

**Leslie Elgar Gardiner**     -   -   -   -   -   -   -   -     *Appellant*

v.

**The General Medical Council**     -   -   -   -   -   -   -   -     *Respondent*

FROM

**THE DISCIPLINARY COMMITTEE OF THE GENERAL  
MEDICAL COUNCIL**

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL, DELIVERED THE 31ST MAY, 1961

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*Present at the Hearing:*

LORD TUCKER.

LORD DENNING.

LORD MORRIS OF BORTH-Y-GEST.

[*Delivered by* LORD MORRIS OF BORTH-Y-GEST.]

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The appellant, a qualified medical practitioner, who was registered under the Medical Acts, appeared before the Disciplinary Committee of the General Medical Council on a charge of “infamous conduct in a professional respect”. It was alleged that he had advertised for the purpose of obtaining patients or promoting his own professional advantage. This it was said he had done in four ways as follows:—

“ (1) By writing for publication and causing to be published in 1959 a book entitled ‘Faces, Figures and Feelings’ which included matter directing attention to your professional skill, knowledge, services and qualifications;

“ (2) By sanctioning or acquiescing in the publication in the issue of ‘The Sunday Pictorial’ dated December 13, 1959, of an article entitled ‘This Man Makes Faces’ which purported to be based on an interview given by you and which included matter directing attention to your professional skill, knowledge, services and qualifications;

“ (3) By sanctioning or acquiescing in the publication in the issue of ‘Woman’ dated February 20, 1960, of an article entitled ‘Leslie E. Gardiner, Cosmetic Plastic Surgeon’, which included matter directing attention to your professional skill, knowledge, services and qualifications; and

“ (4) By procuring or sanctioning the publication in the issues of ‘Woman’ dated February 27, March 5, March 12, March 19, and March 26, 1960 of a series of articles entitled ‘Cosmetic Plastic Surgeon’ of which you were stated to be the author, and which included matter directing attention to your professional skill, knowledge, services and qualifications; ”

After inquiry the Disciplinary Committee determined that the facts alleged against him under (2) above had not been proved to their satisfaction but determined that the facts alleged against him under (1), (3) and (4) above had been proved to their satisfaction. On the basis of those findings they judged him to have been guilty of “infamous conduct in a professional respect” and they directed the Registrar to erase his name from the Register. Pursuant to section 36 of the Medical Act, 1956 he now appeals.

It is provided by section 33 (1) (b) of the Medical Act, 1956 as follows:—

“ If any fully registered person  
 (b) after due inquiry is judged by the Disciplinary Committee to  
 have been guilty of infamous conduct in any professional  
 respect,  
 the Committee may if they think fit direct his name to be erased from  
 the register.”

It becomes necessary to consider whether the actions of the appellant could fairly and properly be regarded as amounting to advertising for the purpose of obtaining patients for himself or for the purpose of promoting his own professional advantage: if so whether he was guilty of “ infamous conduct in a professional respect ”: and if so whether the Committee were right in directing the erasure of his name from the Register.

The appellant has practised for many years as a consultant ear, nose and throat surgeon. For the last nine or ten years he has also practised what has been called “ cosmetic surgery ”. In essence this branch of surgery is concerned to alter and to improve certain naturally-existing personal physical features. It may be contrasted with what has been called “ plastic surgery ” which in general is concerned to ameliorate or correct physical distortions resulting from injuries or accidents either in war or in peace. The appellant described the scope of his work as a Cosmetic Plastic Surgeon as including “ the alteration first of all of the shape of people’s noses, the removal of wrinkles round their eyes, the removal of bags under their eyes, what is commonly called face-lifting, and also the reduction of the large breasts that women suffer from and sometimes the making of small breasts larger ”.

The appellant wrote a book entitled “ Faces, Figures and Feelings ” and made an agreement with publishers dated the 9th January, 1959, for its publication. The book was actually published in December, 1959. He had been advised to employ literary agents in connection with the publication. His agents made a contract in about the month of September, 1959 for the publication in a magazine called “ Woman ” of certain weekly articles which were said to be by way of serialisation of the book. The magazine in question is proclaimed on its cover to be the “ World’s Greatest Weekly for Women ”. The appellant gave permission for the articles to be published. The various articles appeared in the issues dated February 27, March 5, March 12, March 19, March 26, 1960. In the issue of the magazine dated the 20 February there appeared an article which was designed to direct the attention of readers to the articles which were to follow in subsequent weekly issues and to create and stimulate an interest in respect of them in the readers of the magazine. That article included a photograph of the appellant. The article was not written by the appellant but by one of the staff writers of the magazine.

