

Preamble

In July 2011, I was approached by Dr. Stuart Reece and asked to conduct a survey of doctors who had been investigated by Medicare and subsequently referred to the Professional Services Review (PSR) Director for interview. At this stage I have interviewed several doctors in this category and developed a questionnaire. The results below should be considered a pilot study.

Given the nature of the investigations; quasi-judicial and possibly affecting the livelihood of those involved, a considerable amount of stress might be expected. Insufficient time has been available to conduct a full literature search, but preliminary investigations locating no investigations of the impact of Medicare investigations or PSR interviews, though a study of the characteristics of doctors disciplined for professional misconduct in Australia and New Zealand was found (Elkin, Elkin & Studdert, 2011). There are American studies of the impact of investigations of medical malpractice, but they are largely concerned with the experiences of doctors who have been sued for malpractice in the courts (e.g., Goldenbaum, Christopher, Gallagher, Fishman, Payne, Joranson, et al., 2008; Kelly, 2008; Kowey, 2011), although it seems reasonable to expect a certain amount of overlap of response (stress, anxiety, decision to withdraw from medical practice or unwillingness to engage in more challenging medical procedures). The impact of malpractice suits on the defendant can be serious, even to the point of inducing suicidal ideation (Kowey).

A more extensive literature search is planned for a later stage of this investigation.

Findings

Findings are largely descriptive of this very small sample. Percentages quoted are valid percentages throughout and the term 'average' refers to the arithmetic mean.

Demographics

Nine respondents; 8 males and 1 female, with an average age of 57.78 years replied to the initial questionnaire. Half were born in Australia and six attained their first medical

qualification in Australia, the remainder were either born or attained their first medical qualification in Europe.

Seven practised as GPs, one as a specialist and two did not answer the question. Although most practised as GPs, half had postgraduate qualifications of various kinds; they had practised as specialists in their countries of birth or had acted as police surgeons, for example.

Typically, respondents said that they had heard about Medicare investigations but knew little about them until they were investigated themselves.

The Medicare Investigation Process

On average respondents had first been approached in their latest Medicare investigation in late 2005. They received 2.5 reasons for investigation when they were first approached. The most common was a 'concern about their practice profile' (5) followed by 'too many long consultations' (3) and 'other' (3). The 'other' category included 'too many home visits'.

Most were interviewed by a Medicare investigator and one did not answer the question. The tone of the interviews was variously described as hostile, seeking detail to incriminate the respondent or baffling. One respondent said that he simply could not follow the strong accent of the person interviewing him. Although 'constructive and polite' was offered as an alternative, no one chose it. Six respondents (66.7%) said that they had a chance to explain their clinical decisions during the interview but only two believed that the interviewer took any notice of their explanations. Three were asked about specific cases, but two of those believed that these cases were used to make unfair generalisations about their practices. Most (77.8%) said that they had not expected this type of interview and everyone who answered the question noticed errors in the data presented to them during the interview. These errors included procedures mistaken for consultations and genuine differences in medical opinion. None of the respondents had legal representation at this early stage of the investigation.

The reasons for Medicare investigation offered during the interview itself had changed slightly from those offered at first contact. 'Concern about their practice profile' (4) was still common, but this had been joined in frequency by 'too many long consultations' (4) and 'multiple consultations' (2). Sixteen different outcomes of the Medicare interview were

described, notably ‘they wanted repayment’ (4), ‘my practice was to be monitored’ (4) and ‘I thought I had satisfied them’ (3). Two respondents said that there was no clear outcome and that they had been left in limbo as they did not hear from Medicare for some months afterwards. Whatever the outcome, half of the respondents felt that they had no choice but to accept it.

The PSR Investigation Process

Eight respondents were then referred onto PSR for further investigation. Only two believed that they had a good understanding of the role of PSR at this point. All but one respondent was interviewed by the PSR Director; Dr. Webber. Most described the interview as unpleasant, using terms such as ‘hostile’, ‘angry’ and ‘superior’. Only two thought that the tone of the interview was ‘constructive’. Some of the comments described a very intimidating style of interview including standing up and slamming his lap-top shut when ending the interview. One respondent stated that the Director admitted not having received the records before conducting the interview but that he persisted with it nevertheless.

The reasons for interview given by the PSR Director had changed again from those given during the Medicare interview. Participants were now typically told that they were being investigated for three distinct reasons; ‘concern about the practice profile’ (4), ‘too many long consultations’ (4) and ‘inadequate documentation of long consultations’ (4).

