THE MEDICAL TRIBUNAL OF NEW SOUTH WALES

DEPUTY CHAIRPERSON: Judge Cooper

MEMBERS: **Dr. D. Child**
Dr. M. Pasfield
Ms T. Ovadia

SYDNEY: Tuesday, 31 May, 1994.

IN RE THE APPEAL OF GEORGE SLIWINSKI

STATEMENT OF DECISION
IN ACCORDANCE WITH SECTION 165 OF
THE MEDICAL PRACTICE ACT 1992

INTRODUCTION

This is an appeal from the determination made on 11 November 1993, rejecting the application of George Sliwinski to be registered as a medical practitioner, which followed an Inquiry by the Medical Board under Schedule 1 of the Medical Practice Act 1992.

The Appeal lies under section 17 of the Act and, by virtue of section 19, is dealt with by way of rehearing.

The appellant was first registered as a Medical Practitioner in about 1973. In about February 1988 his name was removed from the Register because he had not paid his annual registration fee. The reason why he had not paid that fee was because he was then in prison on remand (bail refused) awaiting trial on a charge of murder.

On 27 October, 1988, he was convicted of manslaughter in the circumstances dealt with in more detail later.

It will be noted that the Medical Tribunal took no part in the removal of the appellant's name from the Register. Consequently, this matter does not come before the Tribunal by way of review under Division 3 of Part 6 of the Medical Practice Act.

The questions which this Tribunal have to determine are, essentially, the following:-

1. Does the appellant have sufficient mental capacity to practise medicine? (See section 13(a».
2. Does the appellant have sufficient skill to practise medicine? (See section 13 (a)).
3. Is the appellant of good character? (See section 13 (b).

4. Having regard to the nature of the offence for which he was convicted in October 1988 and the circumstances in which that offence was committed, does such conviction render the appellant unfit in the public interest to practise medicine? (See section 15)

To answer these questions it is necessary to look very closely into the history of the plaintiff - particularly his medical and psychiatric history. Evidence as to this history comes not only from the oral evidence given before this Tribunal, but also from reports and letters sent to the Medical Board over the years as well as from the transcript of the evidence given at the appellant's trial in 1988.

This history falls neatly into the following stages:-

1. From birth to 1977.

2 From 1977 to 1980

3. From 1980 to 1 October, 1987.

4. From 1st October, 1987 to 27th October, 1988.

5. From 28th October, 1988 to 10th March, 1990.

6. From 10th March, 1990 to date.

1. FROM BIRTH TO 1977.

The appellant was born on 5 March, 1948 in Germany where his parents were displaced persons. He migrated to Australia with them in 1950 when he was two. Initially the family lived in camps in Bathurst, Parkes, Greta and then Scone. He attended primary school at Scone and secondary school at Raymond Terrace.

When the appellant was eleven years of age his father developed an osteogenic sarcoma and died a year later. About this time, his mother became severely depressed and later schizophrenic.

Whilst at high school, the appellant met his first wife.

On leaving high school he obtained a job at the Central Research Laboratories of B.H.P. as a trainee and was attending Newcastle University studying for a Bachelor of Science Degree part-time.

After two years he transferred to the University of New South Wales and then, in 1967, transferred to the Faculty of Medicine. During these years his then fiancee was also living in Sydney and studying occupational therapy.

The appellant said in evidence that, as a medical student, he enjoyed the usual drink but he thought he identified with his father and drank more than some students would.

He also said that when he came to study clinical medicine he found difficulty working in the cancer wards particularly the old wards at the Prince of Wales Hospital. At the time, he did not understand this difficulty. He also found that he would have a few drinks before he had to attend these wards.

In January 1970 he married his first wife Barbara.

He graduated from medicine at the end of 1972. In his first year of graduation he served at Hornsby Hospital as an intern and then, in 1974, became a surgical resident at Sydney Hospital which included terms at Ryde Hospital, Wagga Base Hospital and with the Royal Flying Doctor Service. He was also Surgical Registrar in 1975 at Sydney Hospital for a year, the first six months being spent at that hospital and the second at Balmain Hospital. In addition to this, to earn extra money (because he was now married and had children) he did an after-hours medical practice.

In 1976 he decided to go into general practice and approached the General Practice School based at Hornsby Hospital. From there he spent, as part of the training scheme, three months at West Wyalong and three months at Kingaroy.

His drinking increased up until 1976 and then dropped but started to increase in 1976 particularly at Kingaroy.

During this period his relationship with his first wife deteriorated. In addition, he did not get on at all well with his wife's family.

2 FROM 1977 TO 1980

In 1977 he was invited to join a general practice in Moree - an invitation which he accepted.

When he first arrived, there were three doctors, one of whom was leaving and was replaced by him. The total number of practitioners in Moree at that stage was five. It was an incredibly busy practice. He did surgery including caesarian sections, obstetrics, anaesthetics. He was on call after hours.

At this stage he had two children the second child having been born in 1975.

In 1977 his wife took their the two children and left him permanently. Not long after this, the appellant walked into the operating theatre to perform an anaesthetic for one of his partners. As he was walking towards the patient he had a panic attack which manifested itself in sweating and tremors. He then walked out of the theatre. His partner, having seen what happened, gave the appellant a Serepax which settled him down.

The next day he did surgery but, beforehand, took a Serepax to calm him. This was the first occasion on which he had taken any form of tranquillisers. Thereafter, he proceeded to prescribe for himself and ingest Serepax initially and then Valium. The appellant testified that he was seeking to maintain some sort of tranquillity but the dosage went up as he developed tolerance.

From 1977 to 1980 the levels of self prescribed medication increased. He added tri-cyclates and beta-blockers which he regarded as an accepted form of treatment for tremors and anxiety. From time to time he developed sweating and tremors which eventually became a major problem. He said:-

> "It's not quite that simple, it was not just a matter, it was certainly treating my physical symptoms but I was also treating the side effects of my dependence. I was adding benzodiazepines and I was trying to withdraw from them as well. I was finding I couldn't perform my work. With my limited insight I just got lost. I was treating myself for the side effects. I was finding some equilibrium. I was finding if I was withdrawing medication too much I had to use alcohol for the equilibrium."

In 1979 he sought the help of a psychiatrist, Dr. Sidney Smith, in Sydney. Ativan was prescribed for him and he took four a day eventually.

The appellant said that he tried to get the medication down but it was just too difficult and if the pills went down the alcohol went up. He was chasing his tail.

In 1979, when the appellant was on call at night, he received a telephone call from a lady who said that her husband had had a massive stroke. He arranged with her to ring the ambulance to take the patient to hospital. Later he was advised by the hospital sister that the patient was unconscious and had fixed dilated pupils. At that stage the appellant was anticipating an emergency caesarian section to a patients in labour. He did not attend on the patient who had been brought in. This led to a report to the Medical Board which conducted an inquiry the following year as a result of which he was cautioned.

In about early 1980 the appellant left Moree. He had had difficulties with the Medical Board, with the Hospital Board, his wife had left him and he hoped to go back to Newcastle to re-establish that relationship. That hope was not fulfilled.

