

ARCIC Submission 2007 - On Behalf of the Physiotherapy Trust of New Zealand.

1. INTRODUCTION

My Name is Malcolm Wallace Hood. I have been a qualified and Registered New Zealand Physiotherapist for 36 years, graduating at Otago University. I worked at a number of hospitals, serving my major post graduate time at Napier Public Hospital. It was my fortune to setup the first Physiotherapy Department in a Psychiatric Hospital in New Zealand, Kingseat. My presentation to a Royal Commission of Enquiry assisted in the formation of other Physiotherapy Services being established in other similar hospitals.

I set up a private practice in 1969 which I still run today. I started practice before ACC came into existence.

I am a Member of The Chartered Society of Physiotherapy United Kingdom and registered as a Physiotherapist in Queensland, Australia. My post graduate qualifications are in Manipulation. I have a Sports Medicine Fellowship Hon.

Our Family are Tainui - Ngati Hikairo

I have worked with Counties Rugby, as 1st Physiotherapist Fitness Manager with The New Zealand All Blacks, The New Zealand Police and High performance with The New Zealand Defense Force, Army.

I am Chairman Decision Reachout Toro Mai Trust, with New Zealand Police, Trustee Special Olympics New Zealand, Acting President Physiotherapy Trust of New Zealand. I have been Deputy Chairman & Trustee of Counties Manukau Sports Foundation, I have authored two medical books and published multiple Medical papers.

I have lectured around the World, including USA, South Africa, Australia, and traveled in an official capacity with various teams to countries such as Romania, Canada, Zimbabwe, Wales, Scotland, England, Argentina, Chile, Uruguay, Tonga, Fiji.

2.

In my opinion, crucial to this submissions and important for the determinations of the Enquiry is the name of Accident Rehabilitation Compensation Insurance Corporation (ACC). The emphasis was and is on *Rehabilitation and Prevention* not Insurance in the immaculate monetary way of some financial institutions or various Acts of Parliament. The *Spirit* of ACC was so important to New Zealand citizens as to be unusually enshrined in an Act.

Although ACC under the Injury Prevention, Rehabilitation and Compensation Act 2001, (IPRCA) the names Rehabilitation and Prevention were reversed, the Acts still required all New Zealanders, including ACC management to face the social responsibility of Injury Prevention and Rehabilitation as primary goals. This rarity in legislation, was a deliberate action as the exchange of citizens being unable to sue for injury or accident was considerable. It was a world first and the social responsibility appropriate protection against possible erosion of rights or abuse was required under the circumstances.

Unfortunately erosion arose and ultimately abuse has occurred, as this submission on behalf of **The Physiotherapy Trust of New Zealand** will demonstrate.

2. PREAMBLE.

Patient safety and Physiotherapist responsibility to Patients are paramount for the integrity of people requiring rehabilitation in New Zealand. Both legislation and Standards of Ethical Conduct are historically forged to protect the Patient. These rules by a Profession are to serve the PATIENT and are the very foundation for treatment and care of citizens.

The implementation of the Endorsed Provider Network by the ACC Insurance Company disregarded the Ethics of the Physiotherapy Profession on every principle and most sub clauses. Further, the model used by The ACC Insurance Company was based on a commercial model, which was clearly stated by the Institute of Economic Research, as limited. The IER ACC document was a business model, devoid of any social responsibility or medical ethic. It clashed with the Injury Prevention Rehabilitation Accident Compensation Act, (IPRAC Act) especially with the legislation '*Spirit of the Act.*'

This model was an experiment, which IER also highlighted had several serious side effects.

ACC Insurance Company in a calculated manner implemented the Economic Research findings to configure an Endorsed Provider Network, by baneful inducement employing key Physiotherapy Executive Members to influence.

The ACC Insurance Company punished by illegal and contrived '*fraud investigations*' senior Physiotherapy Practitioners who spoke out in defence of The Ethical Principles that were time honoured, enshrined in legislation and protected the injured Patient from exploitation when at their most vulnerable.

As part of the plan to execute Physiotherapists being directly contracted to the ACC Insurance Company and not to the PATIENT the ACC Insurance Company not only held static the Patient's Regulated Fees, a paltry \$16.89c gst exclusive, for Physiotherapy Rehabilitation for 14 years, but reduced the fees payable. This financial action was '*blackmail*' of the PATIENT and the Physiotherapy Profession implemented so the Physiotherapist would '*contract*' directly to The ACC Insurance Company where fees paid were more than double and triple fees than under regulation.

Physiotherapists accepting this pathway were not '*contracted*' to the Patient, as is the case with other Primary Care Providers.

4.

By 'contracting' to ACC Insurance Company with '*a three month termination for any reason,*' Physiotherapy Advocacy for the Patient and the Profession was compromised as was the relationship of '*trust with the patient*' the first and foremost Ethic of a Physiotherapist and Patient relationship.

The fact an Enquiry is occurring demonstrates the Endorsed Provider Network has fractured the Physiotherapist Patient relationship and has splintered The Physiotherapy Profession. There is now a '*two tiered rehabilitation service*' in New Zealand for Patients requiring Physiotherapy. There are those who receive full funding when the Patient attends a Physiotherapist who is directly accountable to the ACC Insurance Company. (fees \$36 - \$70.00 per visit.)

