

## INFAMOUS CONDUCT IN A PROFESSIONAL RESPECT \*

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1. In 1858 an act of Parliament was passed in the United Kingdom in order to enable persons requiring Medical Aid to distinguish qualified from unqualified practitioners. The General Medical Council was constituted consisting of reputable members of the medical profession whose duty it was, in the words of Sir Donald MacAlister, "to admit the worthy and to expunge the unworthy." The worthy are admitted on academic grounds and the unworthy expunged on ethical grounds. The grounds for erasure from the Register are conviction in England or Ireland of any felony or misdemeanour, or in Scotland of any criminal offence, or if, after due inquiry, the practitioner is judged by the General Medical Council to be guilty of infamous conduct in a professional respect.

2. It is surprising that human society took so long to discover that medicine can only be practised to the advantage of society if it is practised ethically, especially in view of the fact that Hippocrates had laid down a code of ethics as early as 400 B.C. The following excerpts from the Hippocratic Oath will suffice to show the importance ascribed by Hippocrates to medical ethics<sup>1</sup>.

"I will follow that system of regimen which, according to my ability and judgment, I consider for the benefit of my patients, and abstain from whatever is deleterious and mischievous. I will give no deadly medicine to any one if asked, nor suggest any such counsel; and in like manner I will not give to a woman a pessary to produce abortion. With purity and with holiness I will pass my life and practice my Art. I will not cut persons laboring under the stone, but will leave this to be done by men who are practitioners of this work. Into whatever houses I enter, I will go into them for the benefit of the sick, and will abstain from every voluntary act of mischief and corruption; and, further, from the seduction of females or males, of freemen and slaves. Whatever, in connection with my professional practice or not, in connection with it, I see or

hear, in the life of men, which ought not to be spoken of abroad, I will not divulge, as reckoning that all such should be kept secret."

3. However belatedly the Medical Act was passed, credit must be given to the British medical profession and the British Parliament that such an Act was passed at all because no other country had legislated in a similar manner at the time. It is also a tribute to Britain that the Medical Act of 1858 has been the basis of much legislation on medical ethics in many parts of the world. Many countries of the Commonwealth have based their legislation on the Medical Act of 1858 and the successive legislation passed in the United Kingdom.

4. There is no definition of "infamous conduct in a professional respect" in the legislature. It is only on appeal to the King's bench Division and the House of Lords that rules have been formulated regarding the exact meaning of infamous conduct in a professional respect. The Act has been amended several times but the substance of the section on infamous conduct in a professional respect remains the same. The wording in the relevant section of the consolidated Medical Act of 1956<sup>2</sup> is as follows: -

"If any fully registered person —

- (a) is convicted by any court in the United Kingdom or the Republic of Ireland of any felony, misdemeanour, crime or offence, or
- (b) after due inquiry is judged by the Disciplinary Committee to have been guilty of infamous conduct in any professional respect, the Committee may if they think fit direct his name to be erased from the register."

5. Infamous conduct in a professional respect was first defined by Lopes, L.J., in the case of *Allinson v. General Medical Council* (1894)<sup>3</sup> as follows:

"If a medical man in the pursuit of his profession has done something with regard to it which will be reasonably regarded as disgrace-

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ful or dishonourable by his professional brethren of good repute and competency, then it is open to the General Medical Council, if that be shown, to say that he has been guilty of infamous conduct in a professional respect." Lord Esher, M.R. in clarifying this definition said<sup>4</sup>. "The question is not merely whether what the medical man has done would be an infamous thing for any one else but a medical man to do. He might do an infamous thing which would be infamous in any one else, but if it is not done in a professional respect it does not come within section 29. Yet if in relation to his profession — that is, either with regard to his patients or to his brethren — he does that which may be fairly considered infamous conduct in a professional respect, then I think it is within the section."

This definition has formed the basis of all decisions regarding infamous conduct in a professional respect since that date.

