

Privy Council Appeal No. 92 of 2001

Dr. Marta Stefan

Appellant

v.

The General Medical Council

Respondent

FROM

**THE HEALTH COMMITTEE OF THE
GENERAL MEDICAL COUNCIL**

JUDGMENT OF THE LORDS OF THE JUDICIAL
COMMITTEE OF THE PRIVY COUNCIL,

Delivered the 6th March 2002

Present at the hearing:-

Lord Steyn
Sir Andrew Leggatt
Sir Philip Otton

[Delivered by Lord Steyn]

1. On 30 October 2001 a Health Committee of the General Medical Council, exercising powers under section 37 of the Medical Act 1983, decided that the then existing suspension of the registration of Dr Stefan as a medical practitioner should remain in force indefinitely. Pursuant to section 40 of the 1983 Act, she now appeals to the Judicial Committee under the Judicial Committee (Medical Rules) Order 1980.

2. It is necessary to explain the background to the appeal. Dr Stefan is a doctor formerly in practice as such. Her fitness to practise as a doctor has been considered on ten separate occasions by the Health Committee of the GMC. The question of her fitness to practise was first referred to the Health Committee in February 1993. On 21 June 1993, the Health Committee found her fitness to practise to be seriously impaired and imposed conditions on her registration. She appealed to the Judicial

Committee against that decision but her appeal was dismissed. At each subsequent hearing the Health Committee has found her fitness to practise to be seriously impaired. On 20 June 1994, the Health Committee again imposed conditions on her registration. In further decisions made in February 1995, 1996 and 1997 the Health Committee suspended her registration. She appealed to the Judicial Committee against the 1995 and 1997 decisions but her appeals were on both occasions dismissed. On 23 February 1998, the Health Committee decided that the suspension of registration should be indefinite. The Judicial Committee allowed her appeal against that decision, on the grounds that the Health Committee ought to have provided reasons for its decision, and remitted the case to a freshly constituted Committee for reconsideration. The Health Committee considered her case again on 27 May 1999 and suspended the appellant's registration for a further period of twelve months. She appealed to the Judicial Committee against that decision but her appeal was dismissed. On 30 October 2000, the Health Committee again suspended her registration for twelve months. She appealed to the Judicial Committee against that decision but her appeal was dismissed.

3. The decision under appeal was made on 30 October 2001 when the case came before the Health Committee for the tenth time. On that occasion Dr Stefan sought an adjournment in order to obtain legal representation and to arrange an independent medical examination. The Committee refused that request. It was a decision well within the discretion of the Health Committee. In any event, Dr Stefan appeared before their Lordships without legal representation and without having had an independent medical examination. Realistically her earlier complaint cannot be regarded as extant.

4. A second procedural issue arose. A report by Dr Trevor Turner, FRCPsych, Consultant Psychiatrist had been sent to Dr Stefan on the day it was received, i.e. 9 October 2001. At the hearing she objected to the Health Committee considering the report. The Health Committee decided to receive the report and to hear oral evidence from Dr Turner. It was clear that Dr Stefan's objections related not to the date of her receipt of the report but to its conclusions. The Health Committee's decision was a reasonable one and Dr Stefan can have no legitimate complaint about it.

5. The Committee then considered evidence, including oral evidence from Dr Turner and earlier psychiatric reports. After hearing argument from the General Medical Council's solicitor and from Dr Stefan in person the Committee made the decision now under appeal. The reasons of the Health Committee were as follows:

"The Committee have considered all the information presented to them, and paid attention to your submissions, your answers to their questions and the observations you have made regarding your fitness to practise.

