

14 July 2011

Senate PSR Inquiry

My experiences with the Medicare audit process and the PSR have continued almost continuously from 1999 until now.

I would like to present evidence that the PSR process is flawed from beginning to end –

1. It relies far too heavily on faulty Medicare statistics and assertions rather than on evidence as submitted by the accused;
2. Too much judicial power in the hands of one person, the director of the PSR;
3. No compensation for accused who are subsequently found innocent;
4. No legal representation in the PSR meetings;
5. No rational method of punishment;
6. No pathway for complaint.

Serious reform is needed to the current system.

MY PRACTICE

I practice in Addiction Medicine in Frankston, Victoria. Only 3 GP's have serviced the needs of a population of 500,000 with a burgeoning drug and alcohol problem over the past decade. I have a high volume of the most destitute patients, with most complex problems in our society. I see a lot of patients, and pharmacotherapy treatment requires high volumes of prescriptions and use of the PBS. My statistics are always up in the 99th percentile accordingly. Medicare Australia knows this, the PSR knows this, yet there is a bureaucratic machine that ignores all the evidence and proceeds to investigate under the bland cover of terms like 'Medicare has concerns you have engaged in inappropriate

practice” leading me to feel like I’m the victim in a Kafka novel – yet I practice peer-reviewed, evidence-based medicine.

MY PROFESSIONAL BACKGROUND

I’m a member of the RACGP Addiction Medicine Committee, the RACGP Faculty of Special Interest in Addiction Medicine, the Mornington Peninsula Mental Health Reference Group, the Frankston Pharmacotherapy Steering Committee. I have met with the Victorian Minister on Mental Health, Mary Wooldridge on invitation to a key stakeholders meeting in May 2011 to discuss the allocation of the pharmacotherapy budget. I have prepared submissions to set up an Addiction Medicine Network as part of the new Peninsula Medicare Local.

I have written articles on ‘Protocols on Withdrawal in Addiction Medicine’, ‘RACGP Enhanced Addiction Medicine Services Victoria 2008,2010’, ‘RACGP Hepatitis C treatment in the Community’, ‘Complex Care on the Mornington Peninsula’.

MY HISTORY WITH THE PSR

The PSR investigated me twice with interviews in 2002 by Dr John Holmes and 2008 by Dr Tony Webber. I have submitted about 450 patient files in 2001, and 650 patient files in 2008 for examination. (I understand the patients have no knowledge their files are being transferred off-site to a third party AND without their permission. They are kept indefinitely at the whim of the director of the PSR)

In 2002 Dr John Holmes, the past director, completely exonerated me of all charges; in 2008 Dr Webber saw fit to censure me for inappropriately prescribing anti-inflammatory medication Diclofenac, and laxative Lactulose, as a token justification of an 18 month witch hunt which probably cost the taxpayer tens of thousands of wasted dollars. Medicare Australia’s investigators had 40 charges of inappropriate practice against me ranging from abuse of PBS prescribing to over servicing. The PSR Reviews proceeded against me both times despite overwhelming evidence that contradicted mere assertions and inferences based on statistics that were viewed entirely out of context.

The poorly designed and administered PSR Review has resulted in an inquisitorial approach that has harassed me and many of my colleagues who work hard, commit to community development of health programs and are involved in continued professional development and education.

My concerns relate to both

1. The PSR process itself.
2. Medicare Australia’s process in recommending cases to the PSR.

These processes are directly related. The flawed case selection system practised by Medicare Australia results in unnecessary PSR review of many innocent doctors.

Failure to include this process in the PSR Review will not fix systemic errors.

ISSUES ARISING DURING INVESTIGATION

1. In 2001 I was accused of doing too many Level C (OVER 20 MINS) consultations, but on review of my files I was exonerated. I decided at the time I would no longer charge Level C consultations, accepting the financial penalty of a lesser rebate for a Level B, to try avoid another harrowing Medicare investigation. In 2008 I was then accused of inappropriate practice for not billing enough Level C's, depriving my patients of appropriate care! Goldilocks Medicine!
3. Each time I've been investigated by Medicare I've been asked about how many times I went to the toilet in a day. This was studiously reported back to me in the dossier they would send me detailing the investigation. I believe this is a serious invasion of privacy, and complained about it, to no avail. This is unacceptable practice.
4. I was accused of using a simple Catalase urine test that is evidence based and accurate. It saves costs of antibiotics and unnecessary pathology testing (also less risk for the patient). Successive Medicare investigating doctors did not know what the test was, nor did they even look back to what their colleagues previously had reported. One click on Google is all it takes, yet they preferred to be lazy and confrontational.
5. I was accused of inappropriately charging a Level B consultation instead of Level A for CLOZAPINE prescribing. Any doctor who has a basic knowledge of medicine understands that Clozapine is a powerful yet dangerous drug that can cause neutropaenia, cardiomyopathy and a host of very dangerous side effects. Each monthly review requires careful assessment of the patient, pathology reviews, and ordering of specific tests. If anything they should be Level C charged consults. It was clear that the accusing doctor from Medicare had NO KNOWLEDGE of this, but was quite happy to accuse me of inappropriate practice!

