CASES

DECIDED BY

THE SUPREME COURT OF CYPRUS

IN ITS ORIGINAL JURISDICTION AND ON APPEAL FROM THE ASSIZE COURTS AND DISTRICT COURTS.

[JACKSON, C.J., GRIFFITH WILLIAMS AND HALID, JJ.]

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MARIOS TRITOFTYDES
v.
MEDICAL COUNCIL OF CYPRUS.

IN THE MATTER OF SECTION 14 OF THE MEDICAL REGISTRATION LAWS, 1936 AND 1939,

AND

IN THE MATTER OF AN ENQUIRY INTO THE ALLEGED INFAMOUS AND DISGRACEFUL CONDUCT IN A PROFESSIONAL CAPACITY OF DR. MARIOS TRITOFTYDES.

(*Medical Appeal No.* 1/43.)

Medical Registration Laws, 1936 *and* 1939, *sections* 14 *and* 15—*Power of Supreme Court to hear evidence—Meaning of "Due Enquiry"—Combination of incompatible functions in the same person.*

The Medical Council, after holding an enquiry under section 14 of the Medical Registration Laws, 1936 & 1939, ordered the name of a medical practitioner to be erased from the Medical Register for improper conduct. The Acting Attorney-General attended at the enquiry before the Medical Council to assist it in its proceedings, and conducted the case on behalf of the complainant.

Held: The Supreme Court has power to hear evidence in an appeal under the Medical Registration Law, 1936, section 15. Where a case is not properly conducted there is not due enquiry under section 14 of the said Law, and the Supreme Court must intervene. The Medical Council is not a Government Department but an independent statutory body. The functions of prosecutor and legal assessor cannot be combined in one person.

Appeal from an order of the Medical Council of Cyprus for the erasure of the name of a practitioner from the Medical Register.

M. Houry for the appellant.

P. N. Paschalis, Acting Solicitor-General, for the Medical Council.

The Court took time for consideration.

JACKSON, C.J.: This is an appeal by a medical practitioner against an order made by the Medical Council of Cyprus, under section 14 of the Medical Registration Law, 1936, for the erasure of his name from the Medical Register. The ground of the order was that the Council, after enquiry, had found, by a majority of three votes to two, that the practitioner had been guilty of infamous and disgraceful conduct in a professional respect.

A right of appeal to this Court against that order is given to the practitioner by section 15 of the law quoted.

In view of the conclusion at which I have arrived, it is unnecessary for me to review, in this judgment, the evidence given at the council's enquiry.

The appellant's advocate asked this Court to take the evidence of three witnesses whose evidence, Mr. Houry said, was not available at the time of the Medical Council's enquiry and whose statements,

if believed, would tend to discredit certain witnesses who gave evidence before the Medical Council. Mr. Houry also asked us to hear again the evidence of one of the witnesses who gave evidence before the Council. Mr. Houry's application was opposed by the Acting Solicitor-General, on behalf of the Medical Council, on the ground that the Rules of Court, under which it was sought to introduce this evidence, did not apply to these proceedings and that this Court had, in fact, no power to hear evidence itself. Having already consulted my learned colleagues who sit with me, I said that we were quite satisfied that as the law had cast on this Court a duty to hear appeals from orders of the Medical Council, so the law must confer on the Court the power to discharge that duty properly. We were satisfied, therefore, that we could hear evidence if we thought fit. I said that, in this respect, our position differed from that of a Court in England reviewing proceedings of the General Medical Council there on writs of *certiorari* or *mandamus*. In England the law makes no express provision for appeals against orders of the General Medical Council and in Cyprus it does. I added, however, that we were reluctant to hear this fresh evidence which was incomplete in itself and tended only to discredit certain evidence given before the Council. We had not heard that evidence and we had no means of knowing how much of it the Council had believed. We were also reluctant to rehear all the evidence, with this fresh evidence, and so to substitute ourselves for the Medical Council in an enquiry in which peculiarly professional issues were involved. I accordingly said that, on the material then before us, it seemed that the alternatives open to us were, either not to intervene in the Council's decision at all, or, if in due course such a conclusion seemed the right one, to intervene in such a way that it would be open to the Council, if they thought fit, to institute fresh proceedings and to rehear all the evidence given at the first enquiry together with the further evidence which had since become available.

We accordingly proceeded to consider the grounds of appeal.