Dr. Lyndon (a long standing friend of the appellant and a psychiatrist) wrote to the Medical Board on 3rd March, 1992 (exhibit 1) that :-

> "Until the breakdown of his first marriage in 1977 Dr. Sliwinski demonstrated a degree of professionalism and dedication to patient care which could not, in my opinion, be faulted. He equipped himself with the skills necessary for rural general practice, worked hard and achieved a well deserved reputation for being a concerned and competent doctor.
>
> Unfortunately, he found difficulty coping with the pressures of work against the background of an unhappy marriage. To help him cope he turned more and more to alcohol and tranquillisers and he subsequently became addicted to these drugs. This developed into a significantly debilitating problem after the failure of his marriage, until ultimately the point was reached where he recognised that he was unable to continue the practice of rural medicine and he subsequently left Moree to live in Newcastle. "

In evidence to this Tribunal, Dr. Lyndon testified that when he first arrived at the practice at Moree in early 1977 the appellant had settled in and was working hard and was well accepted. The problem first manifested itself after his wife left him and it seemed to develop from there. Thereafter it was an escalating process so that over the last twelve months he became very worried and he knew that his partners were worried.

When asked whether he considered taking any action he replied:-

> "There was very little action that could be taken. Again I think if we go back to those days - the situation for dealing with what we now call an impairment was quite different. There was no ready access to anything like the Doctors' Health Advisory Service. There was no structure to allow doctors in that situation to be treated by any kind of process, particularly one that was sanctioned or done by the Board. So the actual action that we could take was very limited. The action that I chose to take, and one my partners chose to take, was to do what we could to try to contain his drinking, in particular, which was our major concern. To do what we could do to contain that and also to help him to stop and at the same time do what we could to make sure that there was no problems arising as a result. "

Dr. Lyndon also said that, towards the end of the period, the appellant had a fear of performing surgical procedures. He would fear either that he 'would develop a ' tremor or he would actually have a slight tremor and that was what concerned him. He agreed that tremors could be associated with the withdrawal from alcohol and medication.

3. FROM 1980 TO 1 OCTOBER. 1987.

In 1980 the appellant moved to Newcastle. To keep fit, he worked as a builder's labourer for a while and thereafter he worked from time to time as a locum tenens.

About this time a shot gun which he was then handling went off in his house. There was no-one else present. The incident frightened him and he called Dr. Lightfoot from Charlestown. That doctor gave him reassurance.

His first marriage ended in divorce in late 1979 or early 1980. He then formed a relationship with his second wife, Alice, whom he married in about September 1980.

The appellant said that he knew that he was not well so he tried to have time out from medicine. His wife had started sub-dividing land and he assisted her in this operation by landscaping and help in selling. In the meantime, they went sailing up in Queensland.

In the early 1980s the appellant sought treatment from Dr. Vickery, a psychiatrist in Newcastle, regarding the addiction and anxiety. This doctor prescribed Trasicor a betablocker. Also in 1980 or 1981 he was admitted for one week to a hospital at Bondi Junction and then for four weeks to an Alcoholics Anonymous (A.A.) based hospital at Chatswood.

He had joined Alcoholics Anonymous (A.A.) in 1980. He decided to try to deal with his addiction in two stages. The first stage was to confine his intake to alcohol in order "to get off the pills" and the second stage was to deal with the alcohol problem through A.A. Accordingly, he ceased taking pills and went to A.A. in Newcastle from which he was referred to Matron Kessle who operated a course in Sydney.

Dr. G. J. Vickery testified at the appellant's trial in October 1988 that he saw the appellant once on 4 January, 1982 when he consulted him concerning his abuse of the substances alcohol, Valium and Panadeine. The appellant told Dr. Vickery that he was concerned about a deterioration in his work plus the fact that he had the shakes and that he had been trying to reduce the intake of Valium. Dr. Vickery diagnosed him as having a chronic anxiety disorder and also a dependency disorder. He prescribed a beta-blocker. The appellant did not attend on a follow up appointment.

Dr. James Maguire testified in October 1988 that he was contacted in 1983 by the appellant who told him that he had a very severe drug and alcohol problem. He said that the

main problem was alcohol but he had started to use Serepax and Mogadon. At that stage, the appellant had a particular phobia that he was going to die very young. His father had died of some form of bone cancer at a young age and he always felt he would die at a similar age. Dr. Maguire strongly urged the appellant to seek psychiatric help.

The appellant told this Tribunal that, in about 1984, he commenced work as a psychiatric registrar at the Morriset Hospital and in 1986 he did a turn at the Mater Hospital. About this time, he also had treatment from Dr. Metcalfe, a psychiatrist, who tried different forms of medications - initially the MAO inhibitors and then anti-depressants as well as betablockers. On two occasions he admitted the appellant to Linton Private Hospital.

In 1985 he saw Dr. Fisher at the Northside Clinic and in 1987 he also saw Dr. Walden at the Northside Clinic. After leaving the Morriset Hospital the appellant went back to doing locum and after-hours medical service work. His said that he was working for most of the time but there were certainly periods when he had to get away from medicine to get himself together.

During the 1980s it was the appellant's practice to keep records of the pills he was taking because he wanted to ensure he did not exceed the maximum recommended dose of medication. Some of those records are in evidence as exhibit B.

Dr. Middleton gave evidence in the 1988 trial. He was a psychiatric Registrar and the Director of the Post Graduate Training Scheme in Psychiatry at Morriset Hospital in 1984 when he met the appellant and in which capacity he had contact with him. About mid-way through 1984, Dr. Middleton formed the view that the appellant was obviously quite depressed and had suicidal thoughts. He suggested to the appellant that he seek treatment from a psychiatrist. Following upon this the appellant went on sick leave and later returned saying he was better. Dr. Middleton felt that he was still depressed and, within a few hours of his return to work, Dr. Middleton told him to take more time off and seek treatment. Later the appellant was doing a placement of working for six months at the Mater Hospital in Newcastle and he was advised there after a few days to take time off. The appellant later resigned from the Mater Hospital.

Dr. Andrew Walker, in the 1988 trial, testified that he commenced psychiatric training in Morriset in July 1984 and that the appellant started a week later. Dr. Walker said that during the first three months when the appellant was working in the drug and alcohol ward (a ward which is quite frustrating to work on) the appellant appeared to be dynamic and enthusiastic. He was very caring towards the patients. He then moved to the psychiatric ward and, about a month later, Dr. Walker noticed that the appellant became quite severely depressed and at one stage told him that he had commenced taking the anti-depressant Imipramine. Dr. Walker noticed that the appellant became increasingly depressed as the weeks went by, and said that he felt suicidal. Dr. Walker suggested to the appellant that he let his medication be supervised by a consultant psychiatrist. He also expressed his concerns to their supervisor.

Dr. Walker emphasised that it was not the appellant's personality which changed but his mood. He still remained a caring individual but he changed from a man who had energy to one whose mood was depressed.

Exhibit A contains a report from Dr. Maxine Walden dated 31 March, 1988 confirming that the appellant was admitted to the Northside Clinic from 27th August to 27th September, 1985 and also from 12th to 26th July, 1987. She diagnosed poly-drug abuse and a possible anxiety disorder, the latter diagnosis needing further exploration when the patient had been withdrawn from his medications. He was then placed on a withdrawal regime of medications but discharged himself against medical advice on 26th July, 1987. The appellant told this Tribunal that he did this because of pressure from his wife to return home.

In his letter to the Medical Board of 3 March, 1992, Dr. R. W. Lyndon said of this period:

> "Over the next few years, despite seeking treatment and having several hospital admissions, his dependence on alcohol and tranquillisers continued. He made several attempts to withdraw from tranquillisers but experienced withdrawal symptoms of such severity that he was unable to cease. There were several lengthy periods when he was able to abstain from alcohol sufficiently to work in locum positions around Newcastle, but the dependence on tranquillisers continued and he was never able to re-establish himself successfully in a professional sense. "

The appellant said that in 1987, his employment at a practice at Kilburn Bay was terminated with the comment that he should seek psychiatric help.

