

MEDICAL TRIBUNAL OF NEW SOUTH WALES

DEPUTY CHAIRPERSON

JUDGE J B SINCLAIR QC

MEMBERS:

DR H PATTERSON  
DR J WESTERINK  
MS C PETRE

RE: DR GREGORY JOSEPH BERRY AND THE MEDICAL PRACTITIONER'S ACT

REASONS FOR DETERMINATION

27 October 1992

This Tribunal is charged with enquiring into three complaints made against the respondent, Dr Gregory Joseph Berry made by the duly authorised delegate of the Director General of the Department of Health. The substance of the complaints is -

1. That the respondent has been convicted in New South Wales of five offences within the meaning of S28(1)(a) of the Medical Practitioner's Act, 1938 as amended,
2. That the respondent does not have sufficient physical and mental capacity to practice medicine within the meaning of S28(1)(e) of the said Act,
3. That the respondent has been guilty of professional misconduct within the meaning of S28(1)(d) of the said Act.

Particulars of the said complaints are as follows -

### As to the First Complaint

1. On 28 August 1990 at the Local Court at Ryde the practitioner was convicted by Mr Leo, Magistrate, of the following offences:-
  - i. That on 14 August 1990 at Gladesville he did refuse to undergo a breath test in breach of Section 4c(G) of the Motor Traffic Act 1909.
  - ii. That on 14 August 1990 at Gladesville he did drive a motor vehicle upon a public street, to wit, Wharf Road, whilst there was present in his blood the high range prescribed concentration of alcohol in breach of Section 4E(1G)(a) of the Motor Traffic Act 1909.
  - iii. That on 14 August 1990 at Gladesville he being the driver of a motor vehicle upon a public street, to wit, Wharf Road, did drive the same negligently in breach of Part 111(G)(1) of the Motor Traffic Act 1909.
  - iv. That on 14 August 1990 at Gladesville where upon a public street, to wit, Wharf Road, an accident occurred he being the driver of the said motor vehicle no. ORM-078 concerned in the said accident did not stop in breach of Part 11 Section 8(3) of the Motor Traffic Act 1909.
2. On 10 July 1991 in the Local Court at Ryde the practitioner was convicted by Mr. D. F. Leo, Magistrate, of the offence that on 2nd June 1991 he did have in his possession one air rifle, he not being the holder of a shooters licence in respect of the firearm in breach of Section 5(a) Firearms Act.

### As to the Second Complaint

- i. On or about 14 August 1990 the practitioner drove a motor vehicle whilst intoxicated, was involved in a motor vehicle accident, left the scene of the accident and refused to take a breath test when requested to do so by police officers. A subsequent breath test was performed and a reading of 0.300 grammes of alcohol per 100 millilitres was obtained.
- ii. On about 2 June 1991 the practitioner made a telephone call to Jennifer Berry, the 16 year old daughter of his

brother, Dr Neil Berry, which she considered to be of a threatening nature. Police attended at the practitioner's house and confiscated an air rifle and a bow and arrow set. The police officers formed the opinion the practitioner was intoxicated.

- iii. On about 1 July 1991 at about 2.50 am police officers from Gladesville Police Station attended the practitioner at his home at Gladesville and formed the opinion that the practitioner was intoxicated. The police had been contacted by the practitioner's ex wife Mrs Diana Berry. The practitioner had custody of his two children, his son, aged 8 and daughter aged 5, and a friend of his son, also aged 8 at the time.
- iv. On about 25 September 1991 the practitioner was found intoxicated in a public place, namely Copeland Road, Beecroft and taken to Hornsby Police Station.
- v. Between 26 and 27 October 1991 the practitioner rang his brother Dr Neil Berry numerous times in breach of an order prohibiting or restricting his behaviour taken out by his said brother. The practitioner was charged by police at Ryde Police Station in relation to his breach of the order. The practitioner advised police on 27 October 1991 and the Ryde Local Court on 31 October 1991 that the telephone calls the subject of the charge were made whilst he was intoxicated. On 31 October 1991 the charge of breaching the said order was found proven but no conviction entered.
- vi. Between 5 and 7 November 1991 the practitioner was admitted as a Mentally Disordered Person to Macquarie Hospital at Ryde. The admitting medical officer considered the practitioner to be intoxicated on admission.
- vii. On 19 May 1992 at 10 am the practitioner failed to appear at a Professional Standards Committee Inquiry convened to inquire into a complaint against the practitioner by the Registrar of the New South Wales Medical Board dated 15 January 1992. When the practitioner attended at about 12 midday on 19 May 1992 after being contacted by officers of the Complaints Unit and the Medical Board the explanation he gave to the Committee as to why he failed to appear at 10 am was false and/or misleading namely,
  - (a) that a patient of his named Vera Jenkins had died the previous night after being admitted to Royal Prince Alfred Hospital.

- viii. On 19 May 1992 during the course of the said Inquiry the practitioner was directed by the Committee to attend at Royal Prince Alfred Hospital on 19 May 1992 for urine and blood analysis for liver function tests, full blood examination, ESR and drug and alcohol screening and to present the referral letter of Dr Peter Arnold, the Chairman of the said Committee, dated 19 May 1991. The practitioner did not attend at Royal Prince Alfred Hospital until 20 May 1992 and did not present the referral letter of Dr Arnold.
- ix. On 25 May 1992 during the course of the said Inquiry the practitioner admitted that he did not keep any notes or medical records for his patients in his practice as a specialist psychiatrist, the only exception being if a patient of his was involved in a medico legal case.
- x. On 25 May 1992 the practitioner maintained the false and misleading explanation referred to in Particular vii. before the Committee.