One of these grounds was that the Solicitor-General (now and at the time of the enquiry acting as Attorney-General) " took an active part in the enquiry against " the appellant and " misdirected the Council " and that the appellant " was thereby prejudiced ". At the request of the appellant's advocate, we heard argument on this ground of appeal first and we have not considered the others.

The evident implication of this ground of appeal is that the proceedings before the Council were not properly conducted and that there was not, in fact, that " due enquiry " by the Medical Council which is required by section 14 of the Medical Registration Law before the Council is authorized to order the removal of a practitioner's name from the Register. If there was not a due enquiry, then this Court must intervene. This obligation is well established by the decision of the House of Lords in the recent English case of *The General Council of Medical Education and Registration* v. *Spackman* (1943, 2, A.E.L.R., p. 337) notwithstanding that in England the law makes no express provision for an appeal from the Council's decision.

It is necessary, therefore, to look carefully at the conduct of the enquiry held by the Medical Council in this case.

We were informed by the Acting Solicitor-General that the Council was, at its own request, advised by the Attorney-General's department before a charge was framed against the appellant and that the Council had asked the Attorney-General for the assistance of the Law Officers in framing the charge and, as the Chairman of the Council put it, "in prosecuting the case". I attach no special significance to that expression. The appellant was informed, when the charge was communicated to him, that a Law Officer would be present, as a friend of the Council, to assist in the presentation of the case. In due course the Acting Attorney-General appeared himself.

The Crown is in no way a party to these proceedings and the Medical Council is not a government department but an independent statutory body. Nevertheless, in conditions existing in Cyprus, I make no criticism of what was done up to this stage. The appearance of the senior Law Officer of the Crown, for the time being, "as a friend of the Council" was in fact a guarantee to the Council, to the appellant, and to all concerned, of the fairness and impartiality with which the complainant's case would be presented.

It is worth noting, at this point, in what way the course followed differed from what would have occurred in England at a similar enquiry before the General Medical Council there.

In England the Medical Council sits with a barrister as Judicial Assessor. The Assessor advises the Council on legal questions arising in the course of the enquiry and may himself question any witnesses giving evidence at the enquiry, but it is not his duty to present the case against the practitioner charged. The Council has also its own solicitor and he presents the case against the practitioner charged when, and only when, the complainant does not himself appear or when there is no complainant. If a complainant appears, the complainant himself, or his counsel or solicitor, states his case and produces his witnesses.

In the present case the complainant appeared but had no advocate, presumably because he knew that the Acting Attorney-General would present his case for him. This the Acting Attorney-General did, stating the complainant's case to the Council at the beginning and addressing the Council at the end of the proceedings, calling and examining the complainant and all the witnesses in support of the complaint and cross-examining the appellant and his witnesses. The Acting Attorney-General also, at his own instance, called two additional witnesses to rebut certain evidence for the defence after the defence had closed. It appears from the shorthand notes of the enquiry that the appellant's advocate objected, without success, to the evidence of one of these witnesses, but the shorthand notes do not disclose the ground of objection.

I do not know who prepared the statements upon which the complainant and his witnesses were examined by the Acting Attorney-General. The Acting Solicitor-General could give the Court no information on that point. But it appears from the evidence of one of the witnesses called by the Acting Attorney-General, after the close of the defence, that this witness, at any rate, made a statement to the Acting Attorney-General himself.

The outline of the procedure that I have given shows how closely connected the Acting Attorney-General was throughout with what one may term the prosecution. But he not only presented the

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complainant's case to the Council. He appears to have attended the enquiry also in the capacity of Legal Assessor to the Council. He is so described in the Council's own minute of its proceedings and he informed the Council in his final address that they were bound by his advice upon a particular legal point. There can be no doubt that the advice that he gave the Council on that particular point was entirely proper and correct, but when I asked the Acting Solicitor-General, in this appeal, on what authority the Acting Attorney-General had told the Council that they were bound by his advice on legal matters, I was told that the statement had been made by the Acting Attorney-General in his capacity of Legal or Judicial Assessor to the Council and that in fact he had attended the enquiry in a dual capacity—to advise the Council as their Legal or Judicial Assessor and to present the complainant's case to the Council on the Council's behalf. The Acting Solicitor-General could not tell us how it came about that the function of Assessor was conferred upon, or assumed by, the Acting Attorney-General, but it is quite clear that the Council regarded him throughout as exercising these two functions, and the appellant's advocate informed this Court that there were several occasions during the enquiry when either he or the Acting Attorney-General objected to evidence about to be offered by the other and that on each occasion he was told by the Chairman that the Council was bound by their Assessor's opinion.

