

GENERAL MEDICAL COUNCIL

FITNESS TO PRACTISE PANEL

**(applying the General Medical Council's Preliminary Proceedings
and Professional Conduct Committee (Procedure Rules) 1988)**

On:
Friday, 24 August 2007

Held at:
St James's Buildings
79 Oxford Street
Manchester M1 6FQ

Case of:

JAYNE LAVINIA MARY DONEGAN MB BS 1983 Lond

Registration No: 2826367

(Day Thirteen)

Panel Members:

Mrs S Hewitt (Chairman)

Mr J Brown

Ms J Goulding

Dr M Goodman

Mr R Grey QC (Legal Assessor)

MR S SINGH, Counsel, instructed by Clifford Miller, Solicitors, appeared on behalf of
the doctor, who was present.

MR T KARK, Counsel, instructed by Field Fisher Waterhouse, Solicitors, appeared on
behalf of the General Medical Council.

Transcript of the shorthand notes of Transcribe UK Ltd
Tel No: 01889 270708

I N D E X

FITNESS TO PRACTISE

DETERMINATION on serious professional misconduct

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(The Panel continued to deliberate in camera)

STRANGERS HAVING BEEN READMITTED

D E T E R M I N A T I O N

B THE CHAIRMAN: Dr Donegan, the Panel has already announced its finding that you are not guilty of serious professional misconduct. The Panel will now give its reasons for this decision.

C At the material times in 2002 you were a registered medical practitioner. You qualified in 1983 from St Mary's Hospital Medical School and you have been a General Practitioner since 1990.

D In 2002 you were instructed as an expert witness to provide reports on behalf of two mothers engaged in litigation in the Family Division of the High Court on the issue of whether their children (Child A and Child B) should receive various vaccinations
E contrary to the mothers' wishes. You produced reports signed on 14 June and 4 December 2002, which were medico-legal reports and which you knew would be read by the litigants and their legal advisers, any other experts instructed in the case and by the judge.
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G It was these two reports about which the GMC complained.

H The matters had come to litigation as a result of the fathers' desire that their daughters should receive their childhood immunisations contrary to their mothers' wishes. These two families were unconnected but their cases became linked for the court action.

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The first expert to make a report in this case was Dr Conway, Consultant Paediatrician with a special interest in paediatric infections, immunology and respiratory medicine. He was instructed by solicitors on behalf of the father of Child B to write an expert report on the question of her receiving childhood immunisations. In a report dated 4 August 2001, Dr Conway recommended that Child B be given the full range of immunisations.

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to his declaration in his report, that he had indicated therein the sources of all his information, Dr Conway had not done so.

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Professor Kroll, Professor of Paediatrics and Consultant Paediatrician with a particular interest in children's infectious diseases, was instructed by the Children and Family Court Advisory and Support Service (CAFCASS) to write expert reports in respect of both children. In his reports dated 19 and 20 May 2002, he recommended that both children

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given the full range of childhood immunisations, with the exception of pertussis for Child B.

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Your initial letter of instruction from solicitors dated 24 May 2002 requested you to prepare a report for use in the pending court proceedings. Specifically, the solicitors instructed you to answer the following questions:

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“1. What are the comparable risks between the children having the childhood immunisations and not.

2. Whether there is anything in any of the children's medical history which indicates that the child should not be given any or any combination of the immunisations listed in the report of Dr Conway

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dated 4 August 2001. ...

3. What are the risks and the after effects of the immunisations as listed in the report of Dr Conway.

4. Whether the current age of the children or child indicates that that child should not be given any or any combinations of the said immunisations.

5. If you recommend that the child should be immunised the timing and sequence in which the immunisations should be given.

6. When answering the questions you should bear in mind, that the Court will base its decision taking each child's welfare as being of paramount importance."

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On 27 May 2002, Dr Conway wrote a supplementary report on Child B and a report on 28 May 2002 on Child A. In each report he made the same declaration as in his original report but again no reference material was indicated or provided.

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In a further letter to you dated 28 May 2002, solicitors wrote enclosing Professor Kroll's report. The solicitors further instructed you to:

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"1. Comment on any known side effects of the proposed immunisations, if so what the side effects are and the effect these would have on the children's health/abilities.

2. Any medical research that you are aware of that deals with any of the individual immunisations and the said effects of the same worldwide.

3. Please comment on your experience at "ground level" with the children and the effects of immunisation that you have had experience of."

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On 5 June 2002, the solicitors wrote to you enclosing Dr Conway's first report.

