

IN THE PRIVY COUNCIL

No.14 of 1974.

ON APPEAL FROM THE DISCIPLINARY COMMITTEE OF THE GENERAL MEDICAL COUNCIL.

B E T W E E N :-

SHARANGDHAR PRASAD

Appellant.

-and-

THE GENERAL MEDICAL COUNCIL

Respondent.

CASE FOR THE APPELLANT

RECORD - APPENDIX

- 1. This is an appeal from a determination of
- 10. the respondent Council acting by its Disciplinary Committee (hereinafter called the "Committee") on 26th July, 1974, that the Appellant had been guilty of serious professional misconduct within the meaning of Section 13 of the Medical Act of 1969 and a direction that the Appellant's name should be erased from the Medical Register and that pursuant to Section 15 of the Medical Act 1969 the registration of the Appellant should be suspended forthwith.
- 20. The charges against the Appellant was that "Being registered under the Medical Acts between about September 3rd 1973, and about February 22nd 1974, in return for fees you issued prescriptions for drugs otherwise than in the course of bona fide treatment, and in particular you so issued the prescriptions set out in the schedule accompanying the letter sent to you by the General Medical Council on April 9th, 1974, and that in relation to the
- 30. facts alleged, you have been guilty of serious professional misconduct".

At the said Inquiry the Appellant was present and represented by Mr. Bayliss of HEMPSONS, instructed by the Medical Defence Union. Mr. Richard du Cann of Counsel instructed by Messrs. Waterhouse & Co., Solicitors to the Council appeared in order to place the facts before the Committee.

- 40. At the conclusion of the said INQUIRY, the Disciplinary Committee held that the Appellant had been guilty of serious professional misconduct and directed that his name be erased from the Register, and should be suspended forthwith for the protection of members of the public.

2. The questions raised by this appeal are:-

- (A) Whether the Committee was justified in directing that the Appellant's name should be erased and his registration be suspended forthwith.
- (B) Whether the Committee was justified in
- 50. determining that the Appellant had been guilty of serious professional misconduct.

3. The Appellant is a married man with five children and two elderly dependants. At the time of the hearing he was 41 years of age. He qualified in Patna early in 1959 having taken his training and passing the examinations (1958) at the Prince of Wales Medical College, Patna, India. In addition to his qualifying degree M.B.B.S. (Pat)., 1959, he holds the distinguished diplomas of D.C.P. (Pat)., D.T.M & H (Royal College of Physicians of London), D.V.D. (Liverpool). He has been a Member of I.U.V.D.T. (International Union Against Venereal Diseases and Treponematosis) Paris, M.S.S.V D. (Society for the Study of Venereal Diseases), also of the B.M.A., I.M.A. and also holds certificates of training in Family Planning work. The Appellant has all his life enjoyed an irreproachable professional and personal character and is held in the highest esteem by his professional colleagues. He has built up a list of nearly 2,500 patients on his N.H.S. Register, from scratch, simply by the dint of his hard labour and professional acumen. He is held in very high esteem by all of his patients. He has devoted almost all his working time in dealing with his patients by doing 4 sessions every working day in his 2 Surgeries in Birmingham and West Bromwich which cover a wide area of Birmingham and Smetawick, West Bromwich, Oldbury Tipton and Walsall, in the West Midlands.

4. The 1971 edition of Professional Discipline issued by the General Medical Council states that the Disciplinary Committee acts upon the following principles:-

"The primary duty of the Disciplinary Committee is to protect the public. In any case the Committee must first consider whether the public interest requires it to remove the doctor's name from the Register, or to suspend his registration. Subject however to this overriding duty to the public the Committee considers what is in the best interests of the doctor himself".

In the instant case, since the decision of the Committee and without any prompting on behalf of the Appellant a petition has been signed by more than 2000 patients of the Appellant. The Appellant respectfully seeks leave to refer to this petition at the hearing. In the submission of the Appellant it would be obviously in his best interest to allow him to continue in practice without interruption. The petition is indicative of the fact that it would be in the best interests of the patients of the Appellant. When this aspect of the public interest is weighed against any other aspect it is submitted that on the facts of this case the balance comes down firmly in favour of not erasing and suspending the registration of the Appellant.

