

ON APPEAL

FROM THE DISCIPLINARY COMMITTEE  
OF THE GENERAL MEDICAL COUNCIL

B E T W E E N

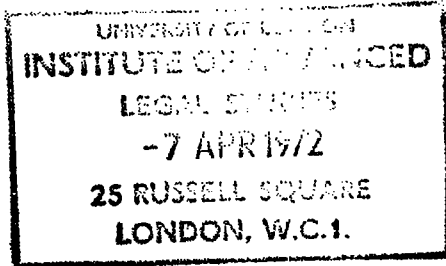
GILBERT DALLEY

Appellant

- and -

THE GENERAL MEDICAL COUNCIL

Respondent



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CASE FOR THE APPELLANT

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Record

1. This is an appeal from a determination of the Disciplinary Committee of the General Medical Council (hereinafter referred to as "the Committee") constituted under Section 32 of the Medical Act 1956 as amended by Section 13 of the Medical Act 1969 made on the 25th day of November, 1970, that the Appellant had been guilty of serious professional misconduct and that the Appellant's registration be suspended for a period of 12 months. P.28

2. The questions raised in this Appeal are:

- (A) Whether the Committee was justified in determining that the Appellant had been guilty of serious professional misconduct
- (B) Whether the Committee was justified in directing that the registration of the Appellant should be suspended for a period of 12 months.

3. The Appellant is a married man with 3 children. At the time of the hearing he was 59 years of age. He qualified in London in 1935 having taken his training at St. Bartholomew's Hospital. In addition to his qualifying diplomas MRCS (Eng.) LRCP (Lond.) 1935, he is a Fellow of the Royal College of Obstetricians and Gynaecologists. He served with the Royal Army Medical Corps between 1939 and 1945 serving first in France and then in England India and Burma. By the end of the War he was a Surgical Specialist in charge of a Field Service Unit in the 14th Army.

P.12

P.1,12

After a short period in general practice he became a Consultant in Obstetrics and Gynaecology to the Dartford Group of Hospitals. Subsequently in addition he has become a Consultant in Obstetrics and Gynaecology at the Darenth and Stone and Medway and Gravesend Group of Hospitals. He also carries on private practice in Upper Wimpole Street.

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The Appellant has all his life enjoyed an irreproachable professional and personal character and is held in the highest esteem by his professional colleagues.

P.21,22

4. On the 25th day of November 1970 the Committee held an inquiry into the

following charge against the

P.1

Appellant:-

"That being registered under the  
Medical Acts,

(1) With a view to obtaining patients  
or otherwise promoting your  
financial benefit, you advertised  
your professional services and  
the services offered by a clinic  
named Fawkham Manor, Fawkham,  
Kent in which you had a sub-  
stantial financial interest by  
dispatching during 1969 to medical  
practitioners in West Germany a  
circular letter signed by you  
directing attention to your  
professional services and the  
services of the said clinic and  
canvassing for patients for  
yourself and the said clinic:

(2) Further with a view to obtaining  
patients or otherwise promoting  
your financial benefit you falsely  
stated in the said letter that the  
said Clinic was 'registered under  
the Abortion Act 1967 in accor-  
dance with legal requirements.'

And that in relation to the  
facts alleged you have been guilty  
of serious professional misconduct."

5. At the said inquiry the facts P.1  
alleged in support of the Charge was  
presented by Counsel for the Complainant.

The Appellant was present and represented by a solicitor.

6. During the said inquiry the Committee determined that the facts alleged against the Appellant in the said charge had been proved; and having heard submissions on behalf of the Appellant determined that the Appellant had in relation to the facts proved been guilty of serious professional misconduct. And the Committee thereupon ordered that the Appellant's registration be suspended for a period of 12 months.

P.28

P.28

7. By letter dated the 25th day of November 1970 the Registrar of the General Medical Council in accordance with the provisions of Section 36 of the Medical Act as amended duly notified the Appellant that the Committee had directed as aforesaid.

8. At the said inquiry the Complainant presented evidence in the form of written documents in support of the facts alleged in the Charge.