Accordingly, when you sat down to write your report dated 14 June 2002, you

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had received the reports of Professor Kroll and Dr Conway, whom you knew were expert witnesses appointed on behalf of CAFCASS and of the fathers, and that they held different views from your own on the issue of whether the children should be vaccinated.

You knew that those experts had been appointed to assist the Court in reaching its decision.

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At the conclusion of your report you declared:

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“I, Dr Jayne LM Donegan, declare that this is an independent medico legal report based on my opinion, knowledge and research on the diseases, their vaccines and taking into account the particular cases of the children involved. I understand that the Court will use it in coming to a decision as to what is in the best interests of the children involved. I have indicated my sources extensively. The facts and opinions expressed in this report are true and accurate to the best of my knowledge. I confirm that any fees paid to me are independent of the outcome of the case”.

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You were aware that the provision of your report might affect the outcome of the litigation.

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You told the Panel in evidence, which it accepts, that, when you wrote your report, you were responding to the reports of the other experts in order to give the Court a balancing view. You told the Panel you were providing a different view to the other two experts and one which you believed the Court would have not come across previously.

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Furthermore, your report on a number of occasions acknowledged the benefits of immunisation and its positive impact on public health. You also told the Panel that in circumstances where parents are deeply fearful of the possible consequences of not immunising their children, your advice to them would be to vaccinate.

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This was your first expert report for the courts and you were working under severe pressure of time.

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On 3 July 2002, you met Professor Kroll in order to determine areas of agreement and disagreement between you on the issue of vaccinating Child A and Child B. Dr Conway was due to attend but did not. Notes of that meeting were available to the Panel and reflected some areas of agreement with regard to the background and risk/benefit ratios of some of the vaccines.

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In a report dated 7 September 2002 (which did not reach you until after 19 November 2002), responding to your report Dr Conway was highly critical of your report. He accused you of confused thinking, of not basing your conclusions on scientific evidence or modern medicine, of ignoring the conclusions of your references and omitting important details from your references.

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On 12 November 2002, the solicitors wrote to you to say that although Dr Conway's response was believed to be 52 pages long, "it is not that you will have to raise a full report, merely to pick out the main contentions". You did not receive Dr Conway's report

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until after 19 November 2002 although you were asked to respond by 2 December 2002. In the event, you commendably managed, despite the limited time, to complete your second report on 5 December, less than a week before the trial began. The Panel carefully

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considered, but did not accept in full, the criticisms of this second report identified by the

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GMC.

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You gave evidence at the trial on 10 December 2002. The Panel has seen the transcript and is certain that you were not trying to mislead the Court. On 13 June 2003, Mr Justice Sumner handed down his judgment at Winchester Crown Court that it would be in the best interests of both Child A and Child B to receive a number of vaccinations, in line with the recommendations of Dr Conway and Professor Kroll.

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Neither Dr Conway nor Professor Kroll gave evidence to the Panel, nor did any of the parents. However, Dr Elliman, Consultant Paediatrician in Community Child Health with responsibilities for immunisation, who had been instructed by the GMC, did.

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In his report dated 10 September 2006, Dr Elliman set out his criticisms of both your reports. He stated that you had been selective in your choice of references and your quotations from them and that the conclusions drawn by you from the references frequently did not accord with the conclusions reached by the author and/or researcher.

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Dr Elliman also criticised your apparent misinterpretation and/or misunderstanding of the references to which you referred and stated that the type of source material referred to by you in your reports was sometimes not appropriate as a primary source for a report such

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you were asked to provide.

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Bearing in mind all of the circumstances outlined above, the Panel went on to

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consider each of the outstanding allegations against you. Mr Kark, on behalf of the GMC, told the Panel that this case is not concerned with the efficacy of vaccines nor with the risks and benefits associated with them. Furthermore, the Panel was told that the case was not concerned with vaccination policy. The Legal Assessor advised the Panel that it

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must decide whether what you did, when writing your reports, was to give false and/or misleading impressions of the research you relied on, whether how you did that was by quoting selectively and omitting information, whether why you did it was because you

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unwittingly allowed your deeply held views to overrule your duty and whether, therefore, you failed to be objective, independent and unbiased.

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Against this background, the Panel went on to consider each of the outstanding allegations against you.

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The Panel considered it important to recognise that the GMC did not allege that you acted dishonestly.

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The Panel has had regard to the duties of expert witnesses as brought to their attention by the GMC and the defence. You stated that you were aware at the time of the contents of *Good Medical Practice* 2001, paragraph 51 of which states:

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“You must be honest and trustworthy when writing reports, completing or signing forms, or providing evidence in litigation or other formal inquiries. This means that you must take reasonable steps to verify any statement before you sign a document. You must not write or sign documents which are false or misleading because they omit relevant information. If you have agreed to prepare a report, complete or sign a document or provide evidence, you must do so without unreasonable delay.”

