

21 *File in case Smith*

24/1971

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IN THE PRIVY COUNCIL

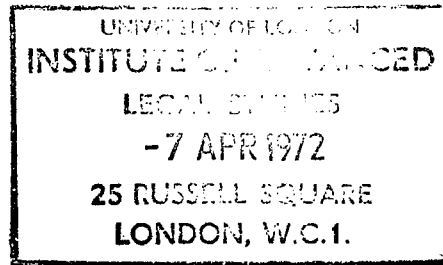
No. 6 of 1971

ON APPEAL FROM THE DISCIPLINARY COMMITTEE

CONSTITUTED UNDER SECTION 32 OF THE

MEDICAL ACT 1956.

B E T W E E N : -



RICHARD WORDSWORTH BARKER

Appellant

- and -

GENERAL MEDICAL COUNCIL

Respondents

CASE FOR THE RESPONDENT COUNCIL

RECORD

1. This is an Appeal by the Appellant, Richard Wordsworth Barker, from a determination of the Disciplinary Committee of the Respondent Council upon the 24th day of February 1971 that by reason of a finding that he had been guilty of serious professional misconduct the registration of the Appellant in the Register should be suspended during a period of nine months.

P.49

2. On the 24th day of February 1971 the Disciplinary Committee held an Inquiry into the following Charge against the Appellant:

"That being registered under the Medical Acts,

(1) In September, 1963, you entered into a professional relationship with Mrs. Carola Alphonsa Maria Kerr then of Sweet Briar, Blackberry Lane, Four Marks, near Alton, Hampshire and with her Husband and Son, and you subsequently attended her and members of her family on numerous occasions;

(2)(a) You retained Mrs. Kerr's name on your list until November 20, 1968, when she removed her name from your list without the knowledge of her Husband;

(b) You retained the names of Mr. Kerr and his Son and Daughter on your list until October, 1969;

(3) For some weeks during July and August, 1968, you employed Mrs. Kerr as a receptionist in your practice;

(4) During the period when Mrs. Kerr and her family were your Patients, and during the period when you employed Mrs. Kerr as a receptionist, you abused your position as a Medical Practitioner by forming an improper association with her, and from November, 1968, onwards you frequently committed adultery with her, and since September, 1969 you have cohabited with her, and since September, 1969 you have cohabited with her;

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

P.1

3. At the said Inquiry the Appellant was present and was represented by Mr. P. Baylis of Messrs. Hempsons, Solicitors and Mr. G.J.K. Widgery of Messrs. Waterhouse & Co., Solicitors to the Council appeared to present the facts.

4. Before the said Inquiry Messrs. Hempsons by letter dated the 20th day of July 1970 made admission on behalf of the Appellant of most of the facts alleged in the Charge subject to certain reservations set out in the said letter, but denied that he had been guilty of serious professional misconduct.

Appendix 5

5. Messrs. Hempsons similarly made certain observations by letter dated the 24th day of July 1970, and contended that the Appellant on the basis of the facts admitted and averred in the said letter did not abuse his position as a Medical Practitioner.

Appendix 6

6. The majority of the primary facts of the Case were not disputed. The evidence was to the following effect:-

P.2

(i) From September 1963 the Appellant had as National Health Service Patients Mr. and Mrs. J.W. Kerr and their Son Robert who was in September 1963 about 21 months old.

