

12 August 2011

To The Senate Community Affairs References Committee
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Review of the Professional Services Review (PSR) Scheme.

Honourable Members of the review Committee:

I have been in the same General Practice on the Woy Woy Peninsula for more than 40 years. I have a generally good reputation & treat a large number of patients who are mostly elderly.

As a result of my personal experiences with the PSR & its Director I am intending to retire from General Practice as I feel deeply insulted & aggrieved by the PSR process & my treatment. I am only working now to pay Medicare the substantial “repayments” demanded by the Director under threat of a very lengthy Committee hearing if I did not.

The repayments were substantially for “ concerns” that were mostly not even those raised originally. Upon repayment I am leaving General Practice as it is far too exposed to the whim & subjective interpretation of the Director & Committees.

In fact the major initial concern surrounded my ordering of interventional Radiology to try to alleviate pain & suffering in many of my inoperable elderly patients. This was totally dismissed as a “concern” but after a careful trolling through my patient notes the Director found “deficiencies” that relied on his personal interpretation of my notes. I was given no opportunity to address his concerns & he only referred to generalities at the meeting prior to him issuing the demand for repayment.

No counselling was undertaken but an indecent haste to obtain a repayment with conclusion of the matter under the thinly disguised threat of a lengthy Committee hearing.

From my reading of the PSR Annual Report there seemed to be very few who escaped a guilty verdict as the modus operandi was to examine sufficient patient notes to allow a negative guilty verdict to be found that often was unrelated to the initial “matter of concern”.

The PSR shows no respect or regard or concern for long years of service without a blemish against my name. Seeing a reasonably large number of patients brings one to notice & punitive measures seem to be the only result in these latter years. One is made to feel like a criminal & it has greatly affected me personally in my family life & relations as I am so disgusted & angry by the sequence of events.

It is for this reason that I have decided to help lead a strong protest to inform you of the many problems caused to honest doctors by the draconian application of “rules” that are designed to be nearly impossible to properly understand leaving the PSR open to easily find errors to support a “guilty verdict”.

There has been no greater source of general concern & unhappiness in the Medical profession over the last few years than the administration & operation of the PSR.

Submissions to & evidence before your Honourable Committee will clearly show that this alone has been responsible for the actions that have led to the numerous complaints & pleadings to your members begging for your Committee to hear our case & concerns hopefully leading to quite radical reforms of the legislation leading to a fairer evidence based system that is able to be understood by us & not subjected to the cult of personality & often idiosyncratic interpretations by a powerful Director of various matters that are brought before the PSR & its Committees following referral by Medicare.

A new order must be established that codifies what is required so that opinions & judgements are consistent & clearly understood with binding rulings made on difficult interpretations of the Medicare Schedule many of which are truly difficult to interpret & seem to be judged by the Director or the PSR Committees in an absolute manner from which there is no real appeal.

A study of the “voluntary settlement agreements” & concluded Committee findings will show that the majority of adverse findings are against GP’s & revolve around the interpretation of very difficult Item Descriptors. The Director & Committees seem to have the absolute power to interpret them as they wish. In real life & practice this is rarely so simple. Human nature is impossible to codify precisely.

The emphasis is mostly purely on the doctor’s notes with little regard to explanations as to what actually happened on a particular days often years ago. Any explanations are simply dismissed & there is very little attempt at counselling & informing the profession as to expectations.

This occurred to me personally on the issue of many patients wishing NOT to have some of their sensitive private information put on a computer record that is in practical terms permanent & accessible by other doctors in a Practice. I was simply told that these patients were not eligible for a Medicare rebate & that I would be asked to repay all such rebates to Medicare. I had always thought that my first duty was to the patient but was told that the legislation implied that wanting privacy meant the patient had to pay the full fee.

I ask how many prominent people, including politicians & major business people, feel comfortable having their sensitive personal medical records hacked or seen by others? In industrial espionage the health of a Chief Executive would be vital & important information. Do they all not claim a Medicare rebate if some information is not recorded.

Medicare should make a clear public statement re its policy.

Further, in my case , despite being told at my meeting with the Director that he had no problems with my standard consultations I was shocked to find that he in fact wanted me to repay 15% of all my Item 23 Consultations [standard consultation].

Breaches are in 2 categories: fraud & misinterpretation of descriptors.

Misinterpretation or often in a busy practice [these are audited most] the sheer inability to write the volume of notes required after concentrating on a long complex consultation. Often there is no extra time to spend for an inexperienced typist [such as many older doctors] to then write copious notes when the waiting room is full of patients & the long consultation was not booked as such.

