

HEALTH PROFESSIONS COUNCIL OF SOUTH AFRICA

MEDICAL AND DENTAL PROFESSIONS BOARD

Professional Conduct Committee: Concerning Dr W Basson

REASONS OF THE COMMITTEE

This committee is charged with the duty of considering and ruling on a number of charges of unprofessional conduct brought against a registered medical practitioner, Dr W Basson.

It is necessary at the outset to repeat what was said in the ruling on the application for discharge, at the close of the case of the PFC, that while at the outset of the hearing Prof. S Rataemane was a member, he subsequently became unavailable, and there was no challenge of the jurisdictional competence of the remaining members of the Committee.

Several charges were initially brought against the respondent, but at the close of the case of the PFC, he was, in terms of Rule 7 (d) of the applicable rules of procedure, acquitted on 3 charges, viz 1, 2.1 and 3. Those charges related mainly to research.

The charges, which remain, are:

“You are guilty of unprofessional conduct, as defined in section 1 of the Health Professions Act, 56 of 1974, in that:

.....

Charge 2:

.....

2.2 During or about the period 1986 to 1988 and 1992, as project officer of Delta G, you coordinated the production of the following drugs and teargases on a major scale:

2.2.1 Methaqualone –

‘Also known as Mandrax, (which) is a sedative drug. The usual effects include relaxation, euphoria and drowsiness, also reducing the heart rate and respiration.

Larger doses can cause depression, a lack of muscular coordination and slurred speech.

An overdose can cause delirium, convulsions, hypertonia, hyperplexia, vomiting, renal insufficiency, coma and death through cardiac or respiratory arrest.’

2.2.2 MDMA –

‘Also known as Ecstasy and referred to in the criminal trial as “Baxil”.

It is a semi-synthetic entactogen of the phenethylamine family considered a recreational drug.

The effects are subjective feelings of openness, empathy, energy, euphoria and wellbeing.

Common side effects are jaw clenching and elevated pulse. Short-term health consequences include hypertension, dehydration and hyperthermia.'

2.2.3 BZ –

BZ is an incapacitating agent.

Approximately thirty (30) minutes after exposure to a BZ aerosol, symptoms appear such as disorientation with visual and auditory hallucinations.

The symptoms peak and fall to eight (8) hours, and may take up to four (4) days to pass.

Other symptoms can include distended pupils, dry mouth and increased body temperature. The action of BZ on the central nervous systems resembles that of atropine. Like atropine, BZ binds to muscarinic acetylcholine receptors.

2.2.4 CS –

CS is a teargas which causes the eyes to sting and water. CS is rapidly hydrolysed in water.

2.2.5 CR –

CR is an eye irritant (teargas), more potent but less toxic than CS.

CR is hydrolysed only to a negligible extent in water solution.

Charge 4:

- 4.1 During the 1980's as Project Officer of Project Coast and on the direct instructions of the Chief of the South African Defence Force you were involved to weaponise thousands of 120 mm mortars with teargas; and/or
- 4.2 During the 1980's you had some 120 mm mortars filled with CR, referred to in paragraph 2.2.5 above, which mortars were supplied by the South African Defence Force to one Savimbi in Angola for use.

Charge 5:

During or about 1983 to 1989 you on two (2) to four (4) occasions provided disorientation substances for over the border kidnapping ('grab') exercises, where the substances were used to tranquilise the person to be kidnapped.

Charge 6:

During 1982 to 1989 you made available cyanide capsules to operational officers commanding for distribution to members of specialised units for suicidal usage.

It is also alleged that a number of protocols, codes, conventions and regulations would be identified as being the ethical rules relied on. For the sake of convenience I will refer to these collectively as 'conventions'. They are listed in the charge sheet.

The respondent pleaded not guilty to all the charges.

The hearing of evidence was interrupted by the contention of the counsel then appearing for the PFC, that the admissions made by Prof. Benatar created difficulties, and he requested a postponement. That was granted. The continuation of the hearing was further interrupted by the launching by the respondent of an abortive application, which was dealt with and dismissed by Judge Bertelsman. The further hearing was resumed by the evidence of Prof. Miles. He identified the conventions, which he considered to be applicable, and he expressed the "considered view that the conduct of the respondent in the 4 charges was in conflict of the ethical rules set out in the conventions. At this point the Committee records that it finds itself fully in agreement with Prof. Miles. The conduct of the respondent as set out in the 4 charges, offended established ethical rules.

