

**Duncan Lindsay McMillan**

*Appellant*

*v.*

**The General Medical Council**

*Respondent*

FROM

**THE PROFESSIONAL CONDUCT COMMITTEE  
OF THE GENERAL MEDICAL COUNCIL**

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL, DELIVERED THE  
24TH MAY 1993  
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*Present at the hearing:-*

LORD GOFF OF CHIEVELEY  
LORD JAUNCEY OF TULLICHETTLE  
LORD MUSTILL

*[Delivered by Lord Goff of Chieveley]*

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The appellant, Mr. Duncan Lindsay McMillan, is a Consultant Obstetrician and gynaecologist. He has held a National Health Service consultant post at Whipps Cross Hospital in Leytonstone, London E11, since 1981. In addition, he has conducted a private practice in obstetrics and gynaecology from consulting rooms in Wimpole Street. He has developed a particular interest in minimally-invasive laparoscopic surgery with the aid of lasers, a field in which he has acquired a considerable reputation, not only in this country, but also overseas.

Unfortunately, in 1987 he became involved with a private clinic called the Pemberdeen Clinic at Ilford, Essex, which was concerned with cosmetic surgery in the form of removal of tattoos by means of a laser. It was in relation to his involvement with this clinic between 1987 and 1990 that he was charged with serious professional misconduct. A hearing took place before the Professional Conduct Committee of the General Medical Council between 30th November and 2nd December 1992, at which he was represented by counsel, Mr. John Grace, instructed by Messrs. Hempsons. At the conclusion of the hearing, the factual allegations made against him, many of which were admitted, were (with two small exceptions) found to be proved, and the Committee determined that the appellant was guilty of serious professional misconduct. The

Committee then made a direction, under section 36(1)(iii) of the Medical Act 1983, that for a period of eighteen months his registration should be conditional upon his compliance with the requirements that he should not engage in any form of professional practice except under the National Health Service and that he should not undertake any professional commitment in relation to private practice.

Before their Lordships, the appellant did not appeal against the finding of serious professional misconduct, but only against the direction made by the Committee under section 36(1)(iii). His appeal against the direction was advanced on two grounds, which were in summary (1) that there was no evidence to justify any such direction either for the protection of members of the public or in the appellant's interests, and (2) that at the hearing before the Committee there was a breach of the rules of natural justice in that no warning was given that the Committee was minded to impose any such condition and that, if such a warning had been given, counsel for the appellant could and would have placed relevant material before the Committee which might have influenced it not to impose any such condition.

Since the appellant has not appealed against the finding of serious professional misconduct, their Lordships need not refer to the facts of the case in any more detail than is necessary for the purpose of considering the appellant's challenge to the appropriateness of the condition imposed by the Committee. The facts do not reveal that the appellant acted with any dishonesty, or indeed out of a desire for financial gain, in his involvement with the Pemberdeen Clinic. On the contrary, as witnesses who gave evidence on his behalf at the hearing were at pains to stress, he is a man of complete integrity, dedicated to his work in which he is highly skilled, and in which he has earned a high reputation. He is an enthusiastic proponent of surgery by laser technique, and he appears to have become involved in the work of the Pemberdeen Clinic in an anxiety to make available this considerable expertise and skill with the use of lasers in surgery, his services being remunerated only by a retainer of £50.00 per week. Nevertheless, private cosmetic clinics of the type of the Pemberdeen Clinic have been the subject of considerable public attention in recent years, and it is plain that the appellant displayed extreme naiveté in his involvement with the clinic, an involvement which became closer and more open to criticism as time passed.

The appellant explained that he agreed to act as consultant to the clinic in succession to a consultant surgeon, Mr. James Dalrymple, who was known to him as a respectable and responsible man of integrity. He did so in the belief that he did not have individual clinical responsibility for patients. He understood that his responsibilities were limited to giving technical advice, reviewing patients' notes after treatment, and dealing with any particular problems as and when they arose. But the difficulty with this approach was that the appellant was, as

he well knew, the only medical practitioner involved in the work of the clinic, and as such he was (as the Committee held) responsible for the medical and surgical care of patients attending for treatment, for directing and supervising such treatment - a responsibility which, again as the Committee held, he failed adequately to discharge. The actual work was performed by two registered nurses, Miss Hyde and Miss Lim, the operations themselves being performed by Miss Lim. Over their work, consistently with his understanding of the position which he had accepted with the clinic, he exercised only the most general supervision, visiting the clinic very rarely, and responding occasionally to enquiries about particular problems on the telephone. He left to the nurses functions and duties requiring the knowledge and skills of a registered medical practitioner, including in particular pre-operative assessment of patients; the decision whether or not to proceed with treatment; the selection and administration of anaesthetics; and post-operative assessment. Furthermore he regularly signed instructions which purported to authorise treatment for the removal of tattoos by laser in individual cases when the treatment had already been carried out - in one case, before he had even assumed his position at the clinic; and from time to time he gave blanket written instructions to Miss Lim and Miss Hyde authorising them to administer and provide certain anaesthetic and other pharmaceutical preparations to patients attending the clinic. He failed also to ensure that patients' general practitioners were informed of the treatment which it was proposed to provide at the clinic. It is right to record that, fortunately, despite the potential dangers involved in this course of conduct, no actual harm was suffered by any patient in consequence. Even so, it is plain that the Committee was astonished that a man of such seniority and distinction in his field could have allowed himself to proceed in so cavalier and irresponsible a manner. Questions posed by the Chairman at the end of the second day's hearing reveal only too clearly how he was reacting to the evidence:-

" Q. ... I have a difficulty and maybe you can assist. I have on the one hand the picture that Mr. Grace painted of Dr. Lindsay McMillan who is bright as a button, an international expert, entirely capable, well organised, has this clinic and that clinic, runs laser officers, and you were very good. I have the other picture which is of you sitting there admitting to us as being somebody who has been involved with a private cosmetic clinic with all the publicity there has been about problems with cosmetic surgery and authoritative surgeons making a fuss about it long before 1987, who then goes to this clinic, has some feeling of the expertise, does not check on the protocol, does not check on the patient consent form, does not check on the GP's letter, does not see the patients, his name appears, OK, unbeknown to him on documents and the

implication is that he has not done the job at all. It seems to me that the contrast is so ... What, of this group, have they got to think about? You stated there was no financial reason compared with what else you could do; it would not be worthwhile. A couple of operations lists would save you bothering going there, so there was nothing financial.