6. The Act of 1858 did not provide for an appeal to a higher authority from the decision of the General Medical Council. However, the General Medical Council as indeed any tribunal exercising disciplinary powers over a profession must operate in accordance with the principles of natural justice. The position prior to 1950 has been summed up by Dennis Lloyd<sup>5</sup>:-

"As for 'natural justice' this rather high-flown expression seems to mean no more than that a person charged with misconduct should be given a reasonable opportunity of making his defence, and that the decision should be reached in good faith and without bias. The courts are not concerned with the merits or reasonableness of the decision, they will not sit as a court of appeal from a domestic tribunal, but are only concerned to see that the tribunal has acted honestly. It may be that the court will interfere if there was absolutely no evidence whatever on the basis of which the tribunal could have reached its finding, but possibly only here on the ground that the decision was so patently unreasonable as to afford evidence of bad faith. If this is the correct view, then if the court were satisfied that the tribunal acted in good faith, its decision, however grossly unreasonable or unsupported by a scintilla of evidence, could not be impugned. Moreover, evidence here does

not mean evidence such as would be receivable in a court of law; a domestic tribunal of this kind is not in any way bound by legal rules of evidence or procedure, and it can moreover inform its mind in any way it sees fit, e.g., by availing itself of its own knowledge and experience, provided always that the accused is given a fair opportunity of dealing with the case that is made against him. Further the tribunal is not bound to state its reasons for the decision."

7. In order that the principles of natural justice may be sustained the following conditions, inter alia, must be satisfied:

a) Accusers cannot act as judges.

In the case of *Leeson v. General Medical Council* (1889)<sup>6</sup> an inquiry had been held, and the name of the practitioner had been erased for infamous conduct. The complaint had been brought, and the facts had been proved before the Council by the Medical Defence Union. Two members of the Council were subscribers to and guarantors of the Union, although they were not members of its Council and had taken no part in bringing the complaint; and the practitioner brought an action for an injunction to restrain the Council from erasing his name and from publishing the proceedings, on the twofold ground that what he had done was not infamous, and that two of his judges were subscribers to the Medical Defence Union and as such biased. The first claim failed, the point having already been decided twice. On the second claim the majority of the Court (Cotton and Bowen, L.J.) held that, as the two members of the Council were not actually or constructively accusers, the decision of the Council was valid; but Fry, L.J., dissented from this decision; and Bowen L.J., while upholding the finding of the Council in this particular case, expressed the hope that in future members of the Council would cease to be subscribers to any society which brought cases before the Council." L.J. Fry, based his dissenting judgment on the case of the *Queen v. Allen*<sup>7</sup>. "In that case there was a voluntary association of persons which consisted of two classes — ordinary members, who were the owners of river-side property or occupiers of the rights of fishing in the Tees and its tributaries; secondly, honorary members, who might be desirous of promoting the

objects of the association by contributing to its funds, and who were, as I understand, not riparian proprietors or owners of rights of fishing in the Tees. That body acted, as most of these bodies do, through a committee, and that committee was not only to make by-laws, and rules and regulations, but they were the persons to engage and dismiss watchers, and in the event of proceedings under the Act being considered necessary, they — that is, the committee — were to instruct the secretary to enforce its provisions; and the secretary and treasurer were, subject to the approval of the committee, to determine what proceedings should be taken against any person acting in contravention of the law. The ordinary members, therefore, and the honorary members, had nothing whatever to do with instituting the prosecutions or appointing watchers. The person who laid the information in that case was a watcher of the association; therefore engaged and liable to dismissal not by the general body but by the committee. The magistrates who sat on the bench to hear that complaint were three. Mr. Allen was an ordinary member, and the owner of the property having a frontage to the river; Mr. Smith was not only an ordinary member, but he was an active member of the committee, and had been concerned in a resolution which authorised the committee to take proceedings for the recovery of such penalties as, in their opinion, had been incurred at the defendant's locks; and lastly, Mr. Rease, who was not an ordinary member, but only a subscribing member of the association. Those were the three justices." Chief Justice Cockburn said<sup>8</sup>, "It is impossible to hold, consistently with the principles which have been established by decided cases, and are founded upon the very essence of justice, that these magistrates were competent judges upon the occasion in question. .... An information was laid against the defendant for the violation of the provisions of an Act of Parliament passed for the protection of salmon fisheries. Certain members of that association were present as justices and took part in this conviction; they were essentially prosecutors, being members of an association the aggregate of which were undoubtedly the prosecutors." The point is not that one magistrate was disqualified but all three according to the essential principles of justice, even Mr. Rease who was only a

subscribing members of the association and could not have been an active member of the Committee which determined the proceedings to be taken.