P.7

- (ii) The Appellant treated the members of the Kerr family from time to time and gave ante-natal treatment and attendance to Mrs. Kerr before the birth of her Daughter Anna on the 19th June 1964. P.7 P.20/24
- (iii) Early in 1968 the Appellant's Wife and Mrs. Kerr became friends, were on Christian name terms, and visited each others homes. P.8 P.29
- (iv) From the 22nd day of July 1968 for a period of about 2½ weeks Mrs. Kerr acted as the Appellant's receptionist. P.8
- (v) At that time, and on a holiday they took together in August 1968, relationships between Mr, and Mrs. Kerr, including their sexual life, were normal and happy. P.8,9 28,29
- (vi) In August 1968 the Appellant went with his Wife on holiday to Spain and while there conceived the idea of learning German, and of asking Mrs. Kerr, whom he then knew to be of German extraction, to give him German lessons. P.22 P.18
- (vii) Almost immediately on his return the Appellant asked and Mrs. Kerr agreed to give him German lessons, which lessons took place in the lounge of the Appellant's house on 2or3 evenings a week when the Appellant's children were normally in bed, and on some occasions the Appellant's Wife was not at home. P.21 P.25 P.19,30
- (viii) When Mrs. Kerr left her home to give these lessons, she was absent from soon after 7 p.m. until 10.30 or 11.30 p.m. and then later stayed out until the early hours of the morning. P.9
- (ix) She was also away from home on the Appellant's day off for the whole day. P.9
- (x) There was not very much space from the beginning of the German lessons and the beginning of a relationship (other than a purely professional relationship)between the Appellant and Mrs. Kerr. P.30

- (xi) Towards the end of one German lesson the Appellant invited Mrs. Kerr to have a meal with him, and in October 1968 took her out for dinner to the French Horn at Sonning, when a romantic relationship started. P.22 P.19,30
- (xii) In November 1968 the Appellant and Mrs. Kerr committed adultery together during the first and last weekends of the month at a Motel in Oxford. P.19 Appendix 1 P.9,19
- (xiii) At this time Mr. Kerr and his family were still Patients of the Appellant, but Mrs. Kerr, had, without telling her Husband, applied in October to have her name removed from the Appellant's list, which removal was in fact effected on the 20th day of November 1968. P.23 P.20,46
- (xiv) The Appellant did not tell Mr. Kerr, his Patient of his adultery with Mrs. Kerr or that Mrs. Kerr had left his list of Patients. P.23
- (xv) The German lessons lasted for 6 to 8 weeks until Mrs. Kerr left her Husband in December 1968. P.22
- (xvi) Since December 1968 the Appellant has ever since been associating with Mrs. Kerr, she moved into his house, and since September 1968 she and the Appellant have lived as man and wife, she being known as Mrs. Barker. P.19 P.20,26
- (xvii) The Appellant's Wife has divorced him on the grounds of his adultery with Mrs. Kerr, and a Petition of Mr. Kerr for divorce on the grounds of that adultery has yet to be heard. P.20
7. The Defence of the Appellant, who gave evidence and on whose behalf Mrs. Kerr was called as a witness and testimonials were read, was that, in forming a relationship with Mrs. Kerr he had not abused his position as a Doctor, and reference was made to the "blue book" "General Medical Council - Professional Discipline (January 1971) page 9 Section (v)", entitled "Abuse of professional position in order to further an improper association or commit adultery." P.16 P.24 P.36 P.41 P.40

8. In the submission of the Respondent Council the Appellant's behaviour towards Mrs. Kerr at a time when she was still his Patient in seeking her company and inviting her out to dinner, and his subsequent adultery with her at a time when the remainder of her family including her Husband were still his Patients, demonstrates an abuse of his position as a Doctor, which afforded him the privileges on the one hand of the respect and lack of suspicion of his Patient's Husband, and on the other of the confidence and friendship of his Patient.

9. The Committee found the facts alleged in the Charge proved, save for the words in head (4) thereof, namely "and during the period when you employed Mrs. Kerr as a receptionist", and after hearing the Appellant's Solicitor in mitigation determined that he had been guilty of serious professional misconduct, and directed that his registration should be suspended for a period of 9 months.

P.47

P.49

10. The Respondent Council therefore humbly submits that this Appeal should be dismissed for the following among other reasons:-

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 was 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 finding of the Committee that the Appellant had been guilty of serious professional misconduct was a proper finding.

4. Because in the proper exercise of its discretion the Committee was entitled to direct that the Registration of the Appellant be suspended for 9 months.

5. Because the aforesaid directions of the Committee was a proper direction.

ANTHONY HIDDEN.

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IN THE PRIVY COUNCIL

B A R K E R

- v -

GENERAL MEDICAL COUNCIL

C A S E

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