

Ramnikgiri Bachugiri Gonsai

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
1ST DECEMBER 1992

Present at the hearing:-

LORD TEMPLEMAN
LORD BROWNE-WILKINSON
LORD WOOLF

[Delivered by Lord Templeman]

The appellant, Dr. Gonsai, appeals against the sentence of the respondent, the General Medical Council, that his name be erased from the Register of Medical Practitioners. Dr. Gonsai does not dispute that he was guilty of serious professional misconduct.

Dr. Gonsai qualified in medicine at the University of Gujarat and came to the United Kingdom in 1971. After a number of hospital appointments, and attaining the rank of Registrar, he entered general practice in 1979 at Plaistow in London where he has remained ever since. He has been a sole practitioner since April 1982 and has some 3,800 patients on his list. He sees about 80 to 90 patients a day and works until 11.00 p.m. In addition to running a general practice, he runs specialist classes dealing with asthma and medical maternity services and he also lectures and participates with other doctors in post-graduate work at Newham General Hospital. In 1991 he foolishly agreed to add to his commitments by taking part in clinical trials commissioned by the manufacturers of a new autohaler for the treatment of asthmatic conditions. The object of the trials was to compare the merits of the autohaler with those of a conventional standard inhaler. It is said on behalf of Dr. Gonsai that he agreed to take part in the trials and accepted equipment and forms to be filled in for that purpose in order to please and impress the organisers of

the trials who called upon him and persuaded him to participate. He was to be paid £150 per patient and said that he could produce four patients; no one suggests that financial gain was his motive. The trials required Dr. Gonsai to select and persuade patients to participate and then to carry out examinations and keep records of the effects of the two types of inhaler on each participant.

When the time came for Dr. Gonsai to produce interim results, he had not even found the time to select participants. He was visited by a representative of the organisers of the trials and should have confessed that he had been unable to fulfil the promises he had made. Instead he took the fatal and inexcusable step of pretending that he had obtained the participation of four patients and had monitored their progress. After that first fatal step he was driven inexorably to keep up the pretence. False records were submitted by Dr. Gonsai which were on their face completed in great haste, at the same time, and bore dates which were inconsistent with the known facts. These records were rejected by the organisers who refused to place further reliance on Dr. Gonsai, did not pay him anything and rightly initiated disciplinary proceedings before the General Medical Council. At first Dr. Gonsai maintained the pretence that his records were genuine but at an early stage confessed his wrong doing. In those circumstances it was clear that Dr. Gonsai had been guilty of serious professional misconduct. Miss Foster, who appeared on behalf of the Council before the Committee, put the matter very fairly and properly when she submitted that:-

"It is of great importance to the public at large and patients who agree to participate in trials, as well as drug companies and the medical profession, that the integrity of practitioners participating in trials such as these can be relied upon. This Committee, being charged with the protection of the public from seriously incompetent or unscrupulous doctors, or those who default seriously in relation to their professional duties or bring the profession into disrepute, must therefore be particularly concerned where an allegation of dishonesty is made."

Although, before the Committee, evidence in mitigation was produced in the form of testimonials of the care and skill of Dr. Gonsai in the conduct of his practice, the Committee had no choice but to direct that the name of Dr. Gonsai be erased from the Register.

The practice of the Board in regard to appeals against erasure was summarised by Lord Upjohn delivering judgment in *McCoan v. The General Medical Council* [1964] 1 W.L.R. 1107 in these terms at page 1112:-

"It is clear that where the committee finds a practitioner guilty of infamous conduct in a professional respect, it has a discretion whether or not to punish that conduct by erasure of the practitioner's name from the

register. ... It is equally clear that where the committee exercises its power to erase, a right of appeal to their Lordships' Board is given ... both against the finding of infamous conduct and the decision to erase. The powers of the Board to correct the determination of the committee on the hearing of such an appeal are in terms unlimited, but in principle, where a professional body is entrusted with a discretion as to the imposition of the sentence of erasure their Lordships should be very slow to interfere with the exercise of that discretion. ... Their Lordships are of opinion that Lord Parker C.J. may have gone too far in *In re a Solicitor* [1960] 2 Q.B. 212 when he said that the appellate court would never differ from sentence in cases of professional misconduct, but their Lordships agree with Lord Goddard C.J. in *In re a Solicitor* [1956] 1 W.L.R. 1312 when he said that it would require a very strong case to interfere with sentence in such a case, because the Disciplinary Committee are the best possible people for weighing the seriousness of the professional misconduct.