L.J. Fry said that subscribing to a union such as the Medical Defence Union implies a general sympathy with the objects of the union and a confidence in the discretion of the executive body, who have to carry on the business of that union. This makes the subscriber a virtual prosecutor and therefore disqualified from sitting as a judge in the same cause.

L.J. Bowen who concurred with the majority view expressed by L.J. Cotton that the fact that the two members of the General Medical Council were subscribers to the Medical Defence Union, by whom the charge was made against the plaintiff, did not invalidate the decision of the General Medical Council as they were not actually or constructively accusers or quasi accusers of the plaintiff, nevertheless said<sup>9</sup>, "I think it is to be regretted that these two gentlemen, as soon as they found that the person who was accused was a person against whom a complaint was being alleged by the council of a society to which they subscribed, and to which they in law belonged as members, did not at once retire from the Council. I think it is to be regretted, because judges, like Caesar's wife, should be above suspicion, and in the minds of strangers the position which they occupied upon the Council was one which required explanation. Whatever may be the result of this litigation, I trust that in future the General Medical Council will think it reasonable advice that those who sit on these inquiries should cease to occupy a position of subscribers to a society which brings them before the Council."

It follows from the above that the General Medical Council cannot initiate proceedings against a practitioner.

- b) The practitioner has the right to be heard though not necessarily by Counsel.

In *Reg v. General Medical Council (Organ's case 1861)*<sup>10</sup>, the facts are that Mr. Organ having been removed without a hearing from the register, obtained a rule for mandamus to the General Medical Council to restore him. Justice Hill of the Queen's Bench said that this amounted to a mandamus to hear him. The General Medical Council immediately restored

him in obedience to the rule of the Court, and then called upon him to answer certain specific charges; he asked to be heard by counsel which the Medical Council refused; and he attended according to the notice, and on hearing the evidence on the specific charges against him, declined to give any evidence to rebut them. The Council found the charges proved and ordered his name to be removed from the register. The Queen's Bench Division who heard the appeal considered that the General Medical Council had the right to refuse to hear the practitioner by counsel and the rule was accordingly discharged with costs.

Subsequently, however, it has been the practice of the General Medical Council to allow practitioners to be heard by counsel and the Regulations of the General Medical Council now lay down a procedure by which the practitioner's counsel may appear and be heard.

c) The General Medical Council must hold due inquiry in all cases when the charge is one of infamous conduct.

(i) *General Medical Council v. Spackman* (1943)<sup>11</sup>

The facts briefly are as follows:

"On the hearing of a petition of divorce S., a registered medical practitioner, was found to have committed adultery with a married woman. The General Medical Council, at a meeting at which the erasure of his name from the medical register was considered, found that he stood in a professional relationship to the married woman at all material times and adjudged him to have been guilty of infamous conduct in a professional respect. In accordance with the council's standing orders, S., was invited "to state his case and produce the evidence in support of it." S. sought to negative the court's finding of adultery by tendering evidence which, though available, was not called in the divorce proceedings. The council refused to hear fresh evidence on the subject, and directed the erasure of S's name from the register. S. contended that by reason of the council's refusal to hear the evidence, the due inquiry required by the Medical Act, 1858, s. 29 had not been held and there had been a failure of natural justice: -