#### As to the Third Complaint

- i. On 19 May 1992 at 10 am the practitioner failed to appear at a Professional Standards Committee Inquiry convened to inquire into a complaint against the practitioner by the Registrar of the New South Wales Medical Board dated 15 January 1992. When the practitioner attended at about 12 midday on 19 May 1992 after being contacted by officers of the Complaints Unit and the Medical Board the explanation he gave to the Committee as to why he failed to appear at 10.00 am was false and/or misleading namely,
- (a) that a patient of his named Vera Jenkins had died the previous night after being admitted to Royal Prince Alfred Hospital.
- ii. On 19 May 1992 during the course of the said Inquiry the practitioner was directed by the Committee to attend at Royal Prince Alfred Hospital on 19 May 1992 for urine and blood and liver function tests, full blood examination, ESR and drug and alcohol screening and to present the referral letter of Dr Peter Arnold, the Chairman of the said Committee, dated 19 May 1992. The practitioner did not attend at Royal Prince Alfred Hospital until 20 May 1992 and did not present the referral letter of Dr Arnold.
- iii. On 25 May 1992 during the course of the said Inquiry the practitioner admitted that he did not keep any notes or medical records for his patients in his practice as a

specialist psychiatrist, the only exception being if a patient of his was involved in a medico legal case.

- iv. On 25 May 1992 the practitioner maintained the false and misleading explanation referred to in Particular vii. before the Committee.

When this Inquiry was called on for hearing the respondent, through his Counsel made the following admissions-

1. Complaint 1 is admitted in entirety.
2. Complaint 2 Particulars 1 and 5 to 10 inclusive are admitted.
3. As to Particular 2 it is admitted that the respondent made a telephone call to Dr Neil Berry's home, spoke to Jennifer Berry, that police attended the home of the respondent and took away an air rifle and a child's archery set.
4. As to Particular 3 it is admitted that two police officers attended at the respondent's home at about 2.00 am, accompanied by Diana Berry and that at that time the respondent's son Christopher Berry and his daughter Felicity Berry, together with Ben Miller were present at the home.

In relation to Particular (ii) the Tribunal is satisfied that the other elements therein have been proved except for that part which reads "which she considered to be of a threatening nature."

As to Particular (iii) the Tribunal is satisfied that the whole of the facts in that paragraph have been established.

As to Particular (iv.) those facts too have in substance been established.

Complaint 3 is also admitted in entirety.

Oral and written evidence has been presented to the Tribunal in support and amplification of all the incidents herein before mentioned, except for Particular (iv) of the second complaint. The Tribunal also has the benefit of expert medical witnesses, the respondent's account of the circumstances leading to such admitted misconduct and from patients of the respondent.

#### The Respondent

The Tribunal accepts that the respondent is a medical practitioner aged 40 years. He completed his primary medical degree at Sydney University in 1975. During 1976 he served an internship at the Royal North Shore Hospital. In 1977 he was Neuro-Psychiatric Registrar at Prince Henry Hospital. For the following two years he was a medical officer at Gladesville Hospital and thereafter he became Registrar to Professor Peter Beaumont at Royal Prince Alfred Hospital and of Dr Robert Gertler. Towards the end of 1981 he took leave of absence and travelled to London where he was informally attached to Kings

College Hospital in Camberwell and the Maudsley Hospital. He became a member of the Royal College of Psychiatrists. Upon returning to Australia he became a Fellow of the Royal Australian and New Zealand College of Psychiatrists in 1982 and in that year he completed a four year Jungian analysis. Between 1978 and 1982 he also attended the student health services at Sydney University and was engaged in seeing psychotherapy patients. From 1983 to 1986 he was Deputy Director of Admissions Ward 7 at Gladesville Hospital and a visiting consultant psychiatrist at Mount St Margaret Hospital and a consultant to Marrickville Community Centre and Burwood Community Care Centre. He also sought to establish a Jungian Training Facet in Sydney which unfortunately did not come to fruition.

From 1986 to date he has been in private practice as a psychiatrist initially working at Lynton Private Hospital until June 1991 and thereafter he moved his practice to Gladesville where he continues to practice seeing private patients 2 or 3 days a week and also attending a number of geriatric centres or hospitals attending to elderly patients about once a week who are severely depressed.

He married in 1981, there are two children of the marriage, Christopher who is 9 and Felicity who is 6 years of age. In September 1987 his marriage broke down and he separated from his wife. The cause of the breakdown of the marriage was differing opinions as to the raising of children with which he found himself in very strong disagreement with

his wife, who is a clinical psychologist attached to Westmead Children's Home. For some time after the separation they shared custody of the children. The marriage has now been dissolved and there were very protracted proceedings in the Family Court between September 1987 and December 1991 principally in relation to custody of the children. His wife now has custody of the children but he has generous access to them. After moving into private practice the respondent became considerably isolated from his medical colleagues, found himself with few close friends and in dispute with his brother, Dr Neil Berry with whom he has had very little contact since the breakup of the marriage although he has repeatedly and excessively sought to establish a close contact.

