

Privy Council Appeal No. 52 of 1970

Gilbert Dalley - - - - - *Appellant*

v.

General Medical Council - - - - - *Respondent*

FROM

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

ORAL JUDGMENT OF THE LORDS OF THE JUDICIAL
COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE
1ST APRIL, 1971

Present at the Hearing :

LORD HODSON

LORD DIPLOCK

LORD CROSS OF CHELSEA

[*Delivered by LORD HODSON*]

This is an appeal by the appellant, Gilbert Dalley, from a direction of the Disciplinary Committee of the General Medical Council, given on 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 12 months.

It is a case which comes before the Board under a comparatively recent Act, the Act of 1969, which altered the language of sub-section 1 of section 33 of the earlier Act of 1956, "erasure from Register for conviction of crime or for infamous conduct in any professional respect". Those words were struck out and by section 13(1) was substituted: "Where a fully registered person (a) is found by the Disciplinary Committee to have been convicted . . . or (b) is judged by the Disciplinary Committee to have been (whether while so registered or not) guilty of serious professional misconduct, the Committee may, if they think fit, direct that his name shall be erased from the Register or that his registration therein shall be suspended (that is to say, shall not have effect) during such period not exceeding twelve months as may be specified in the direction". In this case the Disciplinary Committee directed that the appellant should be suspended. He appeals not only against the finding, but against the sentence.

Their Lordships should give some detail as to who this man is. He is a married man with three children and at the time of the hearing before the Council he was 59 years of age. He qualified in London in 1935, trained at St. Bartholomew's Hospital and has the qualifying diplomas MRCS (England) and LRCP (London) and is a Fellow of the Royal College of Obstetricians and Gynaecologists. He served with the Royal Army Medical Corps between 1939 and 1945, serving in France, England, India and in Burma. By the end of the war he was a surgical specialist in charge of a field surgical unit in the 14th Army, and, after a short period in general practice, became a consultant in obstetrics

and gynaecology to the Kent County Council. Subsequently he has become a consultant in obstetrics and gynaecology to the Darenth & Stone and the Dartford and Medway and Gravesend Groups of Hospitals. He now carries on private practice in Upper Wimpole Street. In addition to the practice in Upper Wimpole Street, he had a private women's clinic at Fawkham Manor, Fawkham, Kent.

The charge which has been made against him is a specific charge in two paragraphs: "That, being registered under the Medical Acts, '(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."

The evidence which was given included proof of the sending of that letter, which must be read, and of the fact that he had made an untrue statement in the letter that the clinic was registered under the Abortion Act 1967 in accordance with legal requirements. The doctor himself, the appellant, gave evidence, and the Committee was addressed on his behalf and certain testimonials were adduced in evidence. Their Lordships have also been informed that there are certain other documents, including advertisements of other homes appearing in the British Medical Journal which are said to have been similar in kind to the advertisement complained of in this case. The Committee deliberated and found the facts of the charge proved, and, after deliberating as to sentence as well as the matter of proof of the charge, the Committee directed that the appellant's registration should be suspended for a period of twelve months.

The letter is undated but it was written in 1969 and is headed not only with the address of the Women's Clinic at Fawkham but also with the London Practice address of Dr. Dalley at Upper Wimpole Street. It is written in German. It is understood that the appellant has constant communication with Germany and German practitioners, he in fact having a German wife. His secretary, who is German-speaking, worded the letter which is under consideration, though it is not suggested that he challenges the English translation contained in these proceedings. Before it is read, it should be stated that copies of this letter, which is a circular letter, were sent by the appellant to between approximately 70 and 80 gynaecologists in West Germany. The letter reads as follows:

"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. G. Dalley,

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

The objections taken to the letter are these. First, it drew attention to professional services in terms which exceeded the bounds which were customary in the profession. The second paragraph drew attention to the attractions of the surroundings and convalescent facilities; the fifth paragraph recommended 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. The further point was taken, which was obviously a very important point, that it was stated in the letter that the appellant’s clinic was approved pursuant to section 1(3) of the Abortion Act 1967. That statement was untrue and untrue to the knowledge of the appellant.

It is right to read the letter which the appellant wrote in response to a request for an explanation made by the Assistant Registrar pursuant to the Disciplinary Committee (Procedure) Rules of 1970. With regard to the complaint of improper advertisement, the appellant wrote as follows: “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.”

With regard to the false statement that the nursing home was approved, he 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.”

He also wrote: “I can only say that I wrote the letter”—that is the circular 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. 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.”

The appellant before their Lordships has sought to justify the letter as not contravening any directions of the Medical Council from the advertising point of view by comparing it with advertisements in the British Medical Journal which refer to other nursing homes. Those cases are not, of course, before the Board, but they are cases of an entirely different character from this case. This is not advertising the nursing home in the British Medical Journal to practitioners in this country, but it is being sent abroad and contains language which in the opinion of the Disciplinary Committee went beyond the bounds of legitimate advertising. There was a pamphlet issued by the Council on the Functions, Procedure and Disciplinary Jurisdiction of the Council, 1969 Edition, which states this: "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." 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.

With regard to the second separate charge of making an untrue statement, that charge of course was considered together with the publication of the advertising circular and both were taken into consideration together in considering whether the appellant had been guilty of professional misconduct of a serious kind within the language of the relevant statute. One does not know what course would have been taken if only one of those two matters had been dealt with instead of both having been taken into consideration at the same time.

Objection has been taken on behalf of the appellant that in some way or other the Disciplinary Committee fell short of their duty in not making a specific finding of fact, but in their Lordships' opinion there is no justification for that. The charges are in relation to the facts alleged that he had been guilty of serious professional misconduct and the facts alleged are specifically set out in paragraphs 1 and 2, and, as has been pointed out on more than one occasion, the practice of the Committee in the ordinary case is merely to make findings, and no criticism can be offered on the basis that the Committee does not, unless it thinks fit, do more than state the finding. That was pointed out by Lord Radcliffe in one of the cases to which reference has been made, in *Fox v. General Medical Council* [1960] 3 All E.R. 225. He said: "But, in the case of hearings before the Medical Council, no judgment is, of course, delivered. There is only a finding such as we have here that 'the committee have determined that the facts alleged . . . in the charge have been proved to their satisfaction.' It is not possible to tell, except by inference, what has been the weight given by the committee to various . . ." matters which were considered by the Council. The Council cannot be criticised unless it is shown that some matter which is irrelevant or has led them into error has been wrongly introduced. Nothing of that kind, as their Lordships understand it, has been suggested in this case and the case is a simple one in which quite simple and straightforward facts have been considered.

It is only necessary to repeat what has been said so often in these cases, that the matter is normally left by this Board to the Medical Council. One of the most recent cases was *McCoan's case* ([1964] 1 WLR 1107), where it was stated by the Board that "it would require a very strong case to interfere with sentence in such a case, because the Disciplinary Committee are the best possible people for weighing the seriousness of the professional misconduct. No general test can be

laid down, for each case must depend entirely on its own particular circumstances." The same considerations apply to the question of deciding what is or is not serious professional misconduct.

In their Lordships' opinion there is no ground for interfering with the finding made by the Disciplinary Committee after hearing the appellant and the evidence which he produced and after considering the matter in the way in which they did. Furthermore, the sentence of suspension in the light of the facts which were found to be established is not one which their Lordships would think should be altered or rescinded, and in those circumstances their Lordships will humbly advise Her Majesty that this appeal be dismissed.

In the Privy Council

GILBERT DALLEY

v.

GENERAL MEDICAL COUNCIL

DELIVERED BY
LORD HODSON