Privy Council Appeal No. 12 of 1971

Derek Ivor Segall – – – – – – – *Appellant*

v.

General Medical Council – – – – – – *Respondent*

FROM

THE DISCIPLINARY COMMITTEE OF THE GENERAL MEDICAL COUNCIL

REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 15TH DECEMBER 1971

Present at the Hearing:
LORD CROSS OF CHELSEA
LORD SIMON OF GLAISDALE
SIR GORDON WILLMER

[*Delivered by* SIR GORDON WILLMER]

This is an appeal from the decision of the Disciplinary Committee of the General Medical Council given on 19th March 1971, whereby the appellant was found guilty of serious professional misconduct and it was directed that his name should be erased from the Register.

The appellant is a medical practitioner, who qualified in 1950, carrying on a general practice in Stanmore. He also carries on a specialised practice in gynaecology and obstetrics with a consulting room in Harley Street.

The charge against the appellant was in these terms:—

"That, being registered under the Medical Acts,

(1) (*a*) Between the summer of 1969 and March 1970 on about three occasions you accepted as patients women seeking the termination of their pregnancies who had been introduced to your practice by Mr. David Gordon, of 20 Burchett Way, Chadwell Heath, Essex, a taxi driver;

(*b*) You authorised the payment to Mr. Gordon by your receptionist of sums in cash amounting to approximately £20 on each of the said occasions in consideration of his services in introducing such patients to you;

(*c*) On June 8, 1970, you informed Mr. Gordon that you would pay to him the sum of £15 on each occasion on which he brought to you a patient requiring the termination of her pregnancy, and that you further then arranged with him that the said sums of

£15 should be retained with him if he had made the original contact with the patient, or should otherwise be paid over by him to whatever other taxi driver introduced the said patient to the said Mr. Gordon;

(*d*) You thereby sanctioned or knowingly acquiesced in an arrangement to canvass for and effect the introduction of patients to your practice;

(2) [This part of the charge was withdrawn at the hearing, and no evidence was tendered in relation to it.]

(3) On March 20, 1970, at St. Mary's Nursing Home, 46 Sunny Gardens Road, N.W.4, you performed upon certain women including [a woman referred to throughout the hearing as Mrs. X] operations for the termination of pregnancy in such numbers with such frequency and in such circumstances that it was impossible for [Mrs. X] to be given adequate nursing treatment, rest, and time for recuperation after the said operation, and that she was required to leave her bed within about an hour of the completion of the said operation, so that you caused, permitted, or sanctioned her discharge from the Home in a taxi cab about two hours after the said operation notwithstanding that she was not in a fit condition to travel;

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

The Committee found that the following allegations were not proved:— in paragraph (1) of the charge, sub-paragraphs (*a*) and (*b*); and in paragraph (3) of the charge, the word "caused" and the words "in a taxi cab". They found, however, that the remainder of the charge was proved to their satisfaction, and that in respect thereof the appellant was guilty of serious professional misconduct.

The circumstances relating to the two heads of the charge which were found proved were entirely distinct, and the evidence with regard to them must be separately considered.

With regard to paragraph (1) of the charge the appellant said that during 1969, after the Abortion Act 1967 had come into force, he became suspicious that some of his patients from the Continent of Europe, who had appointments to attend his consulting room in Harley Street, were being picked up at Heathrow Airport and diverted to other practitioners in pursuance of arrangements with unscrupulous taxi drivers. He said that in September 1969, and again later that year, he reported this to the Police, and his evidence in this respect was corroborated by two police officers from Marylebone Lane Police Station. He was informed, however, that while the Police were anxious to obtain any further information they were not concerned except in so far as there was evidence of some criminal offence. The appellant complained that during the following months what he called the erosion of his practice appeared to be continuing. On 5th June 1970 he received two telephone calls from one Mr. Gordon, who claimed to be a taxi driver and to have brought a number of patients to the appellant's consulting room. Mr. Gordon, who was indeed a taxi driver, was in fact co-operating with the staff of a London newspaper, who were concerned to collect material for the publication of an article on suspected abuses in the operation of the Abortion Act. In the course of the telephone conversations, which (unknown to the appellant) were tape-recorded, Mr. Gordon invited the appellant to come to some arrangement for bringing women picked up at Heathrow Airport to the appellant's consulting room, and the appellant, rather than discuss this over the telephone, asked Mr. Gordon to come and see him at his clinic in Stanmore.