The respondent concedes that since the breakup of his marriage he has been drinking alcohol to excess episodically and has been involved in a number of episodes in public places when he has been very much under the influence of alcohol. An assessment of the respondent's alcohol problem is crucial to the Tribunal's determination of the consequences of his conduct the subject of the complaints brought against him. The duration and severity of his abuse of alcohol and the extent of his insight into his condition are issues of considerable concern in respect of his capacity and fitness to practice medicine.

## The Alcohol Related Incidents

The first episode occurred on 14 August 1990 at Gladesville. The respondent's conduct on that occasion, as recorded in the notebook of the arresting police officer Sergeant G E Priest, is as follows -

"Defendant drove north in Wharf Road contrary to notices indicating One Way. He drove into Victoria Road causing several motor vehicles to brake hard to avoid a collision. He drove straight across three lanes of traffic and on to the median strip where the front of his vehicle almost collided head on with traffic travelling east in Victoria Road. He came into slight collision with the median strip, and a traffic light pole. He reversed back and he drove forward, and collided with a traffic light pole. He made a left hand turn and drove out into Minute Street against the one way traffic. Fortunately this traffic reversed back to avoid collision. He was forced into the curb by police officers and arrested. Eventually he was subjected to a breath analysis test which produced a blood alcohol reading of 0.300, an extraordinarily high reading. He was charged and convicted with refusing to undergo a breath test, driving a motor vehicle on a public street whilst there was present in his blood a high range prescribed concentration of alcohol, negligent driving and not stopping after an accident."

The respondent's explanation for such conduct is that for some months prior to August 1990 he was finding it increasingly difficult to cope with his matrimonial problems, particularly in relation to custody of the children, and was using alcohol to excess, mostly on weekends to control feelings of depression, frustration and of feeling very powerless in his situation. He asserts that earlier on that day, and on the preceeding day, he had spent considerable time drinking, talking and reminiscing with a friend. After his friend left to go to the airport the respondent decided to go out and get a packet of cigarettes. He says that when he

commenced to drive his motor vehicle he had no idea how drunk he was but concedes, in his words, -

"I was clearly suffering from a brain syndrome which was very very high blood alcohol and I was disorientated. I was not under control at all."

This was his first traffic offence.

He says that after this episode he continued to drink heavily. He said the car accident and the charges which followed strongly affected his self esteem, his self concepts. He was feeling quite worthless about the whole thing and foolishly carried on a behaviour which made the circumstances even worse. He says his memory of the incident is very poor due to the very strong affects of alcohol on his brain.

On 2 June 1991 police officers attended the respondent's home at Gladesville and searched his home and took away a small calibre rifle and bow and arrow. On that occasion according to one of the attending police officers, Constable 1st Class Paul Museth, there were no children in the house but the respondent was well affected by liquor. The respondent concedes that early in the night he had made a telephone call to his brother's home to talk to him about the repetitive theme of the areas surrounding the custody dispute. His brother was not at home and he spoke to his eldest neice and the conversation revolved about Uncle Greg, the respondent and whether he was mad and dangerous. He says that as a throw-away line he said to the child "what do you think I'm going to do, come up and blow your heads off or something", that it was

merely a throw-away line, that he had been drinking that day, that after the call he went up to see a neighbour and had a glass of wine with her and that on returning to the house there were two police officers waiting for him. They asked him whether he had any weapons in the house. The respondent says he gave them the air rifle which he had purchased in 1977 and used for target shooting and a child's archery set he had bought for his son about 2 months previously.

On 1 July 1991 a police officer again attended the respondent's residence at about 2.00 am. His wife was waiting in a car outside the house. The police officers said they had concerns about the children in the house and they wished to take the children back to their mother. Sergeant De Bellin, one of the attending police officers gave evidence that upon speaking to Dr Berry he formed the opinion that the respondent was well affected by intoxicating liquor. His two children and a friend of his son were present in the house. He had attended the respondent's home as a result of complaint from the respondent's wife who was concerned about the welfare of the children. Sergeant De Bellin says that after a short conversation with the respondent he suggested that it would be better if he took the children and gave them to his wife, the respondent agreed and the children were handed over to Mrs Berry.

The respondent says that when the police officers called his daughter had been asleep in bed since 11.00pm, that it was the first day of the school holidays and that his son

Christopher and his friend, Ben Miller were playing computer games. He says he had not been drinking to excess that night, that he was not drunk, that the following morning his wife returned the children to him demanding he gave them breakfast.

On Saturday 26 and Sunday 27 October 1991 the respondent made a number of telephone calls to his brother contrary to a restraining order that had been obtained on 11 October 1991. Sergeant De Bellin has given evidence that on 26 October the respondent came to Gladesville Police Station and spoke to him about phone calls he had made to his brother. He says at that time the respondent was well affected by intoxicating liquor. The respondent said he had made a number of phone calls to his brother in breach of the Domestic Violence Order and that shortly before the respondent attended the police station he had been speaking to his brother on the telephone. The respondent was taken to Ryde Police Station by the police car crew, the Restraining Order was checked and the respondent was charged with a breach of the Restraining Order at Ryde Police Station. The respondent was held in custody for some hours and then released. Constable Museth confirms the evidence of the Sergeant that the respondent was again affected by intoxicating liquor.