The respondent testified in support of this plea, and he called Genl. Knobel and Dr. Muller as corroborative witnesses.

It can now be recorded that the following matters were not in dispute:

- In regard to charge 2.2, it appears to have been beyond dispute that, during the times alleged, the respondent, as project officer of Project Coast and afterwards of Delta G, coordinated the production and stockpiling of the substances set out, on a major scale;

- In regard to charge 4, it was accepted that during the times alleged, as project officer of Project Coast, and on the direct instructions of the Chief of the SADF, the respondent became involved in the equipping of 120 mm mortars with teargas, which was to be supplied by the SADF to one Savimbi for use in the conflict in Angola;

- In regard to charge 5, that the respondent on a few occasions provided disorientation substances for over the border kidnapping adventures, where substances could be used to tranquilise the persons to be kidnapped.

- As to charge 6, that he made cyanide capsules available to operational officers.

Dr Basson, the respondent, was born on 6th July 1950. At the time of the conduct complained of, he was in his early 30s. He completed his medical studies in 1973. He enlisted in the SADF and worked in the military hospital. While so serving, he continued with his medical studies in the field of internal medicine. In 1980 he registered with the South African Medical and Dental Council as a specialist physician. He also obtained a Master's degree in Physiological Chemistry in 1978. He continued his work in military hospitals and specialised in Cardiology. After cessation of his military service in 1992 he studied further and registered as a cardiologist in 1997. He is now in private cardiology practice. During all this time, he was registered as a medical practitioner under registration MP016159 with the Health Professions Council of South Africa and its predecessor.

The conduct attributed to the respondent in the charge sheet, was allegedly founded on portions in the evidence given by him in the course of a criminal charge in the then Transvaal High Court. In that trial he faced charges of a criminal commercial nature. He was acquitted, and the appeals against his acquittal were dismissed. The aforesaid portions of evidence were translated from Afrikaans to English and recorded as the factual basis of the charges in these proceedings. It was admitted by the defence team that the translated portions were correct. And the PFC stresses that he would rely solely on what was testified on in the portions alluded to, to establish the facts of the case.

Each of the charges was based on evidence under oath of the respondent in the criminal trial. Exact pages and lines of this evidence was selected and agreed on before the inquiry. These facts are not in dispute. In the evidence led during the hearing of the inquiry, however, numerous factual disputes were debated.

Four expert witnesses advised the committee.

Professor Benatar

The first witness called by the PFC was Prof. Benatar, a medical specialist, who claimed to be an expert in the field of medical ethics. He had the explanation of plea before him and had read the portions of the evidence given by Dr Basson, which are set out in the charge sheet. He stated that in his opinion, by his own

version in evidence in the criminal trial, the respondent contravened ethical norms laid down in a number of conventions and protocols.

A useful summary of his evidence is set out in Paragraph 9 of the Heads of Argument as set out by the counsel for the PFC. Prof. Benatar was cross-examined and re-examined. At the conclusion of his evidence, the counsel then appearing for the PFC informed the committee that he was embarrassed in his presentation of the case by the concessions made by Prof. Benatar in his evidence. He requested a postponement to remedy the situation. The postponement was granted. Counsel now appearing in the enquiry submitted that that was an unfortunate statement to make. The PFC had to find a new expert witness that delayed the inquiry significantly.

Professor Miles

Prof. Miles is a professor of Medicine at the University of Minnesota Medical School, Minnesota Center for Bioethics in Minneapolis, USA. He is affiliated, amongst others, to a Center for Genocide and Holocaust studies and a Law School Concentration in Health Law and Bioethics. He is the author or co-author of five (5) books, twenty-five (25) chapters and hundred-and-nineteen (119) peer-reviewed articles. A significant proportion of these relate to medical ethics. He received a list of awards related to human rights, ethics and teaching. He is a physician and he has an active Internal Medicine practice. He also teaches medical ethics.

He is undoubtedly recognised as an international expert in medical ethics.