The appellant was divorced from his wife Alice in about September 1987. However, they still continued to live in the same house. By this stage they had bought land at Tea Gardens and were planning to build a house and surgery themselves on that land over a period of time so that he could have a semi-retirement practice there. Indeed on 1st October, 1987 he paid the fee to the local council in respect of the building application. The plans are in evidence as exhibit C.

On 1 October, 1987 the appellant shot his wife four times. One of the shots resulted in fatal brain damage.

By this stage the appellant noticed that he had fits of hallucination, particularly since he started taking Hemineurin. He said that the days leading up to the 1st October, 1987 are a 'blur'. He was physically unwell. That morning he had taken pills to steady his hands to sign the cheque to take to the council for the building application. He went to the R.S.L. Club where he had some drinks. He took medication. He recalled speaking to his wife concerning an argument that had occurred earlier between his wife and her daughter who was then about seventeen. He had a sore back from having gone wind-surfing a few days before hand. He said:-

> "It is a complex sort of state of mind and I had had a dream that I had been chased. I had a dream and I think I must have blacked out and gone to sleep. I was being chased by Viet Cong, but the contents of the dream was really violent. I was very frightened and Alice died in sort of the confusion and blurring of that."

Later in evidence he said:-

> "I remember vaguely being inside and looking at the bed, not thinking, but sort of looking that the bed was empty. I recall walking around the house trying to understand what was happening and what had happened. I remember being told to go outside with my hands up, but there was nobody out there. I remember going around the back to see what was true. The police arriving."

The details of what occurred at the trial will be dealt with later.

4. FROM 1ST OCTOBER. 1987 TO 27TH OCTOBER. 1988.

The appellant was arrested on 1st October, 1987 and spent a few days in the lockup at Taree and thereafter was transferred to the B. wing maximum security section of East Maitland Gaol.

As he was being taken into B wing he was told by the prison officer that if somebody wanted to have sex with him or attack him then not to come running to that officer.

Thereafter he remained in East Maitland gaol with occasional visits to Long Bay gaol for medico-legal reasons until his trial in October 1988.

During this period he lived in fear of violence and sexual assault from other prisoners. He frequently saw assaults on others.

He had withdrawn from all medication and alcohol whilst in the Taree cells. He had a high temperature and sweating and a fungal infection all over. Having stopped the medication his tolerance to pain was low. His left arm which had been injured at university was painful with arthritis. His back was also painful. He saw the prison doctor but was given only Noctec for a few days.

His trial on a charge of murder commenced in the Supreme Court at Newcastle on Monday 24th October, 1988. At the end of the third day of the trial he was informed by his legal representatives that the Crown would accept a plea of guilty to manslaughter. On Thursday 27th October, 1988 he entered a plea of not guilty to murder but guilty to manslaughter. He was then sentenced to imprisonment for eight years with a four year nonparole period back dated to 1st October, 1987. The details of this trial are dealt with later.

5. FROM 28TH OCTOBER. 1988 TO 10TH MARCH. 1990.

After the court proceedings he was taken back to East Maitland gaol where he was re-classified to the medium security gaol at Cessnock. Towards the end of 1989 he was taken to the minimum security gaol at St. Helliers. The appellant testified that during his period in custody drugs were readily available. The most common was heroin but marijuana and alcohol were available and, in Long Bay, one could get cocaine. The appellant said that he did not consume any alcohol or drugs except on one occasion he had a marijuana cigarette. He said that if he had not taken the cigarette he would have antagonised a person who was an ally and protector against attacks from some of the gaol "heavies". He said that it would have been really stupid to say no, he did not want to cut off his nose to spite his face. He also said that in 1988 he was in the minimum security gaol at Muswellbrook sitting in his room when a can of Tooheys draught beer was handed in. He took it and drank a mouthful. He said that he did

so because the people who offered it to him were his allies in gaol and he did not want to antagonise them.

Whilst in gaol the appellant said that he did a lot of soul searching trying to explain what happened. Eventually, in 1989 in Cessnock gaol he was introduced to a book on Zen. Later he met some people who practised it and, since then he has gained considerable help from it and become involved in its practice.

In his letter to the Board of 3 March, 1992, Dr. R. W. Lyndon said of this period:

> "I continued to visit Dr. Sliwinski at regular intervals while he was in prison. It was during these years that I witnessed a substantial change in Dr. Sliwinski's personality and general outlook which happily has been sustained. While in prison, although he had access to drugs of all sorts, including alcohol and tranquillisers, he used none. Despite the ordeals of prison life he was able to cope without resorting to drugs and managed to regain much of his former personality, strength, stability and self esteem. This was largely aided by his regular practice of meditation. .

Prior to his trial the appellant had seen Dr. Rickarby and he wrote to him from Cessnock and asked him if he could see him in psychotherapy when he got out of gaol. The doctor agreed after making inquiries as to the appellant's genuineness.

6. FROM 10TH MARCH. 1990 TO DATE.

On 10th March, 1990 the appellant was released from prison and then went to live with his friend, Dr. Lyndon in North Sydney, for about eighteen months. Initially he obtained work doing telephone surveys. However, he was committed to see Dr. Rickarby twice a week in Newcastle and this commenced on 22nd March, 1990. To meet these obligations he did not work until 1991.

Shortly after he left prison he had some alcohol during a celebration with Dr. Lyndon and he also drank some wine on one occasion when he had a night out with a lady. Following this he had a blackout. By this stage he had established himself in meditation and realised that alcohol altered the quality of his meditation and of his life. Consequently he ceased drinking alcohol and has had none since 1990.

For the first two and a half years after his release the appellant went to Warner's Bay or Newcastle twice a week of a Thursday and Saturday by train to visit Dr. Rickarby. In the early days he went to Broadmeadow and caught a bus and in later days he walked from Cardiff station to Warners Bay and then back again. The walk was some four to five and a half

kilometres to Warner's Bay and back again. After two and a half years this was reduced to once a week. During this time he never missed a session other than when the doctor was away.

When asked how he perceived the benefits of the psychotherapy he said:

> "My relationships with people are better. I am happier. Life is good for me. From a non-personal point of view, I see the effects in my immediate family, in my sister as well, who as a result of my example has gone into psychotherapy herself and the rewards there are very obvious to see. It is sort of out of dysfunction into good function. But it is even more than that, that is the bare bones of it. There is a lot of joy in life. It is good, Yes."

He also said that it helped him form an understanding as to why he was dependant for so many years. It has helped him to adjust to “his earlier fears of dying and going mad”.

He said: "Geoff was very compassionate and helped me peel off layers and early life experience was really imprinted on my life."

When asked why he deliberately made a point of never missing a session, he said "It was such a big tragedy that I just wanted anything to get away in another direction really. I don't mean escape it, but I mean find out how to live knowing that it was the wrong way - that this function was not the way. "

From 1990 the Appellant made attempts to keep in contact with medicine by applying, unsuccessfully, for jobs as a research assistant. He also sought a position as a sub-editor of a medical publication.

In 1991 he obtained part time work - five days a fortnight- as a records clerk at the St. John of God Hospital at Richmond earning $390 per fortnight. During this time he was travelling to Newcastle to see Dr. Rickarby twice a week. He had no concession fare entitlement.

When he started work at the hospital at Richmond, the appellant moved to a flatette at Burwood paying $85 per week rent. He still lives here.

His working time has increased and he now works three days per week clearing $479 a fortnight. He describes his financial situation as very difficult and causing him a lot of strain and as restricting every aspect of his life including attempts to develop medically.