The respondent concedes that he had made an excessive number of telephone calls to his brother before he went to the police station. He says his brother had refused to talk to him. The respondent had played tennis earlier that day and had been drinking "very very excessively."

On 5 November 1991 at 10.30 pm the respondent was admitted to Macquarie Psychiatric Hospital in a drunken state at the request of Constable Woods of Gladesville Police Station. The statement of Constable Woods in the hospital records discloses that -

"At about 9.20 pm of this date the brother of Dr G Berry .. contacted the station in relation to continuous harassing phone calls received by the P.O.I. He stated that Gregory Berry had been before a Court on numerous occasions re continual harrassing behaviour.

At about 10.00 pm of this date P.O.I. attended the Gladesville Police Station in an intoxicated state. He stated he "had done it again" i.e. admitted to breaching existing order held by his brother.

Given the repercussions of these events it is felt that having brought the P.O.I. before a Magistrate on several occasions to no successful avail, that it would benefit Mr Gregory Berry to be assessed by qualified doctors and possibly rectify the natter, with the assistance of the Mental Health Act, rather than alternative which has to date been unsuccessful."

The summary in the hospital records simply states -

"This man was admitted as mentally disordered. He was intoxicated. His drinking followed family difficulties. When these matters had been evaluated he was discharged."

Whilst in Macquarie Hospital the respondent was examined and assessed by Dr Jonathan Phillips at the request of the Superintendant of Macquarie Hospital. This was the third occasion on which Dr Phillips had been asked to assess the respondent, having done so for the New South Wales Medical Board on 2 November 1988 and 6 November 1991. Dr Phillips was concerned about the respondent's behaviour. He said he has a preoccupation with what he perceives as difficulties in the

relationship with his brother, he remains angered by the breakdown of his marriage and it is likely he has been drinking in a pathological manner. Dr Phillips assessment on 7 November 1991 was that the respondent was likely a mentally disordered person. He considered Dr Berry required further psychiatric assessment and advice to which the respondent agreed. He did not think that Dr Berry then suffered a diagnosable psychiatric illness at the current time but was functioning less well than what he did in the past, that his problems were now interfering with his personal life and causing difficulties to Dr Neil Berry and his family. In addition he said there is circumstantial evidence to suggest that he is coping less well in his professional life than he did in the past.

The respondent says that on this occasion he had rung his brother on a few occasions, was again concerned he had broken a restraining order and went to a police station "To try and smooth the waters." He concedes he was intoxicated at the time and does not recall for how long before the 5 November he had been drinking consistently. He says he was getting increasingly depressed, "It was a downhill slide so for 3 to 4 months, I would buy alcohol. I was suffering major symptoms of depression, it was moving towards custody time. It was an experience of very intense aloneness." He says that whilst in hospital he was treated by Dr Jonathan Phillips who referred him to Dr Morse for continuing treatment and that he was seeing Dr Morse regularly until he attended for a hearing of the Professional Standards Committee on 30 January 1992. He

says that the custody proceedings were concluded on 23 December 1991 and thereafter he began to improve - by about the end of January he was starting to feel better, he had ceased drinking alcohol.

On 30 January 1992 the respondent appeared before a Professional Standards Committee who were charged with enquiring into three complaints brought against the respondent namely -

- i. That he had been convicted in NSW of an offence within the meaning of section 28(1)(a) of the Act; and/or
- ii. That Dr Berry does not have sufficient physical and mental capacity to practise medicine within the meaning of section 28(1)(e) of the Medical Practitioner's Act, as amended; and/or
- iii. That Dr Berry is not of good character within the meaning of section 28(1)(f) of the Act.

The respondent was given an opportunity to tell the Committee how he saw his situation and oral evidence was adduced from Dr Neil Berry, Dr Jonathan Phillips and Dr Peter Morse. The Committee informed the respondent it was concerned by his behaviour and by his alcohol abuse but that the members thought that he needed a trial of adequate treatment. The Committee suggested to the respondent that it would be in his interests that, subject to giving certain undertakings to the Committee, the hearing was adjourned for approximately 3 months. The respondent gave a written undertaking that, for the duration of the adjournment of the Professional Standards

Committee Inquiry into his mental competence to practice medicine for approximately 3 months he would -

1. Abstain from alcohol.
2. Attend Dr Morse weekly for treatment.
3. Arrange regular participation in psychotherapy supervising group.
4. Regularly attend the general Continuing Medical Education program of the RANZCP.
5. Regularly attend meetings of the Section of Psychotherapy of the RANZCP.

The hearing before the Professional Standards Committee was scheduled to resume at 9.30 am on 19 May 1992. At that time the respondent was not present. The Committee waited until 10.15 am and then heard evidence from Dr Morse, who was concerned about the respondent's absence, because at their last appointment a week prior to the hearing Dr Berry had checked with Dr Morse that he was aware of the day and time of the resumption.

Board staff went to the respondent's home nearby. He was still in bed asleep. The respondent arrived at the hearing shortly after midday. He made little apology for not having attended as required. His explanation was that a patient, Mrs Vera Jenkins, had overdosed the night before and that he had been called to Royal Prince Alfred Hospital at around midnight. He said she had died at about 1.00 am, and he had been on the telephone talking to her relatives until 2.00 am. He had slept through his alarm. He denied having taken any alcohol or sleeping tablets. The hearing was adjourned at

1.00 pm and the respondent was asked to proceed forthwith to the Royal Prince Alfred Hospital in order that blood and urine samples be collected for relevant tests in relation to alcohol or drug intake the night before. These tests were arranged with Professor John Saunders, of the Drug and Alcohol Unit and the hearing was adjourned until 2.00 pm on Monday 25 May.

