Privy Council Appeal No. 53 of 1989

Michele Christopher Luigi Valente *Appellant*

v.

The General Dental Council *Respondent*

FROM

THE PROFESSIONAL CONDUCT COMMITTEE OF THE GENERAL DENTAL COUNCIL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 23RD MAY 1990

Present at the hearing:-

LORD BRANDON OF OAKBROOK
LORD TEMPLEMAN
LORD JAUNCEY OF TULLICHETTLE

*[Delivered by **Lord Templeman**]*

The appellant, Mr. Valente, appeals from a decision of the Professional Conduct Committee of the respondent, the General Dental Council. The Committee found that five out of nine charges laid against the appellant had been proved and held that in relation to the facts proved the appellant had been guilty of serious professional misconduct. The Committee determined that the name of the appellant be removed from the Register of Dentists.

The proven charges were that between 8th September 1985 and 4th June 1989 at surgery premises at Felmores Centre, Lanhams, Basildon, Essex, the appellant failed:-

"1.(a) ... to ensure that appropriate precautions were taken to protect staff and patients from the risk of cross-infection;

(b) to provide adequate sterilisation facilities;

(c) to provide sufficient dental equipment and instruments to enable your Associates adequately to treat patients;

(d) to ensure that appropriate radiation protection methods were adopted for the safety of staff and patients; ...

5. ... notwithstanding the fact that the technique of intravenous sedation was used from time to time on patients at your practice, you failed to have sufficient resuscitation equipment readily available."

The appellant did not dispute before the Board the failures found by the Committee under charges 1(c) and 5.

On behalf of the appellant Mr. Nelson submitted that the findings of the Committee were against the weight of evidence, that the facts found did not amount to serious professional misconduct and that the sentence of erasure from the Register was too severe.

In *Libman v. General Medical Council* [1972] A.C. 217 Lord Hailsham of St. Marylebone L.C. dealing with the statutory powers of the General Medical Council considered the decisions of the Board thereon and on the parallel provisions of the Dentists Act 1957 and concluded at page 221 that although the appellate jurisdiction conferred on the Board:-

"... 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."

In *Doughty v. The General Dental Council* [1988] A.C. 164 at page 173 Lord Mackay of Clashfern pointed out that by section 1(2) of the Dentists Act 1984 "it shall be the general concern of the Council to promote high standards of dental education at all its stages and high standards of professional conduct among dentists". Lord Mackay continued:-

"... what is now required is that the General Dental Council should establish conduct connected with his profession in which the dentist concerned has fallen short, by omission or commission, of the standards of conduct expected among dentists and that such falling short as is established should be serious. On an appeal to this Board, the Board has the responsibility of deciding whether the Committee were entitled to take the view that the evidence established that there had been a falling short of these standards and also entitled to take the view that such falling short as was established was serious."

In *Carmichael v. The General Dental Council* [1990] 1 W.L.R. 134 the Board advised at page 138 that:-

> "The Board can only interfere with a finding of fact by the committee if the determination was not supported by credible evidence or if the weight of the evidence was overwhelmingly against the view taken by the committee ... The committee which was composed almost entirely of members of the dental profession was the best and proper body to decide sentence."

Their Lordships approach this appeal guided by the authorities and conscious that the Committee which reached conclusions adverse to the appellant consisted of six members experienced in dental practice and one layman and had the advantage of hearing and seeing all the witnesses including the appellant.

During the relevant period of nearly four years the appellant carried on a centre for dental treatment. He engaged associates who were also qualified dentists. By 1986 the centre provided four surgeries where dental work was carried on by the appellant and three associates. The appellant provided the premises, staff and the equipment. The appellant said that he worked from 9.00 a.m to 9.00 p.m. except on Saturdays when he worked until 4.00 p.m. and Sundays when he worked until 2.00 p.m. The associates worked from 9.00 a.m. to 6.00 p.m. plus alternate Saturday mornings and perhaps one evening. Each associate was paid 50% of the fees which he earned less laboratory costs. Mr. Linssen, an associate, said that he dealt with thirty to forty patients each day and earned fees of about £200,000 in eighteen months; he thought he was not the highest earner. The appellant had received a letter from the Dental Estimates Board saying that his earnings from the practice in 1987/1988 were £227,000. The earnings of the practice are relevant in that they confirm that the dentists at the centre were working long hours with many patients under great pressure so that there was a possibility that if hygienic and safety precautions were not foolproof, human error by a dentist or a member of the staff might produce grave consequences.