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The Panel also had regard to the judicial pronouncement of Cresswell J in *National Justice Cia Naviera SA v Prudential Assurance Co Ltd (The Ikarian Reefer)* (1993) 2 Lloyd's Rep 68 and the Civil Procedure Rules.

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The Panel decided to treat your report and your references as a single entity because the references were provided in full to the Court and to the Panel. The Panel considered it would be wrong to read the body of your report as if it stood alone, without taking into account the references which you had provided.

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Head of charge 6 states:

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“In the reports that you provided you

a. Gave false and/or misleading impressions of the research which you relied upon”.

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In the course of your evidence before the Panel, you accepted that, with hindsight, two points in your report gave a misleading impression. These follow as (i) and (ii).

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(i) In discussing the issue of pertussis (whooping cough) vaccination you stated in your report:

“The Japanese raised the vaccination age to two years in 1975 after a number of reports of severe reactions and deaths. This reduced the total number of deaths in infants younger than one year.”

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In his report, Dr Elliman stated that your second sentence is incorrect. He attached a graph to his report, which showed that infant mortality was falling and continued to fall after the changes in immunisation practice. The rate of change was not altered, so your implication that changes in immunisation practice were an important factor in this fall is

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incorrect. You accepted in your oral evidence that the effect of what you said would be misleading.

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(ii) In discussing the issue of rubella vaccination you stated in your report:

“In the five years before the rubella vaccine was introduced in 1970 there were only 39 babies born with congenital rubella.”

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Dr Elliman stated in his report that you had misunderstood the BPSU report, from which you obtained your information for this section. The BPSU report states, “National surveillance for congenital rubella (CR) started in 1971”. You conceded in your oral evidence that, in retrospect, your statement was misleading.

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Other than the two points outlined above, where you have accepted that your report was misleading, you have either disagreed with Dr Elliman’s criticisms of your report or you have accepted that they could have been better phrased or were errors. You also accepted that the conclusions of the authors in the references used by you were in the main different from your own conclusions and that you could have included the authors’ conclusions in your report. However, given that you had provided copies of all your references, the Panel accepted your explanation that you did not feel this was necessary.

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The Panel carefully considered each point of criticism made against your reports and set these in the context of your reports as a whole, which ran to 119 pages.

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The Panel found head of charge 6(a) not proved.

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Head of charge 6 states:

“In the reports that you provided you,

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b. Quoted selectively from research, reports and publications and omitted relevant information”

The Panel was of the view that it is normal practice in the preparation of reports to quote selectively from references, which indeed you did.

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Since you had provided the references and made them available to the Court in their entirety, the Panel considered that all the relevant information was readily accessible.

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The Panel found head of charge 6(b) not proved.

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Head of charge 6 states:

“In the reports that you provided you,

c. Allowed your deeply held views on the subject of immunisation to overrule your duty to the court and to the litigants”

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The Panel were sure that at no stage did you allow any views that you held to overrule your duty to the Court and the litigants.

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You demonstrated to the Panel that your report did not derive from your deeply held views and your evidence supported this. You explained to the Panel that your approach

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your report was to provide the Court with an alternative view based on the material that you produced in your references. That material was largely drawn from publications that were, in fact, in favour of immunisation. It was clear from your evidence and from your witness, Mrs Eaton, that your aim is to direct parents to sources of information about

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immunisation and child health safety to help them to make informed choices. You told us that there are many books by doctors and others in this and other countries who seriously question vaccination and they cite a lot of history, proofs and medical papers to support

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their arguments. You did not use any of those publications because you did not think that the Court would regard those as satisfactory support or references for your recommendations. You largely used what was available in refereed medical journals.

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The Panel found this head of charge not proved.

Head of charge 6 states:

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“In the reports that you provided you,

d. Failed to be objective, independent and unbiased”

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Taking into account the Panel’s reasoning in 6(a), (b) and (c), the Panel is sure that in the reports you provided you did not fail to be objective, independent and unbiased.

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The Panel found head of charge 6(d) not proved.

Accordingly, the Panel found heads of charge 7(a), (b), (c) and (d) not proved.

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The Panel considered that heads of charge 1 to 5, which were admitted and found proved, were clearly insufficient to amount to a finding of serious professional misconduct.

Accordingly, the Panel found that you are not guilty of serious professional misconduct.

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That concludes this case.

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