The respondent did not attend Royal Prince Alfred Hospital for blood and urine tests on Tuesday 19 May 1992. He did not attend until the following afternoon. He did not take with him the letter of referral with which he was provided. He did not have blood tests done for his liver function. On 25 May 1992 the respondent attended the further hearing of the Professional Standards Committee. His explanation for his omissions was that upon leaving the meeting of the Committee he had gone to his professional rooms nearby to tell his secretary he would be late, only to find the relatives of the late Mrs Jenkins already waiting for him. He said that they needed his immediate attention. He said he had phoned Dr MacDonald at Royal Prince Alfred Hospital to say he would attend at the hospital later that afternoon but he had become so involved with his patients that he had phoned later to say that he could not attend. The respondent was asked further questions about his patient, Vera Jenkins, her alleged death and his attendances upon her at Royal Prince Alfred Hospital on the evening of 18 May 1992. When informed by the Committee that the story of Mrs Jenkins was highly implausible, his response was "It's up to you". The Committee found itself in great difficulty in determining the truth about the many

conflicting stories put forward by the respondent in relation to his failure to attend the hearing of the Committee scheduled for 9.30 am on 19 May 1992 and decided to refer the matter to a Medical Tribunal.

Before this Tribunal the respondent concedes - that his story about the death of Vera Jenkins was a fabrication, a lie told deliberately to conceal the fact that he had been drinking excessively the previous three days. The explanation he proffers for telling such a deliberate lie is that for the previous three days he had been drinking to excess with three musician friends celebrating the completion and acceptance of a CD Disk upon which they had been working for many years. His explanation for not attending Royal Prince Alfred Hospital for tests as directed and not having tests for liver function is that he was concerned that such tests would reveal that he had been drinking to excess for several days prior to the hearing of the Professional Standards Committee. No specific explanation has been proffered by the respondent for the continuation of his lie about the death of a patient before the further hearing of the Professional Standards Committee on 25 May 1992.

#### Further Evidence

The respondent asserts that his drinking problem was caused by family and personal problems brought about by the separation from his wife and the dispute over custody. He asserts that once the problem was resolved so would be his

drinking problem. Although the three day drinking binge in May 1992 occurred five months after the resolution of his matrimonial problems, he asserts that this was an isolated incident arising out of the special circumstances of the completion and pressing of the CD Disk of the music he had written and composed in conjunction with his musical friends over many years. He asserts that prior to August 1990 which was the first occasion on which he was arrested in connection with drinking, misuse of alcohol, if any, occurred on very infrequent occasions and probably associated with his regular monthly poker game more than anything else. He says he considers he is able to abstain totally from alcohol if necessary and that at the moment he is only drinking not more than 3 cans of light beer probably twice a week. He does not consider that currently he has a problem with alcohol and he says that during the period between August 1990 and December 1991 his excessive consumption of alcohol was, for the most part restricted to week-ends. Between 1985 and 1990 his heavy consumption of alcohol, scotch whiskey, was limited to his monthly poker games but he concedes that from August 1990 through to December 1991 he was using alcohol, particularly on week-ends, in a highly pathological way. He denies having a problem with alcohol since around the time of his marriage breakup, he says he cannot and will not concede that. He disagrees with the view expressed by Dr Morse that he is vulnerable with breaking out with alcohol. He considers Dr Phillips observation that he was vulnerable in a psychological sense as being a hasty judgment made on insufficient information. He is adamant that his drinking has and will not

interfere with his practice as a psychiatrist. He asserts that he was not adversely affected by liquor when Sergeant De Bellin came to his home, that he was perfectly sober at that time. In relation to his undertaking given on 30 January 1992 to abstain from alcohol he denies being in breach of that undertaking until the three day binge in May. The respondent resists the opinion expressed by Dr Morse that he, the respondent, has a continuing problem with alcohol. In respect of the three day binge in May 1992 he asserts it was a stupid error, he did not expect a six year project in respect of his CD Disk to come on line at that time. He admits he knew what he was doing in drinking with his friends at that time and must take responsibility for it. He denies he told Dr Morse that between January and May 1992 he had an occasional glass of wine with a friend with a meal - he does not recall saying that to Dr Morse. He insists that between January and May 1992 he never had an occasional glass of wine or sherry with a meal. The respondent's denial that he has a continuing alcohol problem tends to the conclusion that, if he has such a problem, he has no insight into it.

Dr Jonathan Phillips, psychiatrist, is an important witness. Apart from his undoubted qualifications and experience, he has examined the respondent on a number of occasions since 1988. On 2 November 1988 Dr Phillips assessed the respondent at the request of the Medical Board. At that time the respondent explained to Dr Phillips that he had been under substantial personal stress during the past twelve months and he related his problems to difficulties with his

marriage and to conflict within the social circle of his older brother. He acknowledged that he had been drinking more than usual in the the last twelve months, up to half a bottle of scotch occasionally to partly offset feelings of despondency. Dr Phillips said in his report, by way of summary -

"Dr Berry described the last year as being dominated by crisis. He viewed himself as troubled by depression and anger and is aware that his actions were worrying to those about him. He believes that individual therapy, both with the clinical psychologist and his medical colleague provided him with a chance to talk and deal with the sense of powerlessness which he had experienced. He recognises that others may have viewed him as either suicidal or homicidal at various stages but he himself does not believe he was dangerous."