HELD: the refusal to hear the fresh evidence prevented there being the due inquiry required by the Medical Act, 1858, s. 29, and an order of certiorari should be granted. Decision of the Court of Appeal affirmed. Lord Wright said "The only control of the court to which the council is subject (apart from proceedings by way of mandamus) is the power which the court may exercise by way of certiorari. Certiorari is not an appellate power. Its use may nullify or discharge an order made by the council; but the grounds on which certiorari may be granted are very limited. They may, I think for purposes of this case, broadly be taken to be (i) the ground that the council's proceeding was ultra vires (ii) the ground which without any very great precision has been described as a departure from "natural justice." The former ground is not likely to be evoked in connection with the orders of the council. Their powers are so wide and undefined that the possibility of a case of ultra vires is theoretical and almost fantastic. It is not to be contemplated that the council would proceed without solid prima facie grounds or otherwise than in good faith. The question of a failure of "natural justice" is what is to be considered in this appeal. But before considering the meaning of these words, I must first observe that they can in this case be properly taken as a description of what the council has to do, namely, to make "due inquiry," which under the statute is the governing criterion, that is an independent inquiry by the council as the body responsible for its own decision." Viscount Simon said "It seems obvious, in these other instances, that while the council might well treat the conclusion reached in the courts as prima facie proof of the matter alleged, it must when making "due inquiry" permit the doctor to challenge the correctness of the conclusion and to call evidence in support of his contention. The previous decision is not between the same parties; there is no question of estoppel or of res judicata. In such cases the decision of the courts may provide the council with adequate material for its own conclusion if the facts are not challenged before it, but, if they are, the council should hear the challenge and give such weight to it as the council thinks fit."

(ii) *Ong Bak Hin v. General Medical Council* (1956)<sup>12</sup>

Dr. Ong Bak Hin was convicted and sentenced by the Supreme Court of Malacca for performing an operation with intent to cause miscarriage which caused death contrary to section 314 of the Penal Code of the Federation of Malaya. The Medical Council of the Federation of Malaya forthwith directed the Registrar to erase his name from the Medical Register of the Federation of Malaya. He was not given a hearing on the ground that due inquiry is only mandatory on the Medical Council when they consider a case of infamous conduct and not, as in this instance, when considering a case of conviction in a court of heinous offence. I should point out here that in the United Kingdom the General Medical Council always give an opportunity for the practitioner to present his case, i.e. they always give him a hearing even when he has been convicted of a felony or misdemeanour though of course this does not amount to the "due inquiry" required in cases of conduct.

When the case came before the General Medical Council in the United Kingdom, however, the practitioner was not tried under cases relating to conviction in a court but under cases relating to conduct. The formal charge before the Disciplinary Committee alleged that, on May 18, 1953, the appellant, being registered under the Medical Acts, with intent to cause the miscarriage of Tee Bee Geok unlawfully performed an operation of abortion which caused her death and thereby committed an offence under s. 314 of the Penal Code of the Federation of Malaya of which he was convicted in the High Court of Malacca on August 14, 1953, and sentenced to five years' imprisonment (reduced on appeal to two years). and concluded with the words:

"And that in relation to the facts alleged you have been guilty of infamous conduct in a professional respect." It was submitted on behalf of the appellant that witnesses who had given evidence at his trial should be called to give oral evidence before the committee and that documentary evidence, viz. a copy of the record of the hearing at his trial, though admissible, should be excluded in the interests of justice. The legal assessor having indicated that the disciplinary committee had no power to compel the attendance of witnesses from Malaya, and having advised the committee to proceed on the evidence, the copy of the

record was put in by consent with certain passages deleted or covered up and the trial judge's summing-up omitted. The committee found the appellant guilty of infamous conduct in a professional respect, and directed that his name be erased from the register. On appeal to Her Majesty in Council it was contended that the proceedings at the inquiry were defective and not strictly in accordance with r. 63 of the Medical Disciplinary Committee (Procedure) Rules, 1951<sup>13</sup>.

#### RULE 63 READS:

"The committee may receive any such oral or other evidence as would be receivable in a court of law, or in addition may after consultation with the assessor to the committee, treat any statement of fact contained in any document as evidence of that fact."

