

Privy Council Appeal No. 44 of 1963

John Denis Moore - - - - - *Appellant*

v.

General Dental Council - - - - - *Respondent*

FROM

THE DISCIPLINARY COMMITTEE OF THE GENERAL DENTAL COUNCIL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 25TH NOVEMBER 1964

Present at the Hearing:

LORD MORRIS OF BORTH-Y-GEST.

LORD HODSON.

LORD GUEST.

[*Delivered by LORD HODSON*]

This is an appeal from a decision of the Disciplinary Committee of the General Dental Council, given on the 14th November 1963, that the appellant, John Denis Moore, had been guilty of infamous or disgraceful conduct in a professional respect and that the appellant's name be erased from the Register.

The charge preferred against the appellant was

“That being a registered dentist:

(1) Between August and October, 1962, you did, for your own financial gain and with intent to deceive, persuade Mrs. J. Paterson, a patient of yours who needed treatment under the National Health Service (General Dental Services) Regulations, to undergo a certain course of dental treatment as a private patient by falsely stating that such treatment was not available under the National Health Service;

(2) You demanded from Mrs. Paterson in respect of the said course of treatment the sum of £20 of which she paid you the sum of £8.

And that in relation to the facts alleged you have been guilty of infamous or disgraceful conduct in a professional respect.”

Section 25 (1) of the Dentists Act 1957 provides:—

“(1) A Registered dentist who either before or after registration

(a) has been convicted either in Her Majesty's Dominions or elsewhere of an offence which, if committed in England, would be a felony or misdemeanour, or

(b) has been guilty of any infamous or disgraceful conduct in a professional respect,

shall be liable to have his name erased from the Register.”

The charge was laid under 25 (1) (b).

There is no provision for any other penalty than erasure from the Register.

The charge was referred for inquiry to the Disciplinary Committee by the Preliminary Proceedings Committee in accordance with the procedure laid down by section 26 of the Act. The appeal to the Board lies as of right under Statute. As was pointed out in a judgment delivered by Lord Radcliffe in *Fox v. General Medical Council* [1960] 3 A11 E.R. 225 at p.226 the appellant is entitled to claim that it is in a general sense nothing less than a re-hearing of his case and a review of the decision. The nearest analogy given was that of

an appeal to the Court of Appeal hearing an appeal from a judge sitting alone without a jury. The analogy must not be pressed too hard for in such cases the judge delivers a reasoned judgment recording his findings of fact and the conclusions he has formed as to the reliability of witnesses and his views on the law, and the bearing of those views on the conclusion that he reaches whereas in hearings before the Medical or Dental Council no judgment is delivered and there is only the bare finding of fact and pronouncement of sentence.

In this case the Committee found that the facts alleged against the appellant in the charge had been proved to their satisfaction and that in relation to those facts he had been guilty of infamous or disgraceful conduct in a professional respect. The Registrar was accordingly directed to remove the appellant's name from the Dentists' Register.

The charge was in effect one of obtaining money from a patient by false pretences, the false pretence being that a certain course of dental treatment was not available under the National Health Service. On the onus of proof their Lordships refer to the judgment of the Board in *Bhandari v. Advocates Committee* [1956] 3 All E.R. 742 where at pages 744 and 745 Lord Tucker delivering the judgment of the Board gave approval to the language used in the Court of Appeal in that case. This was "we agree that in every allegation of professional misconduct involving an element of deceit or moral turpitude a high standard of proof is called for, and we cannot envisage any body of professional men sitting in judgment on a colleague who would be content to condemn on a mere balance of probabilities."

Bearing in mind these considerations their Lordships have given anxious consideration to the case made against the appellant.

The relevant facts are as follows:—the appellant who practised at 204A East India Dock Road had as a patient a Mrs. Paterson who lived at Dagenham in Essex. She and her husband and their two children had been patients of the appellant for approximately three years immediately preceding the date of the enquiry as National Health Service patients and had never paid fees to the appellant as private patients. On the 13th August 1962 the appellant examined Mrs. Paterson and told her that she was suffering from pyorrhoea and that it could be treated by him. The most relevant questions and answers are to be found on page 11 in the record of Mrs Paterson's evidence:—

- " 11. Q. Did he say whether he had any particular experience or expertise about treating your complaint?
 A. Yes, he said he had been to America to study this complaint and he could give me the treatment.
12. Q. And then?
 A. If I required treatment it would cost anything from £10 to £20. I accepted.
13. Q. Did he say anything as to the length of the treatment?
 A. He said it could not be done under the National Health Service because of the length of time it would take, but it could be treated privately."

The last answer is vital to the decision in this case. It is to be noted that there is no express statement alleged to have been made that the treatment could not be done *at all* under the National Health Service. If such statement had been proved to have been made it would have been equivalent to a statement which the appellant knew to be false, namely, that in the words of the charge "such treatment was not available under the National Health Service".

That Mrs. Paterson was misled into thinking that the treatment could not be provided under the Service there is no doubt and if whatever the words used the appellant intended that result the charge would have been established but this latter question does not arise for there is no evidence unless it could be deduced from the answers to questions cited above that the appellant had such intention.

His case is and has always been to admit that he was at fault in not specifically informing Mrs. Paterson that such treatment was available under the National Health Service but that all he was saying was that he could not do it under the National Health Service because the National Health Service just would not stand for the fees.

In a letter written by him on the 19th September 1963 in answer to a letter from the Registrar written on the direction of the President of the Council he had stated that he did not as a general rule undertake periodontal treatment under the N.H.S. and that is why he told Mrs. Paterson that the treatment she required could not be undertaken by him under the N.H.S. He added that he offered to carry out the treatment privately to which Mrs. Paterson agreed.

He did not profess to remember the exact words he used to Mrs. Paterson but when he gave evidence before the Disciplinary Committee he was never asked either by his own counsel or by counsel who placed the facts before the Committee whether he admitted or denied the use of the words attributed to him in the answer to question 13 on page 11 set out above. In short he was never asked whether he had said words to the effect that treatment under the National Health Service was not available at all. Their Lordships have come to the conclusion that the answer to question 13 was equivocal.

The appellant never used the precise words attributed to him in the charge that treatment was not available under the National Health Service and it was not the only reasonable inference to be drawn from the use of the words attributed to him by Mrs Paterson that treatment was "not available" under the Service. True Mrs Paterson was misled but the words used are capable of the innocent interpretation that the appellant was saying, as he was fully entitled to do, that he personally was not prepared to provide his services under the National Health Service for what he described as unrealistic fees having regard to the length of time which the treatment would be likely to last whereas he was prepared to accept Mrs. Paterson as a private patient for the purpose of this treatment.

For the reasons stated their Lordships will humbly advise Her Majesty that the appeal be allowed. The costs of the appellant must be paid by the respondent.

In the Privy Council

JOHN DENIS MOORE

v.

GENERAL DENTAL COUNCIL

DELIVERED BY
LORD HODSON

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