The appellant saw a galley proof of the article of the 20th February and made a request that his photograph should not be included. It was however the wish and the decision of the magazine that it should be. In the articles themselves there were some photographs which illustrated operations. The appellant did not appear in these. There were photographs of the appellant at the head of the articles: these were printed from a photograph supplied by the appellant.

The weekly articles themselves were founded upon and as to their substance matter were in the main closely drawn from the book, but in some instances the accounts or descriptions of incidents were adapted and embellished. A few rather arresting passages in the articles had no origins at all in the book. It was said that certain human or personal notes were introduced in order to make the theme acceptable to the general reader. The penmanship or authorship of the articles was not that of the appellant but galley proofs of the articles were sent to him and he approved them. He received payment for the articles.

The book itself, which their Lordships have deemed it desirable to read, contains an autobiographical account of the appellant’s life and career, describes how he came to be concerned with cosmetic surgery, explains the

nature of such surgery, and gives accounts of very many successful operations performed by the appellant. The book may fairly be said to proclaim that there need be no prejudice against cosmetic surgery or ignorance in regard to it, that it may be resorted to without fear and that the appellant is one who by his training his skill and his experience has brought relief and happiness to his patients. Inside the book following the title "Faces, Figures and Feelings" are the words:—"A Cosmetic Plastic Surgeon Speaks by Leslie E. Gardiner, F.I.C.S., M.R.C.S., L.R.C.P., D.L.O.". The cover or wrapper of the book sets out an explanation of the scope of the work in the following terms:—

"Cosmetic Plastic Surgery: what is it—face-lifts, altering the shape of ears and noses, remoulding women's breasts? Is it the step-child of plastic surgery, rather hushed up, or is it practised undercover by quacks?"

"Leslie Elgar Gardiner here tells the intriguing story of how he crossed the frontiers of his own orthodox speciality of ear, nose and throat surgery into a fascinating world which, to many doctors and members of the public, suggests unorthodoxy. He dispels the legend of wickedness. The majority of his patients are neither ageing duchesses nor vanity-ridden members of the entertainment world. They are ordinary people, burdened by personal problems to which they want an answer.

"He tells how he felt the compelling challenge of a new kind of work that called for precision, delicacy and skill. In America and on the Continent, where cosmetic plastic surgery is regarded as a speciality in its own right, he pursued his studies and witnessed the work of many distinguished surgeons in this field.

"He explains in the simplest terms how cosmetic plastic operations are done; and reveals through numberless case-histories the human beings who consult him and why.

"He is the first British plastic surgeon ever to do this. His book is illustrated with remarkable real-life case photographs and sketches that show vividly just what cosmetic plastic surgery can do. The book is a 'must' for every man and woman who wishes to know, not what cosmetic plastic surgery is rumoured to be, but what it is."

On another part of the wrapper there is a biographical note (with a photograph) concerning the author. The appellant had been persuaded to allow his photograph to appear. Their Lordships propose to approach the case by considering whether the contents of the book could be regarded as making its publication objectionable and on the basis that the form and style of this part of the wrapper would not alone render it so.

The charge that the appellant was called upon to meet was thus expressed:—"that you have advertised for the purpose of obtaining patients or promoting your own professional advantage". It is to be noted that the particulars did not refer solely to the fact that the book and the articles were published but that they "included matter directing attention to your professional skill, knowledge, services and qualifications".

It was therefore necessary for the General Medical Council and on appeal it is necessary for their Lordships to consider the nature of the written material, the mode of publication which was adopted, and all the circumstances relating to the purposes and reasons which inspired the publication.

It must be recognised that professional medical men may be amply justified in publishing books and articles and in publishing them in their own names. By their writings they may be making invaluable contributions to medical science and to learning. They may be disseminating useful knowledge. They may be helping their fellow practitioners. They may be advantaging a wider public. It must however be recognised that by their writing they may inevitably and indeed justifiably attract notice. This may redound to their professional and to their pecuniary advantage. It may well be that in some cases a hope that some legitimate meed of personal advancement will result may find its place amongst the motives in writing

and may be the spur to command the industry that the task may require. But after this has been said it can definitely be said that within the profession the line between the kind of publication that is unobjectionable and the kind that is objectionable should present no difficulties of recognition for any reasonable practitioner.

