Privy Council Appeal No. 10 *of* 1962

Ivan Weisz – – – – – – – – – – *Appellant*

v.

General Medical Council – – – – – – – – *Respondent*

FROM

THE DISCIPLINARY COMMITTEE OF THE GENERAL MEDICAL COUNCIL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 17TH JANUARY, 1963

Present at the Hearing:
LORD EVERSHED.
LORD GUEST.
LORD PEARCE.
[*Delivered by* LORD EVERSHED]

This is an appeal from the finding and order of the Disciplinary Committee of the General Medical Council on 28th February 1962. The appellant was charged with infamous conduct in a professional respect, the particulars being eight instances of canvassing patients of Dr. Castillo, another medical practitioner, in or about the month of November 1960—in one case in January 1961—and also at an interview with another patient between June 1957 and June 1958 " depreciating the professional skill, knowledge and services " of the same doctor. Three of the eight charges of canvassing were not pursued at the hearing, but the Committee found proved the other five charges (subject to one exception as regards one of them) and also the charge of depreciation. They found him guilty of infamous conduct in a professional respect and ordered his name to be erased from the Medical Register.

In approaching an appeal of this nature it is necessary to have in mind the principles laid down recently for the Board in the case of *Fox v. General Medical Council* [1960] 1 W.L.R.1017 where it was pointed out by Lord Radcliffe in his judgment that such appeals are not analogous to appeals from criminal courts but call for a determination by the Board upon the whole material before it whether there was in fact " due enquiry " into the charges made. At p. 1021 of the Report the noble lord said that " such considerations . . do sometimes require that the Board should take a comprehensive view of the evidence as a whole and endeavour to form its own conclusion as to whether a proper enquiry was held and a proper finding made upon it ". Again at p. 1023 Lord Radcliffe said: " . . . the appeal must fail unless there was some defect in the conduct of the inquiry by way of the admission or rejection of evidence or otherwise, that may fairly be thought to have been of sufficient significance to the result to invalidate the committee's decision ".

Upon the appeal coming on it appeared that the appellant had dispensed with the services of his solicitors and counsel. The appellant accordingly conducted his case in person. It is right to record that he did so with care and courtesy. But he first sought to amend his case by raising for the first time three entirely new points including (1) that a partner in the firm of solicitors who originally acted for him had at one time acted, upon quite a different matter, for Dr. Castillo, and that (2) the minds of the Committee were or might have been affected by certain statements in newspapers published before the date of the hearing. Their Lordships had no difficulty in rejecting the appellant's application on these two matters, which they were satisfied

were entirely without substance. But the appellant also sought (3) to raise the point that the widow of the original complainant (Dr. Castillo already mentioned) had during the hearing sat among the members of the Disciplinary Committee. Having regard to the seriousness of this suggestion, if true, Mr. Boydell for the respondent did not object to the point being raised and their Lordships accordingly gave directions for affidavits to be sworn and produced on both sides in regard to it. When this had been done the only evidence in support of the suggestion (and their Lordships do not forget the affidavit of a Mrs. Gardiner produced by the appellant) was the appellant's own statement, as follows:—

> " During the Committee hearing on the 27th and 28th February 1962, the Complainant's wife was sitting among the members of the Committee in the Council Chamber. I consider that she directly or indirectly influenced the Committee members and witnesses for the Complainant."

On the other side were four affidavits including one from Mrs. Castillo herself and another from the Registrar of the Council, quite clearly, in their Lordships' opinion, disproving both the alleged fact and its possibility. Their Lordships add that in answer to a question put to him by the Board as to why the point had never been raised before the appellant stated that he had noticed Mrs. Castillo's presence among the Committee at the time of the hearing and had then drawn the attention of his solicitors to such fact. Their Lordships find the greatest difficulty in accepting this last-mentioned statement and in the circumstances have no hesitation in rejecting the appellant's application on this point.

The appellant then proceeded to challenge the findings of the Committee on the ground that there was no, or no sufficient, evidence at the hearing to support them. As regards the charge of having depreciated the competence of Dr. Castillo, the appellant also sought to challenge the evidence of Mrs. Green in support of the charge by complaining that no statutory declaration made by her was before the Board or had been before the Committee. This last matter was not a point raised in the appellant's case—and for a very good reason: for it appeared quite clearly that there had been such a statutory declaration, a copy of which had been duly sent to the appellant or his advisers, that the omission from the record had been inadvertent, but that the appellant's solicitors had refused afterwards to assent to the record being amended.