The Committee wishes to express its confidence and acceptance of the evidence of Prof. Miles. He was the outstanding expert on the conventions and medical ethics. Suggestions that he was biased, are groundless. His reasoning was sound. He was fair, highly professional, and he had the support of pure logic. His interpretations of the conventions are confirmed by the meaning of the language used.

General Knobel

Genl. Knobel, who gave evidence in chief in March 2012 but was cross-examined only on 15 July 2013 because of ill-health, was a registered medical practitioner. He was Chief of Medical Staff Operations at the South African Medical Services as of from 1983. On 01 March 1988 he was appointed Surgeon General. He retired in 1997.

He was, in his career, involved in discussions and conferences on ethical rules. Details thereof are set out in paragraph 73 of the Heads of Argument of the respondent's counsel. He gave extensive evidence on the perception of the use of chemical weaponry in the conflict in Angola, and also on the home front, when the SAP was confronted with dangerous acts by certain groups.

He expressed the opinion that the ethical conventions referred to in the charges mainly constituted guidelines, which had to be interpreted in the light of prevailing circumstances. He testified that in his view the conduct of the respondent in regard to the remaining four (4) charges was proper and did not offend any ethical convention. He relied on the writing of Michael Gross, a non-

health writer, among others, and preferred that, rather than the conventions of the World Medical Association (WMA).

The opinions of Genl. Knobel on the meaning and the effects of the conventions were at odds with the language used.

Doctor GJ Muller

Lastly Dr GJ Muller was called. He is an expert in the field of toxicology. He mainly dealt with the potential harm of substances referred to in the remaining charges, if applied to conflict situations. He made the, possibly self evident, point that many substances in ordinary use may cause physical harm if applied in excessive quantities. He testified on the meaning of the word 'toxin' as used in the WMA guidelines. He said it is intended to mean a toxic chemical produced by living organisms.

He discussed the working of the chemical substances, including that of Scoline. He conceded that persons doing research on and manufacture of substances of the sort referred to in the charge sheet, use medical knowledge. He later added, however, that medical training does not adequately equip a person to do in depth research on such substances.

The Committee has to consider the charges on two aspects: firstly, whether the facts of the alleged conduct are correct; and secondly, whether that conduct is unprofessional.

As quoted in the PFC Heads of Argument Paragraph 103 from **De La Rouviere V SA Medical and Dental Council** at 97E-F, the following was found as to the function of a tribunal of this nature when considering a charge of unprofessional conduct against a practitioner:

[T]here are however two legs to an inquiry of this nature: to establish the facts and then on those facts to conclude whether or not the proved conduct falls short of the required standard...the body holding the inquiry to determine, firstly whether sufficient facts have been proved to its satisfaction to support the charge and, secondly, whether the charge so supported constitute improper or disgraceful conduct.

The Committee is the sole arbiter of what the facts are, and what the significance of those facts is.

The charges that remain can be summarised as follows: The respondent is accused of unprofessional behaviour because, while registered as a medical practitioner with the HPCSA and its predecessor, he was leading a process where

chemical substances for warfare were manufactured, weaponised and provided for use in combat, kidnapping and suicide.

The committee now sets out its views on some of the main factors, which have to be considered in order to make a finding on the abovementioned questions. It is firstly necessary to outline the matters in regard to which there is no dispute:

- In regard to charge 2.2, it appears to have been beyond dispute that, during the times alleged, the respondent, as project officer of Project Coast and afterwards of Delta G, coordinated the production and stockpiling of the substances set out, on a major scale;
- In regard to charge 4, it was accepted that during the times alleged, as project officer of Project Coast, and on the direct instructions of the Chief of the SADF, the respondent became involved in the equipping of 120 mm mortars with teargas, which was to be supplied by the SADF to one Savimbi for use in the conflict in Angola;
- In regard to charge 5, that the respondent on a few occasions provided disorientation substances for over the border kidnapping adventures, where substances could be used to tranquilise the persons to be kidnapped.
- As to charge 6, that he made cyanide capsules available to operational officers.

Secondly, the committee wants to mention the specific sections in conventions that are considered to have been violated in the above actions:

World Medical Association. Declaration of Geneva (1948) Physician's Oath

At the time of being admitted as a member of the medical profession:

- I will maintain the utmost respect for human life from the time of conception, even under threat; I will not use my medical knowledge contrary to the laws of humanity.