Mr. Gordon in fact visited the appellant on 8th June, and their conversation (again unknown to the appellant) was tape-recorded. In the course of the conversation the appellant offered to pay Mr. Gordon £10 for every patient brought to his consulting room. Mr. Gordon later asked if the appellant would be prepared to pay £20. There then ensued the following exchange:

> "*Dr.* Now look, I'll tell you what I'll do. I'll split with you. If you're prepared to accept 15 a case, you can have 15 a case. Will that do?
>
> *Man.* Fine. Is that a deal then?
>
> *Dr.* That's a deal."

Later in the conversation it was agreed that Mr. Gordon might make arrangements with other taxi drivers to bring patients to the appellant's consulting room, and that at the end of each week Mr. Gordon would collect from the appellant all the payments necessary and would himself pay the other taxi drivers.

It was not disputed on behalf of the appellant that the words recorded by the tape-recorder were in fact spoken. His case, however, was that the arrangement which he purported to make with Mr. Gordon was not a genuine arrangement, and that he had no intention of implementing it. He said that he acted as he did solely for the purpose of winning Mr. Gordon's confidence and drawing him out, in the hope that he would be able to secure information as to the reasons for the erosion of his practice, and so as to be able to pass such information to the Police. He said that after the telephone conversations on 5th June he did in fact attempt to get in touch with the two police officers with whom he had previously spoken, only to find that neither of them was available. Evidence given by the two police officers did corroborate the fact that the appellant had telephoned, but it is not clear what purpose he hoped to achieve by communicating with the Police, since they had already informed him that they were only concerned if a criminal offence were committed.

On 23rd June the appellant received a visit from Mr. Rankin, a representative of the same newspaper, and the conversation which ensued between them was again recorded by tape-recorder, unknown to the appellant. Mr. Rankin disclosed that Mr. Gordon was employed by the newspaper, and that the conversations which the appellant had had with him had been recorded. He immediately challenged the appellant about the arrangement made with Mr. Gordon, and asked him how this squared with his professional ethics. The appellant did not seek to challenge the record of his conversations with Mr. Gordon nor did he say anything to indicate that the arrangement made with Mr. Gordon was anything other than a genuine arrangement. On the contrary, he alleged that when he had previously complained to the Police about the activities of taxi drivers he received the reply, " My advice to you, doctor, which is strictly unofficial because we obviously cannot put it in writing, is if you cannot beat them join them ". In the course of what was evidently a very long conversation with Mr. Rankin it is clear that the main concern of the appellant was to ensure that his name was not mentioned in the course of any disclosures which might be published in the newspaper. At one point he is recorded as asking point blank, " Are you trying to get my name erased from the medical register? "

Some reliance was placed by the appellant on the fact that the arrangement with Mr. Gordon was never implemented, for the reason that before any occasion for implementing it arose he had discovered from his conversation with Mr. Rankin that Mr. Gordon was a mere decoy employed by a newspaper to trap him. It was argued therefore

that even if it were unprofessional to make such a bargain there was still a *locus poenitentiae,* and no harm was in fact done. In their Lordships' view, however, there is nothing in this point. The fault, if there was a fault, lay in the making of the bargain with Mr. Gordon, which could amount to nothing less than highly unprofessional canvassing for patients, regardless of whether the bargain was ever implemented.

In the light of the conversations with Mr. Rankin and Mr. Gordon, which it was admitted were correctly recorded, it is manifest that, unless the Disciplinary Committee thought that the appellant's evidence as to the innocence of his intentions might be true, there was but one course open to them. The Disciplinary Committee had the advantage of seeing the appellant and hearing from his own lips the explanation which he had to offer, and it was for them to determine whether they were satisfied that it was untrue. Their Lordships are satisfied that there was abundant evidence to justify the finding of the Disciplinary Committee on this part of the case, with which it is impossible to interfere.

