

REVISED

COPYRIGHT RESERVED

NOTE Copyright in this transcript is reserved to the Crown. The reproduction, except under authority from the Crown, of the contents of this transcript for any purpose other than the conduct of these proceedings is prohibited

FS:CAT:2
O/N: 7122

MEDICAL TRIBUNAL OF NEW SOUTH WALES **N.S.W. MEDICAL BOARD**
LIBRARY

DEPUTY CHAIRPERSON: JUDGE SINCLAIR

MEMBERS: DR NIELD
DR FOTHERINGHAME
MS SMITH

Tuesday, 8 September 1992

IN RE DR ALAN BOWEN-JAMES AND THE MEDICAL PRACTITIONERS' ACT

JUDGMENT

HIS HONOUR: Is the respondent outside?

HICKS: He isn't. On the way out of Court he was photographed by the press and he wanted to avoid that situation again, In saying what I am saying I am not being critical of the press, There is no disrespect meant to the Tribunal by him not being here.

HIS HONOUR: The Tribunal has considered the question as to the appropriate orders to be made in this matter in the exercise of its powers under section 32R(i) of the medical Practitioners' Act, following the findings of professional misconduct by the respondent which are set out in our Reasons for Determination of 12 October 1991.

We have the benefit of the written and oral evidence and submissions presented to the Tribunal this morning.

It is the unanimous decision of the Tribunal that:

1. The name of Alan Bowen-James be removed from the Register of Medical Practitioners of New South Wales.

2 That the time after which the respondent may apply to be registered under the Medical Practitioners' Act be a period of three years from 10 October 1991 and,

3 That the respondent pay the costs of the Department of Health of and incidental to today's hearing.

The principal factors which the Tribunal takes into account in arriving at our decision are as follows:

1. The nature of the proven misconduct. The first and principal episode of such misconduct is that the respondent engaged in sexual activity with his patient on a number of occasions in August and September 1987 and again on one further occasion in December 1987. Secondly, that in March and April of 1987 at the invitation of the respondent psychotherapy sessions were hold in coffee shops and restaurants.

2. The relationship between the respondent and his patient. From about February 1987 the patient was receiving long term psychotherapy from the respondent and she continued to receive such treatment from him until November 1988 after which she required treatment from another psychiatrist for a considerable time. All but one of the episodes of sexual intercourse occurred in the respondent's residence at the invitation of the respondent.

3. The principal considerations of the Tribunal in exercising it's protective power are the protection of the community, the maintenance the standards of the medical profession and the maintenance of the public confidence in the profession. The consequences of an order removing the name of any medical practitioner from the register are undoubtedly most

severe. The public interest in allowing the qualified medical practitioner continuing to practice must be weighed against the public' interest in protecting patients from any repetition of the conduct as proved against the respondent in this case.

4. The Tribunal is cognizant of the views expressed by the Court of Appeal in respect of this category of misconduct as expressed in decisions such as Child's case and Buttsworth's case and of the opinions and reasons expressed by Medical Tribunals in such cases and in a number of other cases concerning this type of misconduct heard before Medical Tribunals in recent years.

5. The orders to be made in any particular case depend on the particular circumstances of each case.

6. The misconduct of the respondent was deliberate and wrongful and occurred principally in the home of the respondent at a time when his de facto wife was overseas. The patient initially consulted the respondent seeking therapy for areas in her life that caused her anxiety and stress, including her difficulties in sexual relations with men.

7. Harm to the patient. The patient's psychiatric problems were aggravated and her mind further confused by the episodes of sexual intercourse followed by the rejection of her by the respondent. Her condition was aggravated by the fact that she felt she had been betrayed by her therapist, in short, the professional misconduct of the respondent amounted to an exploitation of his patient and an abuse of his position of power and caused harm to her.

8. The manner in which the respondent's defence was conducted is an area of discredit to the respondent. In an effort to establish that the complainant was a pathological liar every conceivable aspect of her life which might support such a conclusion was pursued during the course of the hearing.