A. I suppose I had difficulty in saying 'no' when I was asked and I offered to help them.

Q. That I can entirely appreciate, but to do it in such a hamhanded, inefficient, crazy manner, if I may be so rude, I just cannot follow.

A. I first saw my role basically as somebody who had the technical expertise and was interested in that form of laser surgery and I think that, with the passage of time, became implicated in it and did not realise the depth of implication and did not extract myself from that or investigate it adequately to make it right. It certainly is not the way I would set up or manage my own practices within the NHS."

In the result, as was surely inevitable, a finding of serious professional misconduct was made. Plainly, the Committee did not consider that an admonition was sufficient to meet the circumstances of the case; on the other hand, no doubt taking into account the warm testimonials provided for the appellant, and the fact that his failure was due to naiveté rather than to anything more reprehensible, they did not consider that suspension from practice was called for. In all the circumstances, they considered that the direction, the terms of which their Lordships have already quoted, was sufficient to meet the case.

It is of course well known that not only sentences of erasure and suspension, but also the imposition of conditions such as that in the present case, may have a severe impact not only upon the doctor himself, but also upon innocent persons who may be affected. Such innocent persons may include not only patients who have great faith in the doctor's skill and care, but also others who are dependent on the doctor for their employment. It is however recognised that, from time to time, it is nevertheless necessary to impose such penalties, in the public interest, for the purpose of registering disapproval of unprofessional conduct and for maintaining high standards of conduct in the medical profession. All these circumstances must have been well in the minds of the Committee when they came to make the direction in the present case, in the public interest, a matter which was plainly in the forefront of their minds, as is evidenced by a number of passages from the transcript of the hearing to which their Lordships' attention was drawn.

Mr. Kentridge's main submission on behalf of the appellant was that the imposition of the particular direction

in the present case was wrong in principle, because it could not be justified on the evidence before the Committee. Section 36(1) of the Medical Act 1983 provided that the Committee may, if they think fit, direct in respect of a fully registered person:-

"(iii) That his registration shall be conditional on his compliance, during such period not exceeding three years as may be specified in the direction, with such requirements so specified as the Committee think fit to impose for the protection of members of the public or in his interests."

Mr. Kentridge submitted that there was no evidence that the imposition of such a condition was necessary for the protection of members of the public, or in the appellant's own interest. In particular, he submitted, there was no evidence that the appellant's private practice (by which Mr. Kentridge intended to refer to his private practice in obstetrics and gynaecology conducted from his consulting rooms in Wimpole Street) was conducted improperly. Accordingly, if a condition was required, such condition must either be related to involvement in private clinics such as the Pemberdeen Clinic, or must at least be so drawn as to exclude his private practice in obstetrics and gynaecology. He accordingly asked that this Board should substitute a more limited condition for that imposed by the Committee.

Their Lordships are unable to accept this submission. They accept the submission of Miss Foster for the General Medical Council that this case was not about any particular form of treatment, such as the cosmetic treatment performed at the Pemberdeen Clinic, but rather about the doctor's duty and responsibility for his patients, in the context of private medicine. It is plain that the Committee were particularly concerned by the attitude adopted by the appellant to those for whom he was responsible at the Pemberdeen Clinic, and that they considered that it was necessary for them to impose a sentence which reflected this concern and was appropriate to protect members of the public from conduct of that kind in future. In their Lordships' opinion, the Committee were not required, in the circumstances of the present case, to limit such protection in the manner proposed by Mr Kentridge. They were entitled to take a broader view of the matter, and to require that, for a limited period of time, the appellant's position should be confined to the National Health Service, with all the structural safeguards built into that service to prevent conduct of the present kind occurring. No doubt, given that the Committee did not consider that the case was one which merited suspension, the condition imposed was a severe one; but their Lordships do not consider that its imposition was outside the powers of the Committee, who were in a far better position than their Lordships to judge what was

appropriate in the circumstances of the case. It is well established that this Board will only interfere in very rare circumstances with penalties imposed by the Professional Conduct Committee of the General Medical Council. For the reasons they have given their Lordships can see no justification for interfering with the penalty imposed in the present case.

Mr. Kentridge's second submission was that the Committee should have warned counsel that they were minded to impose a condition which confined the appellant to working within the National Health Service, and that if they had done so, evidence could and would have been placed before the Committee demonstrating the adverse effect upon the appellant's private patients, and others, of the imposition of such a condition. An affidavit was placed before their Lordships setting out evidence to this effect which could have been placed before the Committee. Again, their Lordships are unable to accept this submission. The appellant was represented before the Committee by very experienced solicitors and counsel. It must have been obvious that, on the evidence placed before the Committee, either suspension or a direction under section 36(1)(iii) was the likely outcome of the proceedings; and, in either event, it would have been material to draw to the attention of the Committee the impact upon others of any such penalty which precluded the appellant from continuing his private practice in obstetrics and gynaecology. Their Lordships cannot see that there was any special feature of the present case which called for any such warning.

Their Lordships will humbly advise Her Majesty that the appeal should be dismissed. The appellant must pay the respondent's costs.