When asked why he stayed at such a poorly paid position for so long, he replied:

"Well a number of reasons; one, it was three days a week and I had time off to continue to develop, but I also wanted to get a track record and just show that I could hack it really, that I could work under duress and live under duress. "

When asked about the difficulties under which he has worked, he said:

"My boss, lady for whom I work, is very obsessive, compulsive, and that was very difficult, and she is a difficult lady to work with and she has never had anybody working underneath her and so she was unpracticed at that, unskilled at that and made it very difficult. "

He said that he goes to clinical meetings of a Thursday morning at Concord Hospital and has done so since February and also to a G.P. Forum at Hornsby Hospital which meets once per month. In addition, he reads such journals as he can.

When asked how he would see his re-establishing a medical career if he were to become registered, he said:

"Well, I have to retrain, I mean that's something I have to do. No doubt of that. I would like to get into some teaching hospital if I could so that I have the opportunity to retrain and that's sort of first up, and from there, well, I mean the option as I see now, as sort of career medical officer."

When asked about the short term he said that he would expect to go into a hospital:

"I'd have to go in at a junior level, I've been out of practice for so long."

When asked how he felt he would cope with the return to the stresses of clinical medicine he said:-

"Well I would cope, and I think I would be fine, but I am not blind to the fact that it is not an easy transition. Any transition is difficult and even to just going to these clinical meetings at Concord Hospital is quite stressful, but I mean I have to, I have to make the transition slowly and carefully. And it's with awareness of the difficulties, and they are real, from both sides, my side and hospital's side, so I'll cope but it will have to be a slow entry a slow transition."

When asked about the likelihood of his starting to use drugs or alcohol he said:-

"Oh it's essentially nil. I mean I know statistically that's not so but it's, I guess statistically unlikely somebody who is middle aged can change so radically. But I mean that's a fact and well I can say essentially nil. There is always a possibility, you can never be sure of anything. "

When asked why he was so confident he would not start to use drugs or alcohol he replied:-

"Well, I mean what happened was just so shattering. It was just overwhelming and it created so much suffering for everybody, myself included, enormous suffering for everybody. But in a way it sort of - the positive sides of that have been to shatter the binds that were sort of holding me in from developing, and I mean I had worked very hard at getting well and I have been in psychotherapy now for over four years and it's been absolutely superb and I see very clearly the positive effects in my relationships

and in my family, and it's just to see the change you know, it's something that you could wish for, it's just very real and it's wonderful."

The appellant said that he is now under no medication.

Exhibit A contains a reference from Dr. P .T. Morrison, the consultant psychiatrist at St. John of God Hospital who has known the appellant for the last three years in his capacity as a medical records clerk. He states that he has been impressed with the way in which he adapted to his work situation and his development of positive relationships with staff members and visiting consultants. He continues:-

> "I am aware of the events in his life which resulted in his time in custody about which he was open and honest, addressing his earlier substance abuse, his progress in effective rehabilitation over several years and his efforts to consolidate this by regaining his professional status. As Director of the drug and alcohol programme of this clinic I am pleased to be able to add my endorsement to his application for reinstatement as a medical practitioner and wish him well for his future career."

Exhibit A also contains a number of urine analysis reports from Quinn Pathology Services between 13th January and 6th April, 1994 showing that no drugs of abuse or alcohol have been detected on the appellant by screening.

Exhibit 1 contains a number of references from medical practitioners, particularly psychiatrists, speaking highly of the appellant and supporting his application.

Dr. R. W. Lyndon, in his letter of 3rd March, 1992, referred to earlier, wrote of this period:-

> "After his release from prison he was a boarder in my home for eighteen months. His abstinence from alcohol and tranquilisers continued during this time and has continued to the present. He has undertaken long term psychotherapy which for the last two years has involved travelling to Newcastle from Sydney twice each week and to my knowledge he has never failed to keep his appointments, despite the financial strain this entailed. He now has a job and is living independently. He has the support of his family and now enjoys a wide circle of friends and social contacts.
>
> Over the last five years there has been a steady, progressive improvement in Dr. Sliwinski's stability, mood and general adjustment. I believe his rehabilitation has been successful and support whole-heartedly his application for re-registration."

On 1st November, 1993 Dr. Lyndon again wrote to the Board saying that the appellant has continued to remain abstinent from alcohol and tranquilisers during the time despite being exposed to considerable stresses relating to family matters. He continued:-

> "I have noticed that his ability to handle stressful situations has continued to improve and my observation is that he has developed an increased degree of resilience. Dr. Sliwinski has been able to reduce the frequency of his psychotherapy sessions and he clearly coped with this major change in a normal and adaptive way."

In evidence before this Tribunal Dr. Lyndon said that back in the late seventies there was a lot of ignorance concerning the addictive qualities of benzodiazapines compared with now. He added:-

> "It has really only been in the nineteen eighties, perhaps even to the late nineteen eighties, that that ignorance has started to dissipate. In those days, the benzodiazapines class of drug, such as Valium and Serepax, were thought to be harmless and thought to be non-addictive. They were prescribed very widely, readily and very liberally and there was no realisation amongst doctors at that time that these were in fact harmful substances or could be harmful substances ...

Evidence was given by Antonio Miller a doctor of philosophy and a senior lecturer in English at Sydney University. He has been practising Zen for six years and has known the appellant for two or three years in that context. He explained Zen as a practice designed to bring ones attention to physical states and also states of mind, the flow of ideas, feelings which we experience all the time but without paying full attention to them. Zen meditation is an attempt to give full attention to what is happening in our minds. He also explained his understanding as to the way that the practice of Zen could help someone who had been addicted to drugs. Dr. Miller said that the appellant has participated in the Sydney Zen Centre by being a regular attended three nights a week and has spent some time as a leader. He said that he believes the appellant recognises the dangers that led him down the pathway of drug abuse and his practise of Zen Buddhist meditation is an attempt to prevent a similar path of conduct recurring.

THE PSYCHIATRIC EVIDENCE.

Thus far it is the lay evidence that has been considered. Although Dr. Lyndon is a psychiatrist he has not treated the plaintiff and has given his evidence as a friend who happens to possess psychiatric qualifications and whose observations can be looked at in that light.

It is now convenient to look at the evidence given by psychiatrists who have had contact with the appellant over the years. Some of these psychiatrists gave evidence at the appellant's trial in October 1988 and the transcript of their evidence is part of exhibit 1.

THE EVIDENCE OF DR. RICKARBY

1. AT THE TRIAL IN OCTOBER. 1988.

Dr. Geoffrey Rickarby has been the appellant's primary treating psychiatrist. He had seen the appellant on two occasions at East Maitland gaol for the purpose of qualifying himself to give evidence as to the state of the appellant's mind at the time he killed his wife in the then forthcoming murder trial.

At that trial, after giving detailed evidence of the history of the appellant and also examining his conduct at about the time of the shooting, he testified regarding the appellant's mental state at the time:-

> "It was a complex state of intoxication. It is a type of organic mental syndrome. It is due to the effect on the brain, the brain not working properly. This type of organic mental syndrome is classified under intoxication. It is related to delirium, and this- is what would have been applied to it." (page 74) .

The doctor said in evidence at the trial (page 75-76) that the mental condition would not be classified as psychotic:-

> "It would be classified as an organic mental syndrome. If it were not due to intoxication, it would be that it lost touch with reality, but here you have somebody who has a severe neurotic illness rather than a psychotic one and whose drug use is essentially part of their neurotic illness and they have got this so tied up with the levels with intoxicants and the complexity of the intoxicants as only a doctor could have done, really. In that sense this sort of intoxication of this particular man is virtually unique, as far as I know."