Similar considerations fall to be taken into account by the Disciplinary Committee and the High Court in determining whether or not to order or to terminate the immediate suspension of a doctor's registration under Section 15 of the Medical Act, 1969. Accordingly, for the purpose of determining what penalty, if any, is

to be imposed upon a doctor adjudged guilty of serious professional misconduct, a clear distinction is to be made between misconduct which is or may be a danger to the public or which involves the abuse of doctor-patient relationship and misconduct which is otherwise discreditable.

The submission on behalf of the Appellant is that it would be in the best interests not only of the Appellant but also of the Public that the Appellant's name should not be erased from the Register.

The Appellant has already submitted in his examination and is further stressing it under Oath that so long as he is alive and practices as a doctor, this type of foolishness and mistake would never be allowed to recur again. This is a solemn Oath.

SUBMISSION.

20 . 1. The Appellant comes from a completely different background of education and culture to that of the U.K., where he is an immigrant, and whose conversation in English as used and spoken in the Courts is quite different, and he has used expressions which he should not have, and which meant something different than intended.

30 . 2. That the witnesses produced by the respondents had worked in collusion with one another and lied about the facts that they did not have any medical examination whatsoever prior to being prescribed the medicines, which is quite contrary to the evidence and statements of:-

(a) Malcolm Lodge:-

40 . Even late on his cross examination by the prosecution Counsel, Mr. Du Cann, and the defence Solicitor Mr. Bayliss, Lodge admitted that he had got his arm bandaged one week after the brown paper medicine incident which the Appellant would not have known since Mr. Lodge was never seen after 16th February, 1974. It is further contended that Mr. Lodge had painted the walls and ceiling of the Garage which he could not have done by one hand only, with the heavy weights of the different stuff lying in the garage which he was required to lift and move. Not only that he has worked wearing a vest only at the house of the Appellant and every adult and child in the family including the home-help had seen that Lodge had no trace of an ulcer on his arm. The home-help of the Appellant was witness to the fact that Mr. Lodge was paid £7 in Cash at the house of the Appellant. He himself admits that he was given short medical examination when the Appellant examined his chest and back in his first visit.

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(B) Mr. Bremner was interrogated for his own medical history

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(c) Mr. Graham Gene Robinson admitted himself that he had been weighed in his check ups.

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60 . (d) Mr. Robert Owen Jones, by his own admission and in the course of his own examination saying that he was suffering from depression. The Appellant also submits that this prosecution witness was reported thrice to the Police (Handsworth) for prosecution, the last time

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- for attempting to create a furore at the Surgery premises when he was peeping through the rear window of the consulting room, after trespassing and entering stealthily and jumping over the window with the sole intention of creating a disturbance and a nuisance at the Surgery on 19th February, 1974, and also before it on 11th January 1974, when he was warned by the patients
10. of the Appellant, his Secretary and by the Appellant himself, when Mr. Jones created a disturbance and disorder at the Surgery in collusion with his friends, and the police had to be called in. Mr. Jones henceforth became a very hostile fellow and did successfully try to create a commotion at the Surgery. One of his partners in his mischievous actions was Gordon James Yates. Mr. Jones, therefore thought to take the crudest revenge at the G.M.C. enquiry
20. at which he (Mr. Jones) most blatantly denied that he had ever been examined by the Appellant. The Appellant further submits that the case against Mr. Jones for creating a commotion at the Surgery premises by getting on top of the window ledge and looking through at an Indian girl being examined, was being pursued by the Handsworth Police (Thornhill Road Police Station) who had taken over the complaint by visiting his house (Jones's) three times. The Police
30. (Handsworth) had visited the Appellant twice to get all the facts.

(e) Mr. Phillip A Robicheaux (alias Harry Miller) by his own statement requested medical advice. He was also refused any treatment after 13th November 1973. He turned up again at the Surgery on the 7th January 1974 but was refused to be seen at all. He gave the false address of his doctor in Manchester, which later on proved to be a false name and address but the Appellant

40. in all circumstances would not have known the dirty trick played by Mr. Robicheaux who has been imprisoned several times in the past, but was also imprisoned for stealing a full pad of N.H.S. prescriptions from the Appellant's Surgery, and trying to forge the Appellant's signature. It is contended that the Appellant's statement to the Police had played a vital role in Mr. Robicheaux's imprisonment. Mr. Robicheaux is a confirmed criminal for whom a jail sentence

50. does not mean much. Hence, Mr. Robicheaux was a very hostile witness and the best revenge he thought to take was to say in the enquiry that the Appellant never examined or checked him.

