

Privy Council Appeal No. 40 of 1994

Dr. Gurdev Singh Jeetle

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
14TH FEBRUARY 1995

Present at the hearing:-

LORD KEITH OF KINKEL
LORD BROWNE-WILKINSON
LORD LLOYD OF BERWICK

[Delivered by Lord Keith of Kinkel]

This is an appeal against a determination of the Professional Conduct Committee given on 20th May 1994. By that determination the Committee held that the appellant had been guilty of serious professional misconduct and directed the erasure of his name from the medical register.

The charge against the appellant was in these terms:-

"THAT, being registered under the Medical Act,

- (1) For a period of time including the period between January, 1993 and 22nd June, 1993 inclusive Miss 'A' was a patient on your National Health Service list, and you provided her with medical services from time to time over this period;
- (2) On a number of occasions including occasions during the aforementioned period you issued to Miss 'A' prescriptions for various drugs otherwise than in the course of bona fide treatment;
- (3) On a number of occasions during the aforementioned period you behaved indecently towards Miss 'A' including at least one occasion when you had sexual intercourse with her;

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

A hearing took place before the Professional Conduct Committee between 18th and 20th May 1994. Both the Council and the appellant were represented by senior counsel. As provided for by the rules, copies of the statements of witnesses to be called for the Council and of the documentary exhibits had previously been duly served on the appellant. At the outset, counsel for the appellant stated that the facts in head (1) of the charge were admitted, and the Chairman announced that this head was found proved. Counsel for the General Medical Council then opened the case to the Committee. He said that the second and third heads of the charge were linked, and that it was maintained by the Council that the appellant had prescribed certain drugs (diazepam, dihydrocodeine and temazepam) to Miss "A" over a period from 16th November 1992 to 22nd June 1993 in order to make her become addicted to these drugs and thus facilitate sexual advances towards her such as were specified in the third head. Although no such allegation was made in the charge, counsel for the appellant did not object to this part of the opening.

Evidence was given by Miss "A". She had a history of abuse as a child, drug addiction, alcohol abuse and various criminal convictions, including one for arson on her dwelling house. She attended the appellant for various ailments and was prescribed on numerous occasions dihydrocodeine, diazepam and temazepam. She described indecent acts towards her by the appellant on some eight occasions prior to 22nd June 1993. These included sexual intercourse on 27th April 1993, when she alleged that tablets given to her by the appellant caused her to become drowsy and unable to resist. Eventually Miss "A" contacted the police. On 22nd June 1993 the appellant called at Miss "A"'s home. Unknown to him two women police officers were on the premises. At a certain stage these officers entered Miss "A"'s bedroom and found the appellant there with his trousers off and in the act of placing a contraceptive on his erect penis. Both officers gave evidence to that effect. The appellant in his evidence denied all the earlier incidents, and as regards that of 22nd June stated that Miss "A" had attempted to seduce him, that it was she who placed a contraceptive on his penis and that when the police officers entered he was taking it off not putting it on. A pharmacist employed by the Barnet FHSA produced to the Committee 17 prescriptions written for Miss "A" by the appellant during the period between November 1992 and June 1993. The drugs prescribed were dihydrocodeine, diazepam and temazepam. Dihydrocodeine, an opiate, predominated. Diazepam was also an opiate. Three of the prescriptions were written before January 1993. Miss "A" admitted that ten of them were written when she was suffering from some particular ailment. The appellant gave evidence that all were. Miss "A" stated that she felt addicted to dihydrocodeine and diazepam.

Counsel for the General Medical Council in his closing address to the Committee persisted in the contention that the appellant prescribed the drugs in question to Miss "A" in order to make her addicted and facilitate sexual advances. He left the question of over-prescription to the Committee's own expert assessment. Counsel for the appellant concentrated particularly on the danger of relying on Miss "A"'s evidence. The legal assessor advised the Committee on the burden and standard of proof, the meaning of indecency and the need to look for corroboration, particularly of Miss "A"'s evidence, and as to matters capable of amounting to corroboration.

Following a retirement the Chairman announced that the Committee had determined that the facts alleged against the appellant in heads (2) and (3) of the charge had been proved to their satisfaction. Counsel for the General Medical Council submitted that the case was clearly one of serious professional misconduct. Counsel for the appellant stated that he wished to make no submission that the facts found proved were not capable in law of amounting to serious professional misconduct. He put in a number of testimonials to the appellant, as indicating that the appellant was a conscientious, caring and competent general practitioner. He went on to say "The enormity of the facts now found proved may leave you with little to no option but to erase Dr. Jeetle's name", but he nevertheless went on to invite the Committee to consider something other than erasure, perhaps a period of a year's suspension.

The Committee having deliberated in private, the Chairman announced:-

"Dr. Jeetle, the facts which have been proved against you in this case represent an appalling misuse by you of your prescribing privileges as a doctor, and a disgraceful abuse of a particularly vulnerable female patient.

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 the Registrar to erase your name from the register. The effect of the foregoing direction is that, unless you exercise your right of appeal, your name will be erased from the register 28 days from today."

