

GENERAL MEDICAL COUNCIL

PROFESSIONAL CONDUCT COMMITTEE

Monday 8 September 2003

44 Hallam Street, London W1

Chairman – Professor Peter Richards

Panel Members:

Dr Nihal Gunasekera
Mr Neville Harrison
Mrs Muktesh Kakar
Dr Charles Winstanley

Legal Assessor: Mr Douglas Readings

Case of:

EASTGATE, John William

(DAY SIX – PM PROCEEDINGS)

MISS JOANNA GLYNN QC, and MR A HURST, instructed by Messrs Withers,
solicitors, appeared on behalf of the Complainant.

MR JAMES TURNER QC, instructed by Messrs RadcliffesLeBrasseur, solicitors,
appeared on behalf of Dr Eastgate, who was present.

(Transcript of the shorthand notes of T. A. Reed & Co
Tel No: 01992 465900)

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A THE CHAIRMAN: I will ask the Legal Assessor if he has any advice for the Committee before they come to their determination of the findings of fact.

B THE LEGAL ASSESSOR: Mr Chairman, members of the Committee, may I first say something about my position as Legal Assessor. I take no part in your decision-making. My sole function is to advise on legal questions. If at any time it appears to you that I have expressed any view about this case you should ignore it. It is only my advice on the law given openly in public session or reported in public session which you should take into account.

C This is the stage of proceedings at which you have to decide which, if any, of the facts alleged against Dr Eastgate has been proved. You do not have to decide at this stage whether any of the facts amount to serious professional misconduct. The facts alleged are set out as separate heads of charge in the list which you have in front of you. You must consider and decide upon each one of them separately. You are entitled to find some facts proved and others not proved. If you think a fact has not been proved in full you can find it proved to some lesser degree, in I think Miss Glynn's words, you can find it proved in your own terms, but you must make clear exactly what your finding is and you must not purport to make a finding of a more serious allegation than is actually alleged against the doctor.

D The burden of proof is on the complainant to prove each of the facts, and it is not for Dr Eastgate to disprove any allegation. You must only find any fact proved if you are satisfied so that you are sure of that fact. The expression "beyond reasonable doubt" means the same thing. You must decide each matter on all the evidence which you have heard, including the doctor's own evidence, but you must not speculate about what other evidence there might have been. Medical members of the Committee are entitled to rely upon their own professional knowledge and experience.

E There has been some, apparently, delay in this case. The case certainly looks as if it has taken quite a long time to come to this Committee. You should not speculate about why that delay has occurred and you must certainly not hold the fact of any delay that has occurred against the doctor.

F You have had some expert evidence called by both sides. The purpose of having expert witnesses is for them to help you by providing you with information which is within their expertise but which is likely to be outside your own experience and knowledge. A witness called as an expert is entitled to express an opinion about the matters which are put to him or her and you are entitled to have regard to the expert's evidence and opinions. If, having given the matter careful consideration, you do not accept the opinion of an expert you do not have to act upon it. It is for you to decide whose evidence and whose opinions you accept, if any.

G You have heard that Dr Eastgate has no criminal convictions and has never been before the Professional Conduct Committee of the GMC before and witnesses have also spoken of his positive qualities. You must take into account that he is a man of good character generally and professionally in two ways, first, his good character supports his credibility and you should take it into account when deciding whether you believe his evidence. It has been said that in this case there is not much conflict, but some examples have arisen, for example, there is a question as to whether you

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A should believe Mrs A when she says that Dr Eastgate said that he was 98 per cent sure that it was criminal (or words to that effect) or whether the doctor's recollection that he is unlikely to have said that is to be preferred. I turn to that merely as an example.

Secondly, the doctor's unblemished record may mean that he is less likely to have committed the errors which are alleged against him.

B When you have decided one after the other which facts are proved you then have another job to do, you must put those facts together with the facts which have already been admitted and ask yourselves whether all those facts together would be insufficient to support a finding of serious professional misconduct.

C The question is not whether the facts do amount to serious professional misconduct, but whether they are capable of amounting to serious professional misconduct. If you decide that the facts could not amount to serious professional misconduct you will say so, and then the case will come to an end without it being necessary to go on to the next stage, to decide whether the facts do actually amount to serious professional misconduct.

D I must remind you that to prove serious professional misconduct the complainant must prove conduct connected with the doctor's profession in which the doctor has fallen short, by omission or commission, of the standards of conduct expected among doctors, and that such falling short is serious.

There is plainly a dispute in this case as to whether Dr Eastgate has done anything wrong at all. On the one hand, for example, you have the opinion of Professor Zeitlin, and on the other hand the opinion of Dr Bentovim.

