



To: Mr. David Goddard QC - Head of Enquiry ACC.

Personal Submission of Malcolm Hood

Re Head of Enquiry ACC - Physiotherapy

As an elder within the profession of Physiotherapy and having treated patients prior to ACC being formed, particular ethical and legal expectations have formulated in my manner of practice. I am aware the responsibilities to treat all patients in New Zealand with equality and fairness, advocating without fear or favour when required. The enormity of the ACC Insurance Corporation and its ability to influence in several directions should not diminish or override the values, rights and safety of patient treatment and time established ethics, which are set up, and held by all professions to protect the recipient of that professional care.

It was therefore very stressful and costly on patients and health providers when an insurance company, ACC compromised the above-mentioned principles, which protected the patient/health provider relationship. This relationship changes profoundly when the Physiotherapist is contracted to an insurance company and not the patient. The immediate financial responsibility is to the insurance company as opposed to the patient. This clearly can create a misguided loyalty, by financial return superseding medical ethical responsibility to the patient. I was one of the majorities who would not contract directly with ACC through EPN for this reason, although several Physiotherapists have subsequently and reluctantly succumbed in order to remain financially viable.

ACC pursued photocopies of patient's personal clinical records from a number of Physiotherapists, including four of my patient's personal details. Some of these details were gathered over many years. This action by ACC appeared to be deliberately compelling practitioners who spoke out about the Endorsed Provider Network (EPN) to be subject to ACC's atmosphere. This was a technique high lighted in the Institute of Economic Research hypothesis paper 2002 commissioned by ACC. This was to increase compliance and investigate Physiotherapists by the ACC Fraud Unit, those Physiotherapists who would not submit but under the guise of cost saving to the

insurance company ACC. These bullying tactics not only affected the Physiotherapist, but also most importantly, compromised the Patient, as the Physiotherapist became more accountable to ACC as opposed to the Patient. It also meant that the Patient had to fit within an unscientific formula of rehabilitation to recover within a specific number of treatments. It was significant that full written medical reports became unacceptable to ACC. The demand was for photocopied patient's files, which had been obtained '**medical in confidence.**' The usual method of communication accepted in most of the civilized world's professional environment i.e. Orthopaedic Surgeons, Lawyers and others is via written reports, not photocopy of personal records. For instance in the legal spectrum, if a practitioner when accounting to the Legal Services Agency are not required to provide copies of their hand written notes, but rather only formal court proceedings.

When four patients refused to allow me to provide ACC with these notes (on principle), ACC had me charged with two charges under s376(1)(b) of the Accident Insurance Act 1998 and one under s309 of the Injury Prevention Rehabilitation and Compensation Act 2001 in that being a person has provided physiotherapy treatment to an insured without reasonable excuse failed to supply information when requested to do so by the insurer for the purpose of facilitating the timely and appropriate provision of entitlements or detecting fraud. I had provided each patient with photocopies of the notes I held and written reports to ACC when requested. When one Patient did hand over the notes ACC stated that this was insufficient, the Physiotherapist had to hand the notes over himself. At no time have I disputed that ACC may access the financial component of patient's attending this practice.

[REDACTED]

Since I have been at the forefront of this Enquiry the intensity of ACC's harassment, intimidation and blackmail has increased. In 2006 a series of questions were sent to senior Physiotherapists, the writer included, requesting detailed information about bulk billing including questions such as how long my treatment appointments go for and so on. These have been answered to the satisfaction of leaders of government within The Legislative Chamber, but not to ACC's Provider Unit which works without ratification or agreement of their methods from the professional physiotherapy bodies. (**Appendix 2 and 2a**)

Threats, both official (written) and verbal, of removal of ' bulk billing privileges ' have been made which would if followed through would severely curtail the financial viability of my 37 year established practice. (**Enclosed Appendix 3. and 3b**) These threats have not been uplifted by ACC and remain pending.

I inquired about the appeal process or the options available to somebody in my position. It is not reasonable to threaten such action when there is no appeal/review process, nor any protocol agreement between ACC, Patient or Profession. The actions are not reasonable when the profiles are totally unsupported by any reasonable evidence or take

[REDACTED]

into account skill, qualification, length of service to the community, demographics severity of injury or even patient satisfaction. It is not reasonable when any answer provided to ACC may never be to ACC Staff's satisfaction, although acceptable to members of The Legislative Chamber.

The actions taken by staff within ACC are personal, excessive, unlawful with no protection for the health provider who is treating a patient for other than a simple non complex injury. To my knowledge there is no independent body to which ACC becomes accountable too in these situations.

When questioned more recently on matters, The Customer Service Manager, Gail Gall to whom ACC then directed correspondence, replied breaches of The IPRAC ACT are not occurring by the Writer. **(Enclosed appendix 4)**

Of concern has been the blackmail by officers within ACC in order for me to be subject to their will even though I am following the law.