He expressed the opinion that at the time of shooting the appellant was not capable of rational thought and that it was very unlikely that he was capable of forming an intention to kill. He also said, when asked whether at the time of the shooting the appellant was hallucinating, "it is possible. No, you could not say, you would have to be in his head to be sure of that but it is very possible considering the other known effects."

He went on to say:-

> "Well, we know from his history and from what you have told me of the other witnesses' accounts that hallucination was occurring during that week and that week since he had stepped up his Valium since he had hurt his back. We know he drank more alcohol than usual that evening. We also know that hallucination is a very common thing that happens with this mixture of drugs, we know that he did - was hallucinating, therefore it is very possible that he was but to say categorically that he was, one was sure he was, I don't think I could know that."

2. DR. RICKARBY'S REPORTS

On 5th August, 1992 Dr. Rickarby reported to the Medical Board (exhibit A). The appellant had written to him from gaol after the trial requesting that psychotherapy be commenced once he was released on parole. After making enquiries, Dr. Rickarby ascertained that the appellant was motivated for therapy and consequently wrote to him agreeing to long term therapy. The first session was on 22nd March, 1990, twelve days after the appellant's release from gaol on parole. At that stage it was clear to Dr. Rickarby that the appellant accepted responsibility for his neurosis, his drinking and his substance abuse and consequent impaired functioning. By 5th August, 1992 the appellant had completed approximately 220 sessions of therapy without missing an appointment, even though he was required to travel to Warners Bay twice a week from Sydney. At page 4 of the report, Dr. Rickarby says of the appellant's state of mind at the time of the shooting on 1 October, 1987:-

> "He may have continued in a partially compensated state but for the self introduction of Chlormethiazole (Hemineurin) into the regime. It is used in psychiatry to treat withdrawal from alcohol and/or Benzodiazapines in a comparatively safe manner, but only in well nursed patients for a short course. However, it is self addictive, but as it was not generally used by drug users of the addictive or recreational bent, the knowledge of its effects was and still is limited. However, after habituation occurs, it causes severe delirium when the blood level is falling. The combination with the other drugs created further complexities ... He was having more severe withdrawal symptoms from his various drugs and balancing their doses (Valium and Chlormethiazole particularly) precariously. He was having irrational attacks, fearful derealisation, and unpredictable hallucinations which were getting out of his control. Even when not hallucinating he was functioning inadequately and with highly variable rationality. His brain syndrome was seemingly intermittent, but the history indicates that there was a gradually increasing level of delirium with fluctuations in brain function as his blood levels varied. It was in this state that he shot Alice. tr

From page five onwards Dr. Rickarby discusses the details of the therapy and states that in the middle of 1991 the appellant would think aloud about his thoughts of once more practising medicine. At this stage the appellant was mature and talked about commencing again by working in a middle order position in a public hospital where he would get further training and have supportive supervision. In September 1991 Dr. Rickarby thought he was ready to practise medicine again and wrote to the Board in those terms. He says that the appellant continues to work well in therapy and is seeing more clearly compulsive elements grounded in his childhood fears and identifications. He adds that his (Dr. Rickarby's) absence overseas for

eight weeks from April to June 1992 did not provide any "blip" in the appellant's steady progress.

On 12th August, 1992 Dr. Rickarby provided a supplementary report. In it he described the changes for the better in the appellant's personality and stress capacities over the years. Those changes are all for the better. He concluded:-

> "I would say in winding up this report that he has undergone an inner and outer education on the problems of the impaired doctor and in future he could become a valuable resource if there was knowledge and acceptance of how such a resource might be put to use. "

On 31 October, 1993 Dr. Rickarby reported to the Medical Defence Association (exhibit 1). At that stage be had seen the appellant approximately 280 times since March 1990. In September 1992 he reduced the appellant's therapy from twice weekly to once - weekly.

The appellant, after a Board hearing in 1992 when he was congratulated on his transformation, said that he wanted it to be clear that his transformation was from a doctor of good character but with crippling symptom neurosis to an unimpaired doctor. Dr. Rickarby says:-

> "It is important to consider his psychiatric health. His diagnoses were his severe symptom neurosis with secondary prescribed substance abuse. This latter was augmented with alcohol. His self prescription was largely a continuation of treatment which other medical practitioners had prescribed or suggested.
>
> "He has not used prescribed substances in six years.
>
> "He stopped using alcohol at all three years ago.
>
> "His symptom neurosis was largely under control after the first hundred psychotherapy sessions, and by one hundred and fifty sessions (latter half of 1991) it had remitted. When it is considered that he had a severe panic disorder which was being suppressed and modified by his prescribed drug usage and that he exhibited twelve of the thirteen key symptoms of panic disorder, this is significant.
>
> "He gave up drinking coffee and smoking cigarettes in early 1991.
>
> "Now that his symptom neurosis has gone, he shows no signs of psychiatric morbidity on Axis one or Axis two. However, he still exhibits grief over the death of his wife and the ensuing personal disaster. This comes and goes with the circumstances and is normal. As already indicated his development in the last twelve months has been social and in issues of confidence and relationship strengths. It will be important for him to continue with therapy until he is established in the medical workforce.
>
> "In my view, it will be important for a supervisor/mentor to be available in the institution where he works who will be able to counsel him within his development of

> an appropriate new medical career. Addressing his updating of professional skills will be an area in which he would require support and guidance. He allots some time each day to his medical reading, and is not narrowing this to any particular area, although he is selecting areas that have made recent advances. "

In a report dated 5th April, 1994 to Counsel for the appellant (exhibit 1), Dr. Rickarby confirms his assertion that the appellant would not use psychoactive substances again. He agrees that one cannot foretell improbable circumstances such as dementia but asserts that his opinion is strongly based. He then sets out the bases for his assertion by analysing:

1 the nature of the crises that the drug taking induced and its effect upon the appellant,

2 his grief and the way in which he has worked through it,

3 his illness and the way in which he has worked through that and effectively and continuously withdrawn from substance abuse.

4 his social field and the way in which he has been able to develop and maintain relationships, and finally

5 his ego structure and the ability to demonstrate mature mechanisms and to be aware of old defence mechanisms are of no use.

Dr. Rickarby states that whilst the appellant is adapting to psychosocial pressures and changes such as hearings, a change of occupation, the way people perceive him and changes in major relationships, the psychotherapeutic relationship has value and validity but he sees it terminating once the appellant is re-established in medicine.

3. DR. RICKARBY'S EVIDENCE TO THIS TRIBUNAL

Dr. Rickarby gave evidence before this Tribunal in which he confirmed the contents of the earlier reports and amplified them in many respects. When asked about the success of the therapy and the way in which he considered it to have been successful, Dr. Rickarby replied:-

> "Successful in achieving health in one sense but there are a number of parameters for success but I think one of the most significant ones is that this is a sick man who is getting better and that does happen in psychiatry even though we don't have a reputation for having that, but sick people do get better. On another parameter, I think it is successful in that he has undergone quite a lot of personal development in the sense of being aware of various aspects of his, not only his original development but of being able to talk fairly freely about things like his angers, his disappointments, his distress, various things that would give other people fairly low self esteem and that he has developed through the stage where he can accept the warts and all part of himself. "

In a further report to the Tribunal dated 12th April,1994 (exhibit 4) Dr. Rickarby explained that when he used the phrase "being sick and getting better" he was describing the process of transition from sickness to health. He says:-

"In no way should this be taken to imply that he is a sick man getting better and I apologise to the Tribunal if my response has muddied rather than clarified what are important issues. As the remainder of my evidence would indicate unequivocally - he is not sick he is better."

Having considered the totality of Dr. Rickarby's evidence this explanation is accepted.

