operative care and treatment nor did he ensure that the organisation which instructed him provided the necessary facilities, nor did he pass the responsibility on to the general medical practitioner of the patient.

On behalf of the appellant, objection was taken before the Board to the admission of the evidence of the appellant's patients other than Miss Lewis and Mr. Higgins. The Committee made no finding against the appellant of professional misconduct in relation to patients other than Miss Lewis and Mr. Higgins.

In relation to Miss Lewis and Mr. Higgins, the Committee found that professional misconduct had been proved and the Committee were entitled to treat the uncontradicted evidence of the other witnesses as tending to show that the failure of the appellant to provide arrangements for post-operative care and treatment in the case of the two named patients could not be excused as representing co-incidental or isolated lapses but was characteristic of the appellant's system of dealing with his patients.

It was also submitted that the statements supplied by the patients other than Miss Lewis and Mr. Higgins should have been served personally on the appellant together with supporting statutory declarations. For this submission reliance was placed on rule 6(3) of the General Medical Council Preliminary Proceedings Committee and Professional Conduct Committee (Procedure) Rules Order of Council 1980. That rule however is directed to notification of a complaint. The statements made by the witnesses in the present case were not made the subject of complaints or charges against the appellant which were dealt with by the Committee. It was submitted that the Committee had fallen into error by assuming that the appellant was a principal or prime mover in the organisations which produced patients for laser treatment by the appellant. There is no indication that the Committee made any such assumption and it is clear that the Committee confined themselves to dealing with the proven conduct of the appellant in relation to his treatment of Miss Lewis and Mr. Higgins. It was suggested to the Board, on instructions, that Miss Lewis had been mistaken in thinking that the appellant had twice operated upon her. It was however admitted that the appellant had operated on Miss Lewis on at least one occasion and Miss Lewis gave evidence that at no time did she receive instructions from the appellant for aftercare and treatment other than self treatment.

Finally it was submitted that the punishment directed by the Committee, namely erasure of the name of the appellant from the register of medical practitioners, was excessive. By section 36 of the Act, the Committee may direct suspension of a registration for a period not exceeding twelve months and they may direct that registration shall be conditional upon compliance for a period not exceeding three years with requirements specified by the Committee. It was suggested that the appropriate course would be to allow the appellant to continue to be a registered medical practitioner on conditions limiting the circumstances in which he could carry on practice and the type of work he might undertake. Any such conditions would be difficult to draft and difficult or impossible to monitor. In any event, in the absence of any error of principle, their Lordships

would not interfere with a decision to strike off reached by the Committee which is best qualified to determine whether the safety and protection of the public require the name of the appellant to be erased from the register. By section 41 of the Act the Professional Conduct Committee has power to restore the appellant to the register on application not earlier than ten months from the date of erasure. If and when such an application is made it will be for the Committee to consider whether to exercise their power of restoration and, if so, whether to impose any conditions which they consider appropriate.

Their Lordships will humbly advise Her Majesty that this appeal should be dismissed.