9. The respondent was presented to the Tribunal as a man of good character, of outstanding professional and academic attainment and integrity. Yet in the cross-examination of him there clearly emerged the picture of a man who falsely represented on a number of occasions that he had additional academic qualifications to those to which he was entitled, who proffered patently false explanations for some such misstatements and lied on his oath before the Tribunal in an effort to exculpate himself. The Tribunal is not satisfied that the respondent, upon whom the onus lies, has established there is no appreciable risk of the respondent re-offending with another patient in the future.

10. The Tribunal acknowledges the expressions of contrition as set out in paragraphs 9 and 10 of the respondent's affidavit sworn on 24 August 1992 and his acknowledgment that sexual relations with patients are abhorrent; the weight to be given to such expressions of contrition must be tempered by his denials of the charges brought against him and the adverse findings we have made as to the credibility of the respondent.

11. The Tribunal has not overlooked the references from 70 patients and colleagues of the respondent who attest to him being a dedicated, competent and compassionate doctor, nor does the Tribunal overlook the disastrous consequences which flow

from deregistration, but the purpose of the order of the Tribunal is to protect the public and the weight of such considerations I have just mentioned diminish in value.

As was said by the Tribunal in the course of delivering our judgment in October last year. medical ethics have proscribed sexual relations with patients since at least the days of Hypocrates and a translation of the oath is as follows,

"in every house where I come I will enter only for the good of my patient, keeping myself from all intentional ill doing and all seduction and especially from the pleasures of love with women or men be they free or slaves".

Sexual relationships between doctor and patient are forbidden because they violate this rule and harm the patient. The respondent's breach of ethics in this instance is aggravated by the particular relationship between the patient and the respondent. The dominant role of the psychotherapist, particularly where sexual problems are at the core of the patient's problems, demands the exercise of great care to avoid such a relationship and because of their training there is no excuse for a psychiatrist or a person practicing psychotherapy, as was the case here, becoming sexually involved with a patient.

Such principals have been restated by the Medical Board recently in a policy statement set out in the Medical Board's Newsletter of 1 April 1992 where it is said, among other things,

"1. It is an absolute rule that a medical practitioner who engages in sexual activity with

a current patient is guilty of professional misconduct
3. Factors to be considered include the degree of dependence of the doctor/patient relationship, evidence of exploitation, the duration of the professional relationship and the nature of the medical services provided."

It goes on to say that,

"5. The rationale of the Board's position has been supported in many contexts by medical disciplinary authorities. Reasons for the rule include the following:

5.1. The doctor/patient relationship depends upon the ability of the patient to have absolute confidence and trust in the doctor.

5.2. The doctor is in a unique position regarding physical and emotional proximity. For example, patients are expected to disrobe and allow doctors to examine them intimately.

5.3. The doctor/patient relationship is not one of equality. In seeking treatment the patient is vulnerable. Exploitation of the patient is an abuse of power.

5.4. The doctor's role is one of authority, by virtue of the patient seeking assistance and guidance.

5.5. Breaches of the doctor/patient relationship have often caused severe psychological damage to the patient.

5.6. The community expectation of the medical profession is one of utmost integrity. The community must be confident that personal boundaries will be maintained and that patients are not at risk.

5.7. Improper sexual conduct by doctors brings community censure and damages the credibility of the medical profession as a whole.

5.8. The onus is on the doctor to behave in a professional manner. It is unacceptable to seek to blame the patient if a sexual relationship develops.

5.9. Personal involvement with a patient will often lead to a clouding of clinical judgment. 6. The guiding principal is that there be no exploitation of the patient or abuse of the doctor's power".

And,

"The Board rejects the view that changing social standards require a less stringent approach. The nature of the professional doctor/patient relationship must be one of absolute confidence and trust. It transcends social values and no standard other than the highest can be accepted."

To that policy statement this Tribunal is confident to lend its support.

That concludes the matter, is there anything arising?

HICKS: No, your Honour.

JOSEPH: No, your Honour.