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- (f) Mr. Robert Joseph Donnelly who had attended the Appellant's Surgery complaining of depression was reported not only to the Birmingham Central Police 021-236-5000 and the Drug Squad 021-236-5000 ext. 2374 & 2375 but also to the Thornhill Road Police Station
60. (021-554-1111) about pestering, making a nuisance and threatening the Appellant on the 9th January, 1974. He was thereafter intercepted and interrogated by the Police at the Telephone Kiosk and the Pub where he (Mr. Donnelly) was entertaining himself. Thereafter Mr. Donnelly was very hostile and turned out to be an adverse witness and the result is very apparent when he gave evidence before the GMC. Enquiry.

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(g) Mr. John Gabriel Murray asked for treatment even on his own admission while being examined by Mr. Du Cann, and cross examined by Mr Bayliss, when he mentions that he was suffering from depression. He was also reported to the Police on the 9th January 1974 for pestering, creating a nuisance and threatening the Appellant. How this type of witness could have been relied upon?

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(3) That the prosecution witnesses without exception were unreliable people, and the Committee was not entitled to place such heavy weight and credence on their evidence, when they put little or no credence on any of the evidence or statements of either the Appellant, his Secretary, his witness and his wife, though she was not directly involved.

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PARAS 3a-3c on
pages 5a-5c

(4) That the Appellant had not set out to enrich himself from prescribing the drugs as he was prescribing what he most foolishly and erroneously but misjudgingly thought to be necessary for the symptoms presented by the patients concerned. He had plenty of opportunity to do so but he never did, or thought to enrich himself.

(5) That the public interest does not require the removal of his name from the Register. That the Appellant is peculiarly well qualified and experienced and the testimonials submitted on his behalf indicate the marked contribution he has already made and can continue to make to the practice of Medicine in this country where there are not enough doctors to serve the entire population. The justified esteem in which he is held by his Professional Colleagues further indicate the marked contrast between his standards and achievements over the past 16 years of his professional practice and the alleged conduct over the period of 5½ months covered by the charge.

(6) That would it do any good to anybody if the Appellant (who has already lost his practice) would lose his sole livelihood and be on the brink of starvation which he is now facing, being the sole earning member for the family of nine members to feed and educate his five minor children and who also has to pay a very heavy mortgage and rates on his house and Surgeries, and meet other commitments? It is a gross misfortune and a grave irony of facts that the Appellant's own cousin, who was only 42 years of age and was serving as Lecturer in Medicine had died last September 1973 in the presence of the Appellant while the Appellant was convalescing in India, and the Appellant had been meeting part of the expenses of the bereaved family consisting of the wife of the said cousin and their five children, since September 1973.

(7) It is submitted that the Disciplinary Committee could not have given sufficient weight to the factors set out herein, and that the decision to erase the Appellant's name from the Register was in the light of their own principles upon which they ought to act and in all the circumstances

10 (3a) Detective Seargeant Jesse Brown of the West Midland Police, Birmingham in his cross Examination by Mr. Bayliss has throughout supported that the Appellant was not difficult nor obstructive at any stage. But he (Brown) completely twisted his statement for the sake of prosecution, though Mr. Brown was told and informed that the Appellant did not and could not completely control any of his patients whether N.H.S. or Private, and once any patient takes his medicine from the chemist, any doctor could not exercise his control. To give an example, the Appellant said that, say a patient takes Aspirin tablets, which is used every day, but instead of one tablet 4 times a day, the patient chooses to take 40 tablets in one go or 20 tablets every day, he would die of Aspirin or Salicylate poisoning. At no time had the Appellant ever said that he could not be held responsible. The Secretary (Receptionist) of the Appellant was there, and no such words or sentence was ever said by the Appellant. Each one of us in this country is a patient either under the N.H.S. or a Private patient with a doctor and can anyone ever say definitely whether any doctor can 30 compell him or her to take only as many tablets, capsules, mixtures or syrups as the doctor wants him or her to take? There can be not one, but millions of examples when a patient under treatment of the doctor is advised to take one or two tablets of Pethidine, Barbiturate or any other such dangerous drugs or even tablets of antidepressive drugs like LIBRIUM or VALIUM or pain killing tablets like PANADOL, but who (the patient) takes far more quantity and dies 40 of Barbiturate, Pethidine or Salicylate poisoning. The doctor works there in an advisory capacity and not as a compelling authority.