World Medical Association, Regulations in Time of Armed Conflict (1956; 1983)

1. Medical ethics in the time of armed conflict is identical to medical ethics in the time of peace.... The primary obligation of the physician is his professional duty; the physician's supreme guide is his conscience.
2. The primary task of the medical profession is to preserve health and safe life. Hence it is deemed unethical for physicians to:
 - a. give advice or perform prophylactic, diagnostic or therapeutic procedures that are not justifiable in the patient's interest;
 - b. weaken the physical or mental strength of a human being without therapeutic justification; and
 - c. employ scientific knowledge to imperil health or destroy life.

And

6. Privileges and facilities afforded to the physician must never be used for other than professional purposes.

World Medical Association. Declaration of Tokyo (1975)

Guidelines for Medical Doctors concerning Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in relation to Detention and Imprisonment.

Preamble:

It is a privilege of the medical doctor to practice medicine in the service of humanity, to preserve and restore bodily and mental health without distinction as to persons, to comfort and to ease suffering of his or her patients. The utmost respect for human life is to be maintained even under threat, and no use made of any medical knowledge contrary to the laws of humanity. ...

Declaration:

The doctor shall not countenance, condone or participate in the practice of torture or other forms of cruel, inhuman or degrading procedures, whatever the offence of which the victim of such procedure is suspected, accused or guilty, and whatever the victim's belief or motives, and in all situations including armed conflict and civil strife.

The doctor shall not provide any premises, instruments, substances or knowledge to facilitate the practice of torture or other forms of cruel, inhuman or degrading treatment or to diminish the ability of the victim to resist such treatment.

**United Nations Convention on the Prohibition of the Development,
Production and Stockpiling of Bacterial (Biological) and Toxin Weapons
and on their Destruction**

Opened for signature 1972, entered into force 1975.

Article 1:

Each State Party to this convention undertakes never in any circumstances to develop, produce, stockpile or otherwise acquire or retain:

Microbial or other biological agents, toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes;

Weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or on armed conflict.

The respondent admitted that he conducted himself as set out in the quoted portions of his evidence in the criminal trial, but he put forward a number of contentions in explanation of his conduct.

These will be discussed presently, but it is firstly necessary to address the contention of the respondent that he did not have a fair trial.

The conduct attributed to the respondent commenced some thirty (30) years before the conclusion of the present inquiry. The delays were due to several factors, namely that the actions under consideration were secret and only came clearly into the public domain in the late 1990's, then there was a lengthy criminal trial and two appeals. During the inquiry, the PFC asked for postponement and found a new expert witness. Then there was the application for the stay of proceedings by the respondent and several episodes of illness that delayed proceedings. The committee finds that although this is a very lengthy period, there was no significant dispute on the basic facts alleged in charges 2, 4, 5 and 6. While the respondent repeatedly stated on various matters that his memory failed him, none of these relate to the essential components of the four charges. Some of these matters relate to mitigating features, which will be dealt with in the context of an appropriate penalty. The committee accordingly holds that the respondent had a fair trial.

The respondent is of the opinion that his conduct cannot be regarded as unprofessional, because of the following reasons: (I will list the reasons and then deal with each one separately)

1. The alleged unprofessional conduct happened during a specific war and conflict situation.
2. The respondent was under military instruction and supported by senior doctors.

3. The respondent did the acts under consideration as a soldier and not a doctor.
4. The respondent acted as a military doctor and ethics for military doctors are different.
5. The people that received the substances were not his patients; there was no doctor-patient relationship.
6. The respondent acted as a young doctor and therefore cannot be held responsible for the actions under consideration
7. The respondent was not aware of the codes and conventions that forbid chemical weapons and the use of medicine for non-therapeutic purposes.
8. The ethics in the 1980s were different from the ethics of today.
9. The chemical substances under consideration were specifically designed to be non-lethal to protect life.

The committee responds as follows to the 9 (nine) arguments:

1. The alleged unprofessional conduct happened during a specific war and conflict situation

The respondent gave extensive explanations in the plea explanation and the evidence about the war circumstances in Angola and the unrest situation in South Africa. The perception about the use of chemical weapons against South African and Angolan forces in Angola sparked the initiative to start with Project Coast. Genl. Knobel confirmed this in his evidence.