General Practice is far too variable, unpredictable & complex covering the whole gamut of Medicine to being so neatly described as in many of the descriptors. From long experience I would say that if any busy GP’s notes were examined none would totally comply with the descriptors.

I can assure you that except for the Privacy Issue my notes are no worse or less fulsome than all others that I have seen "flying below the radar". The other 6 doctors in our Practice have no difficulty following my treatment or notes over many years yet the Director is having problems even with the reasons for my ordering ordinary CT scans. He does not bother to be specific with his claims so he does not have to explain.

It is vital that PSR Committees are carefully chosen as intended by the legislation. The absolute power they have makes the selection process & criteria absolutely vital. A Doctor's whole life & livelihood can & has been ruined by judgements that are made by Committees that don't have knowledge & experience in some matters

The PUR [Person under review] must be able to check the experience & credentials of his/her peers so that they understand what is going on.

Committees appointed by the Director to well paying positions are beholden to the Director & probably led to the extraordinarily high number of " guilty verdicts". The Director's comments after the 39 investigations had to be halted due to his & his Department's Committee appointment irregularities show that if this occurred in any other fair Court or jurisdiction the Director would be dismissed or stood aside for clear bias & culpable lack of procedural fairness. The clear expectation was that ALL the investigations would return a "guilty verdict".

This is intolerable but the Director continued as Director till this week when he retired. Where is fairness , natural justice & the presumption of innocence till proven guilty. This highlights one of the central problems with the PSR.

Little respect is given to the PUR when Medicare or the PSR demands information or records. These bodies do not have to notify the PUR of the matters for concern. They can ask for anything at all. This is all very well but the investigators, Director & Committee are not trying to run a busy practice , cater for patients, earn enough to pay practice costs as well as attend to the demands of the investigation.

A way must be found where investigators can only ask for specific information & not simply be allowed to troll through the patient records till "something is found". Most doctors would be found guilty of some deficiencies.

The stress on the PUR, staff, patients & the PUR's family is enormous.

I was horrified to read in the PSR Annual Report that the AVERAGE resolution time by a Committee of an investigation is about 670 days-- this is an intolerable torture if it takes so long to resolve issues. Many Doctors have left medicine & sadly some have committed suicide as well as lost their families due to this stress.

Is this the price for "Audit Purity"?

On 31/7/11 the Sunday Telegraph on page 25 wrote -- bogus Medicare claims "blew out" to a record \$ 28.24 M.. A big amount for any of us. However when seen in perspective where the total Medicare rebates paid is about \$ 7.2Billion this equates to a "Rorting Ratio" of 0.0039% -- if only the Pink Bats & BER schemes had such a low Rorting Rate! I do not condone fraud but all that effort & expense for such a small result while others "rort" the various other schemes for much more.

In practical terms there is NO APPEAL from a Committee finding.

There are many cases where the Committee verdicts are plainly wrong . One can only conclude that they operate under some clandestine orders or they will not be reappointed to the very lucrative stress free position of Committee Member. The High Court has apparently held the legislation allows the Committee findings to take precedence over all other opinions & views even if they are relevant specialist opinions

supporting the PUR. Further, the Committee is not obliged to consider other evidence & opinions in making its findings of “inappropriate or other practice”. There is certainly no consensus as to what the “general body of the PUR’s peers” would think about many decisions.

This is another extremely important issue. It further erodes any respect or faith that doctors have in the whole PSR process. I have seen judgments that are totally wrong but were allowed to be made due to this law or regulation. The Director or the Committees are really accountable to nobody but themselves.

This absolute power & its corruptive influence has no doubt contributed to the ever worsening fiasco in the Federal Court relating to the all important proper appointment of the Committees & their members. Different Committees could easily have very different findings for the same case with all the profound implications for the PUR.

The legislation passed by Parliament clearly sets out the steps to be followed for the appointment of Committees. Parliament foresaw the potential for the current problems & intended these steps to safeguard the Medical Profession from the abuses & problems that are now being revealed in the Courts.

Had the PSR complied with the legislation & the AMA been consulted & acted as it was intended to act as an arbiter to ensure that due process & skill was applied in appointing Committee members. The AMA was to also check if Committee members had the necessary knowledge, currency of practice, skill & expertise to perform a proper evidence based review of the activities of the PUR.

This approach would have had the respect of the profession.