The accepted ethical standards of a profession may not be formulated in any written code and may not have found expression with the precision of language associated with a code but yet they are quite clearly within the comprehension of qualified and experienced members of the profession.

It may be noted that it has been the practice of the Medical Disciplinary Committee to issue what was called a "Warning Notice" for the Guidance of Registered and Provisionally Registered Medical Practitioners. The appellant received a copy of such notice on the 19th May, 1954. The notice contains the following:—

" 6. Advertising and Canvassing

The practices by a registered medical practitioner—

(a) Of advertising, whether directly or indirectly, for the purpose of obtaining patients or promoting his own professional advantage; or, for any such purpose, of procuring or sanctioning, or acquiescing in, the publication of notices commending or directing attention to the practitioner's professional skill, knowledge, services, or qualifications, or depreciating those of others; or of being associated with, or employed by, those who procure or sanction such advertising or publication: and

(b) Of canvassing, or employing any agent or canvasser, for the purpose of obtaining patients; or of sanctioning, or of being associated with or employed by those who sanction, such employment,

are in the opinion of the Committee contrary to the public interest and discreditable to the profession of Medicine, and any registered medical practitioner who resorts to any such practice renders himself liable, on proof of the facts to the satisfaction of the Committee, to have his name erased from the Register."

The published warning against advertising, either directly or indirectly, for the purpose of obtaining patients or of promoting personal professional advantage was therefore clear.

Examples may be given. On the one side of the line there might be a book or an article which is an exposition of a particular subject either written as a text-book for medical students or practitioners or written impersonally in order to give information to the general public. No exception could be taken to such publication. As an example on the other side of the line there might be a book or an article an essential theme of which is the praise and commendation of the skill and abilities of the writer himself with an express or implied suggestion that his successes in dealing with cases show that potential patients would do well to have recourse to him. That would be "advertising".

It may be entirely proper in the case of a book or article which is written impersonally as an exposition of a medical subject or to convey valuable general advice not only that the name of the writer should appear but that, possibly on a wrapper, there should be some factual mention of his position and attainments: the authority of the exposition may thereby be shown. But this would be in contrast to a book or article which was written in the hope and with the purpose of attracting patients and increasing a practice: for that would be self-advertisement to which exception could properly be taken.

There does not appear to be any doubt that the medical profession condemns self-advertisement. In his judgment in *Rex v. General Medical Council* [1930] 1 K.B. 562 Scrutton, L.J. (at page 569) recognised that in the medical profession advertising may amount to serious misconduct in a

professional respect. He added that serious misconduct judged according to the rules, written or unwritten, governing the profession was denoted by the phrase "infamous conduct". In *Allinson v. General Council of Medical Education and Registration* [1894] 1 Q.B. 750 one question which arose was whether there was evidence upon which the council could reasonably find that the plaintiff had been guilty of "infamous conduct in a professional respect". In his judgment Lord Esher, M.R. said (at page 760):—

"Was there, then, any evidence which justified the council in finding the plaintiff guilty of 'infamous conduct in a professional respect'? I adopt the definition which my brother Lopes has drawn up of at any rate one kind of conduct amounting to 'infamous conduct in a professional respect,' viz.: 'If it is shewn that a medical man, in the pursuit of his profession, has done something with regard to it which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency,' then it is open to the General Medical Council to say that he has been guilty of 'infamous conduct in a professional respect'. The question is, not merely whether what a medical man has done would be an infamous thing for any one else to do, but whether it is infamous for a medical man to do. An act done by a medical man may be 'infamous,' though the same act done by anyone else would not be infamous; but, on the other hand, an act which is not done 'in a professional respect' does not come within this section. There may be some acts which, although they would not be infamous in any other person, yet if they are done by a medical man in relation to his profession, that is, with regard either to his patients or to his professional brethren, may be fairly considered 'infamous conduct in a professional respect,' and such acts would, I think, come within section 29."

That was a reference to section 29 of the Medical Act of 1858.

