

*Privy Council Appeal No. 60 of 1988*

**Dr. Navin Chandra Rastogi**

*Appellant*

*v.*

**The General Medical Council**

*Respondent*

FROM

**THE PROFESSIONAL CONDUCT COMMITTEE  
OF THE GENERAL MEDICAL COUNCIL**

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL, DELIVERED THE  
24TH APRIL 1989  
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*Present at the hearing:-*

LORD KEITH OF KINKEL  
LORD TEMPLEMAN  
LORD GOFF OF CHIEVELEY

*[Delivered by Lord Keith of Kinkel]*

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This appeal is against a judgment of the Professional Conduct Committee of the General Medical Council on 21st November 1988, finding that the appellant had been guilty of serious professional misconduct and directing that his registration in the Medical Register should be suspended for twelve months.

The charge against the appellant was as follows:-

"That being registered under the Medical Act:

1. On 29th August 1985 you failed to attend and to provide appropriate medical services for the late Mr. K.W. White, at that time resident at 39A Hill Top, Bolsover, Derbyshire,
  - (a) when you had received information indicating that the patient required urgent medical attention and
  - (b) when you had undertaken to visit the patient;
2. On 4th April 1986 and again on 11th April 1986 you sought to assess the medical condition of the late Miss Kathy Chapman, at that time resident at 93, Charlesworth Street, Bolsover,

Derbyshire, and prescribed medication for her, without first undertaking any examination of the patient or adequately assessing the history, symptoms and signs of her condition;

3. By your conduct as aforesaid you disregarded your professional responsibilities towards the two above mentioned patients, for whose general medical care you were responsible at the material times.

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

After the proceedings before the Committee had been opened by the reading of the charge to the appellant, his counsel (Mr. Francis) admitted on his behalf the entirety of the facts set out in head 1 of the charge and also those set out in head 2 in so far as they related to 11th April 1986. The Chairman then announced that the following facts were proved: Head 1(a) and (b). Head 2 omitting the words "On 4th April 1986 and again".

Counsel for the respondent (Miss Davies) then addressed the Committee upon the facts of head 2. The late Kathy Chapman, a child of seven years, and her family were patients on the appellant's list. On 4th April 1986 her mother noticed that she was unwell and telephoned the appellant's surgery. Mrs. Chapman spoke to the appellant and told him that the child had a high temperature, was crying and was very miserable. She requested a home visit. The appellant said that a visit was unnecessary and that the child had the usual symptoms of measles, of which there had been an outbreak in the area. He advised Mrs. Chapman to give Kathy junior aspirin to reduce her temperature and said he would provide a prescription. A prescription for an antibiotic and a cough mixture was made out and later collected from the surgery by Mr. Chapman. By 10th April the course of antibiotic had been completed, no spots had appeared, and the child complained of headache, sore eyes and dizziness. Mrs. Chapman again telephoned the surgery, spoke to the appellant and told him that Kathy's condition had worsened, again requesting a visit. The appellant asked if she could be brought to the surgery, but Mrs. Chapman answered that she was too ill and repeated her request for a visit. The appellant said it was unnecessary, the symptoms sounded like a flu virus and that he would provide another prescription, which he did. Kathy's condition deteriorated during the night of 11th April, and in the morning the appellant was telephoned and asked to visit, which he did. He arranged for Kathy to be admitted to hospital, and a diagnosis of encephalitis was later made. After a period in intensive care, the child died on 20th May 1986, the cause of death being certified as (i) bronchial pneumonia and (ii) viral encephalitis.

Kathy's mother, by then Mrs. Lesley Plant, gave evidence about the events of 4th April 1986 on the lines adumbrated by counsel. In the course of cross-examination it was put to but denied by her that on 4th April she had spoken only to a receptionist and not to the appellant, and that she had requested a prescription and not a house visit.

Evidence was next given by a former receptionist of the appellant who had been in his employment at the material time. This evidence was to the effect that in the course of a visit to the appellant's surgery, made at his request after she had left his employment, she noticed that a medical record card relating to Kathy appeared to have been rewritten by the appellant. No real significance can be attributed to this evidence.

The appellant then gave evidence. He said that he had not spoken to Kathy's mother on 4th April 1986, but had received a message from one of his receptionists on a scrap of paper. It listed the symptoms described as being cough, cold, sore throat and temperature, and had written at the top of it the words "not poorly" and a request for a prescription. He made out a prescription for an antibiotic and cough mixture and left it with a receptionist for collection. In cross-examination he accepted that he could not in the circumstances adequately assess the condition of the child and that he should have visited two or three days later to see how she was progressing.

