

*Privy Council Appeal No. 19 of 1969*

Noel Patrick Burns      -      -      -      -      -      -      -      -      *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 4TH DECEMBER, 1969

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*Present at the Hearing :*

LORD HODSON

LORD DONOVAN

LORD WILBERFORCE

[*Delivered by* LORD HODSON]

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This is an appeal by a doctor, Noel Patrick Burns, from a determination of the Disciplinary Committee of the General Medical Council on 21st July 1969. This determination was that, by reason of a conviction which had been proved against him, his name should be erased from the Register.

The charge was that on 9th December 1966 at the Acton Magistrate's Court he was "convicted (after pleading guilty) of failing to keep a register of dangerous drugs", the dates of the offences being over the period between 1st June 1965 and 3rd June 1966.

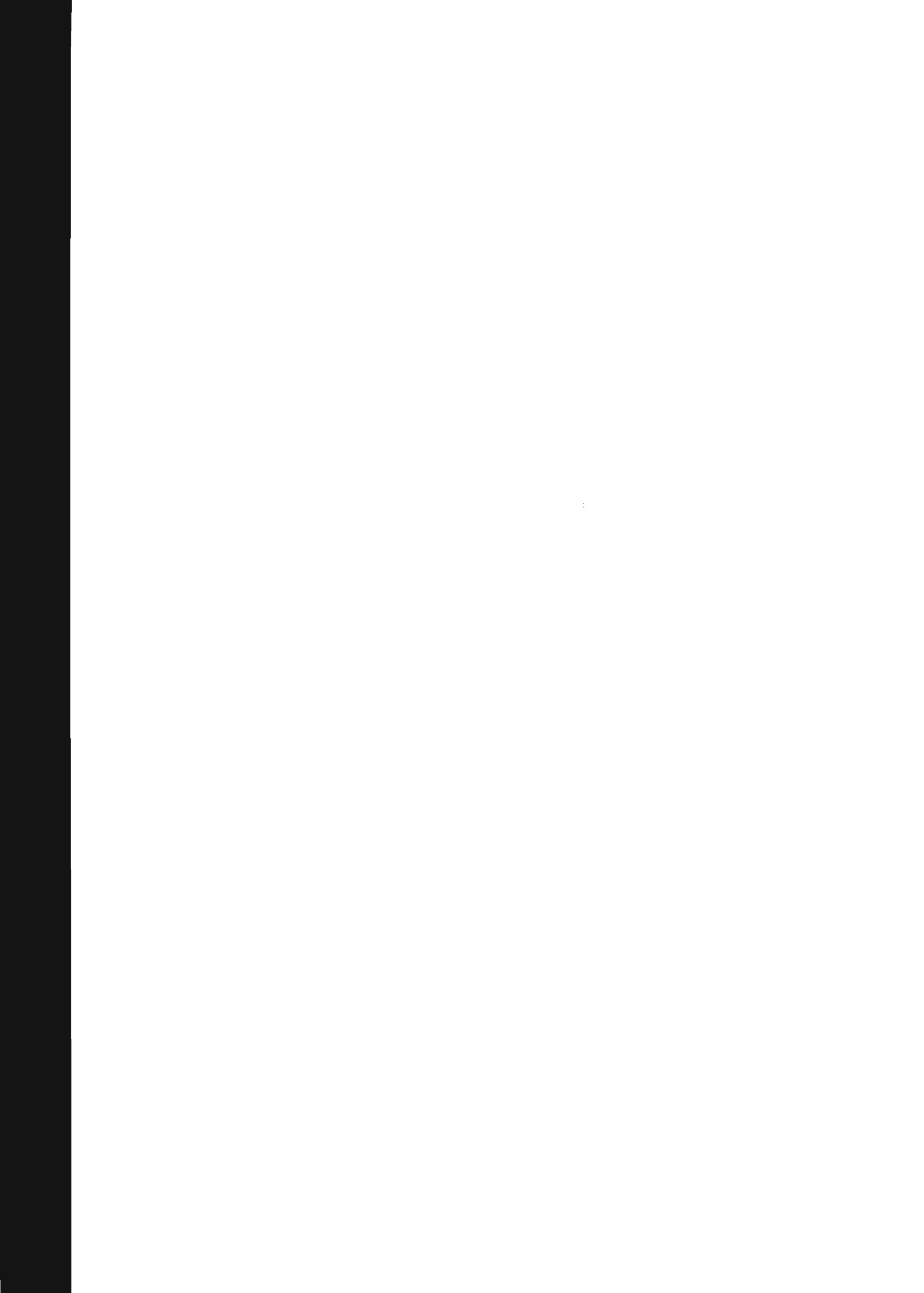
The relevant section of the Medical Act is section 33, which states that "If any fully registered person (a) is convicted by any court in the United Kingdom or the Republic of Ireland of any felony, misdemeanour, crime or offence . . . the Committee may if they think fit direct his name to be erased from the register." There is no other penalty which can be imposed, there is no provision for suspension; it is either erasure or nothing, as was emphasised in the judgment delivered by the Board in the case of *McCoan* in 1964. In that case it was emphasised, as had been stated before, that any appellate court would require a very strong case to interfere with sentence in professional matters, because the Disciplinary Committee, that is, in this case that of the General Medical Council, is the best possible Tribunal for weighing the seriousness of professional misconduct.