In the light of the evidence considered today, the Committee have again judged your fitness to practise to be seriously impaired, by reason of a condition classified in the ICD-10 Classification of Mental and Behavioural Disorders as F60.0 – paranoid personality disorder. In particular, and bearing in mind advice from the Medical Assessor, the Committee were satisfied that you exhibited the following characteristics of this disorder: excessive sensitivity to setbacks and rebuffs; tendency to bear grudges persistently, e.g. refusal to forgive insults and injuries or slights; suspiciousness and a pervasive tendency to distort experience by misconstruing the neutral or friendly actions of others as hostile or contemptuous; a tendency to experience excessive self-importance, manifest in a persistent self-referential attitude; and a preoccupation with unsubstantiated 'conspiratorial' explanations of events both immediate to yourself and in the world at large.

Illustrations of the above can be found in the written submission which you presented to the Committee, and your oral evidence.

The Committee have carefully considered whether it would be sufficient to direct that your registration should be subject to conditions, so that you may return to some form of medical practice. In this regard they have noted the view of Dr Turner that you might be fit to practise on a very limited basis. The Committee were satisfied that your problems are too complex and you are now too inflexible to permit even a limited return to practise. With your provisional registration the Committee were satisfied that for practical purposes there was no realistic prospect of

obtaining medical employment in the National Health Service.

The Committee note that there has been no change in your medical condition since the last hearing. They remain concerned that your ability to make sound professional judgements continues to be seriously affected by your condition. They feel that the adverse aspects of your condition may present themselves more actively if you were to be under specific emotional or other pressures, such as stress at work. Furthermore the Committee consider that your insight remains limited, that you lack judgment and that you have limited awareness of the nature and realities of clinical practice. The Committee are, therefore, concerned that patients could be placed at risk if you were to be permitted to return to medical practise. They do not feel that your condition is likely to improve within the foreseeable future to an extent that would enable them to allow you to return to medical practise. They have paid particular regard to the issue of proportionality and have weighed your own financial and personal interests against the need for protection of the public. Bearing this balance in mind the Committee have still concluded that they should direct that your registration be suspended indefinitely.

The current period of suspension of your registration will continue until the new direction takes effect. A note explaining your right to appeal against this decision, on a question of law, will be sent to you.

The effect of the direction is that the suspension of your registration will remain in force, and will not be reviewed by the Committee unless you ask the Committee to review it. You will not be entitled to ask the Committee to review the suspension until at least two years after the date on which the indefinite suspension takes effect. If, at that time, the Committee do not lift the suspension, you may ask the Committee to review the suspension again after further interval of at least two years has elapsed, and thereafter at intervals of not less than two years.”

6. It is now necessary to turn to the framework of the appeal. Section 40 creates the right of appeal. But section 40(5) provides:

“No appeal under this section shall lie from a decision of the Health Committee except on a question of law.”

The distinction between law and fact is often crucially influenced by the context. Here their Lordships are satisfied that a generous interpretation of “a question of law” is needed so as to ensure that no injustice will remain uncorrected. In the context of section 40(5) it is within the appellate jurisdiction of the Board to consider whether there is any or sufficient evidence to support a material finding. A clearly erroneous finding may disclose an error of law warranting interference. And a material misunderstanding of the evidence may amount to an error of law. And it goes without saying that any unfairness in the hearing and decision making of the Health Committee may invalidate its decision. Without trying to be exhaustive about the circumstances in which they may intervene their Lordships are satisfied that their appellate jurisdiction is wide enough to ensure that justice is done. That is how their Lordships’ have approached the appeal of Dr Stefan.

7. It has to be said, however, that there was cogent evidence to support the Health Committee’s conclusion. Indeed on the oral and written evidence the conclusion of the Health Committee was inevitable. Having given careful consideration to Dr Stefan’s submissions before the Board their Lordships are satisfied that there is nothing in them which casts any doubt on the reasons and the conclusion of the Health Committee. And there has been no failure of due process or any infringement of her absolute right to a fair hearing.

8. Accordingly, notwithstanding their great sympathy for Dr Stefan’s plight, their Lordships will humbly advise Her Majesty that this appeal ought to be dismissed.