Having heard counsel for both parties on the evidence the Committee, after deliberation in camera, announced that it found proved the facts in head 2 of the charge in relation to 4th April 1986, adding that it had now found proved all the facts in head 2.

Following some discussions between counsel for both parties on the one hand and the Chairman of the Committee and the legal assessor on the other hand as to the appropriate further course of the proceedings the legal assessor gave this advice to the Committee:-

"The procedure will be as follows. Ms Davies will outline the facts supporting charge 1, and the rest of charge 2 relating to the 11th April 1986 in relation to the patient Kathy Chapman. To that opening, Mr Francis has the right of reply by way of mitigation. When that statement has been concluded - and, of course, by way of mitigation he may call evidence - after that the Committee will then consider whether those facts and that conduct amount to a disregard of Dr Rastogi's professional responsibilities to those two patients. The Committee will in due course announce a decision. Thereafter there will be such address as Ms Davies deems necessary on whether those facts constitute serious professional misconduct, to which Mr Francis has the right to reply."

The legal assessor asked if there was any query or objections to which Mr. Francis responded "If I understand it, there is no objection".

Miss Davies then outlined the facts of head 1. On 20th August 1985 Mr. White, one of the appellant's patients, complained of pains in the chest and right arm and asked his wife to get a doctor. Mrs. White telephoned the appellant's surgery at about 10.00 a.m. and asked a receptionist for a visit by him. She did not indicate that there was urgency. The receptionist told her that Mr. White's name would be put on the visiting list. At about 11.20 a.m. Mr. White was distressed and in great pain. Mrs. White again telephoned the surgery, told the receptionist who answered that her husband's condition had deteriorated and asked for the appellant to come at once. The receptionist said that the appellant had finished his clinic and that Mr. White was first on the visiting list. Mrs. White then found that her husband was much worse. She called for help to two council employees who were working outside, and one of them telephoned for an ambulance, while the other helped her restrain Mr. White, who was throwing himself about. The employee who had telephoned went outside to await the ambulance. The appellant arrived and spoke to him. Mrs. White saw him arrive and came out to speak to him. He told her that the employee had informed him of the ambulance being summoned. Mrs. White agreed but urged the appellant to come in and do something to relieve her husband's pain. He did not do so, but went away saying that he did not want to complicate the paperwork. Later Mr. White was taken by ambulance to hospital, but was found to be dead on arrival, the cause of death being certified as ischaemic heart disease and coronary arteriosclerosis.

Miss Davies stated that a letter written by the appellant disputed Mrs. White's account in respect that he denied any conversation with her outside the house. However, counsel put her case on the basis that whether or not such a conversation took place, the appellant knew that Mr. White was ill and that an ambulance had been urgently summoned and it was his duty to attend Mr. White and proffer such assistance as he could, by pain killing or otherwise, until such time as the ambulance arrived.

In relation to the events of 11th April in head 2 of the charge, Miss Davies again outlined the facts as indicated in her opening address. As regards head 3, she left it to the Committee to determine as experienced medical people whether the proved facts in heads 1 and 2 amounted to a disregard of the appellant's professional responsibilities towards the two patients concerned.

Mr. Francis then addressed the Committee, giving the appellant's version of the circumstances of head 1 and of the events of 11th April 1986. As regards the former, he stated that the appellant did not see or speak with Mrs. White. He assumed that the workman to whom he spoke was a relative or someone closely connected with Mr. White, and formed the impression that matters were under control and that his presence was not required. The appellant accepted that he made an error of judgment and that he should have gone into the house to see the patient and render such assistance as he could, and regretted not having done so. As regards 11th April, the appellant was on that day informed by Kathy's mother that the child had flu symptoms but was not very bad. He did not get the impression that she was in a worse condition than on 4th April. So he simply issued a prescription, though he now regretted not having gone to see the child, which was an error of judgment on his part. Mr. Francis observed that the respondent had led no evidence to contradict the assertions he had made on the appellant's behalf, and invited the Committee to consider the case on that basis. As regards head 3 of the charge, Mr. Francis submitted that the word "disregard" of professional responsibilities was capable of amounting to no more than carelessness or negligence rather than deliberate or reckless disregard, and that the appellant's conduct in this case amounted at worst to no more than the former.