The current process is so deficient that few have respect for the findings & severe unhappiness & concern for the future of medicine has driven many of us to spend enormous amounts of time trying to bring these serious matters that affect the health & welfare of our nation to the attention of the only body that can help rectify matters -- the Parliament of our great country.

We have all lost faith in the Committee process & many of us have “surrendered”, “admitted inappropriate practice” against our will & paid the repayment or “fine” that demands total rebate repayment despite acknowledgment that a lesser service was provided. It’s winner [PSR] takes all. The recent Federal Court judgments simply reinforce our suspicions that the whole process was simply a kangaroo court & we had no hope with the Committees.

Another major concern is the great potential for conflict of interest by the AMA & its elected representatives.

It appears that Committees have not been properly appointed since about 2000. You are all aware of the increasing number of Federal Court actions that will probably lead to a huge financial cost to the taxpayer due to the PSR ignoring Parliaments legislative directions & recklessly extracting fines, payments & sanctions against many medical practitioners.

Properly appointed Committees may well have come to very different verdicts. I do not accept that this is all due to a small procedural glitch. It is the result of a very major legal & procedural error that has probably caused enormous grief, stress, loss & pain to many. No doubt some of the “guilty” are “sinners” but the greater sin is to neglect transparency, true fairness, the intent of the legislation & every principle of true public accountability that we hold so dear in our democracy.

The AMA must also do some soul searching. I presume that someone knew about the legislative requirements re Committee appointments. Yet suddenly everyone has amnesia.

The worst feature is that Office Bearers & elected office holders of the AMA have openly sought & served as Committee members & PSR State Deputy Directors. Is this not a major conflict of interest? Further comments are found below.

The AMA now represents only about 1/3 of doctors . Much thought must be given as to what Colleges & organisations should have input into Committee Member selection. We cannot have such a potential conflict of interest again or all respect for the process will be lost.

**It is a shame that the PSR has most doctors so cowed that they have asked to be taken off our email list in case the list is seen by the PSR increasing their probability for a PSR “audit”.
Fear & intimidation seems to have been struck into most doctors!!**

We need a total overhaul of the PSR & the legislation.

f) Any Other Matters:

This is a collection of other observations that I feel are very relevant to the inquiry to give some flavour to the general & huge disquiet that doctors & especially GP’s have with the PSR & its current operation.

Note that Dr **Webber speaks using his authority as Chairman of the PSR in** the medical & general media on topics in which he has **NO QUALIFICATION such as Radiology** & on many occasions has caused excessive fear in patients who have even refused to have necessary Xray investigations performed that has delayed diagnosis of serious conditions. Doctors have also been intimidated with fear of investigation by Webber & his kangaroo courts & not ordered Xrays often again delaying diagnosis.

He is a GP & I think if we GP’s dared say these things so publicly & influence public opinion the **Medical Board would be looking at our Registration** very seriously. Such are the trappings of such absolute power. He is protected under the Public Service Act.

The real problem is the sheer **amount of time it takes to defend yourself** while trying to run a busy full time practice against such a capricious system & culture overseen by a Director who could be described as a zealot, doing all it can to find some fault, mostly on technicalities, to extract some fine or sanction from a doctor. GP’s have been mostly affected as the nature of **general practice does not fit in nicely with the very neat Medicare descriptors that** generally take more time to complete in the **real world situation of relative chaos in a busy general practice** that treats the general public as best it can.

The **only criterion is the bookwork**. Patient care is secondary. Low volume practices are rarely audited & are mostly not practicing true general practice. They manage to fly below the radar.

The fine words on the records are written mostly by specialists who have enormous secretarial support , higher fees & time in a far less chaotic practice than a busy General Practice that take on all comers as well as the normal booked practice patients.

No wonder general practice is becoming less attractive -- we are all burdened by the threat of more paperwork for reasons that are not evidence based but rather to comply with descriptors that seem designed to trap GP’s as they are open to the Director’s & the Committee’s subjective interpretation years after the event taking no notice of what actually happened on that day. It’s purely all about red tape.

Does Medicare look at the heroic hours worked & operations performed by some of our leading specialists?

Are 14-16 hour operating days acceptable for non emergency elective surgery? Are 40-50 endoscopies , C/E ‘s etc acceptable per day ? Is it only the GP who is incapable of seeing more than 79 patients per day , even level A’s. There has been no scrutiny of our specialist colleagues - the AMA etc have a blind spot or maybe a specialist degree confers special powers! Would specialists tolerate being reduced to dumbing down & being reduced to the lowest common denominator?