Prof. Miles, in his expert evidence, referred to the World Medical Association Regulations (1956 and 1983), which provide in Article 1: 'Medical ethics in times of armed conflict is identical to medical ethics in times of peace'.

The committee accept that war and conflict situations are a serious challenge to a medical doctor in military service, but the committee's view is that medical ethics are especially important in times of war and conflict. Medical doctors have a unique position in society, a sacred position, which impels them to stay true to the ethical values of the profession: beneficence, non-maleficence, justice and autonomy. This is equally true in conflict situations, where doctors find themselves in families, societies and nations. When doctors act in these difficult situations, they must be acutely aware of the values of the profession, bearing in mind that the first casualty in any conflict situation is Truth.

The committee supports the notion that in South Africa, the medical ethics during war and peace are identical and rejects the suggestion that the regulations have to be interpreted in the light of the prevailing circumstances. The WMA regulations are unambiguous in this respect.

The committee rejects the contention that this factor should be considered in the context of whether the conduct of the respondent was unethical.

2. The respondent was under military instruction and supported by senior doctors

The committee accepts the fact that the respondent acted on instructions of, not only military commanders, but also senior doctors, namely Genl. Nieuwoudt and Genl. Knobel. The respondent firmly believed that his military commanders, notably Genl. Nieuwoudt, who was a man of integrity and a member of the South African Medical Council, would not issue commands to perform acts which might be ethically or legally untoward. He also constantly followed the guidelines indicated by the Surgeon General, saying: '...Sy riglyne was duidelik; geen dodelike of beskadigende substansie mag ontwikkel word nie'. (Which translates into: 'His guidelines were clear; no lethal or harmful substance may be developed'.)

The committee's view is that a medical doctor is responsible as an individual for his or her actions. Medical ethics require the independence of thinking of each medical doctor. A doctor cannot simply rely on a military order to escape the consequence of his actions.

There are many South African examples of medical doctors disobeying orders because of ethical considerations. One fairly recent example is where doctors disobeyed official orders and treated women and babies with anti-retroviral drugs to prevent the transmission of HIV.

There is no indication or evidence from the respondent that he at any stage disagreed with the instructions. On the contrary, he clearly supported the instructions.

The committee holds that the respondent cannot rely solely on the fact that he was ordered to take charge of Project Coast and Delta G as an answer to the charge that he contravened ethical rules.

3. The respondent did the acts under consideration as a soldier and not a doctor

Dr Basson stated repeatedly that he performed the acts under consideration as a soldier and not as a doctor. He then contradicted this by arguing that 'my concern, as a military doctor, is for South African citizens'.

While the respondent was a soldier at the time of performing the acts under consideration, his conduct has to be assessed in the light of the fact that he was probably ordered to perform the acts alleged, because he was a doctor, and the skills and experience in being a qualified doctor played a major role in his activities.

The committee is of the opinion that if a doctor decides to use his medical knowledge and skills for actions contrary to medical ethics in the role of a soldier, then he should de-register from the council. He will then be relieved of the privileges and responsibilities of a doctor. The committee is of the opinion that it is particularly dangerous for a doctor to switch roles between being a doctor and being a soldier, while using the knowledge, skills and privileges of a doctor.

The committee holds that the respondent cannot rely on the contention that he acted as a soldier to the charge of breach of medical ethics.

4. The respondent acted as a military doctor and ethics for military doctors are different

The respondent and Genl. Knobel state that the ethics of military doctors are different from that of other doctors. The respondent declares, 'I do not have any action with the target, the target is not my patient. My concern as a military doctor is for the South African citizens.'

Genl. Knobel relied on the book by Michael Gross, a political scientist, which states that medical ethics in a time of war is different from medical ethics in a time of peace. He base this on the statement that the normal principles for clinical reasoning is absent, that military personnel does not have autonomy in decision making and that the prevailing circumstances may override the bioethical considerations. In line with this argument, Gross also states that a terrorist forfeits his status as a human being.

Prof. Miles, in his expert evidence, referred to World Medical Association Regulations (1956 and 1983), which provide in Article 1: '1. Medical ethics in times of armed conflict is identical to medical ethics in time of peace'.