With the assistance of learned Counsel for the respondent their Lordships read carefully through the whole record of evidence at the hearing including, of course, the evidence of the appellant himself. That there were conflicts between the evidence called for the complaint on the one hand and the evidence of the appellant on the other is clear enough; but having studied the whole evidence their Lordships, though not having had the advantage of seeing and hearing the witnesses, felt clearly that the evidence of the witnesses for the complaint as recorded was more convincing than that of the appellant: and their Lordships have no doubt whatever that there was on the side of the complaint ample evidence, if believed, to support the Committee's findings. In the circumstances their Lordships do not think it useful or necessary to go further into the details of the several issues.

But there remains one point which has given their Lordships serious concern. The point concerns a table or chart proved by the clerk to the London Executive Council of the National Health Service showing the number of Dr. Castillo's patients who in fact transferred to the appellant immediately following the appellant's setting-up in practice in Chelsea and (more particularly) the advice given to the Committee respecting the table by the Committee's legal assessor at the hearing.

In order to make the point clear and also their Lordships' decision upon it, their Lordships have thought it necessary to state the relevant facts in some detail.

In the course of his evidence in chief the appellant had challenged the evidence of some of the witnesses against him to the effect (*inter alia*) that he had called upon them uninvited. At the beginning of his cross-examination

of the appellant Mr. Boydell, the learned Counsel for the complaint, put, naturally enough, to the appellant certain general questions including the question whether he knew what was meant by "canvassing", to which the appellant gave the answer "Only now". There followed the following questions and answers:—

"Q. In the autumn of 1960 on approximately how many of Dr. Castillo's patients did you call? A. You know how many.

Q. I am asking you. A. I do not remember.

Q. Will you try? A. I cannot.

Q. I shall suggest to you it was a few hundreds? A. Can you prove it?

Q. Dr. Weisz, in fairness I should tell you I have evidence available from the London Executive Council and certain questions I shall put to you are based on evidence that is available. A. I will tell you that is wrong."

There was an objection to the last question by the appellant's counsel which led to a discussion between the learned Counsel and the legal assessor. As a result it was made clear that the point of the questions and of the contents of the table was by way of rebuttal of the appellant's defence that the meetings between him and Dr. Castillo's patients had been by chance or upon invitations extended to the appellant. For it appeared from the table that in the very month in which the appellant set up his practice and in the succeeding three months thereafter (until, that is to say, Dr. Castillo began to complain) appreciable numbers of Dr. Castillo's patients (61 in all) had transferred to the appellant.

For such purposes their Lordships are of opinion that the questions objected to were properly admissible and would have been so admissible in corresponding circumstances at a criminal trial. The cross-examination thereupon continued and the figures from the table were put to the appellant.

After the conclusion of the appellant's evidence and the evidence given by another witness on the appellant's behalf, Mr. Boydell then applied to call the clerk of the London Executive Council in order properly to prove the figures of transfer during the months September to December, 1960 inclusive, which, as Mr. Boydell fairly observed, the appellant had not entirely accepted. The learned Counsel for the appellant then stated clearly that he raised no objection to such evidence. In their Lordships' view such evidence was admissible (see *Makin v. Attorney-General for New South Wales* [1894] A.C.57). The clerk was accordingly called, his examination being strictly limited to proof of the relevant figures. In the course of his cross-examination the learned Counsel for the appellant, perhaps unfortunately for him, got from the clerk the view that the extent and time of such transfers were in the circumstances unusual.

At the close of the evidence there followed a speech by the learned Counsel for the appellant who made the point, quite fairly and properly, that the table in question should be treated by the Committee as proving no more than that during the relevant months 61 people had in fact shown their preference for the appellant by transferring to him. Their Lordships note that in Mr. Boydell's final speech for the complaint no reference whatever was made by him to the table.

