

MEDICAL TRIBUNAL OF NEW SOUTH WALES

DEPUTY CHAIRPERSON: HIS HONOUR JUDGE SINCLAIR QC

MEMBERS: DR DON GRIMES

DR MICHAEL PASFIELD

MR DAVID BERRY

5 JUNE 1998

IN RE: DR ALEXANDER CRAIGIE MACFIE AND THE MEDICAL PRACTICE ACT

REASONS FOR DETERMINATION

This Tribunal is charged with inquiring into 2 complaints of "Unsatisfactory Professional Conduct" and/or "Professional Misconduct" brought against the Respondent, Dr Alexander Craigie Macfie by the Health Care Complaints Commission of New South Wales.

The substance of the first complaint is that -

"In the conduct of his practice as a psychiatrist, the practitioner inappropriately engaged in a sexual relationship with a current female patient, Patient A" The complaint was raised in April 1996 on information provided to a member of the group of psychiatrists of which the Respondent was then a member. Upon being confronted by the partners of the practice the Respondent admitted that he had engaged in an improper sexual relationship with the patient. It was the unanimous view of all the partners present that Dr Macfie should resign; and he did so forthwith.

His name was removed from the register of Medical Practitioners in November 1996, at his request.

Upon the matter being called on for hearing the Respondent did not appear in person. However he was represented by counsel who confirmed his client's admissions of such misconduct. The Tribunal does not have the benefit of any details of such misconduct as the patient wished to remain anonymous and there is no evidence or statement from the Respondent.

The substance of the second complaint is that in the course of weekly sessions of psychotherapy with Patient B, between December 1977 and 1982, the respondent engaged in inappropriate sexual and physical contact with the patient. The particulars of such conduct are set out in the Statutory Declaration of the patient sworn- on 15 September 1995 and affirmed by her in the course of her oral evidence before the Tribunal. The patient says that on a number of occasions the Respondent sat her on his lap at the end of consultations, and that on some such occasions it was apparent he had an erection. Further, he would place his hands under her blouse, pull up her bra and feel her breasts. On another occasion he put his hand between her upper inner thighs.

Further it is clear from correspondence annexed to the patient's affidavit that for some years after the professional relationship between them ceased in 1982 he responded to correspondence from the patient in terms that were quite inappropriate, albeit after the termination of the professional relationship between them. By a letter of 29 May 1996 to the Health Care Complaints Commission the respondent, through

his solicitors, continued to deny the allegations of improper sexual conduct during consultations with the patient. However, with the benefit of hindsight, he accepted the criticism of his ongoing conduct with the patient and concedes that his correspondence with her may not have been as therapeutic as he had intended.

The Tribunal has the benefit of hearing the patient, Ms PB, give evidence in support of the matters set out in her Statutory Declaration. Counsel for the Respondent did not cross examine her. The Tribunal accepts her as a truthful and reliable witness and we are comfortably satisfied that the assertions made by her are true.

The Tribunal has the benefit of the opinion expressed by Dr John Slaughter, an experienced psychiatrist of Brisbane, to the effect that the Respondent's conduct as described by the patient is a major and totally unacceptable departure from acceptable professional clinical standards and that his ongoing contact with the patient after termination of therapy was excessive and non-therapeutic.

A report was also tendered from Sheridan Linnell, a Counsellor/therapist in private practice, who has been counselling the patient since November 1993. In her opinion the conduct of the Respondent has retraumatised the patient and significantly slowed her process of recovery by reducing her trust in herself and making it difficult to trust another therapist.

The Tribunal accepts the evidence tendered in support of the complainants and finds that the conduct of the Respondent in respect of each complaint constitutes professional misconduct.

The College Rules

The ethical guidelines of The Royal Australian and New Zealand College of Psychiatrists, published in October 1990, states interalia -

"Sexual Relationships with patients.

Sexual relationships between patients and psychiatrists can never be acceptable and constitute unethical behaviour

Furthermore it is generally improper for psychiatrists to have sexual relationships with former patients unless the circumstances of the

... professional relationship have not rendered the patient vulnerable to a subsequent approach. The more deeply the psychiatrist becomes involved in the patient's emotional life the more certain it is of the impossibility of a subsequent equal relationship. Mutual termination of a therapeutic relationship does not ensure the resumption of an equal relationship, particularly in the short term. Following long term psychotherapy, this may never be possible."

More recently, in 1997, the Medical Board of New South Wales issued a policy statement in relation to Medical Practitioners and sexual misconduct. Rule 1 thereof reads as follows - .

"It is an absolute rule that a Medical Practitioner who engages in sexual activity with a current patient is guilty of professional misconduct."

No evidence has been offered to this Tribunal as to the Respondent's circumstances at the time of committing the abovementioned misconduct nor do we have any evidence as to his background, qualifications or practice and reputation.

The principal considerations which a Tribunal must take into account in deciding the appropriate orders to be made where a member of the medical profession has been guilty of misconduct are as follows -

1. The protection of the community, which includes considerations of;
 - a) Any risk of reoffending,
 - b) Contrition,
 - c) The nature and extent of harm occasioned to the patient.
2. Maintaining the standards of the medical profession.
3. Maintaining public confidence in the profession.

The principal factors we take into account in determining the appropriate orders in this case are -

1. The gravity of the misconduct is to be assessed bearing in mind that the Tribunal is not dealing with one isolated incident, nor one isolated patient.
2. The harm suffered by the patient is apparent from the uncontradicted evidence of Sheridan Linnell.
3. As to contrition, the Tribunal takes into account the Respondent's admission in relation to the first complaint and what we regard as his implied admission in relation, to the second complaint by the restrained manner in which his case has been conducted by his counsel.
4. As to the risk of repetition of such conduct, there is no evidence before us to support a finding that he is unlikely to engage in such conduct again. He has failed to present any material to this Tribunal, apart from the letter from his

solicitors dated 29 May 1996 and his statement of 14 June 1997 in which he says inter alia that he is currently undergoing professional counselling in order to more fully understand "my abhorrent behaviour".

We note the Respondent was graduated from the University of Glasgow in Medicine in 1964, attained a number of post graduate degrees and commenced practice as a Consultant Psychiatrist in 1975, specialising in psychotherapy.

The orders of the Tribunal are as follows -

1. Pursuant to Section 64(1) the Respondent is deregistered as a medical practitioner in New South Wales.
2. Pursuant to Section 64(2), and bearing in mind that the respondent has already ceased to be registered as a medical practitioner in New South Wales, the Tribunal orders that the Respondent be not re-registered.
3. Pursuant to Section 64(3), the Tribunal orders that any application for review of the abovementioned orders may not be made until the expiration of a period of three (3) years from today.
4. That the Respondent pay the costs of these proceedings of the Health Care Complaints Commission.

A handwritten signature in black ink, appearing to read 'J B Sinclair', written in a cursive style.

His Honour Judge J B Sinclair QC On Behalf of the Tribunal