It would, in my view, be extremely difficult, to say the least, for any one person, even with the most scrupulous regard for fairness and impartiality, to combine in himself these two very different functions, that of prosecutor, for this is what the Acting Attorney-General undoubtedly was, and that of Legal or Judicial Assessor to the Council before whom he was conducting the prosecution. So difficult, indeed, would the combination be, both for the person in whom the two functions were combined, and for the Medical Council who must constantly distinguish between them, that, in my opinion, they should certainly not have been combined in one person.

The difficulty first appeared during the actual hearing of the evidence when the Acting Attorney-General, as Legal or Judicial Assessor, was the judge, not only of the propriety of the conduct of the defence, but also of the propriety of his own conduct as prosecutor. But it was not until the Acting Attorney-General's final speech to the Council that the difficulty was fully disclosed. Quite apart from the character of the speech itself—I shall comment on that in a moment—it was not analogous to the final summing-up of a judge to a jury, as it might have been if the Acting Attorney-General had fulfilled the functions of Legal or Judicial Assessor alone. It much more closely resembled the final speech of a prosecutor to a jury to whom no judicial summing-up was afterwards to be addressed. And it was made to a Council who regarded the speaker not only as their Legal or Judicial Assessor, by whose opinion on legal matters they were bound, but also as appearing, at their own request, to assist them; not as the advocate for the complainant, but as "the friend of the Council", as the Chairman had formally described him, upon whose impartiality the Council could safely rely.

The main issues raised by the evidence at the enquiry were whether adultery had been committed by the appellant with one of the witnesses and whether, if so, the relations of doctor and patient had existed between these two persons at the time. There was, as might be expected, strong conflict of evidence. Everything turned on the credibility of witnesses and a good deal of unsavoury matter was introduced at the enquiry in order to discredit some of them. It was a case requiring considerable delicacy of handling in the final speech to the Council if the issues, which were purely issues of fact and not of law, were to be properly placed before them by one whom they regarded as speaking in the character of their friend.

In the Chairman's minute of the proceedings the Acting Attorney-General is stated, not to have addressed the Council for the complainant, but to have "summed-up the case". He began his speech by saying that he was not appearing on behalf of the complainant but to assist the Council in the presentation of the case and that he would not be taking sides. He added that if he said anything that might sound like a reflection of his own view on any question of fact, the Council were not bound by it and that the decision on facts was for them and them alone. At several points of his speech he used such phrases as "If you believe . . . . ." and "It is for you to say . . ." and so forth. And he concluded his speech by advising the Council, quite correctly, as to the degree of certainty which, if it existed in their minds about the evidence, would justify them in finding that the charge had been proved.

But did the speech, as a whole, accord with these unexceptionable declarations? Unfortunately it did not. And, if it did not, was it not the more likely to influence the Council unduly because it had included those declarations than if it had not?

The Acting Attorney-General had assured the Council that he would not be taking sides, but this is precisely what he very forcibly did. However strong his own conviction of the practitioner's guilt, it was not for him to force his conviction on the Council, having regard, especially, to the peculiar relationship in which he stood towards them. It was of little use to tell them, at the beginning, that they were not bound by anything that sounded like an expression of his own view of the facts when the speech as a whole was of such a character that it left the Council with no alternative to the conviction of the practitioner except a total disregard of practically every construction of the evidence that had been very forcibly pressed upon them by their adviser and friend. Everything that could possibly discredit the evidence of the practitioner charged and of his witnesses was brought forward and urged upon the Council, and every doubt that the defence had cast on the evidence of the complainant and of his witnesses was explained away or brushed aside.

At one point the Acting Attorney-General informed the Council that if they accepted certain evidence they were bound to find that the practitioner charged was treating (in a medical sense) a particular woman at particular times. Now that was not a question of law but a very vital question of fact, and a question which a Council of medical men were peculiarly qualified to answer for

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themselves. It was a question on which they were certainly not bound by any advice which their Legal or Judicial Assessor might give them. But I cannot convey the character of the speech as a whole without quoting it at length and that I cannot do in this judgment. A shorthand note of the speech, revised by the Acting Attorney-General himself, is on the record and speaks for itself. It would have been a very strong speech if it had been delivered to a Court of law by a counsel for the prosecution in a criminal case. And though I have no doubt that it was delivered only from sincere and honest conviction, it was, in my view, very much too strong a speech when delivered at a domestic enquiry by the Medical Council and by someone who stood towards the Council in the dual capacity of adviser and friend and spoke with all the authority of his high office.