At that time after only brief contact with the respondent Dr Phillips was of the opinion that there was no evidence to suggest the respondent was suffering from significant mental illness. He did not know the respondent well enough to comment on his habitual personality functioning. Nevertheless Dr Phillips reported, "Concern must be expressed about the recent past." In conclusion Dr Phillips said that on the evidence available he believed the major crisis was now over but there were two important issues to be faced by the respondent. The first was to ensure that any further disturbance was treated in an appropriate fashion and the second to ensure that he remains competent to practice medicine.

On 6 November 1991 Dr Phillips re-assessed the respondent on the request of the Medical Board on the basis of an interview with the respondent on 14 October 1991 and an

interview with the respondent's older brother Dr Neal Berry. Dr Berry was not called as a witness before the Tribunal and accordingly the Tribunal does not rely on the substance of that interview. It is significant that when interviewed on 14 October 1991 the respondent denied he had problems with heavy drinking. He believed, however, he had been portrayed by others including his brother, as an alcoholic, paranoid and a violent man. Consumption of alcohol, he said, was restricted to drinking wine with his dinner on two or three occasions each week and a substantial quantity of scotch at a monthly poker game not at other times. He denied having alcohol related physical or mental problems, he did not relate to Dr Phillips the drunken driving episode of 14 August 1990 (The respondent said in evidence by way of explanation for the false denial of any heavy drinking at this time that he sought to minify his use of alcohol because of allegations in the pending custody proceedings that he was an alcoholic).

On 7 November 1991 Dr Phillips was requested to assess the respondent in Ward 13 of Macquarie Hospital by the Superintendent of the hospital. Upon examination of the respondent at that time Dr Phillips came to the conclusion that he was then a mentally disordered person. Dr Phillips said that -

"He currently has a pre-occupation with what he perceives as difficulties in the relationship with his brother, he remains angered by the breakdown of his marriage and it is likely that he has been drinking in a pathological manner. In view of these matters, Dr Berry's competence to practice psychiatry must come under review."

At this interview the respondent made comments about his current problems which suggested he had gained insight since Dr Phillips last contact with him, he conceded that his drinking was linked to his mood state and may have become pathological in nature. The respondent agreed he required further psychiatric assessment and advice, that he should be reviewed by a senior psychiatrist and except the advice of that psychiatrist about entering therapy. With this in mind Dr Phillips agreed to speak to Dr Peter Morse, to whose evidence the Tribunal will refer later.

In evidence before the Tribunal upon being told of the deliberate lies told by the respondent to the Professional Standards Committee Dr Phillips said that such conduct would bear on the respondent's medical capacity to practice medicine for a couple of reasons.

"Yes it would bear on the doctor's mental capacity to practice medicine, for a couple of reasons. One is apparent lack of insight and judgment. The Professional Standards Committee was a hearing which was in a sense deciding his future, and for a doctor to lie in front of that Tribunal, to my way of thinking would show an unusual lack of judgment and balance, and one would have to question his mental competence on the basis of that."

In the course of his evidence Dr Phillips confirmed the opinions he had previously expressed in his reports herein before mentioned. Upon being directed to the situation of the respondent in October/November 1991 Dr Phillips said -

"There were several matters of concern. Foremost was the issue of possible or probable alcohol abuse. I took a

history in relation to this from Dr Berry. He did not feel that he had a problem with alcohol abuse. Yet it was brought to my attention particularly in the attendance at the Macquarie Hospital in November of that year that he had been using alcohol in large quantities in the period preceding his admission to hospital... The history given by Dr Berry was not consistent with this. He felt that while he had limited amounts of wine with his evening meal several times a week and whilst he would drink spirits at a monthly poker game, he did not feel that he was abusing alcohol nor did he feel that he had any problems which flowed from the use of alcohol."

Dr Phillips said his assessment of the respondent on admission to Macquarie Hospital as a mentally disturbed person was based on "Essentially intoxication with associated bizarre unpredictable and poorly controlled behaviour." He had come to the conclusion that the respondent was vulnerable in a psychological sense to abuse of alcohol and that given stressful situations he was likely to exhibit psychological symptoms. He reiterated that in October/November 1991, in a general sense, Dr Berry had comparatively little insight in the problems which then existed in relation to his abuse of alcohol. Further, he said that his conduct before the Professional Standards Committee "Certainly points strongly in that direction, that if ever there was something to test insight that would have been it." - Insight being insight into his problems.

Dr Peter Morse is a senior consulting psychiatrist to whom the respondent was referred by Dr Phillips after his discharge from Macquarie Hospital. Between November 1991 and May 1992 he saw the respondent approximately weekly and since then he has seen him on three occasions. By 19 May 1992 Dr Morse felt that the respondent had already improved in

relation to his self control in distressing circumstances but there was still a long way to go to gain insight into his predicament and to understand his new family situation. He had found nothing to suggest that the respondent lacked competence to practice medicine nor had he seen any evidence to suggest the respondent's unwise use of alcohol had affected the running of his practice. However he felt the respondent was vulnerable to breaking out with alcohol.

