

PRIVY COUNCIL APPEAL DECISION

At a disciplinary hearing of the Paramedics Board in March 2003, the Committee directed the Registrar to remove the name of the respondent from the register. On 7th October 2003, the Judicial Committee of the Privy Council upheld an appeal by the respondent because of the lack of reasoning for the Committee's decision.

A copy of the Judgment is attached.

Susan Collier

Appellant

v.

**The Council for Professions Supplementary to Medicine
(The Paramedics Board)**

Respondent

FROM

**THE DISCIPLINARY COMMITTEE OF THE
HEALTH PROFESSIONS COUNCIL**

REASONS FOR REPORT OF THE LORDS OF THE
JUDICIAL COMMITTEE OF THE PRIVY COUNCIL OF THE
7th October 2003, Delivered the 29th October 2003

Present at the hearing:-

Lord Steyn
Lord Hope of Craighead
Sir Andrew Leggatt

[Delivered by Lord Steyn]

1. At the conclusion of the hearing on 7 October 2003 their Lordships agreed humbly to advise Her Majesty that the appeal against the penalty imposed should be allowed with costs and that they would give their reasons later. This they now do.

2. The appellant is a state registered paramedic. In May 2002 she was employed by the Royal Berkshire Ambulance NHS Trust. It is common ground that in the early hours of 16 May 2002 members of the staff of the NHS Trust found her slumped in a responder vehicle under the influence of Entonox, a pain relieving drug which was available for treating patients. She was immediately suspended. On 17 May 2002 she was dismissed by the NHS Trust. Her appeal was dismissed. The course of these proceedings are, however, irrelevant to this appeal. In due course a disciplinary charge was brought against Miss Collier. On 24

March 2003 a Disciplinary Committee of the Health Professionals Council heard and determined the charge against Miss Collier. The particulars of the charge were that:

“On 16 May 2002 at St Mark’s Hospital, whilst on duty as a paramedic in a responder vehicle, you were found under the influence of a pain relieving drug Entonox.”

Miss Collier did not attend the hearing. In a statement she had in substance admitted the incident. After hearing evidence about the incident from staff members of the NHS Trust, the Committee had to consider whether Miss Collier had been guilty of “infamous conduct in any professional respect” within the meaning of section 9(1)(b) of the Professions Supplementary to Medicine Act 1960. The Committee found that she was guilty of such conduct. The question then arose how the Committee should deal with the matter. The decision of the Committee is reflected in the chairman’s observation on penalty:

“... we took the view that under the influence of Entonox meant that Miss Collier was not competent to undertake her duties safely and therefore she presented a risk to the public. Accordingly, we direct the Registrar to remove her name from the register.”

Since this decision Miss Collier has not been able to seek work as a paramedic.

3. Section 9 of the 1960 Act, insofar as material, reads as follow:

“9.(1) Where –

(a) ...

(b) such a person is judged by the disciplinary committee to be guilty of infamous conduct in any professional respect; or

(c) ...

the committee may, if it thinks fit, direct that the person’s name shall be removed from the register.

(2) Where the disciplinary committee directs that a person’s name shall be removed from the register, the committee shall cause notice of the direction to be served on that person.

(3) The person to whom such a direction relates may, at any time within twenty-eight days from the date of service on him of the notice of the direction, appeal against the direction to Her Majesty in Council in accordance with such rules as Her Majesty in Council may by Order prescribe for the purposes of this subsection; and the board concerned may appear as respondent on any such appeal and, for the purpose of enabling directions to be given as to the costs of the appeal, shall be deemed to be a party thereto whether or not it appears on the hearing of the appeal.

The Judicial Committee Act, 1833, shall apply in relation to a disciplinary committee as it applies to such courts as are mentioned in section three of that Act (which provides for the reference to the Judicial Committee of the Privy Council of appeals to Her Majesty in Council).”