When asked in evidence how the appellant would handle the combination of fears, emotions, anxiety and panic which manifested themselves in the 1970s, the Doctor replied:-

"Well, I have been interested in that side of things and in the various crises that he has had in his life and, as you might well understand, he has been fairly sorely tested by being in gaol by various aspects. I have watched as he has gone through various crises with his sons' development. I have watched the development of his relationship with his mother and his sister. I have seen him go through a relationship which broke up.
I have seen him be distressed by various things and I feel that he has coped with those appropriately in proportion to their difficulty."

When asked how he saw the appellant reacting to the stresses of clinical practice Dr. Rickarby replied:-

"I think he is the sort of person who you know will always be empathic to people's suffering or their distress. That side of him will not go away. But from what I have seen I think that he wont stay with that. He wont try and do the impossible like the inexperienced do. He will know what is possible or is not possible and he won't sort of carry his worries about the outcome home with him unnecessarily. I think one of the differences, your Honour, could be expressed really by a greater maturity, amongst other things, as a result of his development."

When asked how confident he was that the appellant would not seek out medications or alcohol the way he did in the past, Dr. Rickarby replied:-

"Well, I am, as you know, very confident and that is what I have addressed in this document that I have written, is really the criteria for my confidence; because I realise that my confidence is of such an order that without the criteria to explain it it may be seen as improbable or implausible and that is why I, after discussing the issue then and I wrote out the criteria on which I based this opinion and I am extremely confident."

OTHER PSYCHIATRIC EVIDENCE

Dr. John Ellard A.M. gave evidence on behalf of the appellant. In his report dated 30th March, 1994 (exhibit A) he says at page 2:-

"The essence of the matter then was that Dr. Sliwinski had major psychogenic problems in his personality arising from difficulties in his formative years. They had been exacerbated by his anxiety in his professional practice and by the great problems in his personal relationships. In his attempt to cope with them he had become dependent upon a most unwise mixture of medications and I accept that he lived at least some of his life either in full withdrawal or in drug intoxication.

The issue now is to try to discover how likely this state of affairs is likely to return. There is reason to believe that it will not, partly because the tragedy which occurred and its consequences would concentrate anyone's mind and partly because he has had

four years expert psychotherapy from Dr. Rickarby. In addition he has worked diligently at his rehabilitation.

In interview, Dr. Sliwinski appears to be a sensible, open and mature man. "

Dr. Ellard goes on to say:-

"It seems to me that his psychotherapy has gone well and that the problems which drove him to catastrophe before have now been resolved .... It is my opinion that he has psychological competence to practise medicine. Furthermore, when one examines the ways in which he came to grief before, it would be possible for the Tribunal to reassure itself about his progress in the future because there are appropriate tests available.

Reviewing the whole matter the tragedy occurred because Dr. Sliwinski tried to treat himself using peripheral assistance from others. He has learnt his lesson and will never do that again. "

In evidence before this Tribunal Dr. Ellard was asked the prognosis for doctors who become impaired because of addiction problems. He responded:-

"If they are properly supervised and under the eye of a regulatory body, most do well."

When asked whether the appellant's experience in gaol and since would indicate the ability to withstand stresses without turning to drugs and alcohol the doctor responded:-

"I believe so, and it is perhaps worth remarking that in gaol there is plenty of access to drugs. If he had wanted to keep going, he could have. "

He went on to say that he believed the appellant's personality problems were substantially resolved and that he had worked through his substantial anxieties about madness and about dying.

THE RESPONDENT'S CASE.

The only witness called for the respondent was Dr. Bruce Westmore a psychiatrist who first reported on 5th August, 1991 on an examination conducted on 30th June, 1990 (exhibit A).

Under the heading "Mental State Examination" Dr. Westmore said:-

"His mood was normal and there was no evidence to indicate the presence of any psychotic features. His 'cognitive functions were fully intact. He is of above average intelligence with apparently good insight into the nature and extent of his current predicament. "

Under the heading "Opinion and Conclusions" Dr. Westmore said:-

"In general there are no immediate medical reasons why this man should not be considered for re-registration. Having said this, however, I would like to indicate some areas of general concern which need to be considered by the Board."

Those areas were his clearly identified stress vulnerability, his past personal history and drug and alcohol abuse with the need for close monitoring in this regard. He recommended the need for retraining and supervision and the requirement to undergo random urine analysis studies to ensure that alcohol or other substances were not being consumed and suggested that the protocol of these would follow the normal procedures adopted by the Board. He should also certainly continue to see his treating psychiatrist.

Dr. Westmore again reported on 6th August, 1992 following on an examination on 27th July, 1992. He referred to the fact that the appellant's parole was due to end on 11th September, 1992, and continued:-

> "The history provided to me indicates that he has done a great deal of psychological work over the past two years and has made significant advances in terms of gaining a better understanding of himself and some of his psychological mechanisms. He appears to be highly motivated to return to the medical profession and is strongly desirous to do so. On current medical state examination there appears to be no psychiatric reason why this should not occur. He has an awareness of his potential stress vulnerability and recognises some of the potential difficulties he will experience on his return to the medical work force. Urine analysis studies have not been conducted on Dr. Sliwinski and at this time I can see no value in having them commence.
>
> I would recommend that the Board consider reinstating Dr. Sliwinski as a medical practitioner after the parole order expires on 11th September, 1992. It would be desirable for him to be given limited registration in the first instance and he should be required to work in a structured and supervised work place. As additional support he should continue to see his treating psychiatrist. In addition, a senior medical person in the hospital in which he works might be approached with a view of being Dr.Sliwinski's mentor."

On 18th November, 1993 Dr. Westmore reported to the Medical Board concerning his observations at the Inquiry conducted by the Board on 11th November, 1993 when the appellant's application for re-registration came before it. It is the decision made following that Inquiry which is the subject of the present appeal.

Dr. Westmore says that the appellant's mental state had not changed significantly since he last saw him in 1992. However, he went on to say :-

> "In view of the serious nature of this meeting I was a little surprised to discover how relatively unprepared Dr. Sliwinski was. He brought no adviser and he indicated that until the early hours of the morning of the hearing he had not prepared any notes in preparation for his discussions with the Board."

Dr. Westmore concluded that having had the opportunity to examine the appellant directly and with advantage of observing him respond to the questions of others, he felt more

uncomfortable than he had earlier. He described him as markedly over confident about his total assurance that drug and alcohol issues were no longer relevant in his life and he felt that he did not fully grasp the difficulties he would encounter when he returned to the work place. He said:-

> "I felt in his response to questions there was a vagueness which I would describe as woolly and ill-defined thinking."

In relation to the criticism that the appellant did not have an adviser at the Board hearing, evidence was given that beforehand the appellant had sought advice from a lawyer and had been informed that legal representation was not permitted at a Board's inquiry. Whilst the applicant before the Board had the right to have an adviser present, that adviser was not entitled to participate in the proceedings.

In relation to the criticism of "woolly" thinking. Dr. Ellard had this to say in his evidence at page 86:-

> "Everything I am about to say I have said to Dr.Westmore many times as my good friend. He is a very hardworking, very active, very switched on professional person and he would have some difficulty in understanding the way in which a Buddhist person might behave. It would be the antithesis of his behaviour.
>
> Q: Is there something about the way some practising Zen may appear to be woolly in talking?
>
> A: Well the world is woolly. The practitioner of Zen - well, that's a very big question. I suppose the - a Buddhist might well think that the Tribunal has the task of coming to a proper decision and - or any Tribunal has and the Buddhist role is to appear and answer questions and that would be the principle way of assisting the Tribunal in contradistinction to the western way of coming along with teams of Queen's Counsel and solicitors and battling it out before the Tribunal."