The committee is of the opinion that medical ethics are similar inside and outside the military. Doctors in the military in South Africa are bound by the ethical rules generally applicable to doctors.

The committee holds that the respondent cannot rely on being a military doctor as an answer to the charge of breach of ethical rules.

5. The people that received the substances were not his patients; there was no doctor-patient relationship

The respondent stated that he could not be judged on the actions under consideration as there was no patient-doctor relationship between him and the people who were on the receiving end of the drugs and substances that he produced and provided. In his words, 'the target is not my patient'.

The WMA in the Tokyo Declaration 1975 use the term 'victim' where the respondent uses the term 'target'. The declaration states: 'The doctor shall not countenance, condone or participate in the practice of torture or other forms of cruel, inhuman or degrading procedures, whatever the offence of which the victim of such procedure is suspected, accused or guilty, and whatever the victim's belief or motives, and in all situations including armed conflict and civil strife.'

Genl. Knobel's opinion was that the duty of physicians to do no harm extends only to their patients. When medical doctors are involved in exercises designed to protect their forces and allies from harm, no doctor-patient relationship exists.

This is a particularly dangerous argument. Doctors make decisions and take actions in management and policy positions where they can argue that a direct doctor-patient relationship is absent, but these decisions and actions impact on people. Doctors have to take full responsibility for the impact and effect of their decisions and actions, even in the absence of a direct doctor-patient relationship.

The duties and roles of a doctor include the promotion of health of the general public and not only the individual patient.

The committee holds that the respondent cannot rely on the absence of a direct doctor-patient relationship as an answer to the charge of unprofessional conduct.

6. The respondent acted as a young doctor and therefore cannot be held responsible

The respondent stated as part of his defence that he was a young doctor when he was approached to start Project Coast. In the cross-examination of Prof. Benatar, counsel for the defence even used the term 'intern'. The respondent was an intern in 1974. He was already a registered specialist physician when the activities under consideration happened.

The committee is of the opinion that a doctor of any age, including medical students must act within ethical norms.

The committee regards Dr Basson to be fully accountable for his actions as he was a registered specialist physician in 1980, and further regards him not as a young follower, but a mature leader of the chemical warfare programme.

The committee considers that the respondent cannot rely on his alleged immaturity and lack of experience as an answer to the charge of breach of ethical duties.

7. The respondent was not aware of the codes and conventions that forbid chemical weapons and the use of medicine for non-therapeutic purposes

The respondent and Genl. Knobel testified that they were at the relevant time unaware of the conventions applicable to their conduct.

Prof. Miles gave his opinion on the codes and protocols, which, he said, were applicable.

The International Code of Medical Ethics of the WMA, which inter alia provided that the following practices are deemed unethical: '... Any act or advice which

could weaken physical or mental resistance of a human being may be used only in his interest.'

Paragraph 2(b) of the Regulations made by the WMA, which provide:

2. The primary task of the medical profession is to preserve health and a safe life, hence it is deemed unethical for a physician to:

(a) weaken the physical strength of a human being without therapeutic justification; and

(b) employ scientific knowledge to imperil health or destroy life.

The WMA Declaration of Tokyo (1975) which conveys: 'The utmost respect for human life is to be maintained even under threat, and no use is to be made of any medical knowledge contrary to the laws of humanity'.

The WMA declaration of Geneva, which was adopted by WMA, which declares:

'I will maintain the utmost respect for human life; I will not use my medical knowledge to violate human rights in civil liberties even under threat.'

The convention on the Prohibition of the Development, Production and Stockpiling of Bacterial (Biological) and Toxin Weapons and Their destruction, which inter alia provides:

'Each State Party to this convention undertakes never in any circumstances to develop, produce, stockpile or otherwise acquire or retain...toxins, whatever their origin or method of production, of types and quantities that have no justification for prophylactic, protective or other peaceful purposes.'

Prof. Miles conceded that while the HPCSA and its predecessors had statutory powers to create rules of medical ethics of the sort now under discussion, it only did that well after the conduct attributed to the respondent.

The committee finds that the provisions of the conventions relied on are clear and apply to the activities of the respondent. It is correct, as testified by Prof. Benatar, the respondent and Genl. Knobel that the conventions establish guidelines, but they are nevertheless directory, and should be adhered to. They clearly lay down ethical rules, which should have been regarded by the respondent.

