

Walter John Finegan

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 18TH DECEMBER 1986

Present at the Hearing:

LORD KEITH OF KINKEL
LORD OLIVER OF AYLMEYTON
SIR IVOR RICHARDSON

[Delivered by Lord Keith of Kinkel]

This is an appeal against a determination of the Professional Conduct Committee of the respondent Council dated 14th July 1986. The charge against the appellant was as follows:-

- "1. Between about April 1975 and about September 1985 you repeatedly and at frequent intervals issued stock prescriptions for large quantities of controlled drugs and other euphorants, including the prescriptions listed in the Schedule which was sent to you with the Council's letter of 9th April 1986 most of which were used for purposes other than the *bona fide* treatment of your National Health Service patients;
2. Between 2nd January 1977 and May 1980 you regularly failed to enter in a controlled drugs register full particulars of controlled drugs obtained supplied or administered by you; And that in relation to the facts alleged you have been guilty of serious professional misconduct."

Counsel appearing for the appellant at the hearing before the Committee, acting on instructions, admitted on his behalf all the facts alleged in the

charge and did not dispute that these facts disclosed serious professional misconduct.

The circumstances of the case, as laid before the Committee, had some distressing aspects. The appellant's wife late in 1975 gave birth to a child which died a few days later. Mrs. Finegan, a registered nurse, conceived a hostility to her general practitioner over this matter, and prevailed upon the appellant to prescribe controlled drugs for her in large quantities. From early 1976 until the middle of 1980 he prescribed Pethidine and a drug called DF118. In addition, Mrs. Finegan forged prescriptions for drugs and stole drugs from the appellant's bag. The level of the appellant's prescribing of these drugs attracted the attention of officers at the DHSS, who had a number of interviews with the appellant during the period mentioned. It emerged that many prescriptions had not been entered in the appellant's controlled drugs register. The appellant repeatedly promised to stop prescribing drugs for his wife and was warned that proceedings would be taken if he did not. He did in fact stop doing so from May 1980 until October 1983 when he started prescribing Fortral (a controlled drug) for her in large quantities, and also some Valoid (not a controlled drug). This again came to the attention of the DHSS in November 1984 and a meeting between the appellant and officers of the Department took place in April 1985, when the appellant again undertook not to supply further drugs to his wife. The DHSS communicated with the respondent Council, which on 9th April 1986 wrote to the appellant asking for an account of the matter. The appellant replied by letter of 21st April 1986 in which he admitted prescribing Pethidine and later Fortral for his wife over the past ten years, with an interruption from April 1980 to October 1983, and stated that he had done so in response to threats from his wife to himself and their young child. He said "I know that I shall never again treat her with anything whatsoever". At the hearing before the Committee there was produced on behalf of the appellant a report by Dr. Norris, a consultant psychiatrist, dated 9th July 1986, which *inter alia* revealed that Mrs. Finegan had been taking intra-muscular injections of Valoid, prescribed by the appellant, for the past ten months, the last prescription being only a week previously.

Counsel for the appellant, addressing the Committee in mitigation, submitted that erasure from the register or suspension from practice would not be appropriate penalties in the circumstances, and suggested as appropriate the imposition of conditions on his continued registration such as would prevent him from prescribing for his wife or dealing with her as a patient.

The Committee's determination was as follows:-

"Dr. Finegan, the Committee are seriously concerned by the evidence adduced before them regarding your extensive prescribing of controlled drugs and other euphoricants over a number of years other than in the course of bona fide medical treatment.

The Committee have judged you to have been guilty of serious professional misconduct in relation to the facts proved against you in the charge and have directed that for a period of three years your registration shall be conditional on your compliance with the following requirements:

You shall not prescribe or possess any Controlled Drugs or any other prescription-only medicines.

The effect of the foregoing direction is that, unless you exercise your right of appeal, your registration will become subject to the specified conditions from today.

The Committee will resume consideration of your case at a meeting to be held before the end of this period. They will then consider whether they should take further action in relation to your registration. You will be informed of the date of that meeting, which you will be expected to attend. Shortly before that date you will be asked to furnish the Council with the names of professional colleagues and other persons of standing to whom the Council may apply for information, to be given confidentially, as to their knowledge of your conduct in the interval. That concludes the case."

This is an appeal only against sentence, and in relation to that matter this Board has repeatedly said that professional disciplinary committees are the best possible people to judge of what is appropriate, and that it will interfere only where the sentence is clearly wrong and unjustified.

The principal argument for the appellant was related to the terms of section 36(1) of the Medical Act 1983, under which the Committee, where it has judged that a fully registered person has been guilty of serious professional misconduct, may, if they think fit, direct *inter alia*:-

"(iii) that his registration shall be conditional on his compliance during such period not exceeding three years as may be specified in the direction, with such requirements so specified as the Committee think fit to

impose for the protection of members of the public or in his interests."