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50 At no point was it ever suggested by Seargeant Brown in his interview with the Appellant that any patient was suffering from overdoses as a direct result of the Appellant's prescriptions, and it is a blunt truth that any patient is free to take, borrow or buy medicines or drugs from whatever sources he likes. If any patient chose to give a wrong address, the Appellant had no means or authority to disbelieve the patient unless and until the Appellant would have been called over to the residence of the patient more than once.

60 It is proved from the reply of one of the prosecution witness Mr. Murray that Seargeant Brown wanted to "do Dr. Prasad" and hence Murray gave the statement in the words of Seargeant Brown, "We are going to do Dr. Prasad, will you make a statement?"

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The mistake that the Appellant made was not to take a tape recorded statement of each and every patient and all the interviews including that of the Seargeant Brown and Mr. Spear, but that was not feasible nor possible in a busy Surgery as that of the Appellant. The only other way was to exchange written and signed

statements from the patients, Mr. Brown and Mr. Spear, but everybody of us understands that this could not have been done in a surgery of a doctor.

10 (3b) Harry Bryan Spear, a Deputy Chief Inspector in the Home Office Drug Squad maintained in his Cross Examination by Mr. Bayliss the Defence Solicitor, that the Appellant was helpful and co-operative and that the Appellant persuaded the patients concerned in the cases to go to the Addiction Centre, in the efforts of which the Appellant failed miserably. Mr. Spear also agreed that the Appellant denied sending the patients to different chemists spread round the city and that no excessive quantities of the drugs had ever been prescribed by the Appellant and that the quantities of the drugs were very small and the intervals were great, that it was insignificant, and also that the drugs being small in quantities had not changed hands or been sold or went in the Black Market. Mr. Spear also agreed that it was difficult for the Appellant (who is not an English doctor) who always ran the risk of being insulted or injured if he would turn any patient away and that such young patients could have been very difficult to deal with. Mr. Spear also agreed that after carrying Sample check and normal check as far as he could the Appellant did NOT prescribe for any of these patients any drug after his first visit on 19th February 1974.

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20 Mr. Spear threatened the Appellant on his second visit on 3rd April 1974 that he (Mr. Spear) would see that the Appellant could not practise anywhere in this country. This threatening was done in the presence of the wife of the Appellant at the home of the Appellant, and the results are proved by the outcome of the G.M.C. case. It is clear from the evidence and all the facts and records of this case that the Appellant took to his heart the advice of Mr. Spear and that the Appellant stopped seeing any of the patients in question from 19th February 1974, after being seen and advised by Mr. Spear. There was only one exception of Miss O'Shaughnessy who was exempted from the case and Mr. Cavanagh who was taking medicines for cutting down his weight and for his depression and drowsiness and that was the reason why Mr. Cavanagh was prescribed the weight reducing drug "PONDERAX" which is also a drug for making somebody more alert and for warding off anxiety. This drug was continued until May 1974. It is more than crystal clear that the Appellant was not to challenge the authority and though he was misled and had misjudged, he did take the whole problem to his heart and thoroughly co-operated with one and all of the people concerned. Had the Appellant been a wicked, mischievous and untruthful doctor he could have done many wrong things over the past 16 years and could have continued with that, but neither this type of mischief was at his heart, nor was he taking advantage of the situation. It was

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a misfortune that the types of patients involved ~~were~~ ~~in~~ were not of good character and that they were criminals, but the Appellant was prescribing as a doctor and not as a moralist, not as an executive authority with powers to purge or prosecute a patient. The Appellant is bound by the Hippocratic Oath under which he (the Appellant) could not or would not have asked the caste, creed or crimes of any patient attending him. It should not be forgotten that he comes from a very different background.