P.2-11  
Appendix 1-16

9. The Appellant gave evidence on his own behalf and called no witnesses.

P.11-27  
Appendix 17-21

10. At the said inquiry the following material facts were proved or admitted:-

(1) That in about the year 1959 the Appellant established a private nursing home known as the Fawkham Manor Nursing Home.

P.12

- (2) That on the 11th day of June 1969 P.13  
 the Appellant submitted an  
 application for the approval of  
 the nursing home under the  
 provisions of the Abortion Act  
 1967 and completed the appro-  
 priate form setting out the  
 relevant information about the  
 Nursing Home. Appendix P3-6
- (3) That the Appellant believed that  
 from the point of view of the  
 facilities and staffing the  
 nursing home was one which  
merited approval by the Minister. P.13
- (4) That the Appellant in company  
 with a German colleague drafted P.17  
 a circular letter in about  
November 1969 which he sent in  
 about December 1969 to 70-80 P.16  
 colleagues in West Germany  
 giving details of the facilities  
 which were offered by the Nursing  
 Home.
- (5) That the letter contained the Appendix P.2  
 phrase "the women's clinic is  
registered under the Abortion  
 Act 1967 in accordance with legal  
 requirements".
- (6) That the Appellant wrote to the  
 Minister on a number of occasions  
 including one occasion in December P.13, 14  
 1969 requesting a determination of  
 his application for registration

and received only a formal reply saying that the application was still under consideration.

- (7) That in a letter to the Complainant dated the 2nd day of February 1970 the Secretary of State complained about the circular letter. P.3,13 Appendix P.7
- (8) That the Appellant replied to the Secretary of State by letter dated the 12th day of February 1970. P.13 Appendix 18
- (9) By letter dated 23rd day of March 1970 the Secretary of State notified the Appellant of his refusal to approve Fawkham Manor for the purposes of the Abortion Act 1967. Appendix P.10
- (10) By letter dated 7th day of August 1970 the Assistant Registrar of the General Medical Council wrote to the Appellant setting out matters of complaint against him. Appendix P.11-12
- (11) By letter dated the 18th day of September 1970 the Appellant gave his explanation of his conduct. Appendix P.13-16

11. The Appellant will humbly submit that his conduct in this case did not amount to serious professional misconduct.

12. The Appellant will further humbly submit that the Committee erred in law failing to make specific findings of fact in relation to each paragraph of the charges in the manner approved by Her Majesty's Board in the Case of Tarnesby v The General Medical Council (Privy Council Appeal No. 21 of 1969

at P.4) and further failed to consider each paragraph separately.

13. The Appellant will further humbly submit that in relation to the first Paragraph of the charge that on the facts that were proved and admitted his conduct in notifying colleagues of an inception and/or departure in his professional practice amounted at most to an error of judgment within the permissible limits and in the premises was not sufficiently serious to amount to serious professional misconduct within the description approved at Her Majesty's Board to Gardiner v General Medical Council (Privy Council Appeal No. 35 of 1960 at P.5.)

It will be submitted that the Committee failed to take into any or sufficient account the following amongst other factors:

- (a) The admission by the Complainant P.20 that the provisions of the 1967 Abortion Act were so widely known that it had been reported in the press that "large numbers of German girls were coming to England for abortions".
- (b) That the initial draft of the letter was written in collaboration with a German Doctor on the P.17 advice of and at the request of P.14

- a number of other German doctors.
- (c) That the letter was circulated only P.16  
to Medical practitioners in Germany  
(who could be taken to be aware of  
the provisions of the 1967 Abortion  
Act by inference in view of the  
Complainant's concession in sub-  
paragraph (a) above).
- (d) In view of the foregoing the General  
Medical Council failed to heed the  
practical effect on medical practice  
particularly at consultant level of  
the ease in modern times of transport  
and communications.
- (e) That to a limited extent the sense  
of the letter was altered in trans-  
lation from German to English in  
particular in relation to the words P.21  
"specialist" and "first class" in Appendix P.1 + 2  
the English translation.
- (f) That it was permissible to adver- Appendix P.17 + 18  
tise nursing homes in the Medical P.2,15  
press and include ~~and~~ <sup>the</sup> name and  
qualifications of the Registered  
Medical Practitioner who was super-  
vising the nursing home.
- (g) That professional ethics permit a  
consultant setting up in a new area  
to circulate doctors in the area  
notifying them that he has  
established a practice and is P.16,26  
prepared to accept patients.
- (h) That in view of the permitted standards



in other fields although abortion has been legalised the Committee continue to view it with professional dislike and treat offences connected with it with a degree of severity that other professional practice does not attract.