The Committee also wishes to record its view on the evidence of the respondent that he was, in the 1980's, unaware of the terms of the applicable conventions. This evidence is not helpful in the context of the issues under discussion. It behoves a medical practitioner who ventures in the field of chemical weaponry, to acquaint himself adequately on the terms and possible applicability of conventions and the ethical rules created thereby. High standards of professional behaviour are at all times required from medical practitioners. The respondent cannot be heard to say that he is to be excused owing to the fact that he was at the relevant times unaware of the rules of the game.

The committee holds that the respondent cannot rely on his lack of knowledge as an answer to the charge of breach of ethical rules.

8. The ethics in the 1980s were different from the ethics of today

The respondent and Prof. Benatar stated that the ethical perceptions have developed and are different today from the perceptions in the 1980's.

Prof. Benatar referred to development in research ethics, which were considered in the acquittal of the three (3) charges related to research.

The committee is of the opinion that although the discipline of Medical Ethics was not prominent in the 1980s, the principles of putting the interests of the patient first were accepted and applied universally. The Hippocratic Oath and its subsequent versions are based on these principles. No doctor can claim ignorance of the expected professional behaviour of a medical doctor.

During the 1980s, doctors in South Africa who remained true to their profession took a stance against military conscription; they also refused to declare to the police the identities of the patients in their care exactly on ethical grounds.

The committee finds that the ethical norms of the 1980s were not significantly dissimilar to those applicable after 1990.

9. The chemical substances under consideration were specifically designed to be non-lethal to protect life

Dr Basson states in his defence that the substances developed, manufactured and provided were specifically designed to weaken and disorientate, but not kill people. He states that this was done to reduce fatalities.

In regard to charge 5, which dealt with the provision of substances in the so-called 'grab' operations, Prof. Miles stated as his view:

The respondent 'prepared and dispensed a non-therapeutic agent of PCP and dispensed scoline for the purposes of these operations. [] [H]e used privileges and facilities, which had been granted him as a physician. He used the skills, training and background knowledge of a physician for the purpose of abetting operations which were not compatible with the professional purposes or ends of medicine.... He confounded the ethics of a soldier with the ethics of being a doctor, while he retained his medical licence.'

With regard to tear gas (CR) in charges 2.2 and 4: Evidence has been provided that people with asthma may have attacks precipitated; and in closed spaces, asphyxia may occur, especially among the very young and the elderly. These chemicals therefore are not harmless. The reality is that the substances were developed, produced and provided to be administered to people without their consent or against their own will. In charge 5 the purpose of the drugs was to capture the person and keep him or her alive so that he or she can be interrogated for information. This is hardly a good beneficence/non-maleficence argument.

With regard to charge 6, concerning the cyanide capsules, Prof. Miles concluded:

‘The allegation in the charge is that Dr Basson from 1982 to 1989 supplied cyanide to Special Forces of South Africa for them to commit suicide. He obtained the drug, he provided the drug to the commanders who then dispensed it to the troops; the individual troops [] which Dr Basson himself never examined and knew nothing of their psychiatric or medical condition. Dr Basson believed incorrectly that cyanide was like the cyanide that we see in TV dramas or in Agatha Christie books, which acts instantaneously, painlessly and causes a person to suddenly drop dead. In fact, cyanide is a form of medical asphyxiation, which takes minutes to unfold, minutes that include suffering. And, finally Dr Basson kept this poison in a medical cabinet along with other drugs. All these acts strike me as breaches of ethical conduct.’

The committee rejects the contention that ethical principles do not apply to the manufacture and use of substances, which should not cause death or bodily harm.

The Committee concludes that it was established on a balance of probability that the conduct under discussion was in breach of established ethical rules. It will, at this stage, be inappropriate to discuss matters, which are mainly relevant in the context of an appropriate sentence.

The committee further decides that in the light of all the circumstances, the breaches of medical ethics amount to unprofessional conduct.

The decision of the Committee, Dr. Basson, is that you are guilty of unprofessional conduct as set out in charges 2.2, 4, 5 and 6.

The committee will now adjourn to consider the question of appropriate sentences.