The Committee then deliberated in private, and thereafter the Chairman announced it had found head 3 proved to its satisfaction.

Miss Davies then addressed the Committee on the matter of serious professional misconduct, and Mr. Francis replied. He drew the Committee's attention to a body of testimonials and described the nature of the appellant's practice.

Following deliberation by the Committee in retirement, the Chairman announced its findings of serious professional misconduct, and its direction that the appellant's registration be suspended for a period of twelve months. He added:-

"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.

The Committee will also expect you at that time to furnish evidence to them that you have taken steps to remedy the deficiencies in your professional and communication skills, attitude and practice management exposed by the facts as found proved in the case. They recommend that you seek advice from the Adviser in General Practice for your region about attendance not only at lectures and postgraduate meetings but also at training practices."

It was contended on the appellant's behalf before the Board that the finding of serious professional misconduct should be set aside on the ground of procedural irregularities in the proceedings before the Committee. It was said that the Committee should have heard evidence on all the parts of the charge which were not admitted, including head 3, and made a finding on that evidence, before going on to consider whether serious professional misconduct was made out. Criticism was also made of the use by the legal assessor of the term "mitigation" to describe the nature of the reply which Mr. Francis would be entitled to make to Miss Davies's outline of the facts relating to the admitted head 1 and the admitted part of head 2. It was further maintained that the Committee had erred in not hearing evidence to resolve the dispute about the precise circumstances of these admitted aspects, in particular as to whether or not the appellant had spoken to Mrs. White after his arrival at the house on the day in question and as to whether or not on 11th April 1986 Mrs. Chapman had told the appellant that Kathy's condition had worsened.

It does not appear to their Lordships that there is any substance in these submissions. The appellant having admitted at the outset head 1 of the charge and head 2 in relation to the 11th August 1986, the Committee went on to hear evidence about the events of 4th April and found head 2 proved in relation to that date. There was no additional evidence of fact which they might usefully have heard as regards head 3. Upon that head the function of the Committee was to determine as a matter of inference or judgment whether or not the facts admitted or proved on heads 1 and 2 constituted disregard of the appellant's professional responsibilities as alleged. It is true that the Committee made a division between those parts of the charge as a whole which went to primary fact and those which went to inference, but that involved no prejudice to the appellant. His counsel had the opportunity to lead evidence on matters of primary fact and to address the Committee on both aspects. He expressed no objection to the advice on procedure given by the legal assessor, though invited to do so if so advised. Had he desired to lead evidence about the points in dispute on the events of 29th August 1985 and 11th April 1986 he was free to do so. In the event, he confined himself to

stating the appellant's version. Though the legal assessor had described as "mitigation" what Mr. Francis might present in reply to Miss Davies, he had made it clear that this included the calling of evidence. The appellant could have given evidence of his version of events as indicating that the matters which he admitted were not as blameworthy as they might otherwise seem.

In all the circumstances their Lordships are of the opinion that there was no material departure from the relevant provisions of The General Medical Council Preliminary Proceedings Committee and Professional Conduct Committee (Procedure) Rules Order of Council 1980 (S.I. 1980 No. 858), and that the Committee was fully entitled to find, as it did, that the appellant had been guilty of serious professional misconduct.

Counsel for the appellant further submitted that the sentence of 12 months' suspension was excessively harsh, and would have the effect of destroying the appellant's practice. In addition, and in any event, the conditions with which the appellant was required to comply in anticipation of a further appearance before the Committee were impracticable and unworkable.

This Board can interfere with a sentence of suspension by a Professional Conduct Committee only if satisfied that it is wrong and unjustified. Their Lordships are not so satisfied in this case. In their view the Committee was well entitled to hold that the appellant's failures in his professional responsibilities constituted serious derelictions of duty indicating a lack of proper awareness of those responsibilities. It was evidently its perception of that lack which prompted the Committee to impose upon the appellant the requirements it did pending a further appearance before it. There is no reason to suppose that the Committee, consisting as it did of experienced medical practitioners, did not fully appreciate all the likely consequences to the appellant both of the suspension and of compliance with its requirements. The most significant part of these requirements lies in the recommendation that the appellant seek advice from the Adviser in General Practice for the region. If he follows this recommendation, and acts according to the advice which he receives, it would be reasonable for him to expect that that would operate in his favour at the resumed hearing.

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