With regard to paragraph (3) of the charge, the case for the respondent Council depended almost entirely on the evidence of Mrs. X, most of which was of necessity entirely uncorroborated, and which was in direct conflict with the evidence given by the appellant, by Dr. Saltoun (his anaesthetist), by Dr. Bruce (one of the proprietors of the Nursing Home, who was called on behalf of the respondent Council to produce the Nursing Home records), and by Matrons Kinghorn and Fisher (who shared responsibility for its administration). It was suggested on behalf of the appellant that the evidence of Mrs. X ought to be viewed with a considerable measure of suspicion. She had come from Sheffield under the auspices of a local newspaper, whose editorial staff were desirous of collecting material for an article on the operation of the Abortion Act and had in fact assisted in obtaining an appointment for her with the appellant. Before leaving Sheffield she had posed for a photograph by a Press photographer. She was accompanied to London and to the Nursing Home by a representative of the newspaper (Miss Dewar), who also collected her upon her discharge after her operation, when she was again photographed by a Press photographer. It was suggested that these circumstances should be taken into consideration when weighing the evidence given by Mrs. X, as tending to show that her evidence might well be coloured by a desire to make a good newspaper story. But all these matters were put to the Disciplinary Committee by the appellant's Counsel; and it is to be inferred from the finding at which they arrived that, in spite of these considerations, the Disciplinary Committee must have substantially accepted the evidence given by Mrs. X, and must have rejected much of that given by the appellant and his witnesses.

The evidence of Mrs. X may be summarised as follows. Having seen the appellant and a psychiatrist on the previous afternoon she arrived at the Nursing Home about 8.30 a.m. on 20th March. She was shown into a waiting room on the ground floor in which there were already 12 or 13 other people, mostly women. Others continued to arrive, and after about two hours Miss Dewar (who had gone in with her) was asked to leave because the waiting room was becoming too crowded. Eventually about 11.30 a.m. Mrs. X's name was called, and she was taken upstairs to a bedroom in which there were three beds as well as a mattress on the floor. She was told to hurry up, get undressed and get into bed. She waited about half an hour, during which time other women were going out and new ones coming in, all the beds being occupied throughout. She was then summoned by a nurse to go to the operating room, by which time she agreed that it must have been, according to her story, 12 o'clock or after. She asked

if she was to be given pre-medication, but was told that there was no time for that. After being anaesthetised her next memory was that she came to in bed, in the same bedroom where she had previously been. She was screaming and in terrible pain. She was given a pain-killing injection, after which she felt better but became very sleepy. But after about 10 minutes two nurses came into the room, and she was told to get up as her bed was needed. She was feeling very wobbly, but got up and dressed, and then went upstairs to another waiting room on the second floor, where she had to sit on a hard chair with no arms. There were already more than a dozen other women in the room, some of whom had to stand. After a short time she felt very ill and vomited. She was told she could sit where she was till she felt better. She was not offered a bed to lie down in, nor was it ever suggested that she should remain in the Nursing Home overnight. She was never seen again by the appellant. After about half an hour she made her way downstairs and telephoned for Miss Dewar to come and take her away. Miss Dewar came in a taxi cab, arriving according to her evidence about 2.15 p.m. They then drove off together in the same taxi cab, intending to return to the hotel where they had spent the previous night. But on the way Mrs. X was again feeling ill, and accordingly Miss Dewar took her to the Hospital of St. John and Elizabeth in St. John's Wood, where according to the hospital records she was admitted at 3.05 p.m. She remained in hospital until the following Monday, 23rd March.

According to the evidence given on behalf of the appellant the whole of the Nursing Home was at his disposal for the day of 20th March. The Nursing Home was equipped with 11 beds, 6 of which were in double rooms, the other 5 being in single rooms. It was denied that there was any room containing 3 beds or a mattress on the floor. The appellant said, and the Nursing Home records confirmed, that on 20th March he performed 11 operations, 6 of which were for termination of pregnancy, and the other 5 less serious. According to the appellant he performed the operation on Mrs. X about 10.30 a.m. Shortly afterwards it was reported to him that she was complaining of pain. He accordingly examined her and found that her condition was satisfactory. He directed that she should be given some Pethidine, but Dr. Saltoun, the anaesthetist, decided that having regard to the anaesthetic which he had used, Omnopon would be more desirable. The Nursing Home records purport to show that this was administered at 11 a.m. Both Matron Kinghorn and Matron Fisher, who came on duty about 12.30 p.m., said that they took the view that Mrs. X, having received a dangerous drug, ought to remain in the Nursing Home overnight, that they tried to persuade her to do so, but that she was insistent in her desire to leave that afternoon. This was reported to the appellant, who was at the time engaged in operating. He also took the view that Mrs. X should stay overnight, and so advised, but pointed out that he did not have the power to detain her against her will. He said that the next thing he knew was that she had left, so that he did not have the opportunity to see her again.