It was maintained that Mrs. Finegan was the only member of the public with whose protection the Committee, in the circumstances of the case, had occasion to be concerned. The conditions which the Committee imposed upon the continued registration of the appellant went far wider than upon any view was necessary for her protection. Further these conditions were not necessary in the appellant's interests but were seriously damaging thereto, since their effect would be to prevent him for all practical purposes from carrying on the practice of a general practitioner, the only medical field for which he had the requisite training and experience. The conditions should therefore have been limited to prohibiting the appellant from prescribing for and treating Mrs. Finegan, and the Committee were not entitled to impose such broad conditions as they did.

There can be no doubt that the conditions imposed by the Committee would indeed have the effect of making it impossible for the appellant to carry on general practice, and counsel for the respondent Council did not dispute that. Their Lordships cannot, however, agree that in considering whether conditions of such a width were appropriate the Committee were bound to regard Mrs. Finegan as the only member of the public whose protection was in issue. The appellant had displayed gross irresponsibility in making available to his wife, at public expense, an illegitimate supply of addictive drugs over a very lengthy period, and in failing to discharge his duty as regards the keeping up of the controlled drugs register. That he should have continued to prescribe Valoid for his wife right up to the month of the hearing before the Committee, notwithstanding all the warnings he had been given and the assurances he had given, is almost incredible. Their Lordships are of the opinion that the Committee were well entitled to take the view, in the circumstances, that the wider public interest required that the appellant should have no access at all, over a lengthy period, to drugs which required a prescription. They could also reasonably take the view that this was in the best long term interests of the appellant himself.

Then it was argued that the imposition of the conditions in question was for all practical purposes equivalent to a suspension for a period of three years, whereas section 36(1)(ii) of the Act of 1983 provided for a maximum period of suspension of twelve months. The short answer is that restriction of practice is not the same thing as suspension of registration. Suspension is a much more serious matter. Some argument revolved around the question

whether the Committee, if the appellant requested it, could hold a resumed hearing at any time within the three year period and, if thought fit, revoke the restrictive conditions. It was pointed out that a suspension could only last for twelve months in the first instance and that even a practitioner whose name had been erased from the register could apply after ten months, under section 41(2)(a) of the Act of 1983, to have his name restored. So it was maintained that here the appellant was for practical purposes in a worse position than if his registration had been suspended or his name had been erased from the register. Section 36(4)(b) of the Act of 1983 gives the Committee a general power, not subject to any limitation as to the time of its exercise, to revoke a direction for conditional registration or to revoke or vary any of the conditions imposed by the direction. It was argued for the appellant that since the only reference to revocation or variation of conditions in the relevant procedural rules (S.I. 1980 No. 858) appeared in Rule 48(3), and since that Rule only operated where a resumed hearing had been convened as a result of the receipt of information as to the conduct or conviction of the practitioner since the original hearing (under Rule 42(3)), or the receipt of information indicating that the practitioner was not complying with conditions imposed on his registration (under Rule 42(4)), the Committee had no power in any other circumstances to revoke a direction or vary conditions. Their Lordships are of the opinion, however, that these Rules do not have the effect of inhibiting the exercise by the Committee of the general power of revocation or variation conferred upon them by section 36(4)(b) of the Act. It would be absurd if that power could only be exercised where something to the discredit of the practitioner came to be known, and not where something creditable came to attention, or where for some other reason reconsideration was thought appropriate. It is true that the practitioner has no right to require a resumed hearing for the purpose of considering revocation or variation, but if he requested one the President would, in their Lordships' opinion, be bound to consider that request and would have power, if he thought fit, to convene a resumed hearing.

Finally, it was argued on the appellant's behalf that the Committee acted in contravention of the rules of natural justice in respect that they failed at the hearing to put to the appellant's counsel the possibility that they might impose on his continued registration conditions of the width they did in the event impose, and allow counsel to make representations as to the appropriateness or otherwise of those conditions. It was suggested that the Committee did not appreciate that those conditions would have the effect of preventing the

appellant from carrying on general practice, and that due to lack of suitable qualifications and experience he would be unable to practice in any other medical field. If they did appreciate that, they did not appreciate that the imposition of these conditions, for a period of three years, would operate more harshly than a suspension for twelve months or even than an erasure. If given an opportunity, counsel would have been able to open the minds of the Committee to these considerations. In their Lordships' opinion there is no substance in this argument. Provided that counsel is given the opportunity to say all that he wishes to say in mitigation, as happened here, the rules of natural justice are satisfied, and no court or other tribunal is required to discuss with counsel all possible forms and durations of sentence. Their Lordships see no reason to suppose that the Committee, whose membership included very experienced medical practitioners, did not fully appreciate the consequences of the sentence which they decided to impose.

Their Lordships have not been satisfied that the sentence was upon any of the grounds argued before them, wrong and unjustified, and they will therefore humbly advise Her Majesty that the appeal should be dismissed.

At an earlier stage a differently constituted Board heard argument upon the question whether the petition of appeal had been presented within the period of 28 days of the service of the notification of the Committee's decision, as required by section 40(3) of the Act of 1983. That question arose by reason of the nature and terms of the document presented to the appellant at the conclusion of the hearing, and the Board answered it in the appellant's favour. The respondent must pay to the appellant the costs of that hearing, but in other respects the appellant must pay the respondent's costs.