Dr Morse says that on the first occasion he saw the respondent after 19 May 1992 the respondent told him of his explanation for failing to appear before the Committee at 9.30 am on 25 May 1992, that he had been drinking with musician friends the previous night and slept in. On the occasions the respondent consulted Dr Morse during the last four months he told him he was completely free of alcohol apart from a very occasional glass of wine with friends at a meal. In terms of the respondent's behaviour before the Committee he said -

"It seems so outstandingly stupid and out of control that one is concerned about it extending into other areas of his life including the practice of medicine. However, he says and it seems that he was in a desperate situation that led him to that occasion on that morning, his desperation was such that he lied." The respondent's behaviour before the Professional Standards Committee he says "indicates that not so much he is vulnerable to crisis because he did not have a crisis, but more than that the use of alcohol gets out of control .. the behaviour on that occasion indicates that alcohol can get out of control with him."

Dr Morse felt the respondent does not have the full insight into his lack of control of drinking episodically and that is a very big problem. Further he says that to make such

a grave error of judgment as the respondent did before the Professional Standards Committee, to react in such an extraordinarily stupid and uncontrolled way makes one wonder whether or not there is this lack of judgment in other areas - and about his ability to control his alcohol intake. In his professional opinion the respondent should say to himself - I have a problem with alcohol and I am going to treat it as a major problem and continue to see a specialist in that field - it is a major ongoing problem that I have and I am going to try and resolve that. However, he sees himself as not having an ongoing problem, he maintains that he does not have that problem now. If he has a problem and he continues without getting any help or does not change that, that will inevitably interfere with his practice. Dr Morse shares the view expressed by Dr Phillips that the telling of a deliberate lie by the respondent to the Professional Standards Committee would attract the strong disapproval of professional colleagues of good standing.

Dr Bruce Westmore, Consulting Forensic Psychiatrist was also called to give evidence before the Tribunal in respect of, inter alia, the respondent's conduct before the Professional Standards Committee. Dr Westmore expressed the opinion that the respondent's deliberate lie as to his explanation for his failure to attend before the Professional Standards Committee as required on 19 May 1992 and his deliberate persistence in that lie before the Committee again on 25 May 1992 was conduct which would attract the strong

disapproval of his peers of good professional standing and that the respondent's apparent lack of insight into the nature of his predicament at that time may well suggest the respondent's mental and physical ability to practice medicine was impaired.

#### Evidence from the Respondent's Patients

Seven patients of the respondent who have received psychotherapy treatment from him for a considerable time gave evidence before the Tribunal. They were all people of good standing in the community and intelligent persons. Each of them told the Tribunal that they had not observed any sign of the respondent being affected by alcohol, that they had benefited considerably from their treatment and had great confidence and trust in the respondent. They also said that they were aware that the respondent had family problems and was involved in a custody dispute in respect of his children, but they said that the respondent had not allowed his personal problems to intrude into his relations with his patients.

Dr Canarais, a Psychiatrist of Ashfield who also practices some psychotherapy told the Tribunal of a patient who came to him for treatment after receiveing Jungian therapy with the respondent two years earlier. He said he wrote to the respondent for a report on the patient and received a reply from the respondent in which he gave a reasonable run down of the patient's problems at the time, the management of the patient's problems at the time and the kind of other

factors he expected a reasonable psychiatrist to take into account in passing on information about a patient to a colleague.

The Respondent's Failure to Keep Medical Records for his Patients

The respondent concedes that he has not kept any records of his patient's treatment or therapy since about 1988 when he established himself in full time private practice working three days a week. He says he did not feel that his omission to keep clinical notes has interfered with his therapy with his patients though he recognises now that he should have kept notes for other reasons, medico legal reasons. He asserts that he has an exceptionally good memory which made it unnecessary to keep such clinical notes. He acknowledges that when he appeared before the Professional Standards Committee he was censored for not keeping notes and that it was not until about two or three weeks ago that he commenced to make notes. He says now that he does not think his position of not keeping notes "Is terribly defensible, quite honestly." Abundant and uncontradicted evidence has been adduced before the Tribunal that the omission of a psychiatrist to take proper clinical notes reflects adversely on the respondent and would attract the strong disapproval of colleagues of good standing. Before the Professional Standards Committee the respondent said he did not keep clinical records because "I bulk bill everyone, so there is no need for medical records." He had no need ever to seek information about previous

attendances. He only took notes if the patient was involved in a medico legal case. As the respondent now concedes such a stand is indefensible. Further his continued omission to take clinical notes until two or three weeks ago is another factor which causes concern to the Tribunal as to the respondent's insight into his problem.

#### The First Complaint

The admitted misconduct of the respondent on 14 August 1990, and in particular the blood alcohol reading of 0.030 is of considerable concern to the Tribunal in that such loss of control suggests that at that time the respondent was unable to drink safely and had been consuming alcohol to excess from an earlier time and he admits to the Tribunal. It suggests a diagnosis of alcohol dependence at that time, of which the respondent was not aware.

