

MED. COUNCIL v MURPHY

1983 No 497 sp
1984 No 177 sp
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THE HIGH COURT

THE MEDICAL COUNCIL

. v .

DR. MICHAEL MURPHY

Ruling delivered on the 29th day of June 1984 by Finlay P.

The issue at present before me is as to whether the evidence which I have heard, consisting of the evidence of Det. Sergeant O'Dwyer; the evidence of Mr. Santry, the Pharmacist; the evidence of Dr. Kelly, Specialist Consultant in charge of the Jervis Street Drug Centre and Director of the Drug Advisory Centre in the area of Drug abuse; and the evidence of Dr. Mason who is a General Practitioner of very high standing and holds the important post of President of the newly formed College of General Practitioners; the evidence of Professor Murphy who has wide experience in medical conduct and disciplinary matters apart from having being a President of the Medical Council and the evidence of Dr. Murphy himself. On all that evidence, the question is as to whether the Medical Council has established to my satisfaction, as a matter of probability, that Dr. Murphy in the prescription of Palfium which he gave to Gerard and Linda McCarthy between January of 1980 and the end of 1981 was guilty of professional misconduct.

The bare facts are not in dispute and these indicate that commencing in January of 1980, the two McCarthy's came to Dr. Murphy. The only information he had with regard to their financial and home situation appears to have been that I do not think that at the time they were married but they were living together in a flat and Gerard McCarthy was unemployed.

When they came to him, it would appear probable without going into the contested area of the facts that they were to some extent

addicted to some drug.

The uncontested evidence is that he commenced prescribing very largely in the name of Gerard McCarthy and perhaps the prescription was intended for both Gerard and Linda McCarthy for the drug Palfium. He did so over a long period and regularly and supplied a quantity of prescriptions. Over a period in January and February 1981 and from the very end of 1980, these prescriptions were standing at one hundred tablets each over the six days of the week. After that, as a result of pressure from outside and by reason of the conduct of the McCarthy's who caused trouble by forging prescriptions, it would appear that Dr. Murphy refused to give them further prescriptions. During that period not only was there no sign of a reduction of the prescriptions of Palfium issued by Dr. Murphy but it would appear that he allowed a situation in which more Palfium was prescribed as time went by.

The evidence of Dr. Kelly, the evidence of Dr. Mason and the evidence of Professor Murphy is all very clearly and strongly to the effect that that could not be a bona fide responsible medical treatment over a period of that length of time unless the person prescribing it had taken the precaution with a detailed intervening examination of the urinary tract and a body fluid level examination. They expressed a view that any responsible doctor who believed he was treating two hardened drug addicts would know the necessity for those examinations and would not increase over that period those type of drugs nor give prescriptions for quantities as large as were given in January and February of 1981. What Dr. Murphy says is that he agrees that he prescribed for these quantities and with this consistency but that he was effective in reaching a cure towards the latter part of 1981 as a result of that treatment and

that the McCarthy's were then brought back down to 50 tablets a week.

He took these patients into his care under circumstances which, in my view, should for practical purposes have immediately raised a considerable suspicion as to the purpose for which they were demanding the number of drugs whether Palfium or any other drug. Though they were persons obviously entitled to a medical card, they came to him as private patients and whether they paid him or not for issuing the prescriptions, a much more dramatic consequence was that they had to purchase their prescriptions at a price in the order of something like over £4 to £5 a hundred for the tablets as I understand the evidence.

I am informed on the evidence and I am satisfied to accept it, that as an ordinary practising doctor, a General Practitioner in the City of Cork, that Dr. Murphy should have recognised that when the McCarthy's came to him that there would have been a considerable apprehension of the way in which they came and of what the reality of their situation was.

I find it quite incomprehensible that although he prescribed and steadily increased, during the periods referred to, the numbers of drugs and although he did so in the face of a warning he certainly received, prior to the sitting of the Medical Council, from the Garda Sergeant who ultimately approached him in a responsible and quiet fashion why he, Dr. Murphy, never took any steps to make any investigation of the McCarthy's, as to their condition either of a scientific or pathological nature and as to whether the treatment was working on them or not.

I cannot accept his theory that he had succeeded in this treatment

for as far as Gerard McCarthy was concerned, there was a break in the period in which Dr. Murphy claims his treatment was continuing while Gerard McCarthy was in prison.

I ignore the fact, given in evidence, that Gerard McCarthy has since committed suicide because I have not got evidence what treatment, if any, he got when he ceased to be treated by Dr. Murphy. I do not take that fact into account.

I am driven by the facts which I have recited on all the evidence and by the considerations which I have tried to outline that this treatment probably was not bona fide treatment and to put the matter at the level which I am merely asked, it probably was a prescription of drugs to gratify the addiction of a patient. I have no doubt that I must accept and repeat the view of the distinguished members of the Medical Council that on the facts advanced by them, it would be and was professional misconduct when a doctor prescribes addictive drugs of any kind in the manner indicated in the evidence here and that it cannot be bona fide treatment and is probably at best for the gratification of an addicted patient and thus professional misconduct. This, it seems to me, particularly true in the 1980's where there is a great advance in the clear understanding of such matters as drug addiction than there was in the 1960's when the knowledge of drugs was not so far progressed as of today and yet this has been the responsible view of the medical profession since that time.

That is the inevitable conclusion I have come to and I am satisfied that this was not bona fide treatment and I must, therefore, in effect hold that it was proper for the Medical Council on the Report of the Medical Practices Committee (Fitness to Practice) to hold that Dr. Murphy was guilty of professional misconduct in over-prescribing drugs.

Ruling on the appropriate Order to be made

I am satisfied that the particular form of misconduct which has been established to my satisfaction in this case requires a relatively severe penalty. As I indicated in asking questions on this aspect of the case, it seems to me that in making a decision on the appropriate penalty which must be imposed in such a case of misconduct, I have to have regard to four matters.

First, I have to have regard to the element of making it clear by the Order to the Medical Practitioner concerned, the serious view taken of the extent and nature of his misconduct, so as to deter him from being likely, on resuming practice, to be guilty of like or similar misconduct. Secondly, it seems to me to be an ingredient though not necessarily the only one that the Order should point out to other members of the Medical profession the gravity of the offence of professional misconduct. And thirdly, and this must be to some extent, material to all these considerations, there is the specific element of the protection of the public which arises where there is misconduct and which is, what I might describe as the standard of approach in the practice of medicine. I have as well an obligation to assist the Medical Practitioner with as much leniency as possible in the circumstances.

I am taking all these matters together and I am satisfied that the erasure which was recommended and sought by the Medical Council must be the appropriate order to make. I do that largely influenced by the fact that I think a suspension for a specific period does not serve the purpose which I think the Order must have as a protection for the public. On the facts, therefore, I make this Order with reluctance aware of the consequences of the Order and its effect on Dr. Murphy. I would, however, as part of my judgment like to

recommend to the Medical Council that in view of the fact that this is the first Order to be made by a High Court under the Act of 1978 and since the Act imposes on the Council specific discretion not on the Court with regard to the consideration of applications by persons whose name has been erased from the Register for re-registration, I would express the hope that the Council and I am not seeking to tell them their business, and I hope it will not be thought to be that, would look in such a case as this at the manner in which Dr. Murphy can be rehabilitated when the times comes and given the assistance of the Council in a course of conduct which could lead to his rehabilitation and re-registration. I make that as a comment.

approved.
J. a. Ford
30/7/1984.