Lord Tucker, while keeping in mind the changes produced by the Medical Act 1950 whereby the Medical Disciplinary Committee are empowered to compel the attendance of witnesses and the production of documents and to administer oaths, considered that the Committee are not a court of law, but a domestic forum charged with the duty of making "due inquiry" as to the conduct of a practitioner. This duty they cannot adequately perform unless they are in possession of the whole of the proceedings in the criminal court in which the conviction occurred. He ruled further that the record of the court proceedings is "a document" within the meaning of rule 63 and therefore admissible. He commented, however, that the admissibility of such documents is limited to the statements of facts contained therein, and such a restriction may render the task of the committee and legal assessor extremely difficult in dealing with the record of proceedings in the criminal court and would exclude the judge's charge to the jury and other parts of the record which it is clearly desirable the committee should see. The Appeal was dismissed but their Lordships drew attention to the desirability of an alteration in the Rules of Procedure, whereby the committee can be empowered beyond all question to receive in evidence and examine the whole of the officially authenticated proceedings of the convicting court in this class of case,

Following the judgment of the Judicial Committee on the appeal by Dr. Ong Bak Hin the Rules were revised, and the relevant Rule is now Rule 43 (2) of the Rules of 1958. This Rule is as follows: -

The Committee may receive as evidence any such oral, documentary or other matter as, after consultation with the Legal Assessor, they may think fit;

Provided that, where any matter is tendered as evidence which would not be admissible as such if the proceedings were criminal proceedings in England, they shall not receive it unless, after consultation with the Legal Assessor, they are satisfied that their duty of making due inquiry into the case before them makes its reception desirable.

(iii) *Daly v. General Medical Council (1952)*<sup>14</sup>

It was ruled by Lord Porter that the legal assessor to the Disciplinary Committee had not exceeded his powers by questioning witnesses at the hearing by the committee provided that he had received the leave of the chairman to put the questions he did; further, that it was in order for the committee to receive evidence as to the previous position of the doctor concerned and to take it into consideration when they are making up their minds. In the first place, whether they should find the doctor guilty of infamous conduct, and in the second place what action they should take on that conduct.

(8) APPEAL

a) *Fox v. General Medical Council (1960)*<sup>15</sup>

Prior to the Act of 1950 there was no provision for an appeal to a higher authority and the courts could only act by way of mandamus or certiorari. Since 1950, however, an appeal to His Majesty in Council can be of right and by statute. The position has been summed up by Lord Radcliffe as follows: - "The appeal in this case lies as of right and by statute — see section 36 of the Medical Act, 1956. The terms of the statute that confers the right do not limit or qualify the appeal in any way, so that an appellant is entitled to claim that it is in a general sense nothing less than a rehearing of his case and a review of the decision. .... It has been

said in an earlier case (see *General Medical Council v. Spackman*<sup>16</sup>) that there can have been no due inquiry if the rules of natural justice have not been observed, and this is true. At the same time it must be remembered that before there was a statutory right of appeal to the Board under the Medical Act the only way of attacking a decision of the council was by way of certiorari proceedings or, at any rate, one of the other prerogative writs. Such proceedings are not truly by way of appeal. The court in granting or refusing the writ does not investigate the merits of the decision: its only concern is to satisfy itself that certain essential rules of procedure, which are treated by it as constituting the requirements of natural justice, have been duly observed. Their Lordships think, therefore, that it would be an undue limitation of their duty and powers in dealing with the statutory appeal to require no more for the upholding of a determination than observance of what are known as the rules of natural justice." (In effect therefore, the absolute power of the General Medical Council has been removed and its decision can now be reversed by the Privy Council.)

b) *Sivarajah v. General Medical Council (1964)*<sup>17</sup>

In 1963 the General Medical Council charged Mahadeva Sivarajah, a registered medical practitioner, with committing adultery with Mrs. Forbes between September 1954 and September 1964 and that during this period he stood in professional relationship with her. The complainant was Mrs. Forbes and as there were no other witnesses the only possible corroboration of her statement was the written statement of Sivarajah (who did not appear before the Medical Disciplinary Committee) denying having had sexual intercourse with Mrs. Forbes prior to 1960. This was interpreted by the legal assessor as corroboration of that part of the evidence dealing with the last part of their association. At the same time he warned the Committee of the danger of a finding of adultery unless there was corroboration of the evidence of Mrs. Forbes. In evidence Mrs. Forbes said that her name was removed from his list of patients in November 1959; it seemed the most probable date of its removal was February 1960 as claimed by Sivarajah. The Medical Displi-

nary Committee found the practitioner guilty of infamous conduct in a professional respect and directed that his name be erased from the register.