E The complainant's case is that Dr Eastgate erred in the course of treating Miss A. It obviously does not follow that if he erred, he is therefore guilty of serious professional misconduct; but it is unlikely that he could be guilty of serious professional misconduct if he was not negligent in the way he treated Miss A.

F I must tell you, therefore, that it is well established that a doctor is not negligent if he merely does what any ordinary competent professional in his speciality would do in the same circumstances. In medical practice there can be cases where there is a genuine difference of opinion within the profession about the best way to proceed in the course of treating a patient. Mr Turner on behalf of Dr Eastgate has suggested that this is such a case, particularly concerning interviewing and making records.

G If you think that this is such a case, then you should bear in mind an important decision by Mr Justice McNair in 1957 – as he then was:

“A doctor is not guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art”.

H Putting it the other way round, a doctor is not negligent if he is acting in accordance with such a practice merely because there is a body of opinion that takes a contrary view.

A I must just say again that you are not now being asked to decide whether Dr Eastgate did in fact commit serious professional misconduct; but when you have found which facts are proved, if you believe that it would not be possible on the evidence, as it now is, in its totality, for Dr Eastgate to be found to have fallen seriously short of the standards expected among doctors, then you should make a decision accordingly.

B Finally, please keep in mind that at the appropriate stage you will have to give reasons for your decisions.

That is my advice to the Committee.

THE CHAIRMAN: The Committee will consider in private.

C MISS GLYNN: Sir, it may be helpful if we were to know what the minimum time is that you are likely to take, just in case any of us need to leave the building for any reason. Can we take it that the Committee will take at least an hour for this next stage, or some other time?

THE CHAIRMAN: It is likely that the Committee will take at least an hour. We may need to call counsel in, if we are given advice by the Legal Assessor.

D MISS GLYNN: Yes.

THE CHAIRMAN: But, yes, it is very unlikely that we shall call the public back with our findings of fact determined in less than an hour.

E MISS GLYNN: Sir, in those circumstances would you prefer that counsel did not leave the building at all for the time being?

THE CHAIRMAN: We would need counsel – in your case, I imagine your junior – to be here in case the Legal Assessor has to put a point.

MISS GLYNN: Thank you, sir.

F STRANGERS THEN, ON DIRECTION FROM THE CHAIR, WITHDREW
AND THE COMMITTEE DELIBERATED IN CAMERA

STRANGERS HAVING BEEN READMITTED

G THE CHAIRMAN: Dr Eastgate: This case goes to the heart of a doctor's dilemma in circumstances when, whatever he or she does, criticism and controversy is likely to follow; situations in which there may be no absolute truth, no perfect answers; moments which may come out of the blue, imposing huge new urgent demands on an already full clinical week. Conflicting interests and responsibilities must be balanced;
H decisions must be taken in the best interests of patients, balancing all the

A | circumstances and conflicting interests at the time. The doctor has to have the courage of his or her own convictions.

B | The Committee have heard that in such circumstances neither the GMC nor the courts would blame a doctor for acting in good faith and in the best interests of a patient, provided his or her decision was based upon sound clinical evaluation and judgement. On the other hand, any doctor may be required to justify his or her professional decision. Such justification has been your task at this hearing.

C | In assessing all the written and oral evidence, the Committee have had the benefit of expert evidence from three eminent child and adolescent psychiatrists. In essence, the two experts called by your counsel took the view that you had acted appropriately; the expert called by the counsel for the complainants took a different view. The two experts, who agreed in general, did not, however, agree in every particular. One D | expert, Dr Alyson Hall, commented that in this controversial field of possible sexual abuse of a child, that the Committee might receive as many different opinions as there were experts, saying:

E | “...you could get 10 experts in this room and you would find us all having different views about this case and how it should be handled. My view is, for what it is worth and I do not want to be dogmatic, to say that there is no right way, that there are just better ways and worse ways and that we have to try and do our best in these very difficult cases.”

F | The Committee have, therefore, listened carefully to all three experts and used their own, partly clinical, common sense to decide which opinion to prefer in respect to each detail of the charge. The Committee have been assisted in their findings of fact by all the experts.

G | The Committee have given detailed consideration to all the evidence adduced in this case, and have taken account of the submissions made by counsel and the advice given by the Legal Assessor. They have borne in mind that the burden of proof rests on the Complainant and that the standard of proof required is that they should be sure.

H | They have considered each head and sub-head of charge separately. Certain facts

A have been proved against you. However, the Committee have found that they would be insufficient to support a finding of serious professional misconduct.

These are the findings on the facts in relation to Heads of Charge 1-5:

B 1 and 2 were admitted and found proved.

3. a. On 9 July 1996 you held an individual session with Miss A in which you,

C i. assisted Miss A to identify the person who “had let her down”, was found proved.

D ii. asked whether “it happened once or a number of occasions”, was found proved.

iii. asked Miss A “when she first felt uncomfortable”, was found proved.