Blackmail

Crimes Act 196 Part 10 237. **(Enclosed appendix 5)**

1. *Every one commits blackmail who threatens, expressly or by implication, to make any accusation against any person (whether living or dead) to disclose something about any person (whether living or dead) or to cause serious damage to property or endanger the safety of any person with intent -*

(a) to cause the person to whom the threat is made to act in accordance with the will of the person making the threat; and

(b) to obtain any benefit or to cause loss to any other person.

2. *Every one who acts in the manner described in subsection (1) is guilty of blackmail, even though that person believes that he or she is entitled to the benefit or to cause the loss, unless the making of the threat is, in circumstances, a reasonable means for effecting his or her purpose.*

3. *In this section and in section 239 benefit means any benefit, pecuniary advantage, privilege, property, service or valuable consideration.*

The actions of harassment, intimidation and blackmail by ACC toward myself, and other medical providers, according to the transcript enclosed **(appendix 6)**, are directed by the Chief Operations Officer, Mr. Gerard McGreevy, via Karen Mole Provider Unit Manager. The actions are not reasonable as they occurred after I had become involved with this inquiry, despite the fact that I have made no substantial changes to the way my

practice is run. [REDACTED]

To date I have not received a response from ACC regarding my request for an extension to continue to bulk bill, and the threat of laying a complaint to the NZ Physiotherapy Board until after The Enquiry as per my letter dated 18 December 2006. (Appendix 7) This removal of bulk billing would cause immense loss to my practice and others affected and the public serve diligently and legally to legal requirements under The Act 'treatment to the maximum level practical.'

I have not been notified as to a lifting or abatement of this threat and blackmail, or postponement as requested. The threat remains to ensure I do act in accordance with the will of the person making the threat from Karen Mole and Gerard McGreevy Chief Operations Officer ACC and by proxy Dr. Jan White CEO and ACC Board. This is a continuing attack, which I link to [REDACTED] and again being at the forefront of Physiotherapy, The ACC/ Physiotherapy Enquiry. The apparent disregard and non-resolution by ACC indicates a continued culture of bullying and vexatious action.

In the event that there was a breach, ACC should have immediately stopped the writer and others affected continuing to bulk bill and action, as opposed to leaving in the air an open threat. Instead ACC stated "the first treatment could be claimed from ACC, but the patient would have to then claim the remainder." As the first treatment is often the most vital and ACC were prepared to pay for this, ACC obviously did not believe the medical opinion and treatment by the Physiotherapist was at fault, nor was there any illegal or unethical practice by the provider. If this were the case ACC would stop instantaneously and in its entirety, bulk billing. The intent is therefore to threaten and blackmail to ensure I act in accordance with the will of the person making the threat, and fit within the statistical benchmarks of ACC, irrespective of any legal foundation.

As an experienced health practitioner, one has treated almost every conceivable Pathology and conditions. Each patient and person's circumstance varies. It is entirely inappropriate for ACC to expect every patient to receive less than optimum care in order to keep within the specified number of treatments, disregarding the Pathology and other circumstances.

" The profiles are not intended to be prescriptive and should not be considered a document to restrict clinical freedom."

" The treatment numbers stated in this document relate to a specific diagnosis without complications. " (Appendix 8)

There is limited option available to obtain an extension of treatment numbers in complex cases. Under the EPN, ACC can cancel the contract for any circumstance, which may result in the patient never being given the opportunity for full recovery. For the Regulated Fee practitioner the patient is paying for over half their fees privately and

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Solution.

ACC should immediately lift the threat of bulk billing privileges of patients against me. **(Appendix 9)** I seek written confirmation that these threats have been lifted together with the threat to report me to the Physiotherapy Board in these circumstances.

The Head of Enquiry should direct that criminal charges under The Crimes Act 1961 section 237 - blackmail, should be laid against, Karen Mole, Gerard McGreevy, The ACC Management and The Board.

SUMMARY

Blackmail is an illegal action and a corporate organization must not be allowed to embark on such action with immunity. ACC should develop a procedure and appeal process acceptable to Physiotherapy 'bodies' using an independent party should issues like these arise in the future.

I have no problem with ACC obtaining information of financial transactions from us. I am also prepared to give written reports. ACC should be directed to pursue only those records they are entitled to, in the manner The Law states under the various acts. Privacy, Human Rights, Health and Disability, IPAC Acts.

To misuse financial payments (the patient fee) by way of threats and blackmail and by using menace by injudicious stated use of a Professional Board is of major importance to all New Zealanders. These should be used in the correct manner and not as a form of blackmail.

The failure by ACC to communicate responsibly and appropriately in timely fashion, indicates ACC do not regard the issue has base enough to take action merely threaten. The position ACC has taken is to intimidate lead witnesses to The Enquiry, reputable long serving Health Providers. ACC has blackmailed to maintain a benefit for its own advantage and loss to the other person/s Physiotherapist and Patients.

It is particularly significant that ACC's relationship with the practitioner and the patients is not treated with the legal and social responsibility as enshrined in the '*Spirit of The ACT.*'



Malcolm Hood
Manipulative Physiotherapist