Davey, L.J. in his judgment at page 766 said:—

"The question is not whether the plaintiff is right or wrong in his views on the subject of medicine and hygiene. He may be right, notwithstanding his differences from the majority of his professional brethren. He may be in the position of Athanasius contra mundum. But there are different modes of stating one's opinions and views, and a man may be actuated by different motives in enforcing his views and opinions upon the world. In the present case the language in which the plaintiff has thought fit to express his views, and the circumstances under which and the surroundings with which his advertisements were issued, coupled with the notices to which our attention has been drawn, recommending his own works and his own advice, seem to me, when taken together, to be evidence from which the Medical Council might reasonably hold that his conduct was 'infamous in a professional respect'."

In that particular case the plaintiff had been in the habit of inserting advertisements in newspapers in which his name and address were stated. These advertisements contained reflections upon medical men generally and their methods of treating their patients and advised the public to have nothing to do with them or their drugs. The advertisements contained a series of answers to real or imaginary correspondents as to the proper treatment of different complaints and there were recommendations to apply to the plaintiff for advice the amount of the fee charged by him for advice being stated. Certain works on medical subjects written by the plaintiff were also mentioned, and their prices.

It must be recognised that a book or an article may be written for more purposes than one. At the hearing before the Disciplinary Committee the appellant was asked what his purpose was in writing his book. Certain answers and questions followed:—

"A. When I began to become interested in the work of cosmetic surgery the thing that struck me at the very beginning was how little people knew about it. In the very beginning, I, as a doctor,

as an ear, nose and throat surgeon, did not, for example, for some time—it did not dawn upon me that people wanted the shape of their noses altered, and then when I went into the matter more fully I discovered that even the ordinary, average general practitioner knew nothing about it and the public knew nothing much about it, and after some years in the practice of this speciality I realised that it was time that somebody did write a book about this, somebody with authority. I apologise if I should say that I am an authority, but somebody who had some experience in this work should write and for the first time put before the public what can be done and also inform the general practitioner about it as well.

Q. Your book, then, was directed to the public at large and to the general practitioner.

A. Yes.

Q. With the object of informing them what could be done?

A. Yes.

Q. Was there a third object?

A. Yes, there was a third object, because through a very odd sort of tradition—I don't quite know if I am putting it in the best possible way, but a nucleus, a syndicate of certain men was fostering subversive propaganda among the public that this syndicate, of eight or nine people if you wish, were the only accredited people that could do this work. Now . . . .”

The appellant proceeded to refer to an article which appeared in 1954 in a certain women's journal in regard to plastic surgery and which mentioned an Association of Plastic Surgeons. The appellant said that he was disturbed to find that that Association were recommending the surgeons of certain teaching hospitals and no one else: it seemed, he said, that a certain group were assuming that they were the only ones who could undertake plastic surgery. The article in question begun as follows:—

“ In an age of many wonders, perhaps one of the greatest of them is plastic surgery. With the experience gained from the miracles of skin grafting and surgery done during the war, plastic surgery is now very far advanced. It is a branch of medicine about which everyone should know some of the details, so that they can appreciate its possibilities. It is not only surgery, it is an art which, when practised by skilled hands, performs marvels of transformation.

“ Being out of the ordinary run of surgery, it is a profession which inevitably attracts charlatans. There is no law to prevent any man setting up as a plastic surgeon, but if anything untoward happens, the patient has no redress. In any case, it is very necessary to be sure you have the services of a qualified man. Anyone can find out the qualifications of a surgeon by applying to the British Association of Plastic Surgeons, c/o Royal College of Surgeons, London, W.C.2. Your own doctor should also be able to recommend a good plastic man or you can find one at most of the big hospitals.”

In reference to this there was the following question and answer:—

“ Q. In what way was your book going to help with regard to the attitude taken up by the association called the British Association of Plastic Surgeons?

A. Well, the only way I think it could help, it would at least shew that other sort of people than members of this association were just as well qualified to do this work as they were.”

It is apparent therefore that the appellant was saying in his evidence that he had more than one purpose in writing. In this connection it may be

observed that among the questions put to him by members of the Disciplinary Committee was the following:—

“ Q. Did you realise that as a result of the publication of this book and of these articles in ‘ Woman ’ you were likely to attract a number of people to you for your services?

