

12, 1971

IN THE PRIVY COUNCIL

No. 52 of 1970

ON APPEAL FROM THE DISCIPLINARY COMMITTEE

BETWEEN :

GILBERT DALLEY

Appellant

- and -

INSTITUTION OF
LEGAL STUDIES
- 7 APR 1972
25 RUSSELL SQUARE
LONDON, W.C.1.

GENERAL MEDICAL COUNCIL

Respondents

CASE FOR THE RESPONDENT COUNCIL

Record

1. This is an Appeal by the Appellant, Gilbert Dalley, from a direction of the Disciplinary Committee of the Respondent Council upon the 25th November 1970 that by reason of a determination that he had been guilty of serious professional misconduct the registration of the Appellant should be suspended for a period of twelve months.

p. 28

2. On the 25th November 1970 the Disciplinary Committee held an inquiry into the following charge against the Appellant :-

"That, being registered under the Medical Acts,

p. 1

'(1) With a view to obtaining patients or otherwise promoting your financial benefit, you advertised your professional services and the services offered by a Clinic named Fawkham Manor, Fawkham, Kent, in which you had a substantial financial interest, by despatching during 1969 to medical practitioners in West Germany a circular letter signed by you directing attention to your professional services and the services of the said clinic and canvassing for patients for yourself and the said clinic;'

'(2) Further, with a view to obtaining patients or otherwise promoting your financial benefit you falsely stated in the said letter that the said Clinic was "registered under the Abortion Act, 1967 in accordance with legal requirements;'

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

3. At the said inquiry the Appellant was present and was represented

by Mr. Peter Bayliss of Messrs. Hempsons, Solicitors to the Medical p. 1

Defence Union. Mr. Robert Alexander, Counsel, instructed by

Messrs. Waterhouse & Co., Solicitors to the Council, appeared in order

to present the facts.

4. The case against the Appellant was founded upon a circular letter in the German language of which an agreed translation is as follows :-

App.p.1

p.2

"Private Women's Clinic,
Fawkham Manor,
Fawkham, Kent.
Tel. Longfield 08-747 2481

London Practice:
Dr. G. Dalley
22 Upper Wimpole St,
London, W.1.
Tel. 01 935 4534

Dear Colleague,

This letter is to inform you that I have opened my private women's clinic 'FAWKHAM MANOR'.

Although 'FAWKHAM MANOR' is only about 30 km. from London, the well-tended parkland in which it is set offers our patients a real atmosphere of peace and relaxation.

All types of medical and operative cases are dealt with in our special department for women's complaints. Pregnancies, confinements - normal and abnormal - also gynaecological treatment, including irregularities of menstruation, are dealt with.

The women's clinic is registered under the Abortion Act, 1967, in accordance with legal requirements.

'FAWKHAM MANOR' is centrally heated and comfortably furnished. An operating theatre with modern equipment and treatment by first-class specialists under my direction guarantee that my patients receive the best possible treatment. By agreement patients can be met on arrival in London.

I would be pleased if you would give my address to any possible patients to whom we would be pleased to give further details in writing. Thanking you for your efforts,

Yours etc.

(signed) G. Dalley.

P.S. Should you ever be in London I would be pleased to have the opportunity of meeting you personally."

Copies of this circular letter were sent by the Appellant to between approximately 70 and 80 gynaecologists in West Germany.

p.18

App.p.14

5. It was submitted in opening that this letter comprised two elements which were liable to objection. First, it drew attention to professional services in terms which exceeded the bounds which were customary in the profession. In particular, the second paragraph of the letter drew attention to the attractions of the surroundings and convalescent facilities; the fifth paragraph commended the quality of the medical treatment available; and the sixth paragraph contained a specific request for the name and address of the Appellant to be furnished to potential patients. Secondly, the fourth paragraph of the letter suggested that the Appellant's Clinic was approved pursuant to section 1(3) of the Abortion Act, 1967. Such suggestion was false.

p.3

p.10

6. The Disciplinary Committee were invited to consider a letter dated the 18th September 1970, sent by the Appellant in response to a request for an explanation made by the Assistant Registrar pursuant to Rule 5(2) of the General Medical Council Disciplinary Committee (Procedure) Rules Order of Council 1970. With regard to the complaint of improper advertisement, the Appellant wrote as follows :-

p. 7

App. pp. 13
to 16

"It did not occur to me for a moment that in sending this letter I was doing anything wrong, or unethical. I was aware that it is permissible for nursing homes to be advertised in medical journals and that there is no objection to the names of the proprietors being given, even if they are medically qualified. I had in mind also that a consultant starting practice in a new speciality or in a new area is permitted to notify appropriate professional colleagues. I did not therefore consider that my action in writing exclusively to professional colleagues could be called in question. That it has been demonstrated that I might have been wrong."

p. 8

With regard to the false statement that the nursing home was approved in accordance with the requirements of the Abortion Act, the Appellant stated :-

"I was certainly wrong in stating that the nursing home was registered under the Abortion Act. This arose because I was confident that approval would be given during the period in which the letter was being printed and I very much regret that this occurred. I also realise now that the wording of my letter was unwise in the sense that it refers to me personally. I think I was justified in referring to the nursing home in attractive terms but I accept that the reference to the treatment of patients under my direction and the request that my address be given to possible patients are open to criticism."

p. 8

The Appellant also wrote :-

"I can only say that I wrote the letter in all innocence, without thinking it necessary to seek advice, and not thinking that I was guilty of any impropriety. I trust that the Committee will find it possible to accept this explanation and it is perhaps unnecessary for me to give my assurance that no similar letter or communication of any sort will be sent to anyone."

p. 8

Finally, it is perhaps not irrelevant to point out that as a result of sending this letter I have already suffered serious financial loss because it has resulted in the licensing of the nursing home under the Abortion Act being rejected."

