New council takes GMC to High Court for undue leniency

Clare Dyer *legal correspondent, BMJ*

The bodies that regulate the conduct of doctors and nurses in the United Kingdom were taken to the High Court last week under new powers to challenge decisions of healthcare regulatory bodies for the protection of the public.

In its first two cases, the new Council for the Regulation of Healthcare Professionals challenged a caution imposed on a nurse who viewed pornographic websites during his night shift on a children's ward, and a finding that a GP accused of having an

affair with a patient was not guilty of serious professional misconduct.

In the first case, Mr Justice Collins reserved judgment on whether the Nursing and Midwifery Council dealt too leniently with Steven Truscott, who was given a caution, leaving him free to carry on working. Mr Truscott, who was dismissed from his job with University College London Hospitals Trust, admitted misconduct but said the most obscene material, including "Lolita"-type scenes, had "popped up" inadvertently on his computer screen. His activities were discovered when another member of staff caught him in the act.

In the second case, the Council for the Regulation of Healthcare Professionals alleges that the General Medical Council was too lenient when it acquitted

Dr Giuseppe Ruscillo, a GP, of serious professional misconduct. Dr Ruscillo, who practises in Lancaster, was accused of having an inappropriate relationship with a patient.

In a preliminary hearing last week, the GMC argued that the Council for the Regulation of Healthcare Professionals has no power to take a case to the High Court if the doctor has been found not guilty. Its powers are limited to challenging only a penalty imposed on a doctor once found guilty of misconduct, contended the GMC.

In addition, the GMC argued that a case should not go ahead if there were outstanding complaints against the doctor to the regulatory body. Mr Justice Levison reserved his judgment till later.

A spokesman for the Council for the Regulation of Healthcare Professionals said: "These are

new powers, and it's right and proper that they should be tested and explored."

The powers, in force since April 2003, were granted by section 29 of the NHS Reform and Healthcare Professions Act 2002, which set up the Council for the Regulation of Healthcare Professionals (*BMJ* 2003;327:1070). They allow certain decisions of the regulatory bodies to be challenged in the High Court for England and Wales and the equivalent courts in Scotland and Northern Ireland if the council considers it desirable for the protection of the public.

The policy, set out in the notes to the bill when it went through parliament, is that the powers would be limited to "extreme cases" where the public interest in having a "clearly perverse" decision overturned outweighed the public interest in independent self regulation. □

Patient challenges GMC guidance on withdrawing treatment

Clare Dyer *legal correspondent, BMJ*

A man with a degenerative brain condition who claims that the General Medical Council's guidelines would allow doctors to end his life against his wishes took an unprecedented "right to life" case to the High Court in London last week.

Leslie Burke, aged 44, of Lancaster, is seeking judicial review of the GMC's 2002 guidance on withholding and withdrawing life prolonging treatment, which he argues is unlawful because it could lead doctors to breach his human rights.

Mr Burke was diagnosed 12 years ago with cerebellar ataxia and depends on a wheelchair for mobility. His prognosis is that he will remain mentally competent until death is imminent but will lose the ability to swallow.

"I am doing this because I may well end up in the position where I need artificial hydration and nutrition," he explained before the hearing. "Physically my body will deteriorate, but I will be mentally alert the whole time."

"I may not be able to communicate with the doctors, and it takes two to three weeks to die

when hydration and nutrition is withdrawn, and I will be acutely aware of that every single day and physically not be able to do anything about it."

His counsel, Richard Gordon QC, said the guidance could breach his right to life and his right to be spared inhuman and degrading treatment under articles 2 and 3 respectively of the European convention on human rights.

It could also violate his right to autonomy (article 8) and his right to a fair hearing (article 6) because the convention advises doctors only to seek legal advice on whether they should apply to the court for a ruling before denying artificial nutrition and hydration.

And the distinction between patients in a permanent vegetative state—whose cases need court sanction—and others was discriminatory under article 14 of the convention, said Mr Gordon.

He said the guidance seemed to suggest that artificial nutrition and hydration could be denied by doctors to patients who were fully capable of taking their own decisions.

Dinah Rose, the GMC's counsel, told the judge, Mr Justice Munby, that it would be "entirely inappropriate" to deny artificial nutrition and hydration to a patient in Mr Burke's position. "There is no evidence at all before the court that any doctor has ever proposed, or has any intention of proposing, that should he require artificial feeding and hydration it would not be provided to him."

"There is no suggestion by any doctor that they believe the guidance issued by the GMC might encourage or permit them to withdraw artificial nutrition or hydration from Mr Burke."

She added: "The GMC wishes to make it clear at the outset that we would welcome any assistance this court can give as to ways in which our guidance can be clarified and improved."

Judgment was reserved till later. □

Leslie Burke: "I may well end up in the position where I need artificial hydration and nutrition... I may not be able to communicate with the doctors"