A. It was obvious, if anybody writes a book—it is an obvious question—yes.

Q. Did you hope you would?

A. Not particularly. I had enough practice.”

During the address of the appellant’s counsel to the Disciplinary Committee the Legal Assessor said that he would advise the Committee that in considering the charge it would not be enough for them to find merely that the appellant advertised but, inasmuch as the charge was unseverable, that they would have to decide whether the appellant advertised for the purpose of obtaining patients or promoting his own professional advantage: he said that the Committee need not be satisfied that such a purpose was the exclusive purpose but that if the Committee were satisfied that the appellant advertised and that among his purposes there was to a substantial extent the purpose of obtaining patients or promoting his own professional advantage then it would be open to them to find the facts proved.

Their Lordships recognise that while in some cases a particular purpose may be exclusive there may be cases in which a particular purpose exists to a substantial extent and others in which a particular purpose is merely incidental and it seems to them that in finding that the facts alleged against the appellant under heads (1) (3) and (4) of the charge were proved the Committee must be taken to have held that in publishing his book and in sanctioning the publication of the articles the appellant had to a substantial extent the purpose of obtaining patients or promoting his own professional advantage. That was their conclusion after a consideration of all the facts and after hearing the full evidence of the appellant and after hearing him examined and cross-examined.

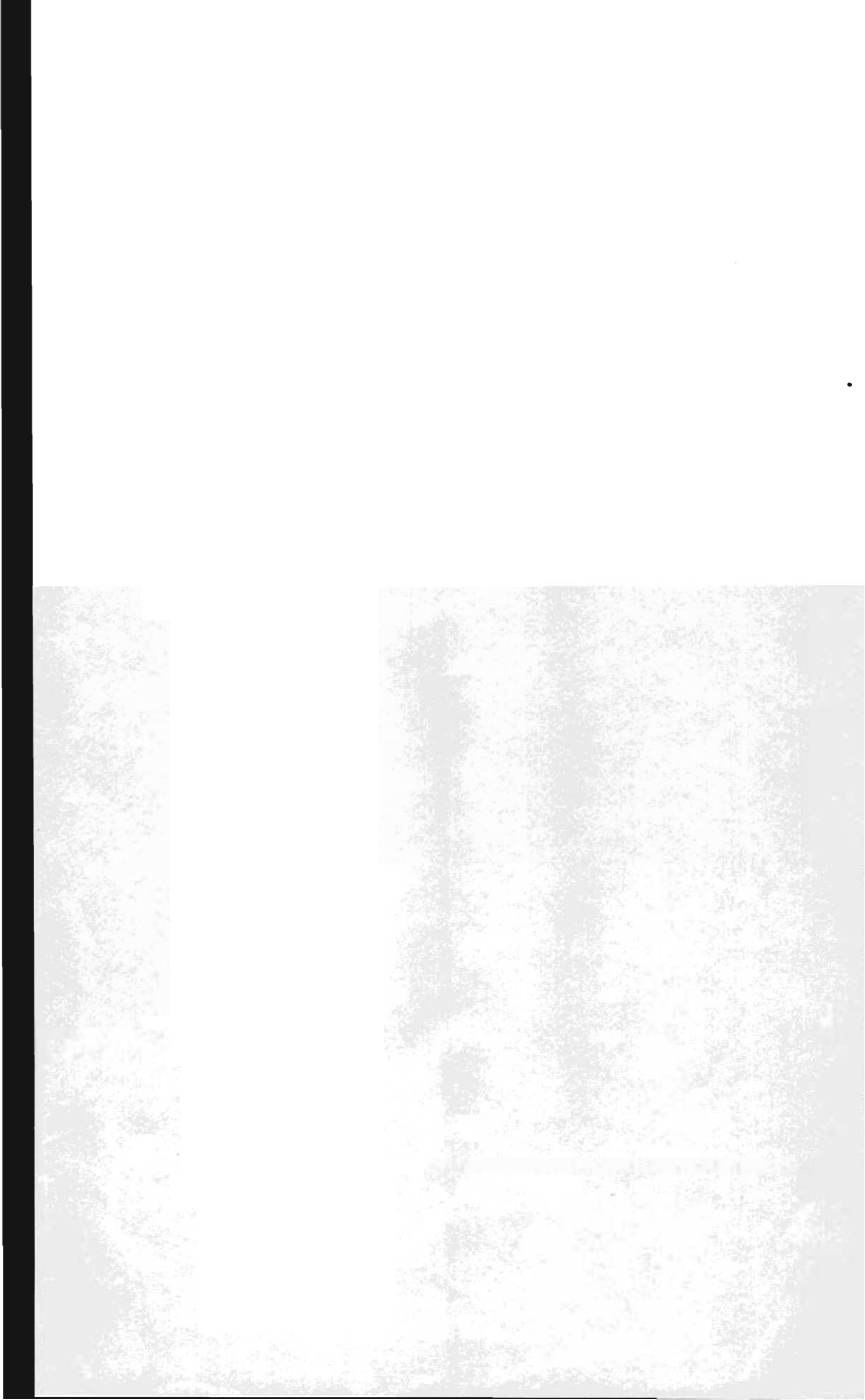
On the appeal to their Lordships’ Board (as to the nature of the appeal see *Fox v. General Medical Council* [1960] 1 W.L.R. 1017 and *Felix v. General Dental Council* [1960] A.C. 704) their Lordships were fully referred to all the evidence and to the book and to the various articles in the magazine “ Woman ”. All the material was the subject of careful analysis in the addresses of the appellant and learned counsel. At the request of the appellant certain other publications including many issued under the sponsorship of the British Medical Association were considered by their Lordships. The appellant referred also to certain press articles and to interviews as recorded in the press. Their Lordships were also referred to the biographical and commendatory notes with photographs appearing on the backs of certain books written for laymen on medical subjects by medical men for a well-known popular series of books. The appellant referred to some of these as denoting what he submitted that he was entitled to regard as legitimate conduct in medical men of good repute and competence. Their Lordships are not called upon to express any opinion in regard to any other book or article or in regard to any newspaper report of interview but they have noted certain manifest contrasts between such of the publications containing medical advice as were seen by their Lordships and the book written by the appellant together with the articles in “ Woman ”.