Rule 10 of the Professions Supplementary to Medicine (Disciplinary Committees) (Procedure) Rules 1964 (contained in Statutory Instrument No. 1203 of 1964) provide for the procedure to be adopted on proof of the facts alleged. It reads as follows:

“(1) Where the Committee have found in a case relating to conviction that the facts alleged in a charge have been proved, the Chairman shall invite the complainant, or if no complainant appears the Solicitor, to address the Committee and to adduce evidence as to the circumstances leading up to the conviction and as to the character and previous history of the respondent. The Chairman shall then invite the respondent to address the Committee by way of mitigation and to adduce evidence as aforesaid.

(2) Where in a case relating to conduct the Committee have recorded a finding against the respondent, the Chairman shall invite the complainant, or if no complainant appears the Solicitor, to address the Committee and to adduce evidence as to circumstances leading up to the facts found proved and as to the character and previous history of the respondent. The Chairman shall then invite the respondent to address the Committee by way of mitigation and to adduce evidence as aforesaid.

(3) The Committee shall next consider and determine whether they should postpone judgment.

(4) If the Committee determine to postpone judgment, the judgment of the Committee shall stand postponed for a period not exceeding 2 years; and the Chairman shall announce their determination in such terms as the Committee may approve.

(5) If the Committee determine not to postpone judgment, they shall determine whether by reason of their finding against the respondent the Registrar shall be directed to remove the name of the respondent from the register, and the Chairman shall announce their determination in such terms as they may approve.”

It has to be observed that the Committee was handicapped by the fact that Miss Collier did not appear. She told the Board that she now regretted having followed the advice of a solicitor not to do so.

4. The Disciplinary Committee had before it the Paramedic Training Manual. It describes Entonox as follows:

“Entonox is a safe and effective analgesic gas composed of 50% nitrous oxide and 50% oxygen. It may be used by Ambulance staff for pain relief at the scene of an emergency and during transport to a treatment centre.

When used correctly and given time to work (two minutes), it can help patients to be handled and transported with a minimum of pain.”

Advantages are that Entonox can be self-administered and that there are no dosage restrictions. The substance of the oral evidence led in support of the charge is summarised as follows in the Case of the respondent:

“Ms Tracy Cook (a Duty Controller at the Royal Berkshire Ambulance NHS Trust) gave evidence that at about 23:47 on 15 May 2002 a ‘999’ call was received that an elderly female had fallen at home and emergency assistance was required. Her job was to send out the nearest available response. That was Miss Collier. She indicated she was having some difficulty in locating the address and then asked for assistance lifting. According to the ambulance records Miss Collier had by 1.17am (on 16 May 2002) completed the incident and had decided that the patient was not travelling to hospital. Miss Collier was then available for further calls.

Ms Cook had some concerns and briefed Mr Steve Hartley, the Resource Centre Manager of the NHS Trust. The two decided to do a welfare check on Miss Collier and went to St Mark's Hospital, Maidenhead where Miss Collier's standby post was. Ms Cook observed that the Miss Collier was in the driver's seat, curled away from the window with an Entonox mouthpiece in her mouth. She looked asleep. The car was not safely parked. Mr Hartley knocked on the window and Miss Collier woke up. She looked disorientated and confused.

Mr Steve Hartley gave evidence that a welfare check was undertaken as there had been problems locating a member of staff, the purpose was to check that member of staff's welfare. Having spoken to Ms Cook he decided to undertake a welfare check on Miss Collier with Ms Cook. They arrived at St Mark's Hospital at about 2am on 16 May 2002.

Mr Hartley said that he came across Miss Collier in a car. The car appeared to be abandoned. There was no response when he 'flashed' the car. He approached the car and saw Miss Collier slumped at the wheel. The door was locked and she had an Entonox mouthpiece in her mouth connected to a tube which was situated behind the front seat of the vehicle. He eventually got her attention. He tried to have a conversation with her and she had slurred speech. She was totally disorientated. She had difficulty getting out of the vehicle.

Entonox is used for mild pain relief. It is self administered. Mr Hartley formed the view that Miss Collier was in no fit state to be in charge of a vehicle, to attend patients or administer medical treatment. He suspended her from duty.