6. I was incorrectly accused both in 2002 and 2008 of breaching the so-called 80/20 rule. Investigations both times were launched on that pretext, yet examination of my stats showed I had not breached the rule.
7. I was accused of requesting authority scripts for diazepam, only available for some nursing home patients - yet I don't visit nursing homes and have NEVER applied for a diazepam authority in 35 years of practice!
8. I was asked to provide references and evidence justifying the 'concerns' of 'inappropriate' practice. Medical evidence, letters of support from professors, specialists, Victorian Government officials, community groups, professional organisations and extensive testimonials, were not even read or replied to. A total waste of time and effort for all concerned, due to laziness or part of a culture of disdain and arrogance, where one is guilty before proof of innocence and evidence is ignored. This may be acceptable in other political systems, but in Australia, against doctors who try their guts out for their patients and communities ?

Concerns

- 1) **Poor quality of investigating officers** being relied upon - specifically the chief investigating officer working for Medicare Australia who recommends cases for investigation.
- 2) **Numerous and repeated clinical errors, factual errors and statistical errors made by Medicare Australia** in preparing their case against us me and my former colleague, Dr Ron Korman.
- 3) **Blatant false accusations made by Medicare's chief investigators indicating an agenda beyond the brief of rational investigation** – despite factual evidence to the contrary being repeatedly produced.
- 4) **A complete disregard and disdain of extensive supporting references from irrefutable sources** – similar to the recent case in the Federal Court that ruled against Medicare Australia, indicating a systemic problem of neglect, and 'get our man at any cost, regardless of the facts'.
- 5) **Possible collusion between Medicare Australia investigators and the PSR director** in prosecuting certain 'troublesome' doctors. Dr Webber ordered me to attend his PSR interview within 12 hours of him receiving my voluminous reply to Medicare charges – it would be impossible for him to go through that amount of information charge by charge in that time. It led me to the inescapable conclusion that he had been briefed on my case by the Medicare Chief Investigating Officer, contrary to his denial.
- 6) **Lack of natural justice** – denial of legal representation at PSR meetings, ignoring evidence and proceeding with false charges.

- 7) **Director of PSR is judge, jury and executioner using dictatorial powers** - in my case he randomly chose an amount of fine for me to pay for the token 'crime' of inappropriate prescribing of a laxative and an anti-inflammatory. When I rang Dr Webber's secretary to find out what my penalty was to pay I heard his secretary yell out behind her "hey Tony it's Dr Weiss, how much should we charge him?" "Oh about \$2000 should do it...." Dr Webber said. Justice ? Even my patients with long criminal records and gaol time get a fairer hearing!
- 8) **Lack of a pathway for appeal or complaint** – I protested to Minister Abbott, Minister Roxon, the Federal Ombudsman, my local MP Bruce Billson, Medicare Director of Compliance Colin Bridge (I have all correspondence on file), NSW Medical Board – all just duck-shoved my complaints until I gave up, which is what I'm sure they wanted. Until now, apart from a prolonged, stressful and costly legal battle, there has been no practical mechanism of complaint or appeal.
- 9) **Continued harassment and warnings from Medicare Australia** for 'inappropriate practice' despite 12 years of being under constant scrutiny and found innocent after review of patient files on 2 occasions ; I have to justify my practice every 3 years or so if I trip a 'red flag' which launches a massive, unnecessary investigation each time.
- 10) **Lack of compensation for the cost, time and effort put into defending one's case** – including the cost of mailing large numbers of patient files repeatedly to the PSR, attending interviews at the cost of being able to consult with patients, despite being innocent. I estimate having spent over 80 hours in reading and responding to reports, attending interviews; at a minimum of \$200 per hour that's \$16000 of unpaid time, when innocent of charges.

I have extensive records that prove the events cited above,

Yours Sincerely