The principal ground of appeal against the determination of the Committee lay in the submission that the terms of the charge against the appellant did not state adequately the facts relied upon by the Council and did not give the appellant proper notice of the allegations made against him. Reference was made to Rule 17(2) of the General Medical Council Preliminary Proceedings Committee and Professional Conduct Committee (Procedure) Rules 1988 (S.I. 1988 No. 2255) which provides:-

"In a case relating to conduct, the charge shall include a statement which identifies the alleged facts upon which the charge is based."

The complaint was that whereas counsel for the General Medical Council, in opening his case and again in his concluding address, maintained that the appellant had prescribed certain drugs to Miss "A" in order to make her addicted and thus facilitate sexual advances towards her, the charge itself made no allegation of that nature. Further, head (3) of the charge made no allegation that any sexual contact between the appellant and Miss "A" had occurred without her consent, yet Miss "A" had given evidence that such was the situation. Bound up with this submission was the observation that the Committee, in finding that heads (2) and (3) of the charge were proved, did not give any indication as to whether or not the Committee had found it proved that the appellant had prescribed the drugs in question in order to make Miss "A" addicted and thus facilitate sexual advances. Nor did it indicate whether or not it had been proved that any sexual contact between the appellant and Miss "A" had been non-consensual. It was argued that this state of affairs was not only unfair to the appellant, because he did not know precisely what he had been found on the facts to have done, but would create a most unsatisfactory situation when the appellant came to apply to have his name restored to the register, which he could do ten months after its erasure, under section 41 of the Medical Act 1983. Reference was made to Rule 46(b) of the 1988 Rules, dealing with the procedure in restoration proceedings, which provides for the Chairman of the Committee to invite the solicitor to the General Medical Council to recall the circumstances in which the applicant's name was erased from the register. These circumstances must remain uncertain, so it was argued, since it was not known precisely what were the facts upon which the Committee had founded its decision to erase.

A further ground of appeal was that no expert evidence was led before the Committee for the purpose of establishing which of any of the prescriptions for the drugs in question written by the appellant constituted inappropriate treatment for the condition for which it was prescribed. Nor was the appellant cross-examined on his evidence that each of the prescriptions did in fact constitute appropriate treatment. Thus it was not open to the Committee to find head (2) of the charge proved.

As regards the complaint that the charge did not give the appellant proper notice of the facts alleged against him, it is to be noted that the service on the appellant of the General Medical Council's witness statements and the documentary exhibits gave him full notice of the evidence to be led against him, and full opportunity to prepare his defence. Further, no objection to the terms of the charge was taken, in the light of the witness statements and exhibits, by the experienced counsel who represented the

appellant at the hearing. There is, however, no doubt that the charge did not allege that the appellant prescribed the drugs in question for Miss "A" in order to make her addicted and thus facilitate sexual advances towards her by the appellant. Their Lordships regard it as very unfortunate that counsel for the General Medical Council should have made that allegation in his opening and again in his closing address. But here again, no objection was taken by counsel for the appellant. The finding of the Committee was to the effect only that the facts alleged in heads (2) and (3) were proved to their satisfaction. That finding most definitely does not include that the allegation made by counsel for the General Medical Council was found proved. At any restoration proceedings under section 41 of the Act of 1983 it would be most improper that any suggestion to that effect should be made. The Committee hearing the application would be bound to have regard only to the actual terms of the charge the facts in which were found proved, and would in any event be concerned principally with the prospects for the future, having regard to the appellant's conduct since the erasure and the likelihood, in the event of restoration of his name to the register, of his carrying on an unblemished practice.

The Committee's finding on head (3) of the charge establishes that the appellant carried on a course of indecent behaviour towards Miss "A", his patient, over the specified period, and that such behaviour included one act of sexual intercourse. The finding that the behaviour was indecent necessarily infers that it was not consensual. With the possible exception of the sexual intercourse the nature of the appellant's acts, as described by Miss "A", precludes any possibility that they might have been consensual. The final episode which occurred on 22nd June 1993, as described by the two women police officers, was quite extraordinary. There can be no doubt that the proof of head (3) of the charge was quite sufficient in itself to justify a finding of serious professional misconduct.

As regards head (2) of the charge, there was evidence before the Committee that the drugs dihydrocodeine and diazepam were opiates, as the experienced medical practitioners on the Committee were no doubt well aware. No expert evidence about the nature of these drugs and their suitability for prescription to a person of Miss "A"'s character and history was led before the Committee. It was left to them, in the light of their own medical knowledge and experience, to decide whether the prescription of them in the circumstances amounted to bona fide medical treatment. They decided that it did not, and their Lordships can perceive no grounds upon which it could reasonably be held that they were not entitled to do so.

Leaving entirely out of account any question that the appellant might have set out to make Miss "A" addicted to the drugs in question in order to facilitate sexual advances by him, their Lordships are satisfied that the Committee had sufficient grounds for their finding of serious professional misconduct and for their determination that the appellant's name should be erased from the medical register. Their Lordships will therefore humbly advise Her Majesty that the appeal should be dismissed. The appellant must pay the costs of the respondent Council before the Board.