7. Reference was made at the hearing to the views on the professional offence of advertising which the General Medical Council had expressed in the pamphlet on its Functions, Procedure and Disciplinary Jurisdiction, 1969 Edition, page 12, which states as follows :-

p. 11

"(1) The professional offence of advertising may arise from the publication (in any form) of matter commending or drawing attention to the professional skill, knowledge, services, or qualifications of one or more doctors, when the doctor or doctors concerned have instigated or sanctioned such publication primarily or to a substantial extent for the purpose of obtaining patients or otherwise promoting their own professional advantage or financial benefit."

Whilst the Committee were also referred to paragraph (3) upon the same page, it was emphasised that it was an essential ingredient of item (1) of the charge as framed that the Committee should be satisfied that the motive of the Appellant was to obtain patients or promote his financial gain. p.11

8. The Appellant gave evidence before the Disciplinary Committee. p.11
In his evidence-in-chief, after stating his qualifications, he explained the circular letter in essentially the same terms as he had done in his letter of the 18th September 1970. In particular, he emphasised that he had been in no doubt that the nursing home would be approved for the purposes of the Abortion Act, 1967, and referred to his awareness that private nursing homes were advertised in the medical press in this country. He drew attention to the fact that his correspondence with the Secretary of State for Social Services suggested strongly that the Clinic had failed to receive approval for the purposes of the Abortion Act, 1967, solely on account of the despatch of the circular letter, and that accordingly he had suffered severe financial loss. In cross-examination, the Appellant stated that the letter had been drafted by a German-speaking secretary upon the basis of points prepared by the Appellant. p.17
He accepted, however, that he could understand the sense of the letter as ultimately despatched. He further accepted that he knew that the letter stated that the Clinic had been approved for the purposes of the Abortion Act; that he gave instructions for the despatch of the letter knowing of its contents; and that he knew that the statement as to approval for the purposes of the Abortion Act was untrue. He p.18
further admitted an expectation that fairly soon after receipt of the letter some German doctors might recommend a patient to come to the Clinic, and that he had no guarantee that by then the Clinic would have been approved for the purposes of the Abortion Act. The Appellant further accepted that he needed to attract patients to the Clinic and that this was the purpose of the letter. When asked whether the effect of this conduct would be to procure his own financial advantage, he stated :- "That is the object of all advertisements". When asked to p.19

consider the second paragraph of his letter to the Secretary of State for Social Services of the 12th February 1970, he stated that he was subsidising the Clinic to the limit of his financial ability and that his Clinic was not viable without patients for abortion. He agreed that he had thought that West Germany was a country likely to send a lot of patients to England for abortions, and that he had heard statements to this effect. When asked to consider his own letter in comparison with advertisements in the medical press to which he had referred, the Appellant was unable to draw attention to any advertisement which had contained any statement to the effect that the treatment or services offered were "the best possible" or any other matter of comparison with the treatment offered by other practitioners.

9. At the conclusion of the evidence for the Appellant, Mr. Baylis addressed the Committee and adduced in evidence testimonials. The Committee then deliberated in camera and found the facts alleged in the charge proved. Mr. Baylis did not thereafter seek to add to the remarks addressed by him in mitigation prior to the consideration of the facts by the Committee. After further deliberation in camera the Committee determined that the Appellant had been guilty of serious professional misconduct, and directed that his registration should be suspended for a period of twelve months.

10. The Respondent Council submits that the determination and direction of the Committee should be upheld upon the following grounds :-

- (a) Because the circular letter written by the Appellant was capable of being held to constitute an advertisement directing attention to the professional services of the Appellant and the services of the Clinic and of canvassing for patients for the Appellant and the Clinic and that, after consideration of the said letter and the explanations offered by the Appellant, the Disciplinary Committee were right in determining or, alternatively, entitled properly to determine, that the object of the circular letter was to attract patients or otherwise promote the financial benefit of the Appellant,

(b) Because the Disciplinary Committee were right in determining or, alternatively, entitled properly to determine that the Appellant had falsely stated that the Clinic was "registered under the Abortion Act, 1967, in accordance with legal requirements" with a view to obtaining patients or otherwise promoting his financial benefit.

p.2.

(c) Because the Disciplinary Committee were right in determining or, alternatively, were entitled properly to determine, that the facts alleged against the Appellant constituted serious professional misconduct and merited a suspension of his registration for a period of twelve months.

11. The Respondent Council therefore humbly submits that this Appeal should be dismissed for the following, among other

R E A S O N S

- (1) BECAUSE the facts alleged against the Appellant were proved to the satisfaction of the Committee.
- (2) BECAUSE the Committee were right in holding or, alternatively, entitled properly to hold that in relation to the facts proved against the Appellant he had been guilty of serious professional misconduct.
- (3) BECAUSE the determination of the Committee that the Appellant had been guilty of serious professional misconduct was a proper decision.
- (4) BECAUSE in the proper exercise of its discretion the Committee was entitled to direct that the registration of the Appellant should be suspended for a period of twelve months.
- (5) BECAUSE the aforesaid direction of the Committee was a proper direction.

(signed)

Robert Alexander.

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WATERHOUSE & CO.,
4 St. Paul's Churchyard,
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