Privy Council Appeal No. 28 of 1995

Dr. David Noel McCandless *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 11th December 1995

Present at the hearing:-

Lord Goff of Chieveley
Lord Nicholls of Birkenhead
Lord Hoffmann

*[Delivered by **Lord Hoffmann**]*

Dr. David McCandless, a general practitioner in Deeside, appeals against a determination and direction of the Professional Conduct Committee of the General Medical Council. At a hearing on 16th March 1995 the Committee found that he was guilty of serious professional misconduct and directed that his name should be erased from the Register of Medical Practitioners.

The charges alleged errors in his diagnoses of three patients and failure to refer them to hospital. Two subsequently died and the other was found on her eventual admission to hospital to be seriously ill. It is not necessary to go further into the details because Mr. Mitting Q.C., who appeared for Dr. McCandless, accepted that the Committee's findings of fact were not open to any material dispute. He also accepted that in each case Dr. McCandless had been negligent. The Chairman of the Committee gave the following brief reasons for its finding that he had been guilty of serious professional misconduct:-

"Dr. McCandless, the Committee take a very serious view of the evidence which they have heard about the poor standard of medical care which you provided to all three patients in this case. The care which you provided fell deplorably short of the standard which patients are entitled to expect from their general practitioners."

Mr. Mitting submits that these reasons reveal an error of law by the Committee. He says that the Committee applied the wrong test for what amounts to serious professional misconduct. It thought that it was enough that the treatment given to the three patients fell "deplorably short" of the standard which would reasonably be expected. Mr. Mitting says that poor treatment is not enough. The doctor may nevertheless have been doing his best. He may have been overworked or just not particularly good at the job. But "serious professional misconduct" means, he said, conduct which is morally blameworthy. This cannot be determined simply by deciding whether the treatment measured up to an objective standard. One has to look at why the doctor gave the treatment which he did. If it fell short of a reasonable standard because he was, for example, too lazy or drunk to examine the patient properly, then he would be guilty of misconduct. But not if he made an honest mistake.

Their Lordships think that some support can be found for Mr. Mitting's submission in old cases on the meaning of "infamous conduct in a professional respect" - the words which were used in nineteenth century Medical Acts and which continued to be used until replaced by the words "serious professional misconduct" in the Medical Act 1969. For example, in *Felix v. General Dental Council* [1960] A.C. 704, 721 Lord Jenkins said of a dentist who was alleged to have given unnecessary treatment:-

"...according to the appellant, he honestly believed it to be necessary...An honestly held opinion, even if wrong, in their Lordships' view plainly cannot amount to infamous or disgraceful conduct."

Since *Felix* however, much has changed. First, the words "infamous conduct in a professional respect" were replaced by "serious professional misconduct". It is true that the General Medical Council's guide to "Professional Conduct and Discipline: Fitness to Practise" stated (and continues to state - December 1993, page 7) that the new words were intended to mean the same as the old. On the other hand, it is by no means clear that the Council accepted the *Felix* interpretation of what the old words meant. The guide also cites the dictum of Scrutton L.J. in *Rex v. General Council of Medical Education and Registration of the United Kingdom* [1930] 1 K.B. 562, 569 that:-

> "'infamous conduct'... means no more than serious misconduct judged according to the rules written or unwritten governing the profession."

This looks much more like an objective standard. Their Lordships think that the authorities on the old wording do not speak with one voice and that they are of little assistance in the interpretation of the new. Secondly, although there remains the single disciplinary offence now styled "serious professional misconduct", the possible penalties available to the Committee, which used to be confined to the ultimate sanction of erasure, have been extended to include suspension and the imposition of conditions upon practise. This suggests that the offence was intended to include serious cases of negligence. Thirdly, the public has higher expectations of doctors and members of other self-governing professions. Their governing bodies are under a corresponding duty to protect the public against the genially incompetent as well as the deliberate wrongdoers. Fourthly, the meaning of the new wording has been authoritatively stated by this Board in *Doughty v. General Dental Council* [1988] A.C. 164, 173 in objective terms:-

> "...judged by proper professional standards in the light of the objective facts about the individual patients...the dental treatments criticised as unnecessary [were] treatments that no dentist of reasonable skill exercising reasonable care would carry out."

This test appears to their Lordships to be *mutatis mutandis* equally applicable to treatment by doctors and in their Lordships' view should make it unnecessary in the future to revisit *Felix* or any of the other earlier authorities.

Once it is accepted that seriously negligent treatment can amount to serious professional misconduct, then it seems to their Lordships that the appeal must fail. The eminent medical practitioners who sat on the Committee came to the conclusion that Dr. McCandless's treatment of his three patients fell deplorably short of the standard to which patients are entitled to expect from general practitioners. In the circumstances, it is scarcely surprising that they concluded that Dr. McCandless was guilty of serious professional misconduct. Their Lordships can see no basis for interfering with that conclusion. Nor can they see any ground for interfering with the Committee's decision that the offences merited the penalty of erasure from the Register. Their Lordships will therefore humbly advise Her Majesty that the appeal should be dismissed. The appellant must pay the respondent's costs before their Lordships' Board.