No general test can be laid down, for each case must depend entirely on its own particular circumstances. All that can be said is that if it is to be set aside the sentence of erasure must appear to their Lordships to be wrong and unjustified."

The sentence of the disciplinary committee in the present case, far from being wrong and unjustified at the time when it was made, was plainly right and inevitable. In all but the most exceptional circumstances, that would be the end of the matter and no testimonials or facts in mitigation produced after the determination by the disciplinary committee would lead this Board to exercise its power to recommend that an appeal against sentence be allowed.

The publication of the sentence of erasure passed on Dr. Gonsai has however produced a mass of evidence which has led the Board to conclude that it would not be in the public interest to allow the sentence to stand.

Although the General Medical Council has power to restore the name of Dr. Gonsai to the Register ten months after erasure has taken place, it seems clear that the immediate effect of erasure will be the ruin of Dr. Gonsai. In order to extend his practice and improve his services Dr. Gonsai borrowed a sum of a quarter million pounds which he is repaying at the rate of £2,500 per month. The loan is secured on the premises occupied by Dr. Gonsai. He has a wife and three dependent children and is now 51 years old. If his practice is interrupted, he will not be able to service the mortgage, his assets if sold under present market conditions will be insufficient to discharge his liabilities and as a bankrupt he will not be able to resume practice in Plaistow or elsewhere. These

are consequences which may of course follow in other cases and they are consequences which should have been appreciated by Dr. Gonsai at the time when he committed the offence which led to his appearance before the disciplinary committee. The obvious serious consequences of erasure on the finances and career of a doctor struck off the Register must have been present in the minds of the members of the disciplinary committee when they considered the appropriate course to take with Dr. Gonsai. Nevertheless they are fearful consequences for an offence which did not put the health of any patients at risk. To the prospect of financial ruin for Dr. Gonsai there has been added much evidence which supports the view that Dr. Gonsai's dishonest conduct was an uncharacteristic departure, inexcusable and inexplicable, from the high standards of probity and integrity which Dr. Gonsai had established in the course of a long career in Plaistow. This consideration also does not excuse the offence but suggests that the offence is unlikely to be repeated, that the shame felt by Dr. Gonsai is deep and sincere and that the extreme penalty of erasure may not be necessary.

Dr. Gonsai practises in an area of East London which is one of the most deprived areas in the United Kingdom and does not welcome immigrants. Yet when the sentence on Dr. Gonsai was published there was a wave of spontaneous letters and petitions which, while acknowledging the serious nature of the offence committed by Dr. Gonsai, expressed great trust in and devotion to Dr. Gonsai and viewed with dismay the prospect of his departure. General medical practitioners in the Newham district health authority, numbering about 100, state that the departure of Dr. Gonsai will be a sad loss for his patients and the community. A local minister of religion who has worked in a large community centre for over 20 years in the neighbourhood testifies to the time and attention and kindness devoted by Dr. Gonsai to the care of poor persons, including a large proportion of elderly persons living in sheltered accommodation. The minister deposes that in the course of a long career he has never known such professional and local concern expressed by medical colleagues, magistrates, church leaders and police officers and indicating their shock and dismay at the sentence. Over 2,800 persons signed a petition of support for Dr. Gonsai. Among many letters, obviously spontaneous and deeply felt, there are moving tributes to the honesty and high standards of practice of Dr. Gonsai and the belief is expressed that an immeasurable and tragic loss would be suffered by a greatly under-privileged community if Dr. Gonsai were not able to continue to practice.

Their Lordships are well aware that the threatened loss of any well-regarded doctor will inspire tributes from his patients and that such tributes do not by themselves justify interference with a sentence properly passed by the disciplinary committee of the General Medical Council. In the exceptional circumstances of the present case, their Lordships, taking into account the nature and

circumstances of the offence, the fact that the offence did not jeopardise the health of any patient, the disastrous consequences of the sentence of erasure and the remarkable position attained by Dr. Gonsai in the hearts and minds of the members of the community to whom he has devoted many years of faithful service, have formed the view that it is not necessary to deprive the community of the services of Dr. Gonsai and that the sentence of erasure may properly be replaced by a direction that Dr. Gonsai shall not take part in any medical or clinical trials for a period of three years from the date of the order of Her Majesty giving effect to the advice of the Board. Their Lordships will humbly advise Her Majesty that the appeal ought to be allowed on these terms.