#### The Second Complaint

The further alcohol related incident between June 1991 and May 1992 demonstrate the gravity of the respondent's continuing alcohol problem culminating in his extraordinary misbehaviour and appalling lack of judgment in going on alcoholic binge during the three days prior to his appearance before the Professional Standards Committee on 19 May 1992. There is conflicting evidence as to when the respondent developed a serious alcohol problem. The Tribunal does not accept the respondent's assertion that prior to August 1990

his abuse of alcohol, if any, occurred on very infrequent occasions. We do not accept him as a reliable witness in respect of misuse of alcohol and have no hesitation in preferring the opinion expressed by Dr Morse and Dr Phillips. In the opinion of the Tribunal his blood alcohol reading at the time of the August 1990 incident alone suggests that the respondent had been drinking to excess, albeit episodically, for several years before then. Although the Tribunal is unable to make a positive finding as to when, exactly, the respondent developed an alcohol problem, we are satisfied it is now at least of several years standing. Further it would appear that most of his social life since he separated from his wife, poker games, tennis and his association with musicians has involved the misuse of alcohol. His relationship with his brother, his ex-wife and others is very poor at present and there is evidence that this too was aggravated by alcohol. On the other hand the Tribunal accepts the evidence that so far alcohol, apparently, has not interfered with his somewhat limited professional life, but it is clear that the respondent did not honour his undertaking to the Professional Standards Committee in May 1992 to abstain from the use of alcohol.

The deliberate lie told by the respondent to the Professional Standards Committee on 19 May 1992 and repeated six days later when he was not affected by alcohol and his failure to follow the directions of the Professional Standards Committee in relation to the tests arranged with Professor John Saunders of the Drug and Alcohol Unit of Royal Prince

Alfred Hospital are of very grave concern to the Tribunal. The Tribunal has doubts that even at this time the respondent has a real insight into the nature and extent of his alcohol problem and as to his willingness to undergo appropriate treatment in respect of such condition.

The substance of the third complaint, which is admitted by the respondent, has been covered in dealing with complaints 1 and 2. The Tribunal is unable to accept with any degree of confidence many of the explanations put forward by the respondent. He did not appear to us to be a completely truthful and reliable witness and the Tribunal is unable to accept without considerable reservations the assertion of the respondent that he now has an insight into his alcohol problem and can and will refrain from any abuse of alcohol in the future.

While the Tribunal accepts that the respondent is a medical practitioner who has equipped himself well by way of training to pursue his chosen speciality and that the evidence demonstrates that in his professional life to date he is compassionate and effective as a medical practitioner and that to date his alcohol abuse has not impacted on his capacity to practice psychiatry many of the incidents the subject of these complaints indicate an appalling lack of responsibility and judgment in respect of many matters that are essential to the proper practice of medicine and would incur the strong disapproval of his colleagues of good standing and would be likely to adversely affect community respect for the medical

profession. It is clear to the Tribunal that the respondent has an alcohol problem, which requires treatment and although there is no evidence of alcohol related brain disease sufficient to impair his capacity to practice at this time the possibility that he has suffered from such alcohol related brain disease cannot be discounted at this time.

The Tribunal is comfortably satisfied that the charges set out in the first and third complaints have been established and that the respondent has been guilty of professional misconduct. In respect of the complaint that the respondent does not have sufficient physical and mental capacity to practice medicine there remains in the minds of the Members of the Tribunal a concern which is sufficient to defer making a positive finding on that complaint at this time. While the evidence before the Tribunal does not persuade us at this time to make an order of deregistration or suspension of the respondent's right to practice medicine the Tribunal is firmly of the view that his right to practice medicine should be subject to stringent conditions and that the decision of the Tribunal in respect of the second complaint be deferred for a period sufficient to assess the respondent's response to such conditions and to have the benefit of a neuropsychiatric assessment of the respondent. The question of the possibility of alcohol related brain disease is an area in which the opinion of the Tribunal must be explored prior to any final decision in respect of the respondent's professional future. Accordingly the orders of the Tribunal at this time are as follows -

1. In respect of the first and third complaints the respondent shall be reprimanded.
  
2. In respect of the third complaint the Tribunal further orders that the registration of the respondent is subject to the following conditions -
  - i. That the respondent unequivocally agrees to maintain proper medical records. Such records to be subject to an audit by a Medical Board appointed psychiatrist and to continue for so long as it takes for the clinical auditor to be confident that the respondent's record keeping has become an integral part of his clinical practice.
  
  - ii. That the respondent voluntarily and promptly absent himself from practice, be admitted into a detoxification unit approved by the Medical Board and after appropriate time there be subjected to neuropsychiatric assessment, including psychometric testing.
  
  - iii. Upon completion of such testing the respondent shall submit to psychiatric examination by a specialist

appointed by the Medical Board, and a copy of the psychiatrist's report shall be forwarded to each Member of the Tribunal and the parties.

- iv. Assuming no such impairment is evident the respondent must undertake not to ingest alcohol and remain under the care of the Medical Board's appointed specialist in drug and alcohol abuse for as long as the Medicial Board sees fit.
  - v. The respondent to accept the supervision of a psychiatrist nominated by the Medical Board in a relationship of doctor and patient for as long as such supervising psychiatrist deems requisite.
3. The further hearing of the second complaint is adjourned to a date to be fixed in about 6 months time. Liberty to either party to apply to the Deputy Chairperson for further direction on 3 days notice to the other party.
4. The Tribunal orders that the respondent pays the complainant's costs of this enquiry.

.....

Judge J B Sinclair QC

.....

Dr Hugh Patterson

.....

Dr John Westerink

.....

Ms Clare Petre