



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED

FROM The Registrar, Supreme Court of Appeal
DATE 15 January 2021
STATUS Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment.

*The Health Professions Council of South Africa and Others v Grieve (1356/2019)
[2021] ZASCA 06 (15 January 2021).*

MEDIA STATEMENT

Today the Supreme Court of Appeal upheld an appeal against a court order of the Gauteng High court, Pretoria which set aside a decision of the Health Professions Council of South Africa (HPCSA) to charge Dr David Grieve of Pretoria for unprofessional conduct.

On 25 November 2014 the Dr Grieve appeared before the professional conduct committee of the HPCSA on charges of unprofessional conduct. The charges emanated from allegations that during the period 2004 to 2009 Dr Grieve persuaded his patients and former patients to invest in a financially distressed company of which he was a director. It was also alleged that he the misappropriated the funds invested by his patients.

Dr Grieve objected to the disciplinary process, challenging the authority of the committee (and the Council) to charge him on the subject of the charges fell outside the Council's jurisdiction as envisaged in s 49 of the Health Professions Act 56 of 1974 (the Act). According to him the subject which formed the basis of the charges did not relate to the health profession. The committee dismissed the objection.

After Dr Grieve had tried, unsuccessfully, to lodge an internal appeal against the withdrawal of his objection, he approached the high court for a review of the committee's decision to prosecute him. The high court upheld the objection and granted an order setting aside the decision to prosecute Dr Grieve. The Council the appealed to the Supreme Court of Appeal against the high court decision.

In upholding the appeal the SCA held that the correct approach was to ask whether the conduct complained of, if proved, would indeed constitute unprofessional conduct. It held that the Act's definition of unprofessional conduct is sufficiently wide to support the exercise of the Council's supervisory functions over conduct that is not directly related to the rendering of health services. It emphasized that the Council is not only a medical malpractice watchdog; it is also the primary guardian of morals in the health profession. It found further that the Council's supervisory functions are not limited to instances where there has been a criminal conviction, as some unethical conduct may not be criminal. In this case, if the charges were proved, Dr Grieve would have used his access to his patients to benefit himself and his company unduly to the prejudice of the patients, conduct which would fall under the Council's supervisory powers. The matter was referred back to the Council for further proceedings.

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