The practitioner appealed to the Privy Council. Lord Guest in delivering judgment referred to the clarification of the position created by the Medical Act of 1950 allowing an appeal to the Privy Council by Lord Radcliffe in the case of *Fox v. General Medical Council* (1960)<sup>18</sup> and made the following statements: -

- (i) "It would have been preferable if the advice tendered had been that the letter was capable of being considered as corroboration but that it was for the committee to judge whether in fact it corroborated the complainant's evidence, and that is what the legal assessor clearly meant to say, although it was perhaps unfortunately expressed. The legal assessor is however in no sense in the position of a judge summing-up to a jury nor is the Committee's function analogous to that of a jury."
- (ii) "Some attacks were made by counsel on the credibility of Mrs. Forbes, the principal attack being based on the fact that in her petition for divorce from her husband on the ground of his cruelty, decree absolute on which was pronounced on August 1960, she concealed from the court her adultery with the appellant. But these and other discrepancies in her evidence referred to by counsel were eminently matters for the committee who saw and heard Mrs. Forbes. Apart from these considerations the fact that the appellant did not appear nor gave evidence at the hearing was a matter to which the Committee were well entitled to have regard. If her evidence was accepted by the Committee there was ample evidence to justify the Committee's finding. The legal assessor warned the committee in the clearest possible terms of the danger of a finding of adultery on the uncorroborated evidence of Mrs. Forbes and that they should look anxiously for some corroboration, but if they believed her evidence they were entitled to make their

finding in the absence of corroboration. Therefore, having this warning before them, even if the Committee did not find corroboration in the appellant's statement, they were quite entitled to come to the conclusion which they reached. Their Lordships do not therefore consider that the Committee's finding can be interfered with."

Whatever the legality may be it does seem odd that the Medical Disciplinary Committee decided to erase Sivarajah's name from the register on the unsupported evidence of Mrs. Forbes whose motivation for bringing the charge would in the circumstance appear to be less than honourable. Even if Sivarajah's statement denying sexual relations with Mrs. Forbes prior to 1960 is definitely to be interpreted as meaning that he did have such relations with her in 1960 or after, it would appear that she had ceased to be his patient by February 1960, if not by November 1959, so that he did not stand in professional relationship with Mrs. Forbes during the period when there is corroborated evidence of adultery.

The case of *de Gregory*<sup>19</sup> may throw some light on this decision. *De Gregory* admitted the charge made by the General Medical Council viz. that he had committed adultery with Mrs. Round from July 1959. Mrs. Round came off his list in December 1958 but Mr. Round and the three children continued to be on his list. The General Medical Council found *de Gregory* guilty of infamous conduct in a professional respect and directed the Registrar to erase his name from the Register. The effect of this decision was simply that there is no magic in the removal of a name from a doctor's list at any particular time and the fact that it had happened at some particular time did not prevent the Committee from considering whether the man's alleged conduct arose out of the relation of doctor and patient.

In the light of the clarification by Lord Radcliffe whereby a practitioner whose name is removed from the register has the right of appeal to the Privy Council since 1950 and his statement that "an appellant is entitled to claim that it is in a general sense nothing less than a rehearing of his case and a review of the decision." it is surprising that the Board

was satisfied in the case of Sivarajah that justice had been done.

## 9. THE POSITION IN MALAYSIA

The position in Malaysia would, I think, be similar to that in the United Kingdom. I expect the decisions of the United Kingdom Courts to be of highly persuasive authority on the local Courts because provision is made in some instances for an Appeal to the Privy Council though no such provision is made in our Medical Registration Ordinance. However that may be I have no doubt the Medical Councils of Malaysia will generally act in accordance with the lines of the decision in the United Kingdom since our professional and ethical standards are derived from the United Kingdom. In this country, unlike in the United Kingdom, provision has always existed for an appeal against the decision of the Medical Council and therefore the points made by Lord Radcliffe in the case of *Fox v. General Medical Council* would be pertinent to the situation in Malaysia.