(3c). It is an accepted fact however unfortunate it may seem to be that these seven prosecution witnesses (Murray, Donnelly, Jones, Sorby, Miller, Robinson and Lodge) have known each other as drug users for quite some time, and these persons have no caste or creed than one common aim of getting drugs. They attended the Surgery of the Appellant, ^{as normal patients} and having known each other from before, strengthened their acquaintances further while waiting for and sharing the Surgery of the Appellant. They all lived in Birmingham area, knew and exchanged their viewpoints collaborating one another's statements while being investigated by the Drug Squad much before the G.M.C. Enquiry. Four of them were brought to London from Birmingham and even while in the G.M.C. Enquiry they were kept waiting and closetted together in the same waiting room of the G.M.C. from the morning of 22nd July, 1974 to 25th July, 1974 (Monday to Thursday). It may please to be noted that the G.M.C. Enquiry was to begin at 10a.m. on Monday 22nd July, 1974 and everybody concerned in this unfortunate case was kept waiting from the morning of 22nd July, 1974 until the afternoon of 24th July 1974 when the case began. On the afternoon of 25th July, 1974 while the Appellant was in the G.M.C. Enquiry room, two of the witnesses approached the Appellant's Secretary (Mrs. Beryl Hooper) and the Appellant's wife (Mrs. Saroj Prasad) and said "Mrs. Hooper and Mrs. Prasad, we are sorry to have been brought here by the police to give evidence against Dr. Prasad, but we would face a jail sentence if we did not co-operate with the police. We are appearing under subpoena". The Appellant did not learn about it till the night of 25th July, 1974, when he could make out as to who were the people concerned. The Appellant did not attach much importance to it as he was convinced that he had seen those prosecution witnesses as patients, and not as characters of a plot. The events of the 26th July, 1974, went so fast and judgement announced shortly before noon, that it engulfed the Appellant. He should have told this to the G.M.C. Judges, but events galloped over him. In retrospect, the Appellant wishes that his Solicitor and the G.M.C. Judges should have been told about it. In conclusion, collaborative evidence has come out in the light of the above facts which saved those witnesses from jail sentences, but was most harmful to the Appellant.

of this particular case and unduly severe penalty.

8. Because no emphasis whatsoever has been laid down on the facts that the Appellant has himself remained ill and was suffering from a severe form of Anxiety state and Tension from the beginning of July 1973 and though he tried to treat himself, he was forced to abandon and leave his practice to a Locum doctor and to break the vicious circle of Anxiety state and Tension, had to go out of the country, under medical advice. Though he went out to India to be relaxed with his relatives and old acquaintances to get out of the state of Tension, his own elder cousin (Hardly 42 years) a Lecturer in Medicine died a pitiable death which shocked him all the more. Though he returned back to the U.K. late in September 1973, the mental shock, the state of Anxiety and Nervous Tension did not leave him.

He was under treatment with his own doctor and under a Consultant Psychiatrist at the All Saints Hospital, Birmingham, where he had to undergo treatment. He kept on taking medicine prescribed by the Consultant even though he had to resume his medical practice in the end of September 1973 on returning back to the U.K., because after all he had to keep working and life had to go forward. The Appellant has been taking those medicines right through since July 1973 and even now he has to take.

9. That the case would not have arisen if the Appellant had maintained a good account of his practice and the facts that he had been a very bad witness. He very thoroughly regrets that having had suffered himself with severe Anxiety State and Tension, he felt more sympathetic to those patients and quite erroneously thought that he was helping them, which he would ever regret all through his life, and which is a big scar mark on his mind and on his professional and social character.

10. That the heavy interest of the public and even in the least interest of the Appellant, it does not warrant that the Appellant should be erased and suspended from the Medical Register.

Therefore, the Appellant humbly submits that this Appeal should be allowed for the following among other

REASONS

50 . 1. BECAUSE the findings of the committee were wrong, unjust and unsatisfactory, and an error on the face of the record.

2. BECAUSE the decision of the Committee was very harsh and unjustified, and the Appellant's conduct did not merit the extreme professional penalty of striking off.

The Appellant therefore humbly prays and submits that the Appeal should be allowed and the decision of the Committee should be set aside, altered or varied.

(sgd) Sharangdhar Prasad.