In evidence before this Tribunal Dr.Westmore conceded:-

> "What we may have been seeing at this particular meeting, as I mentioned before, was a performance failure. It does not necessarily reflect a personal failure. It may have been - this particular report was an assessment of him on that particular occasion as a result of that occasion. It did not make me alter my views about him in any substantial way, but it made me more cautious." (page 71)

He further conceded:-

> "I do not say that reflects an underlying defect in this man. It may well be a reflection of the performance anxiety that occurred on that day. "

When the stresses which the appellant has undergone over the years since 1987 were put to him with the question:-

"Q: That cluster of stresses is about a strong a test as one could possibly wish to undergo is it not?

A: I think it is quite a good reflection of his current capacity that he had dealt with these stresses so well.

Q: And certainly offers considerable hope for the future?

A: Yes, I think it is a positive sign.

Q: You indicated in response to a question, you were asked whether personality defects were still there and I think you said 'I have not had enough exposure. You would agree that his treating psychiatrist would be in a very good position to answer that sort of question?

A: Yes, I would.

When these answers to questions are considered together with the earlier reports, it is clear that Dr. Westmore's views do not essentially contradict those of Dr. Rickarby and Dr. Ellard.

THE TRIAL IN OCTOBER 1988.

Because of its importance to the issues which this Tribunal is required to determine, it is now necessary to consider some aspects of the appellant's trial for murder in the Supreme Court at Newcastle in October 1988.

The evidence showed that the appellant fired two shots at the deceased both of which struck her but neither of which inflicted fatal injuries. After a short delay two further shots were fired one of which entered the head causing fatal brain damage. Evidence was given that the appellant had been drinking and taking self prescribed drugs and from time to time had been hallucinating.

At page 58 of the transcript, the appellant's counsel is recorded as stating that the defence of the accused would be ‘O'Connor's case’ of intoxication and secondly, diminished responsibility under section 23A of the Crimes Act.

Dr. Rickarby then gave the evidence which has been referred to earlier. Dr. Reid gave evidence in reply on behalf of the prosecution contradicting that of Dr. Rickarby. Dr. Rickarby was then permitted to give evidence in reply to that of Dr. Reid.

On the fourth day of the trial the transcript (page 146) records that the appellant was recharged and pleaded not guilty to murder but guilty to manslaughter whereupon the Crown

Prosecutor indicated that, in the circumstances, the Crown was prepared to accept that plea in full discharge of the indictment.

The transcript does not indicate whether the plea was taken on the basis of lack of appropriate intent or on the basis of diminished responsibility or both.

The only prior conviction recorded against the appellant was one of driving with the prescribed concentration of alcohol in 1975.

Because of its importance in determining the nature and extent of the appellant's criminality, it is necessary to set out the Remarks on Sentence of Loveday J. in full:-

> "Mr. Sliwinski, the circumstances giving rise to what happened on 1st October, 1987 demonstrate the tragedy of your life. I accept that you did not then and have never wished to take the life of the lady to whom you had been married, or, indeed, anybody else's life. On the contrary, your training as a medical practitioner was directed towards saving life and not taking it.
>
> I have heard evidence of the difficulties you had in coping with your practice as a medical practitioner and your everyday life, and of your addiction to drugs. Unfortunately for you, they were readily available. Your training as a doctor also gave you the knowledge which enabled you to administer them to yourself in a very complex form. This is not the usual crime, however, committed by an addict. You had no motive for the crime. There was not even a violent argument. Indeed I regard your actions as quite bizarre.
>
> You are obviously a very intelligent person. There has been considerable evidence as to your skill and abilities as a doctor, and as to your energy and enthusiasm. This, unfortunately, did not enable you to cope with the problems that were confronting you and the resort to drugs which you adopted was the cause of your actions in the large measure on 1st October, 1987.
>
> Keeping you in gaol will not assist in your rehabilitation, except that perhaps it may enable you to come to terms with your problem and plan for the future. I hope that, when you leave gaol, you will pursue a worthwhile career. You are still young enough to do this and you still have much to offer by way of potential achievements to the community, to members of the family who love you and, indeed, to yourself. It is terribly important that you should restore your own self esteem.
>
> I must, however, bear in mind that the community very properly regards the taking of human life as a very serious crime.
>
> I take into account the fact that you are a person of good character and that prison must be particularly unpleasant for you.
>
> Taking these and other factors into account I sentence you to eight years penal servitude and specify a non parole period of four years. The sentence and the non parole period will date from 1st October, 1987."

GENERAL CONSIDERATIONS.

The de facto as opposed to the de jure reason for the removal of the appellant's name from the Register of Medical Practitioners was the fact that he had killed a human being and was subsequently convicted of manslaughter. The circumstances and the reasons appear succinctly set out in the remarks on sentence of Loveday J above.

It is quite clear that as at 1987 and 1988 the appellant was unfit to continue to have his name on the Register of Medical Practitioners. This Tribunal now has to consider whether the appellant has comfortably satisfied it on the balance of probabilities that the factors which brought about that lack of fitness no longer exist. In doing so, it bears in mind the words of Walsh J in *Ex pane Tziniolis* 84 WN Part 2 275 at page 286:-

> "Reformations of character and of behaviour can doubtless occur but their occurrence is not the usual but the exceptional thing. One cannot assume that a change has occurred merely because some years have gone by and it is not proved that anything of a discreditable kind has occurred. If a man has exhibited serious deficiencies in his standards of conduct and his attitudes, it must require clear proof to show that some years later he has established himself as a different man .... In such cases it has been frequently said that a heavy onus lies on the applicant."

What, then were the factors which, in 1987 and 1988, rendered the appellant unfit to be registered as a medical practitioner?

In this particular case, it was not that the appellant in 1987 and 1988 possessed a defect in character in the sense of moral turpitude. Rather he had, as Loveday J. said, difficulties in coping with his practice as a medical practitioner and his every day life and his addiction to drugs. His training as a doctor gave him the knowledge which enabled him to administer them to himself in a very complex and dangerous form. Rather than a case of moral turpitude this is a case of a medical practitioner who was suffering from an "Impairment" within the meaning of clause 3 of the Dictionary contained in the Medical Practice Act 1992.

The defects which rendered him unfit in 1987 and 1988 were defects in personality and an in ability to cope with stresses rather than moral turpitude.

The evidence of the appellant, Dr. Rickarby, Dr. Ellard and Dr. Westmore comfortably satisfy this Tribunal that the appellant has now overcome those problems and no longer has those defects. He has achieved this by dint of his own hard work and perseverance.

It is now necessary to consider the four questions which were set out at the beginning of these reasons for determination.

1. Does the appellant have sufficient mental capacity to practise medicine?

The evidence of Doctors Rickarby, Ellard and Westmore comfortably enable this Tribunal to answer this question in the affirmative. However, it is necessary that the appellant be closely monitored and, if he is to be granted re-registration, conditions have to be imposed.

2. Does the appellant have sufficient skill to practise medicine?

The evidence comfortably satisfies this Tribunal that he does have skills but because of the long period of time since he has been in constant practice it is necessary that he undergo training and that appropriate conditions be applied to his practice.

3. Is he of good character?

For the reasons stated above the Tribunal is satisfied comfortably that this question is to be answered in the affirmative.

4. Should this Tribunal, in the exercise of its discretion, reject the appeal because, having regard to the nature of the offence and the circumstances in which it was committed, it is of the opinion that the conviction renders the person unfit in the public interest to practise medicine?