E b. Your questions and comments relating to the above were,
i. inappropriate,
not found proved

F ii. unprofessional;
not found proved.

4. a. In the afternoon of 9 July 1996 you held a further individual session with Miss A in which you,

G i. told Miss A that what Professor X had done sounded wrong,
Found proved.

H ii. told Miss A that you were “worried that he may have done it to other children as well”,

A Found proved.

- b. Your comments relating to the above were,
 - i. inappropriate,

B Not found proved in relation to 4a.i., but found proved in relation to 4a.ii.

- ii. unprofessional;

Not found proved in relation to 4a.i., but found proved in relation to 4a.ii.

C The Committee were not satisfied that your conduct in your interview with Miss A on the morning of July 9 was either inappropriate or unprofessional; they were very aware of the danger of misinterpretation by hindsight of the significance of the use of particular words or phrases. On the other hand, they found your conduct in the interview with Miss A on the afternoon of July 9 was inappropriate and unprofessional because it was likely immediately to strengthen her impression that she might have been improperly touched at medical examination. They had regard to your note that Miss A was “surprised when I suggested that not only did it sound wrong to me but I was worried that he may have done it to other children”. They heard your explanation but considered that, in the light of all the evidence, your comments on that occasion were inappropriate and unprofessional.

These are the findings in relation to head of charge 5:

F You failed to keep an account of your interviews with Miss A which was as nearly verbatim as possible on – and you will see that the head of charge has been amended by the Committee. There are a number of dates here:

- a. Found proved;
- b. Found proved;
- c. Found proved;
- d. Found proved;
- e. Found proved;
- f. Found proved;
- g. Found proved.

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A Two of the medical experts considered, and indeed you yourself admitted in evidence
before the Committee, that the quality of your notes at the crucial period of the
afternoon of July 9 to on or about July 19 was unsatisfactory. The Committee found
your notes were inadequate, either as a record of events assisting understanding of the
B revelation of her concern regarding possible inappropriate touching or for assisting
clinical care when another consultant took over in your absence on holiday. The
Committee were persuaded by the evidence of Professor Zeitlin, Dr Eyre and indeed
your own admission. They noted that you were aware of the importance of good
notes, having written on July 16, that “It is important that all discussions, whether
C with nursing staff or other clinical staff, are written down as near verbatim as
possible”. You failed to follow your own good advice. The Committee accepted the
argument that nobody could ever produce a literally verbatim account without
mechanical recording. Therefore, they found the facts in Head 5 proved to the lesser
extent defined by the words of your own note of July 16.

D These are the findings in relation to head of charge 6:

6. a. You caused to be reported the allegations made by Miss A in
relation to Professor X to the Child Protection Team,

E was admitted and found proved as amended above.

i. without first having taken reasonable steps to verify their truth or
otherwise;

F not found proved.

ii. without first sharing your concerns with the parents of Miss A,
had already been admitted and found proved.

G b. Your conduct in this regard was,

i. inappropriate,

not found proved.

H ii. unprofessional,

A not found proved.

B As a doctor very experienced in matters of sexual abuse of children, you concluded on the clinical evidence at the time that you had an overriding professional duty to share your concerns with the senior social worker on the Child Protection Team, without having first consulted Miss A's parents. You were concerned with the possibility of other children being at risk, and were fully aware of the possible harm to Miss A, her family and Professor X.

C You knew that it is good practice to keep the parents closely involved and indeed it appears from an entry in your diary on July 9 that you had planned to telephone Mrs A in London. The senior social worker, Mr Evans, with whom you conferred on July 12, was strongly of the opinion that the parents should not be involved until after a strategy meeting had been held. He also made it clear in evidence to the Committee that he would have taken matters into his own hands as a result of his assessment of your information, even if you had not agreed together that a strategy meeting was necessary. Contrary to his advice, you used your own clinical judgement and spoke with Mrs A that same evening.

E The medical experts were sharply divided in their opinion as to whether you should have shared your concerns with Miss A's parents before consulting with Mr Evans. The Committee in all the circumstances did not find your conduct in this regard to be either inappropriate or unprofessional. They accepted that in the end you had to use your own clinical judgement.

G Having regard to the facts admitted and found proved against you, the Committee consider that taking all the facts and circumstances into account, your conduct at the interview on the afternoon of July 9 and your note-taking then and on the subsequent days fell short of the principles of good practice in this sensitive and difficult situation. However, they consider that these limited failings seen in the light of your previously unblemished record, could not amount to the grave finding of serious professional misconduct.

H That concludes the case.

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MR TURNER: Sir, may I express my gratitude to the Committee for their clearly very careful consideration they have given the case, and for indulging us by sitting so late today and indeed on other days during the hearing.

(The hearing was adjourned)

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