The appellant submitted that the only facts that could properly be found by the Disciplinary Committee were that he had written the book and caused it to be published and that he had acquiesced in the publication of the various articles in “ Woman ” and that the conclusions of the Disciplinary Committee as to advertising represented inferences from these facts and that such inferences being open to review should be held to have been unwarranted and unjustifiable.

The appellant testified in his evidence that one of his purposes in writing his book was to dispel and terminate a certain veil of secrecy which he said

had shrouded cosmetic surgery, a secrecy which had had the result that no one had had the courage "to stand out in the open and say what it is" or to call himself a cosmetic surgeon. Another of his purposes was to combat the "subversive propaganda" that the eight or nine members of a syndicate were the only accredited people that could operate and to show that others were just as well qualified to do the work. Their Lordships consider that the Disciplinary Committee were entitled to decide that in carrying out these purposes as acknowledged by the appellant himself he had the essential purpose of presenting himself and his subject to the public and proclaiming himself as a cosmetic surgeon whose services (of the nature described by him in his book by reference to the many operations that he had successfully performed) the public might be well advised to seek. This would furnish ample warrant for the conclusion that the appellant had to a substantial extent the purpose of obtaining patients or of promoting his own professional advantage. But quite apart from this the Committee were entitled to have regard to the content of the written material, the form in which it was written, and the selected media for its publication in forming conclusions as to what were the purposes which animated the writer. The Committee were entitled to consider whether a desire to give information about a subject and to direct attention to such subject could have been achieved without directing attention to the personal and unique performances and abilities of the writer. Having been fully referred to the evidence and to the various articles in the magazine "Woman" and having considered the book their Lordships consider that there was ample material which warranted the decision of the Disciplinary Committee and their Lordships see no error in such decision. Following upon their decision it was open to the Committee to direct the erasure of the appellant's name from the register and it was open to them not so to direct. If there is erasure an application for the restoration of a name to the register may be made after a period of eleven months. (See Medical Act, 1956, section 34). The Disciplinary Committee considered it fitting to direct erasure. Their Lordships find no reason to think that in deciding to direct erasure the Disciplinary Committee erred in principle or that their decision was unjustifiable. Accordingly their Lordships will humbly advise Her Majesty that the appeal should be dismissed. The appellant must pay the costs of the hearing before their Lordships' Board.





In the Privy Council

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LESLIE ELGAR GARDINER

v.

THE GENERAL MEDICAL COUNCIL

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DELIVERED BY

LORD MORRIS OF BORTH-Y-GEST

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HARROW

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