The relevant sections of the local Ordinance are as follows: -

### (a) *Medical Registration Ordinance (1907)*

s. 19 (1) If any medical practitioner registered under this Ordinance is convicted of any heinous offence or is, after due inquiry by the Medical Council, deemed by it to have been guilty of infamous conduct in any professional respect, the Medical Council may order the name of such person to be struck out from the register.

(2) Upon any such inquiry the person against whom such offence or conduct is alleged shall be entitled to appear and be heard by counsel and any person whose name has been struck out from the register may appeal to the High Court.

It will be noticed that as early as 1907 the right to be heard by counsel and the right of appeal have been provided for whereas in the United Kingdom such provisions were only made in 1950.

### (b) *Medical Registration Ordinance (1953)*

s. 23 (1) If any person registered, whether provisionally or otherwise, under this Ordinance

is convicted of any heinous offence or, after due inquiry by the Medical Council, is deemed by such Council to have been guilty of infamous conduct in any professional respect, the Medical Council may order the name of such person to be removed from the register.

(2) The Registrar shall forthwith give to the person concerned notice in writing of the removal of his name from the register.

s. 24 (1) Any person, whether provisionally registered or otherwise, aggrieved by the removal of his name from the register under section 23 of this Ordinance may, within one month of the notice given under subsection (2) of that section, appeal to the High Court against the removal and on any such appeal the High Court may give such directions in the matter as it thinks proper, including any directions as to the costs of the appeal.

(2) No appeal shall lie from an order of the High Court under this section.

The local Medical Councils are not empowered to take evidence on oath or to compel the attendance of witnesses neither is there provision for a Medical Disciplinary Committee to carry out the task of conducting an inquiry, the position in this respect being similar to that in the United Kingdom before 1950.

10. It is pertinent to refer to two local cases where the decision of the Medical Council was appealed against: -

### (a) *F. W. Goonetilleke v. Medical Council (1911)*<sup>20</sup>

Dr. F. W. Goonetilleke was charged with making an agreement with M. A. de Silva whereby the latter undertook to forego a judgment for some \$1,100/- in consideration of Dr. Goonetilleke treating him for specific urethritis and keeping secret the nature of the malady from which he was suffering and without informing de Silva that he was under a professional bond of secrecy; and, further, that the amount of the said judgment was entirely disproportionate to the probable value of any professional services which Dr. Goonetilleke would be called upon to render in connection with his illness. The Medical Council found Dr. Goonetilleke guilty of infamous conduct in a professional respect and ordered his name to be struck off the register.

Dr. Goonetilleke appealed against the decision. The appeal was heard before Law Ag. C. J. Thornton, Fisher and Ebden J. J., the Ordinance XI of 1907 only providing for an appeal to the Supreme Court and that consisting by virtue of the Courts Ordinance 1907 of the Chief Justice and three or more Puisne Judges. The grounds of appeal, inter alia, were that the Council had acted both as prosecutors and judges in the proceedings and that Dr. Galloway took part in the inquiry and adjudicated on the issue notwithstanding that he had a pecuniary interest in the result. Actual bias on the part of Dr. Galloway was not alleged.

Law Ag. C.J. referred to the cases of *Leeson v. General Medical Council* and *Allinson v. General Council* and said that since the Medical Council instituted the prosecution they must be regarded as the prosecutors as it were; and that being so, these proceedings on the authority of the cases cited were bad, and the appeal must be allowed. Fisher J. agreed and added further, that on the second ground the bare possibility of pecuniary interest in the result of an inquiry prevents that person from adjudicating on the issue. He said, "Here there can be no doubt that the possibility exists. The Appellant and Dr. Galloway both have a large native practice. The number of medical men enjoying that sort of practice in Singapore is quite limited. And if the appellant is deprived of his right to practice, his patients will have to go elsewhere. It is scarcely conceivable that Dr. Galloway should not benefit to some extent by such a result."