Had the matter rested there their Lordships think that no valid objection could now be taken to the admission of the evidence of the table and that such admissibility did not require the invocation of Rule 43 of the General Medical Council Disciplinary Committee (Procedure) Rules of 1958. Their Lordships are equally of opinion that the Committee could have taken the table into account in assessing the appellant's defence that the calls upon Dr. Castillo's patients were by chance or by invitation. Unfortunately, however, in advising the Committee upon the law at the end of the hearing the Legal Assessor is recorded as using this language:

"It is entirely for the Committee to evaluate. A chart has been put in, and evidence has been called which purports to show that there was a degree of transfer from Dr. Castillo to Dr. Weisz. You see what the figures were, and you see the proportions. It is my judgment and advice to the Committee that that evidence is proper to be considered

by the Committee in a canvassing case, because one knows from experience in this building how reluctant patients are to come and give evidence against one doctor in favour of another doctor . . .

" The nature of a canvassing charge is such that one would expect that if there had been canvassing, some of it would have been successful; and it is in order to show that there has in fact been a substantial transfer of patients from one doctor to the other that that evidence is tendered by Mr. Boydell, and he is entitled, in my opinion, to ask you to draw the inference that that transfer, or some of it, was due to such canvassing as he has given in evidence, and some further canvassing of which evidence for the reasons that I have mentioned is not available. He is entitled to ask you, in my opinion, to draw that inference. Whether you do draw that inference or not is a matter entirely for you."

As their Lordships have intimated these expressions on the part of the Legal Assessor were, they think, unfortunate and went further than they should; and as regards the last sentences, their Lordships note that Mr. Boydell had not in fact invited the Committee to draw the inferences indicated.

The Committee thereupon retired and on their coming back the President announced the Committee's conclusion as follows:—

" Mr. Weisz, I have to announce that the Committee have determined that certain of the facts alleged against you in the printed charge have been proved to their satisfaction, but that certain other facts have not been proved to their satisfaction. As regards, first, the facts which have *not* been found proved, the Committee have determined that the facts alleged against you in paragraphs (*b*), (*g*) and (*h*) of head (1) of the charge, as printed in the Programme of Business, have not been proved to their satisfaction; and they have also found that the facts relating to Mr. Anthony John Bell in paragraph (*e*) of head (1) have not been proved to their satisfaction. The Committee have therefore recorded a finding that you are not guilty of infamous conduct in a professional respect in relation to the facts alleged against you in those particular paragraphs of the charge.

" The Committee have, however, determined that the remaining facts alleged against you in the charge have been proved to their satisfaction."

It is to be observed that in this announcement the President made no reference whatever to the table or its contents but confined himself to the specific charges made against the appellant including that related to Mrs. Green on which the table could not in any event have had a bearing.

In the circumstances, though their Lordships have felt some anxiety on the matter they have concluded that the terms used and above quoted by the Legal Assessor could not be regarded as vitiating the Committee's conclusion. Their Lordships repeat (1) that the table was in their opinion properly before the Committee and could in any case be taken into account in assessing the appellant's denial of uninvited calls on his part; (2) that Mr. Boydell made no faulty submission to the Committee as regards the table, whereas the learned Counsel for the appellant, not having objected to its introduction, made quite clearly his own submission upon it; and (3) that the conclusions of the Committee as stated by the President made no reference to the table but were confined to conclusions on the evidence relating to the specific charges.

As their Lordships pointed out at the beginning of this judgment, a case such as the present cannot be regarded as analagous to an ordinary criminal trial and the Committee looked upon as a jury answering the questions put to them without giving any reasons. As stated by Lord Radcliffe in *Fox v. General Medical Council* (*supra*) the duty of the Board is to consider the case upon all the material available and, so far as there has been any error in the conduct of the inquiry, to determine whether it is of sufficient significance to invalidate the Committee's decision. So regarding this particular matter and after reading carefully the whole of the recorded transcript their Lordships conclude that the language used by the Legal Assessor was not, in all the circumstances, sufficiently significant to disable the result; but think that

there was beyond question amply sufficient material in the evidence given on behalf of the complaint, if the Committee after seeing and hearing the witnesses accepted their truthfulness, to justify their findings.

The appellant further maintained that the sentence of erasure was excessive. Their Lordships see no reason to interfere with the sentence imposed by the Committee.

Their Lordships will humbly advise Her Majesty that the appeal be dismissed. The appellant must pay the costs of this appeal.

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In the Privy Council

IVAN WEISZ

v.

GENERAL MEDICAL COUNCIL

DELIVERED BY LORD EVERSHED

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