The conduct of the complainant's case by the Acting Attorney-General was indistinguishable from that of a prosecutor and, in my opinion, the combination of two incompatible functions in him, throughout the enquiry, coupled with the character of his final speech to the Council, while occupying that double relation towards them, cannot but undermine that confidence in their finding which one would naturally have felt, whatever conclusion they had reached, if their enquiry had been conducted in freedom from these difficulties. The conclusion that they reached may have been right. I express no opinion, one way or the other, on that point. But the manner in which the enquiry was conducted deprived it, in my view, of the character which it should have had as a domestic enquiry by representatives of the medical profession into the conduct of a member of their own profession. It was not, I think, a due enquiry such as the law requires before the Council is authorised to order the removal of a practitioner's name from the Medical Register.

Having formed those views I can only conclude that, in my opinion, this appeal should be allowed and the order of the Council removing the appellant's name from the Medical Register should be cancelled.

This conclusion will make it unnecessary for us to hear argument on those grounds of appeal which were not argued before us at our last sitting.

It will be open to the Medical Council, if they so desire—and I offer no suggestion to them, one way or the other, on this point—to rehear the charge against the appellant, with a different membership. If they do, then the fresh evidence, which it was sought to bring before us, can be heard by the Council together with the evidence given at the first enquiry.

GRIFFITH WILLIAMS, J.: There is little I can profitably add to the very clear and complete judgment of the learned Chief Justice with which I entirely agree. I should, however, like to lay stress on one or two points he has touched on.

I wish to emphasize the gravity of cases of this kind, in which if found guilty the medical practitioner is liable to be struck off the Medical Register, entailing the abandonment by him of the profession to fit himself for which has involved years of study and great expense. He is deprived of his means of livelihood, and lacks

the training and experience necessary to succeed in any other walk of life. Hence the Medical Council has a very grave responsibility to discharge and should be satisfied beyond all reasonable doubt as to the guilt of the practitioner before finding him guilty. He should be given the most fair and impartial trial, so conducted that the Council should be not only free from undue pressure of any kind but be immune from any suspicion of it.

The Court has not heard argument on the evidence or considered the case on its merits, but as the learned Chief Justice says in his judgment there was strong conflict of evidence and everything depended on the credibility of witnesses. It was therefore a case in which the conduct of the friend and adviser of the Council, as the Acting Attorney-General purported to be, might seriously influence the finding of the Council, unless he imposed upon himself the strictest impartiality.

That the evidence left room for doubt as to the guilt of Dr. Tritoftydes is shown by the fact that there was only a bare majority of the Council in favour of his conviction. And I should like to refer to the evidence briefly, not to consider its credibility or otherwise, but to show that the question of the guilt or not of Dr. Tritoftydes was a very delicate one, and chiefly depended on the statements of two witnesses who might well have been disbelieved.

In the absence of any assistance from the Council, which left no record of its findings on any questions raised in the evidence or of its belief in the credibility or otherwise of any of the witnesses called, I shall assume that it came to the conclusion that adultery was committed by Dr. Tritoftydes with the wife of the complainant, and at some time or times when he was treating her professionally. There were two periods only during which it was alleged that adultery was committed, namely, in August, 1941, and in August, 1942, both times in the clinic of Dr. Tritoftydes when the lady in question was alleged to be undergoing treatment. As to the former occasion the only witness was a nurse Philomen, and as to the latter occasion there were two witnesses, Philomen and a medical practitioner called Lambis. The two incidents were mentioned in a letter by a nurse Terpsa to the complainant as having been witnessed by her; but she herself appeared before the Medical Council to explain the circumstances under which that letter came to be written, and to deny the truth of its contents. The only witnesses then who gave evidence to the Council about the adultery were Philomen and Lambis, and their evidence was not without an element of improbability, particularly as regards the behaviour of Dr. Tritoftydes and the complainant's wife at the clinic in August, 1942, when by the account of Dr. Lambis they cast aside proper decency and reserve and openly flaunted their immoral relationship. This alleged behaviour, so completely out of accord with the way these two demeaned themselves before their friends in general and indeed before the complainant himself, might well raise doubt as to its credibility. The appellant and the complainant's wife both denied absolutely the evidence of these witnesses relating to the alleged incidents of August, 1941, and August, 1942, and other witnesses were called to impeach their credibility on points of detail. Evidence for the defence alleged that Dr. Lambis and the nurse Philomen were engaged in a sexual

intrigue, and had a joint grudge against Dr. Tritoftydes for interfering with their relationship by dismissing Philomen from his clinic. It is in evidence that the moral character of Philomen at least was not above suspicion, as she was admittedly the mother of an illegitimate child, and that her or her mother's house, where the complainant's wife lodged on leaving the complainant was—as appeared from the record of the divorce proceedings before the Ecclesiastical Court—regarded as a house of ill-fame.