Eight participants were told to send patients’ files into the PSR. The numbers of files required varied from 100 to 250, but an average of 142.86 files was requested. Satisfying this request could impose a considerable and expensive workload, particularly where part of a longstanding patient’s file was still in paper format but part had been converted to electronic format, but 87.5% stated that they did not get any help with this work or reimbursement for the costs of locating, copying and sending the files. This step was typically taken without the patients’ knowledge or consent, although all respondents who answered this question (8) said that they were concerned about the breach of confidentiality. About half of the respondents felt that they could do nothing about it, though one complained in writing.

All respondents who answered this question (8) believed that the PSR Director wanted the files as part of a ‘fishing expedition’ to find that they had done something wrong. Only

50% said that the PSR Director had given them factual reasons for his concerns. Far fewer respondents believed that the PSR Director gave them a chance to explain their clinical reasoning (42.9%) as compared with the 66.7% who believed that they were given this opportunity in the Medicare interview. Only one respondent reported that some notice had been taken of his explanations. Three respondents were asked about specific cases and all of them thought that these cases were then used as a basis for unfair generalisations to the rest of their practices. Only one respondent had expected this type of interview. Four respondents noticed errors in the data presented in the course of the interview.

By this stage, legal representation was more common (71.4%), but respondents were unanimous that it had been unhelpful. A major reason for this was that the solicitors were told that they were not allowed to speak during the interview with the PSR Director, although the legal basis for this was unclear. Some respondents commented that their legal advisors had told them not to attempt an appeal because no one ever won against the PSR, innocent or not. Others commented that legal advice was very late in coming and when it did arrive seemed to be limited to explaining how to comply with the PSR Director's requests and advice not to try to defend their practice. As one respondent put it "legal advice was that the PSR Committee process was too stressful, expensive in time and money, and would always agree with Dr. Webber."

Thirteen outcomes were recorded from these interviews, typically 'they demanded repayment' (4) with two respondents referred to a Medical Board. Respondents felt that they had no choice but to accept this decision.

As many GPs are called to testify before courts or other government bodies, they were asked to compare these experiences with that of the PSR Director's interview. Typically they found it worse (77.8%) or 'much worse' (11.1%).

Two investigations were still ongoing. For those that had been completed, the entire process took about 18 months on average and cost the respondents \$138,500 in legal fees, time lost and repayments to Medicare.

Impact of the investigation process

Respondents were asked how the experience of the investigation process had affected them personally and professionally.

A total of 38 personal impacts were given. The three most common were 'I was deeply humiliated' (7), 'I developed anxiety/stress problems' (7) and 'I was extremely distressed' (6). Several respondents sought psychiatric help during or immediately after the process. One respondent commented that he remained bitter two years after the interview because it had ruined his career as a GP. While it might be asserted that any investigation process would occasion a certain amount of tension, causing extremes of distress is not essential.

A total of 32 professional impacts were given. The three most common were 'I lost enthusiasm for my work' (6), 'My confidence was shaken' (5) and 'I no longer prescribe certain drugs' (5). More ominously, from a medical workforce viewpoint, was a group of 10 responses describing a withdrawal from medical practice. Two respondents lost their practices as a result of investigation and another ceased work. Three plan to stop as soon as possible; in other words they will retire earlier than they had planned and four thought of leaving the country and practising elsewhere.

Many of the free response comments made at the end of the questionnaire suggested considerable anger and resentment about the nature of the process including "my case was a witch hunt", "guilty until proven innocent", and "trying to deal with a difficult field (Drug & Alcohol) and picked on".

Comments

This is a mature group of GPs who have been practising for a long time, so it would be reasonable to expect that they would be familiar with the requirements of practice. It appears that they thought that they were practising appropriately and that they could meet the concerns of the initial Medicare investigation without legal support. Even in such a small sample there is evidence that the reasons offered for the investigation changed as the respondents moved through the process. The demands imposed upon them to satisfy investigators at various levels were onerous and unrecognised by the system. By the time they reached the PSR interview stage many had availed themselves of legal advice but found this unhelpful.

As well as being personally distressing, the processes involved in investigating these doctors are expensive and very drawn out. The professional impacts suggest that, if carried out on a grand scale, this investigative process will contribute to the shortage of medical care available.

References

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