While there can be no doubt that prosecutors cannot act as judges it is very much open to question whether a decision of the Medical Council is invalidated because the person charged is a private practitioner and one of the members of the Council is also a private practitioner and might benefit by putting him out of practice. This could possibly be sound sense if there was only a handful of practitioners in the city but the objection certainly does not hold to-day. There always have been private practitioners serving on the Medical Council both here and in the United Kingdom and this fact should not invalidate the findings of the Council when the person charged is a private practitioner. Indeed the Presidents of the Medical Council of Singapore since the

Medical Registration Ordinance 1953 come into force are all private practitioners.

(b) *Paglar v. Medical Council (1933)*<sup>21</sup>

It was alleged against Dr. Paglar that he gave an incorrect certificate to a patient stating that on a blood test he had been found to be suffering from a certain disease, when, in fact no such test had been made and the patient was not suffering from that disease. The matter was brought to the notice of the Medical Council, and they took action which resulted in a decision being taken to strike Dr. Paglar off the medical register. An appeal was put in to be heard by the full Court of Appeal, when it was ruled that the matter was a proper one for hearing by a single judge, with an assessor. The assessor on appeal was Sir David Galloway. The C.J. Sir Walter Huggard in dismissing the appeal said, "I am sitting as an appellate court on an appeal from a tribunal which has had the opportunity of seeing the witnesses and forming an opinion as to their credibility, and in order that the appellant should succeed I must be satisfied that the conclusions of fact are definitely wrong. I may say at once the appellant has failed to discharge that onus."

The position therefore is similar to that in the United Kingdom, that is, though the law allows an appeal by right and the High Court here and the Privy Council in the United Kingdom can investigate the merits of the decision it would appear that in fact the appeal judges would be very hesitant to reverse a decision of the Medical Council unless the proceedings were improper or the decision patently absurd. It is felt that the Medical Council have the opportunity of seeing the witnesses and forming an opinion as to their credibility and therefore are most fitted to arrive at a decision. Further, reputable members of the medical profession such as constitute the Medical Council are the most proper persons to decide whether a practitioner has been guilty of infamous conduct in a professional respect.

#### REFERENCES

1. Adams. F. (1939): *The Genuine Works of Hippocrates*, Frontispiece.
2. Medical Act, 1956. section 33—Erasure from Register for conviction of crime or for infamous conduct, London: Published by Her Majesty's Stationery Office,

3. *Allinson v. General Medical Council* (1894), 63L.J.Q.B.534.
  4. *Ibid.*
  5. *Dennis Lloyd* (150): *The Modern Law Review*, Vol. 13, No. 3, P. 283.
  6. *Leeson v. General Medical Council* (1889), 59L.J.Ch. 233.
  7. *The Queen v. Allen* 4 B & S. 915; 33 L.J.M.C.98.
  8. *Ibid.*
  9. *Leeson v. General Medical Council* (1889), 59L.J.Ch.233.
  10. *Regina v. The General Medical Council* (Organ's case) (1861), 30L.J.Q.B.201.
  11. *General Council of Medical Education and Registration of the United Kingdom v. Spackman* (1943), 2 All.E.R.337.H.L.
  12. *Ong Bak Hin v. The General Medical Council* (1956), 2 All.E.R.257,P.C.
  13. *The Medical Disciplinary Committee (Procedure) Rules*. Approval Order of Council, 1951, Printed and published by His Majesty's Stationery Office 1951.
  14. *Daly v. General Medical Council* (1952) 2 All. E.R.666.P.C.
  15. *Fox v. General Medical Council* (1960), 1.W.L.R. 1017,P.C.
  16. *General Council of Medical Education and Registration of the United Kingdom v. Spackman* (1943), 2 All.E.R.337,H.L.
  17. *Sivarajah v. General Medical Council* (1964), 1 All.E.R.504,P.C.
  18. *Fox v. General Medical Council* (1960), 1 W.L.R.1017,P.C.
  19. *De. Gregory*, Brit. Med. J. Suppl., 1960, 2, 237.
  20. *Goonetilleke v. Medical Council* (1911), 12 S.S. L.R.95,C.A.
  21. *Paglar v. Medical Council*, Straits Times 16.8. 1933.
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