Mr Peters gave evidence about Entonox. He said that it is used for pain relief. It can affect people in different ways. The apparent effects of Entonox use is someone becoming sleepy and relaxed."

In her statement Miss Collier gave the following account. In early 2002 she had been off work for 6 weeks with severe ear ache. She returned on the 13 May 2002. She was asked to visit a patient. She did meet the patient who had slipped whilst attempting to go to the toilet. There were no apparent injuries but the patient was anxious to get up. There was no lifting cushion in her vehicle and the

nearest other response vehicle was some way away. As the patient was becoming increasingly agitated Miss Collier lifted her and experienced a sharp pain in her back. Her back then went into severe muscle spasm and in desperation she took a couple of puffs of Entonox. A colleague arrived and they made the patient comfortable. Miss Collier then left the scene and returned to St Mark's Hospital. She was still experiencing pain in her shoulders and tried another couple of puffs of Entonox. She then decided to have a quick sleep so that she would be more alert for the next emergency. She was then awoken by Mr Hartley.

5. In finding Miss Collier guilty the Disciplinary Committee gave no reasons. The Chairman simply said that the Disciplinary Committee found the charge proved.

6. Miss Collier now appeals against the finding of the Disciplinary Conduct that her conduct amounted to "infamous conduct". In the alternative she appeals against the decision of the Disciplinary Committee to direct that her name be removed from the register.

The finding of "infamous conduct"

7. Taking into account the Statement of the Disciplinary Committee of March 2003, which explains what conduct may amount to "infamous conduct" in a professional respect, the Board approaches the matter on the basis that conduct serious enough to carry the risk of bringing the profession into disrepute may amount to "infamous conduct". Undoubtedly there were in this case a number of mitigating circumstances to which it will be necessary to turn in due course. On the other hand, Miss Collier's conduct was of a kind which a right-minded member of the public would find disturbing. Although she used Entonox for genuine pain relief, the fact that she resorted to it rather than enter the hospital to seek assistance discloses at least a marked degree of irresponsibility. In the view of the Board the finding of the Disciplinary Committee was open to it on the evidence. Moreover, while the conduct was not of the most serious kind, the Board takes the view that the finding was justified by the evidence. The appeal on the merits must therefore be dismissed.

The Penalty.

8. The Disciplinary Committee had before it three options, viz.
(a) to impose no penalty;

(b) to postpone the decision under Rule 10;

(c) to direct that her name should be removed from the Register.

The Disciplinary Committee chose to direct removal of her name from the Register.

9. Although Miss Collier was not present, the Disciplinary Committee was duty bound to consider mitigating circumstances available to her. The Board considers that the following matters were relevant to the assessment by the Disciplinary Committee of an appropriate penalty: Miss Collier took Entonox to relieve her severe back pain and to enable her to carry out her duties. She did not in fact put her patient or any member of the public at risk. Miss Collier immediately admitted her transgression and apologised. She was dismissed on 17 May 2002 and by the date of the hearing before the Disciplinary Committee she had been awaiting the disciplinary proceedings for a considerable time. Miss Collier was of previous good character. All these matters were known to the Disciplinary Committee.

10. Given these circumstances the Board is of the opinion that the penalty of removing her name from the register was disproportionate. The Disciplinary Committee could and should have either imposed no penalty or postponed the decision for a stipulated period. It follows that the decision of the Disciplinary Committee must be quashed.

11. The Board wishes to add that this conclusion is strongly reinforced by a substantial volume of testimonials as to Miss Collier's good character. Moreover, the Board takes into account that Miss Collier has had the order removing her name from the register hanging over her for more than six months. In these circumstances the Board considers that as between the two lesser options it would now be just to order that there be no penalty.

12. The Board will humbly advise Her Majesty that the decision of the Disciplinary Committee should be quashed and that no penalty should be substituted. The respondent must pay Miss Collier's costs.