Privy Council Appeal No. 40 of 1984

Douglas Glyn Evans *Appellant*

v.

The General Medical Council *Respondent*

FROM

THE PROFESSIONAL CONDUCT COMMITTEE OF THE GENERAL MEDICAL COUNCIL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 19TH NOVEMBER 1984

Present at the Hearing:

LORD KEITH OF KINKEL
LORD BRANDON OF OAKBROOK
LORD TEMPLEMAN

*[Delivered by **Lord Keith of Kinkel**]*

This appeal is against a determination of the Professional Conduct Committee of the General Medical Council on 10th July 1984, finding that the appellant had been guilty of serious professional misconduct and directing that his name be erased from the Register of medical practitioners. The appellant does not challenge the finding of serious professional misconduct, but maintains that the penalty of erasure was excessively severe and that a period of suspension should be substituted for it.

The misconduct of which the appellant was found guilty consisted in an adulterous relationship with a patient, Mrs. Mellor, which extended over a period of some six years ending early in 1983. The appellant carried on general practice in partnership with his wife and others, and his patients included not only Mrs. Mellor but also her husband and two children. It is plain from the evidence that the affair had a seriously adverse effect on Mrs. Mellor's health and upon her married and family life. It resulted in sexual relations with her husband being broken off and in her developing a drink problem. In the end she suffered something approaching a nervous breakdown and underwent psychiatric treatment. The elder child of the marriage, a boy, also suffered ill effects through his mother's depression and drinking.

The affair remained entirely unsuspected by Mrs. Mellor's husband until she revealed it, early in 1983, by producing in the course of a dinner party at the appellant's house a bundle of love letters written to her by the appellant. Mr. Mellor then consulted a solicitor and took steps leading to the complaint against the appellant which resulted in the proceedings before the Professional Conduct Committee.

Mr. Du Cann, for the appellant, drew to the Board's attention a number of aspects of the case which, in his submission, tendered to indicate that it was not to be regarded as one of the more serious cases of its kind. These were (1) that the adultery arose out of a social relationship and not the relationship of doctor and patient, as appeared from the circumstance that the appellant had not had occasion to treat Mrs. Mellor for several years before the affair began and the two couples were close friends and frequently went on holiday together; (2) while the affair was going on the appellant had occasion to treat Mrs. Mellor and members of her family only infrequently; (3) acts of adultery had never taken place at the appellant's surgery and not often at Mrs. Mellor's home, the appellant's home being the usual venue. These aspects demonstrated, so it was maintained, that the appellant had not abused his professional relationship with Mrs. Mellor or her family in order to institute or carry on or disguise the adulterous relationship.

Mr. Du Cann referred to *Haggart v. General Medical Council* (Privy Council Appeal No. 11 of 1975). This was a case of serious professional misconduct in the shape of an adulterous relationship with a patient in which the Board refused to interfere with a sentence of erasure. The Board had before it information that there was, out of 12 cases of similar misconduct before the Professional Conduct Committee since the passing of the Medical Act 1969, only one in which sentence of erasure was pronounced. It was the Act of 1969 which for the first time empowered the Committee to impose penalties less severe than erasure, in particular suspension. The Board described the sentence of erasure in an adultery case as "admittedly an extreme and unusual penalty", but in the light of certain reprehensible features of the case before them considered that they would not be justified in setting it aside.

Mr. Du Cann informed the Board that since 1975 there had come before the Professional Conduct Committee 10 cases involving sexual relations with patients, and that sentence of erasure had been pronounced in 4 of them, which represents quite a high proportion. He gave the Board an outline of the circumstances of these 4 cases, maintaining that

these showed them to be much more serious than the present one.

The principles upon which this Board acts in reviewing sentences passed by the Professional Conduct Committee are well settled. It has been said time and again that a disciplinary committee are the best possible people for weighing the seriousness of professional misconduct, and that the Board will be very slow to interfere with the exercise of the discretion of such a committee. A sentence of erasure will be set aside only if it appears to the Board to be wrong and unjustified. (*McCoan v. General Medical Council* [1964] 1 W.L.R. 1107 per Lord Upjohn at page 1113). The Committee are familiar with the whole gradation of seriousness of the cases of various types which come before them, and are peculiarly well qualified to say at what point on that gradation erasure becomes the appropriate sentence. This Board does not have that advantage nor can it have the same capacity for judging what measures are from time to time required for the purpose of maintaining professional standards. It would be entirely inappropriate for the Board to make a practice of examining the circumstances of all cases in a particular field over a period of years with a view to considering the relative seriousness of the case before it. The only question is whether the circumstances of that case are such that the sentence pronounced can reasonably be held to have been wrong and unjustified so that the Committee were not entitled to pronounce it.

In the instant case the circumstances appear to their Lordships to be serious enough to entitle the Committee to pronounce the sentence they did. Although there are absent certain features which would have made the case even worse, the fact remains that the appellant maintained this adulterous relationship with his patient over a period of at least six years, to the sustained deception under guise of friendship of her husband, who was also his patient, the destruction of marital relations, the detriment of the wife's health, and the estrangement of her son, another of his patients. A whole family to which the appellant owed professional obligations suffered through his breach of a fundamental aspect of medical ethics. The damaging consequences may fairly be regarded as predictable, if not inevitable. Their Lordships are unable to find the sentence of erasure to have been wrong and unjustified.

Some criticism was expressed of the Committee for not having given reasons for their decision on sentence. As a general rule, the seriousness of a particular case can readily be gathered from the transcript of proceedings before the Committee, and the giving of reasons for sentence is neither

necessary or desirable. There may be exceptions to the general rule, but this case does not appear to their Lordships to be one of them.

In the course of the hearing before the Board Mr. Du Cann sought to introduce further evidence in the shape of testimonials and a petition signed by many of the appellant's patients, though he did not claim that reception of this material could lead to the allowance of the appeal if it was otherwise appropriate to dismiss it. In *Haggart v. General Medical Council* (supra) the Board received and considered similar material, but there one of the charges related to improper disclosure of information about a patient, and their Lordships took the view that the material could not reasonably have been expected to be gathered while that charge was awaiting trial. There is no similar consideration in the instant case and their Lordships accordingly refused to admit the further evidence.

Their Lordships will humbly advise Her Majesty that the appeal should be dismissed, with costs.