This question has caused the Tribunal some difficulty. The nature of the difficulty is exemplified by a letter to the Medical Board from the brother of the deceased (Exhibit 5) in the following terms:-

> "It has come to my attention that George Sliwinski the man that murdered my sister Alice Claire Sliwinski at Hawks Nest on 1.10.87 is applying for restoration to the Register.
>
> Apart from this horrific crime committed by this man he shot my sister four times in the thigh to stop her running from him, in the arm, again in the chest and finally at close range in the back of the head.
>
> I believe it would be a great injustice both to his late victim and to possible future patients if he is allowed to be reinstated. Can the Medical Board guarantee the public safety with this man's history of drug and alcohol abuse (over a decade of abuse). Even Judge Loveday suggested while in gaol to plan for a new career preferable away from drugs. I hope the Medical Board will consider these objections and refuse his application for the safety of the general community."

In considering this question, this Tribunal is bound to consider the public interest. But this means the interest of a public which is fully informed of all the facts; not a public which is informed as to part of the facts or misinformed as to the facts.

This Tribunal has considerable sympathy with the views of the author of this letter. Quite understandably, he holds a particular belief as to the facts surrounding the death of his sister. In reaching its decision, this Tribunal is of the view that it should accept the findings of the learned trial judge set out above. He was present throughout the proceedings and was in a much better position to make findings of fact on the evidence before him than is this Tribunal.

Accordingly, this letter contains a number of factual errors. The appellant was not convicted of murder. He was convicted of manslaughter. Furthermore, he was convicted of manslaughter in circumstances where the Judge who presided at the trial and heard all the evidence said of the appellant:-

> "I accept that you did not then and have never wished to take the life of the lady to whom you have been married, or indeed, anybody else's life."

Nonetheless, manslaughter is a crime which involves the taking of a life and it is clearly in the public interest that a person who has wilfully taken a person's life should not be allowed to practise medicine. The appellant's crime lacked such willfullness.

In deciding whether registration as a medical practitioner should be refused under section 15 of the Medical Practice Act, it is not possible to lay down any general rules. Each case must be looked at in the light of its own circumstances.

This was not a case of a deliberate intentional taking of a life. It is quite consistent with the doing of an unlawful and dangerous act without intent to take life but which results in the loss of life. It occurred at a time when the appellant was suffering from a mental impairment due to addiction to alcohol and deleterious drugs. He has now overcome them.

In *Ziems -v- The Prothonotary of the Supreme Court of New South Wales* 97 C.L.R. 279, the High Court had to consider the question whether a conviction of a barrister on a charge of manslaughter with a consequent sentence of two years imprisonment constituted a disqualification to be a member of the Bar.

In that case the evidence was that the barrister was driving a motor vehicle under the influence of alcohol when he drove onto the incorrect side of the road colliding with a motorcycle and causing the death of the cyclist.

At page 299 Kitto J. poses the question:-

> "If a barrister has been convicted and sentenced to imprisonment on a charge of manslaughter arising out of the death of a person in a road collision caused by the barrister's driving of a motor car while under the influence of drink, is it a necessary conclusion from those facts that he is not a fit and proper person to be a member of the Bar."

His Honour continues:-

> "With the greatest possible respect for those who answer that it is, I find myself unable to agree. The conviction is of an offence the seriousness of which no-one could doubt. But the reason for regarding it as serious is not, I think, a reason which goes to the propriety of the barrister's continuing a member of his profession. The conviction relates to an isolated occasion, and, considered by itself as it must be on this appeal, it does not warrant any conclusion as to man's general behaviour or inherent qualities. True, it is a conviction of a felony; but the fact that as a matter of technical classification it bears so ugly a name, ugly because the most infamous crimes are comprehended by it, ought to be disregarded lest judgment be coloured and attention diverted from the true nature of the conviction. It is not a conviction of a premeditated crime. It does not indicate a tendency to vice or violence or any lack of probity. It has neither connection with nor significance for any professional function. Such a conviction is not inconsistent with the previous possession of a deservedly high reputation, and, if the assumption be made that hitherto the barrister in question has been acceptable in the profession and of a character and conduct satisfying its requirement, I cannot think that, when he has undergone the punishment imposed upon him for the one deplorable lapse of which he has been found guilty, any real difficulty will be felt, by his fellow barristers or by judges, in meeting with him and co-operating with in the life and work of the Bar.

> At page 301 Taylor J. said:-
>
> "The first difficulty which arises in the case will, therefore, readily be appreciated when it is remembered that the expression manslaughter is a compendious expression and that the acts which may constitute it range from culpable negligence on a particular occasion to the most infamous and reprehensible conduct. That being so mere proof of a conviction for manslaughter gives no real clue to the conduct of the person concerned nor could it enable a court to make any real assessment of his character or reputation. This could not be done without some knowledge of the underlying facts. "

It is appreciated that *Ziem's* case was concerned with the fitness of a barrister who had been convicted of manslaughter to continue to be a member of the Bar. It was not concerned with a medical practitioner nor was it concerned with statutory provisions such as appear in section 15 of the Medical Practice Act 1992.

This Tribunal bears in mind that it is in the public interest that the public have confidence in members of the medical profession and that, in some cases, registration of a person convicted of manslaughter could diminish that public confidence. However, each case must be looked at in the light of all of the circumstances surrounding the crime leading to the conviction.

It is the view of this Tribunal that the words of Kitto and Taylor JJ. set out above do afford a guide. The conviction in this particular case does relate to an isolated occasion and does not warrant any conclusion as to the appellant's general behaviour or inherent qualities as at today. Having regard to the words of Loveday J. in his remarks on sentence, it was not a premeditated crime, it does not indicate a tendency to vice or violence or any lack of probity. It has neither connection with nor significance for any professional function.

There is no evidence that the appellant committed acts of violence towards his ex wife or any other person other than on the occasion which gave rise to his conviction for manslaughter.

For these reasons this Tribunal is comfortably satisfied that the conviction does not render the appellant unfit in the public interest to practise medicine.

Accordingly, this Tribunal makes the following orders:-

1. The appeal is allowed and the determination of the Board refusing the appellant's application for registration be revoked and replaced by the orders following.

2. That George Sliwinski be registered as a medical practitioner subject to the following conditions:-

   (a) That his practice of medicine be limited to a resident medical officer appointment in a public general hospital approved by the N.S.W. Medical Board. The terms of such appointment will involve the presence of more senior staff at all times.

   (b) That he will not prescribe prescription drugs or medications for himself.

   (c) That he will remain drug and alcohol free at all times except in the case of prescription by a treating practitioner for a diagnosed illness or accident.

   (d) That he undergo urine analysis and/or blood tests in accordance with the protocol of the N.S.W. Medical Board.

   (e) That he maintain regular consultation with his treating psychiatrist, Dr. Rickarby or another psychiatrist of his choice at intervals to be determined by the treating psychiatrist and further that such treating psychiatrist shall report any breach of these conditions of which he shall become aware to the N .S.W. Medical Board.

   (t) That he attend a psychiatrist to be appointed by the N.S.W. Medical Board at six monthly intervals or at such further times as the Board shall direct and the reports of such consultations shall be forwarded to the Board.

   (g) That he undergo such on-going medical education as the Board shall direct.

   (h) That these conditions be reviewed by the Board at the expiration of two years from this date at which stage the Board shall have the power to terminate or to

extend with or without variations such conditions for such further period as it deems fit.

(i) That in the event of any breach of these conditions such breach will be reviewed by the Board for the taking of appropriate action under the Medical Practice Act 1992

Judge H.L. Cooper

Dr. D. Child

Dr. M. Pasfield.

Ms T. Ovadia