It will be seen from the foregoing summary that there was a considerable conflict of evidence, not least with regard to the time schedule and the circumstances in which Mrs. X came to leave the Nursing Home when she did. According to her evidence she was required to leave her bed within less than an hour of the operation, she was told that she would have to go because her bed was required for another patient, no effort was made to persuade her to stay, and she in fact left within about two hours of the operation when she was not fit to do so. According to the evidence for the appellant something

like four hours had elapsed since the operation when Mrs. X left, and she did so not only of her own free will but in defiance of a strong recommendation that she should stay overnight. There was no evidence to show that it would have been physically impossible to accommodate Mrs. X in the Nursing Home overnight. The evidence in fact showed that one patient did stay for the night.

In accordance with their usual practice the Disciplinary Committee gave no reasons for the finding at which they arrived. In delivering the judgment of their Lordships on 20th July 1970 in the unreported case of *Tarnesby v. General Medical Council* Lord Pearson said:—"It would of course be of advantage for the hearing of an appeal if the Disciplinary Committee were to give some indication, however brief, of their main grounds of decision." Their Lordships take the opportunity to repeat this observation, and to suggest that consideration be given to the desirability of amending the practice, so that in future a brief statement of the reasons should be included with the decision of the Committee.

The absence of any statement by the Disciplinary Committee of the reasons for their finding renders the task of their Lordships in reviewing the decision one of the utmost difficulty. In the recent unreported case of *Libman v. General Medical Council* the Lord Chancellor, in delivering the judgment of their Lordships on 20th October 1971, pointed out that since the appeal lies of right by the statute an appellant is entitled to claim that it is in a general sense nothing less than a rehearing of his case and a review of the decision. But he went on to say that as the witnesses are not heard afresh there is a heavy burden upon an appellant who wishes to displace a verdict on the grounds that the evidence alone makes the decision unsatisfactory. He summed up the considerations governing such an appeal in these words:—"In the result, although the jurisdiction conferred by the statute is unlimited, the circumstances in which it is exercised in accordance with the rules approved by Parliament are such as to make it difficult for an appellant to displace a finding or order of the Committee unless it can be shown that something was clearly wrong either (i) in the conduct of the trial or (ii) in the legal principles applied or (iii) unless it can be shown that the findings of the Committee were sufficiently out of tune with the evidence to indicate with reasonable certainty that the evidence had been misread." To this statement of principle may be added the observations of Lord Radcliffe in delivering the judgment of their Lordships in *Fox v. General Medical Council,* [1960] 3 A.E.R. 225, as follows:—"It is not possible to tell, except by inference, what has been the weight given by the committee to various items or aspects of the evidence, or what considerations of fact or law have proved the determining ones that have led the members to arrive at the decision finally come to. Such considerations, which are unavoidable in appeals of this kind, do sometimes require that the Board should take a comprehensive view of the evidence as a whole and endeavour to form its own conclusion whether a proper inquiry was held and a proper finding made on it, having regard to the rules of evidence under which the committee's proceedings are regulated."

In the present case in order to establish the charge against the appellant it had to be shown that in consequence of the number and frequency of the operations performed and the circumstances in which they were performed it was impossible for Mrs. X to be given adequate nursing treatment, rest and time for recuperation—that is to say, that there was a causal connection between the number, frequency and circumstances of the operations and the alleged failure to provide adequate nursing treatment, rest and time for recuperation. It was not