- (i) That the Appellant assured the Committee both in writing before the hearing and at the Hearing itself that he would in no circumstances send a similar letter in the future. Appendix P.15,16 P.16

14. The Appellant will further humbly submit in relation to the second Paragraph of the charge that the Complainant failed to discharge the burden of proof laid down by Her Majesty's Board in Gardiner v General Medical Council (Privy Council Appeal No. 35 of 1960 at P.7) by proving that either financial considerations or the desire to obtain patients constituted substantial reasons for the Appellant to state falsely in the said letter that the Clinic was duly approved under the Abortion Act and further will humbly submit that the inclusion of the Statement that the clinic was duly approved under the Abortion Act 1967 amounted in the circumstances to no more than an error of Judgment. It will be submitted that the Committee failed to take into account the

following among other factors:

- (a) the facts and matters set out in his letter of explanation dated the 18th day of September 1970. P.7 + 8
- (b) That in view of the answers which he was able to give to the questions in the Application for license for abortions and his familiarity with the required standards he was entitled to assume that his application for approval of the nursing home would be a formality only and that his nursing home would have been approved by the time any patients for Germany were ready to come. P.13 Appendix 3-6
- (c) That the proper inference to be drawn from the Secretary of State's letters dated 2nd day of February 1970 and 10th day of February 1970 is that the clinic would have been licensed but for the Appellant's letter to his German colleagues. Appendix PP.7,10
- (d) When several doctors subsequently wrote to him he wrote back to them to correct the assertion in the letter that the clinic was licensed. P.19

15. The Appellant will further humbly submit that even if, contrary to his contentions, he was rightly found guilty of serious professional misconduct the facts proved against him do not in the circumstances of the case justify the penalty of suspension

from the Register for a period of 12 months and that the Committee was wrong in so directing.

16. The Appellant will humbly submit that the determination of the Committee that he was guilty of serious professional misconduct and/or that the Appellant be suspended from the Register was wrong in law and/or in fact and ought to be reversed for the following among other

REASONS

- (1) BECAUSE the Committee erred in law in finding that the Appellant was guilty of serious professional misconduct without considering each paragraph in the complaint separately and without making a specific finding in relation to each paragraph.
- (2) BECAUSE the Committee erred in finding that the Appellant was guilty of serious professional misconduct having regard to the Appellant's respectful contentions set out in Paragraphs 11-14 hereof.
- (3) BECAUSE the facts found proved by the Committee are not as a matter of law capable of amounting to 'serious professional misconduct' or alternatively do not as a matter of fact amount to such serious professional conduct.
- (4) BECAUSE even if the Committee found and were entitled to find that the Appellant was guilty of serious

professional misconduct in relation to the charge the Committee was not thereby entitled as a matter of law to order the suspension of the Appellant's name from the Register.

- (5) BECAUSE the gravamen of the case does not warrant the severe penalty imposed.
- (6) BECAUSE the severe penalty which the Appellant has already incurred as a result of the letter which he sent by reason of the Secretary of State's refusal to licence the nursing home.
- (7) BECAUSE by reason of the matters hereinbefore set out the Committee were wrong in determining and/or directing as they did and the Appellant will humbly submit that their finding and/or direction should be reversed.

JOHN TOULMIN.

No. 52 of 1970

IN THE PRIVY COUNCIL

ON APPEAL

FROM THE DISCIPLINARY  
COMMITTEE OF THE GENERAL  
MEDICAL COUNCIL

B E T W E E N

GILBERT DALLEY Appellant

- and -

THE GENERAL MEDICAL COUNCIL  
Respondent

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CASE FOR THE APPELLANT

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