

Supreme Court of Appeal of South Africa

MEDIA SUMMARY – JUDGMENT DELIVERED IN SUPREME COURT OF APPEAL

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THE HEALTH PROFESSIONS COUNCIL OF SOUTH AFRICA v DEWALD DE BRUIN

The Supreme Court of Appeal today upheld an appeal brought by the Health Professions Council of South Africa against a judgment of the Pretoria High Court which set aside a decision by the Council to remove Dr De Bruin's name from the register of medical and dental practitioners because of his disgraceful conduct. The High Court had instead suspended Dr de Bruin for 3 months. The SCA agreed with the High Court that removal from the register was too extreme a penalty but considered that the High Court's 3-months suspension was far too lenient. The SCA substituted a penalty of suspension for 2 years. In doing so, the SCA emphasised that the Council is the statutory guardian of professional standards in the health professions, but that a court of appeal should not hesitate to interfere with its decisions when interference is warranted by the principles governing appeals.

During 1993, while Dr de Bruin was a 32 year old clinical assistant specializing in urology, his relationship with the complainant, a 21 year old student, resulted in her pregnancy. Over a period of approximately four months, Dr de Bruin attempted to abort the fetus in various ways, including physical intervention on numerous occasions and the prescription of medication to the complainant under a false name. The complainant ultimately aborted the fetus, under traumatic circumstances, in late November 1993.

A formal charge was laid against De Bruin with the Council in July 1994, followed by a disciplinary inquiry conducted by a disciplinary committee of the Council. Dr de Bruin pleaded not guilty to all the charges against him. However, after a protracted hearing taking place over five days during August 1996 to February 1998, Dr de Bruin was found guilty of disgraceful

conduct in February 1998. In April 1998, the disciplinary committee recommended to the Council that his name be removed from the register of medical and dental practitioners. The Council confirmed this recommendation in October 1998.

De Bruin did not attack the Council's finding that he was guilty of disgraceful conduct. As regards the penalty imposed on him, however, he instituted review proceedings in the Pretoria High Court, simultaneously appealing to that court in terms of section 20 of the Health Professions Act 56 of 1974. The Pretoria High Court (Swart J) upheld both the review application and the appeal, holding that there were irregularities in the procedure followed by the Council and that the sentence imposed was unfair and unreasonable. The court substituted Dr de Bruin's sentence with one of suspension from practice for a period of 3 months.

On appeal by the Council, the SCA held that the alleged grounds of review upheld by Swart J were not sustainable and that the review application should not have succeeded. As regards the appeal proceedings, the SCA held that an appeal in terms of section 20 of Act 56 of 1974 is an appeal in the ordinary sense. While a court of appeal will obviously be reluctant to interfere with the decisions of a body such as the Council, it should not hesitate to do so when interference is warranted by the principles governing appeals.

The SCA found that a crucial aspect of this case was the fact that Dr de Bruin's actions and omissions had their origin in a serious crisis arising in the course of a personal relationship. Dr de Bruin's conduct was indeed reprehensible. However, it did not take place in the context of a usual doctor/patient relationship. It was evident that, during the period in question, Dr de Bruin was acting totally out of character, both from a professional and a personal point of view. Even on his own version of events, he admitted freely that he had made serious errors of judgement and that he was deeply ashamed of what he had done.

Another important aspect highlighted by the SCA was the lengthy delay in completing the disciplinary inquiry, much of this delay being due to circumstances beyond Dr de Bruin's control. He was registered as a specialist urologist in 1995 and has been practicing as such since then. By the time the penalty imposed on him was confirmed by the Council, both he and the complainant had managed to put their professional and personal lives back together

again. Dr de Bruin's professional integrity, his competence as a urologist, his dedication to his patients, his high ethical standards and the excellent service being rendered by him to the community were attested to by an impressive number of references, most of which emanated from members of the medical profession who had worked closely with him. These references were all written after the disciplinary inquiry and submitted to the Council on his behalf.

The SCA held that, while Dr de Bruin clearly deserved severe censure, a decision removing his name from the register was startlingly inappropriate and warranted interference. Thus the appeal in terms of section 20 of the Act correctly succeeded in the High Court. However, the penalty substituted by the High Court was also shockingly inappropriate. It was far too lenient. The SCA thus substituted the penalty imposed by the High Court with a period of suspension for 2 years, minus the 3 months' suspension which Dr de Bruin had already served.