challenged that 11 beds were available for patients on the day in question. Nor was it challenged that the number of operations performed by the appellant was 11, of which only six were for termination of pregnancy. It was never suggested to the appellant that there was any impropriety in performing this number of operations in a day. Nor was it put to him that it was a consequence of the number and frequency of the operations performed that Mrs. X had to leave her bed within an hour after her operation. In these circumstances counsel for the respondent Council was constrained to admit that the use of the word "impossible" in the charge was difficult to justify. He did, however, rely on the inclusion in the charge of the "circumstances" in which the operations were performed, and he instanced as relevant circumstances (*a*) the number of beds, (*b*) the absence of any attempt personally to encourage the patient to stay, and (*c*) the fact that the physical lay-out of the Nursing Home made it necessary for patients to move from one bed to another earlier than they should have done after an operation. With regard to (*a*), for reasons already given the number of beds does not appear to their Lordships to be a legitimate ground for complaint. As to (*c*), the substance of the complaint was that because the operating theatre was on the first floor it was necessary to use the bedrooms on the first floor (sufficient to accommodate only five patients) not only for those recuperating after operative treatment, but also for those immediately awaiting treatment. A patient recuperating after an operation was sometimes required to leave her bed on the first floor and proceed to another bed in one of the ground floor rooms, in order to make room for another patient awaiting an operation. But there was no evidence that in this case Mrs. X was ever required to move to a bed on the ground floor, so that it does not seem to their Lordships necessary to give any further consideration to this point.

The only remaining "circumstance" relied on is (*b*)—the absence of any attempt personally to encourage the patient to stay. As to this there was, as already stated, an acute conflict of evidence, but their Lordships are prepared to assume that the Disciplinary Committee must have accepted the account given by Mrs. X, rather than that of the appellant and the officials of the Nursing Home. It was contended on behalf of the respondent Council that in this regard there was at least a lamentable lack of supervision on the part of the appellant amounting to serious professional irresponsibility. Such behaviour could well have been the subject of a charge against the appellant, and if such a charge had been made and proved their Lordships do not doubt that the Disciplinary Committee would have been minded to take a serious view of it. But lack of supervision was not the charge that the appellant was called upon to meet, and if and in so far as the Disciplinary Committee acted upon it it seems to their Lordships that they fell into error. In order to make good the charge actually brought against the appellant it had to be shown that it was the result of the number, frequency and circumstances of the operations performed by the appellant that Mrs. X had to leave her bed within an hour of the completion of her operation. Even on the assumption that the evidence of Mrs. X was substantially believed, their Lordships are unable to accept that this was ever adequately proved.

In these circumstances, adopting the words of Lord Radcliffe already quoted, it appears to their Lordships, on a comprehensive view of the evidence as a whole, that a proper inquiry into this charge was not held, because the Disciplinary Committee did not address themselves to the right question. It follows that their finding was not a proper finding and should be set aside.

In the light of these conclusions their Lordships have carefully considered whether the penalty imposed by the Disciplinary Committee of erasure from the Register can now stand. The appellant now stands convicted of only one offence, namely that set out in paragraph (1) (*c*) and (*d*) of the charge. Their Lordships are acutely conscious of the fact that the decision as to the appropriate penalty for any offence is a matter which is peculiarly one for the Disciplinary Committee. But there seems to be no power, in the situation in which their Lordships now find themselves, to remit the case to the Disciplinary Committee for them to reconsider what would be the appropriate penalty in the light of their Lordships' judgment on the substance of the appeal. In such circumstances their Lordships have considered the booklet published by the General Medical Council entitled " Professional Discipline ", which makes it clear that canvassing for patients is serious professional misconduct. Such precedents for penalties imposed by the Disciplinary Committee as have been drawn to their Lordships' attention have mostly related to what seems the closest analogous offence, namely advertising. In the light of such guidance it seems to their Lordships that despite their quashing the finding under paragraph (3) of the charge, the appropriate penalty still remains erasure from the Register. In so deciding their Lordships have the satisfaction of knowing that the appellant can apply to the Disciplinary Committee for reinstatement after 10 months, and that the Committee can then consider all the circumstances of the case in the light of the findings as reviewed by their Lordships, and can decide what course is appropriate. In saying this their Lordships are not, of course, implying any view as to what course the Disciplinary Committee should then take.

In the result their Lordships have humbly advised Her Majesty that this appeal be allowed to the extent that the determination of the Disciplinary Committee under paragraph (3) of the charge be quashed, but that their determination under paragraph (1) (*c*) and (*d*) of the charge be affirmed, and that the sentence to be imposed in respect of that determination be the erasure of the appellant's name from the Register.

The appellant must pay 50 per cent of the costs of the respondent Council.

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In the Privy Council

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