The matter was not dealt with summarily. An enquiry was held on the 24th May 1967, but the appellant was given a number of opportunities of appearing before the Council again. There is a provision in the Rules of the General Medical Council for this very situation, because underlying the offence was the desire of the Council to give this man an opportunity of rehabilitating himself, he being a man who had been addicted to taking

dangerous drugs himself. Rule 25 provides for adjournment in order, amongst other things, to "receive further oral or documentary evidence in relation to the case, or to the conduct of the practitioner since the hearing".

The Disciplinary Committee gave the appellant numerous opportunities, which he did not take at any rate at all promptly, of providing referees in order that a report might be made to them as to his conduct and as to his condition since the date of the enquiry. Great patience and forbearance was exercised by the Committee and a very long time elapsed before anything definite appeared to assist them in forming a conclusion as to whether the appellant had really rehabilitated himself so as to make him fit to remain on the register, notwithstanding the conviction for the offence, which of itself might not be considered serious enough in all cases to justify the erasure of his name. In the end he did consent to go to the Bethlem Royal Hospital for treatment, and there he did something which he regarded I think as a humane thing to do, namely, he prescribed drugs, not dangerous drugs but Schedule B drugs which require a doctor's prescription, for a fellow patient in the hospital. He had no notice that this was going to be raised against him, but it was so raised at the final hearing and it was taken into consideration and no doubt it is a relevant matter. It is misbehaviour on the part of a medical man to prescribe for those who are not his patients. It may in certain cases, as was pointed out to the Board, interfere with the treatment which the patient is legitimately receiving. In this case, Dr. Burns said, the patient was not receiving any treatment and it could not possibly do him any harm; but no doubt that was not the main consideration in the minds of the Committee when they decided as they did in the exercise of their discretion to erase the doctor's name from the register.

They had reports, which it is not necessary to go into in detail, which indicate that there were grave reasons to believe that the doctor had not freed himself from the trouble which he had been in, and, after giving the matter what their Lordships are sure was the fullest possible consideration, they decided as they did, and it is not possible, therefore for the reasons which have been indicated at the beginning of this judgment, for their Lordships to recommend that there should be any interference with the decision of the General Medical Council, and they will advise accordingly that this appeal be dismissed.



In the Privy Council

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NOEL PATRICK BURNS

v.

THE GENERAL MEDICAL COUNCIL

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DELIVERED BY

LORD HODSON