As to charge (a) the appellant agreed that there were "not entirely two sets of surgical instruments" available at the centre for four dentists. As to charge (b) the centre was equipped with two or three heat sterilisers which required one hour and ten minutes for the operation of sterilisation and cooling if complete hygienic protection was to be secured.

As to charge (c), the appellant did not dispute the finding by the Committee that he did not provide sufficient dental equipment and instruments to enable the associates adequately to treat patients. It was not in dispute that some items of equipment provided were second hand, stained or chipped or suffered from minor

defects. At least one surgery had no spittoon. As to charge (d) the appellant explained to the Committee the type and siting of the X-ray machines provided by him, the method of operating the machines and the precautions available to the operator, if sufficiently instructed and careful, to protect the operator and the patient from the dangers of radiation. There was one lead apron for the four machines. As to charge 5, the oxygen cylinder provided for resuscitation purposes was kept in a laboratory from which it had to be fetched to a surgery after having been disconnected from its other task of melting precious metals for use in the practice; the appellant does not dispute the finding of the Committee that sufficient resuscitation equipment was not readily available.

An inspection of the dental centre was carried out by the Department of Health. The inspection was worthless because the inspectors unaccountably gave sufficient notice for the centre to be improved and smartened. Nevertheless the test of one X-ray machine was abandoned after the machine gave forth a bang and flash and the cable was found to be bound with tape.

The crucial question for the Committee was whether, taking into account the work carried out at the centre and the organisation of that work and taking into account the instruments, equipment and other facilities which the appellant provided and the instructions which he gave, there was at the centre any avoidable risk of cross-infection from the instruments and equipment, any avoidable risk of radiation from the X-ray machines or any avoidable risk of injury or death from the failure to ensure that sufficient resuscitation equipment was readily available.

The appellant was admirably represented before the Committee and before the Board by Mr. Nelson. He pointed out that there was no evidence that any cross-infection had taken place and that the associates who were, like the appellant, responsible for the safety of themselves, their patients and their staff, continued to work at the centre where, with one unreliable exception, they thought the facilities were "adequate". Mr. Nelson also succeeded in establishing clearly that one of the associates and one of the nurses who gave evidence were prejudiced against the appellant.

In the opinion of the Board a dentist responsible for a practice owes a duty to the public to ensure that there is no reasonably avoidable risk to health. Every dentist if challenged should be able to satisfy the Professional Conduct Committee of the Council, a tribunal composed overwhelmingly of his fellow professionals, that he has discharged the duty which he owes to the public. The Committee is not a court of law and is not concerned to decide whether a dentist has been guilty of conduct which in law amounts to

negligence or breach of contract. The Committee must of course observe the principles of natural justice. In the present case, the appellant, ably assisted by experienced counsel, had every opportunity of justifying his conduct of the centre and knew that his conduct of the centre was on trial. There was no danger of the Committee setting impossibly or unnecessarily high standards. It was for the Committee, considering all the evidence and applying their own knowledge and experience, to determine whether the appellant's conduct of the centre involved any avoidable risk to health. The Committee gave no reasons for their determination but there was ample evidence from which they could determine that the shortage of surgical instruments and dental equipment obliged dentists to share the tools of their trade, that the sterilisation facilities provided by the appellant were inadequate or unsuitable, and not proof against human error and that in the circumstances there was an avoidable risk that under the unremitting pressure from patients requiring treatment some cross-infection might occur. There was absolutely no reason why the appellant should not have provided equipment and insisted on procedures which would satisfy any Committee that there was no avoidable risk of cross-infection.

There was also evidence from which the Committee could conclude that the appellant had not taken appropriate steps to ensure that no one would at any time be in a position of danger from radiation.

The Committee must have been satisfied that the appellant's conduct of the centre involved an avoidable risk of injury to health arising from cross-infection and radiation. The appellant's failure to ensure sufficient resuscitation equipment was readily available involved without doubt an avoidable risk of death. In these circumstances, the finding of the Committee that the appellant had been guilty of serious professional misconduct cannot be faulted, and the removal of the appellant's name from the Register of Dentists in order to protect the public was not too severe. The Council has power to restore the appellant to the Register on the application of the appellant after he has ceased to be a dentist for at least ten months. There were a number of testimonials from patients and others paying tribute to the skill and care of the appellant. They were satisfied with the conditions at the centre. The Council will no doubt take these testimonials into account when considering any proposals from the appellant in due course for the restoration of his name to the Register.

Their Lordships will humbly advise Her Majesty that the appeal ought to be dismissed. The appellant must pay the respondent's costs before this Board.