If the Council should accept the story of these witnesses regarding the fact of adultery having taken place on either or both occasions alleged, they had further, before deciding that at the time or times in question Dr. Tritoftydes was acting in a professional capacity to the complainant's wife, to believe that she went to be treated by a gynochologist at his clinic for influenza and/or toothache, and this although these visits were not recorded in the register of patients regularly kept at the clinic, and although the clinic was not used exclusively for patients but was also the private residence of Dr. Tritoftydes. It was admitted by the complainant that Dr. Tritoftydes was accustomed to extend hospitality to him and his wife and put them up on their occasional visits to Limassol from Platres. The same two witnesses give evidence as to treatment at the clinic in August, 1942, as gave evidence of adultery. As to the influenza incident in August, 1941, it was stated clearly by the complainant that his wife went there not for treatment at a clinic but on account of their being without servants in their own house. Complainant himself says, "We friends as doctors looked after my wife but she was under the treatment of Dr. Tritoftydes". He did not say in what that treatment consisted. The allegations of professional treatment at the times in question were denied by the appellant and his witnesses.

So much for the evidence. It can be seen that the story of the complainant depended almost entirely on the statements of the nurse Philomen and the doctor Lambis, and it was for the Medical Council to decide whether or not to believe that evidence.

In view of the extreme gravity of the charge against the appellant it seems to me extremely doubtful, having regard to the witnesses in the complainant's case and the conflict of evidence, whether the Medical Council would have come to the decision it did were it not for the very partial manner in which the Acting Attorney-General conducted complainant's case. The behaviour of the Acting Attorney-General has been so fully dealt with by the learned Chief Justice that I need only refer to it very briefly.

The conduct of the proceedings was assumed by the Acting Attorney-General who himself laid down the procedure the Council should follow; and he appears to have interpreted the phrase "Assist the Council in the presentation of the case" to mean "prosecute the case on behalf of the complainant", which he, in fact, did from start to finish. His position with regard to this enquiry was without any precedent, English or local, as he attempted to perform the dual role of appearing at one and the same time in the incompatible characters of prosecutor and of adviser and friend to the Medical Council. He, throughout, insisted that he was there merely to assist the Medical Council, and protested that he was not to be considered as representing the complainant.

Indeed he even went so far as to suggest that by his conducting the proceedings the complainant's case was prejudiced. That the Council believed that the Acting Attorney-General was acting entirely impartially and assisting them in the most proper manner is shown by the Council passing at the end of the proceedings a unanimous vote of thanks to him for his able assistance in presenting the case.

To be the friend and adviser of the Council or Judicial Assessor, complete impartiality is essential; but it stands out in relief from the record of the proceedings that far from displaying impartiality the Acting Attorney-General prosecuted the case against Dr. Tritoftydes with relentless zeal, pressing on the Council evidence, sometimes dubious, adduced by the complainant, and disparaging evidence that might tell in favour of the appellant.

The members of the Council could scarcely fail to be influenced strongly by the behaviour of the Acting Attorney-General, on account of his high legal position; and would naturally feel they could rely on his impartiality on account of his fiduciary relationship to themselves, as their friend and adviser. His insistence that he was not representing the complainant but was only there to assist the Council could serve only to increase their belief in his complete disinterestedness.

In an atmosphere of the kind that must have existed at this enquiry it appears to me impossible for a domestic tribunal like the Medical Council to exercise that free judgment necessary to a right decision on the evidence, and to carry out that "due enquiry" needed to comply with the requirements of section 14 of the Medical Registration Law. There must be a fair and unprejudiced trial. I need scarcely stress the danger to the community if domestic and other tribunals exercising severe disciplinary powers are to be influenced by any form of forensic persuasion. In the conditions in which these proceedings were conducted the elements necessary to a due enquiry were not present. I do not consider that Dr. Tritoftydes had a fair trial, and I agree that the whole proceedings should be quashed.

HALID, J.: I concur.

Appeal allowed.