What special power or skill does one get by being an elected official of the AMA & other bodies & colleges?
Presumably one becomes an expert in everything . They can vet the PSR Committees ensuring that true peers

are chosen & without any compromise to their impartiality sit on the **actual well paid investigating Committees** delivering the Director an almost perfect 100% guilty verdict! All this for getting elected. Amazing.

The **new PSR Director is ex AMA** & should make a clear statement how he intends to operate & ensure that the intent & letter of the law is followed ensuring that AMA office bearers truly monitor process & not participate in any Committees so that the AMA's intended function of "honest broker" & not fellow executioner be properly performed. As the AMA only represents about 30% of doctors its role as the only arbiter in such an important process must be closely examined & other Colleges also consulted.

We should also know the **general terms & conditions of his employ & how the "Performance Bonus"** is calculated for a person who has such huge powers to demand repayments, sanctions & fines. Is it related to monies retrieved?

The AMA's role so far has been far from exemplary & it has severely neglected the charter & principles that it was supposed to uphold & monitor. It is very difficult to find any advertisements for Committee Membership with terms & pay conditions. I can only conclude they must be highly prized & reserved for the "select few". Some Committee look like the who's who of the AMA!

The **Director's statement that if a patient wants privacy for sensitive personal information they are not eligible for a Medicare rebate comes as a surprise.** With increasingly large multi doctor practices becoming the norm many patients are very concerned that the Doctor/Patient relationship is not "sacred" or private. They often do not their information to be available to all in the practice. Since Wikileaks & the recent legislation allowing Medicare access to their records without consent this concern is only heightened.

The Director does not acknowledge this **nor does he make any public statement re the ineligibility of patients to a Medicare rebate if they want privacy.** He simply fines the Doctor.

While he claims that Medicare decides **how descriptors are to be interpreted , in practice it is the personal view of the Director that seems to prevail.** Enquiries to Medicare by myself & others highlight this fact. It seems the Director's view is final & any objection to this is dealt with by referral to a Committee that almost invariably agrees with him.

The **lengthy & onerous Committee procedure** that averages 670 days, according to the PSR report, covering any matters not just the "matters of concern" places a huge unwarranted stress on the PUR who is mostly also trying to **run a busy practice & earn enough to pay the staff & practice costs.**

Committee members are well paid & under no pressure to conclude their "investigation" & can continue till they find something that allows them to impose some penalty onto the PUR.

The absence of any real appeal mechanism & the power given under the legislation to the Director & Committees to ignore any medical evidence supporting the PUR has caused extreme unhappiness & a true sense of procedural unfairness.

If Doctors neglected to dot every I & cross every T they are severely reprimanded & fined.

The Director & his large staff have **NO EXCUSES for the blatant neglect of the legislation** as shown in recent Federal Court hearings. Yet **NO ONE WILL BE RESPONSIBLE OR WILL HAVE TO PAY--** the taxpayer pays for their huge errors & mistakes -- their pay & pensions will not be disturbed. The degree of arrogance & neglect of basic duty is impossible to comprehend . It can only point to **culpable maladministration & dereliction of duty.**

The potential cost to the taxpayer may yet be many millions of dollars.

All parties involved including the AMA must examine their role & responsibility. This would & should not be tolerated especially in an organisation that is set up to investigate & punish people for not sticking to often

confusing & difficult “rules”. Here we see total neglect of a most basic statutory duty & imposed by our Parliament to oversee this important process & to ensure fair play for doctors & patients.

Parliament must recognise the absolute power of the Director & Committees to fine & sanction doctors & has place certain requirements in the legislation to ensure some sort of justice. The actual composition & skills of a Committee is absolutely vital to the outcome of the investigation.

Anything that may interfere with the appointment of a competent, skilled & unbiased Committee is a huge potential problem for the accused or PUR. Yet the whole matter is simply passed over as a “Procedural Glitch” when the whole reputation , livelihood & standing of a doctor is at stake. I have read many of the decision & have definitely concluded that a different Committee could easily have come up with a totally different result. This shows how important the selection process is.

The Director showed his **lack of bias** recently with his statement after 39 Committees had to be stood down due to the ongoing appointment irregularities when he stated that : **“The PSR is hopeful that the 39 people are sufficiently chastened and understand how fortunate they have been to escape full investigation”**

Truly the words of one who is totally unbiased & believes in the principle of innocent till proven guilty who has no influence or connection with the investigation yet seems to indicate that all are guilty even before the verdict!