The second tier are those Patients who receive just \$17.48c Gst exclusive per visit, but whose Primary Care Physiotherapist is directly responsible to the PATIENT, not the ACC Insurance Company.

No other Primary Care Health Provider, Doctors, Nurses, Counsellors, Dentists etc. works under the Endorsed Provider Network Scheme, or have faced these compliance costs of Accreditation or had Patients Regulated fees held as part of subjecting a profession to defection from Patient proximity to insurance company liaison.

The experiment by the ACC Insurance Company has not worked and it should be disbanded immediately. Restoration of the Ethical principles and Legislation should be returned and social values, social laws, practice principles and 'Spirit of the Act' be at the pinnacle of this branch of Patient medical care.

3. STANDARDS OF ETHICAL CONDUCT

The Physiotherapy Board of New Zealand March 2006 -

THE FOLLOWING PRINCIPLES EXPRESS THE OVERRIDING INTENT OF THE STANDARDS OF ETHICAL CONDUCT.

PHYSIOTHERAPISTS SHOULD AT ALL TIMES;

- 1. Act in the best interests of their patients.**
- 2. Practice in accordance with acceptable professional standards.**
- 3 Apply principles of best practice of physiotherapy to their professional activities.**
- 3. Respect the rights and dignity of all individuals.**
- 4. Comply with all legislation that governs and impacts upon the practice of, and research in the field of physiotherapy.**
- 5. Accept the responsibilities to uphold the integrity of the profession.**

* (1) Ethical Standards

1. ACT IN THE BEST INTERESTS OF THEIR PATIENTS.

1.1. The relationship between the Physiotherapist and their patient is one of trust.

Physiotherapy would never refer to patients as 'stock,' particularly 'stock to be exited. ' This is demeaning to patients and breaches the Ethics of Physiotherapy. (Ethics 4. Respect The Right of the Individual) To so do would lead to disciplinary action of the practitioner. ACC have termed patients 'stock.' Is the Physiotherapist directly contracted to ACC and not contracted to the Patient, more directly complicit in ACC's attitude on this and any other matter ACC decides?

* (2.) ACC EXIT PLANNING 2004 Target reduction in stock of ACC long term weekly compensation claims)

6.

It is difficult to see a good ethical relationship between ACC and Physiotherapists exist when ACC term patients "STOCK," but criticism of the funder is less likely if the relationship is fixed in The Funder's favour.

Who pays the piper picks the tune. The Piper should be the Patient if the relationship is to be 'one of trust.' The Piper should not be the insurance company even if a monopoly, perhaps especially if a monopoly. This type of relationship is conducive not only for potential breach of ethics, but likely to continuously erode the trust between Patient and Physiotherapist, as the Physiotherapist becomes more the employee or agent of the insurance company. The Physiotherapist directly contracted to the ACC Insurance Company under EPN no longer is in a position of advocacy for the Patient, unless willing to put at risk the Physiotherapy ACC Contract at higher fees or 'termination of the contract for any reason.' The PATIENT is compromised by the Physiotherapist being so closely aligned with ACC. The Physiotherapist is compromised by being controlled by ACC with no duty of good faith in place to protect the patient.

The relationship of trust between a Physiotherapist and patient was further compromised by EPN being based on a business model, bereft of ethics.

The Physiotherapy Board of New Zealand 25 August 2006

" The Board as a Regulatory Authority, has a specific role under the Health Practitioners Competence Assurance Act 2003 to protect the health and safety of members of the public by providing for mechanisms to ensure that health practitioners are competent and fit to practise.

Contractual issues with organisations such as ACC are professional issues best addressed by the profession. Contracts are entered into voluntarily by providers and as such do not come under the Board's jurisdiction as matters of public safety.

All physiotherapists are subject to the Physiotherapy Board's Standards of Ethical Conduct regardless of what capacity they practice. This is not altered by their contractual arrangement with funders.

Yours sincerely

*Susan Beggs
CEO/Registrar "*

Accreditation in itself is not an issue apart from the cost, and the manner it was manipulated, including lack of scrutiny and competition to roll out into The

7.

Endorsed Provider Network (EPN) experiment affecting only patients of Physiotherapists and no other Primary Care Group.

This was a healthcare initiative singular to New Zealand, a small country. It was determined by a few advocates, The Minister of Accident Rehabilitation, Compensation Insurance Corporation (ACC) The Board of ACC, The Senior Management of ACC and a small group of Physiotherapy Executive Members following the Institute of Economic Research 2002 document produced for ACC.

* (3) Institute of Economic Research Document for ACC 2002)

The beliefs of these individuals were not subject to rationale debate or reliance based on, sound evidenced practice.

'National Women's Unfortunate Experiment- Summary '
(National Women's April 1986) New Zealand Medical Journal - Vol. 4117 no 1206
ISSN 155N11758716

" It is to be hoped that the lessons learned from the past half century will be considered by those persons responsible for the evaluations of future technologies. In a relatively small country like New Zealand, initiatives in healthcare are often determined by a few advocates, usually medical professionals. The beliefs of these individuals need to be subject to rationale debate and reliance placed on sound evidence based practice." * (4)

Ron W Jones. Clinical Professor of Obstetrics and Gynecology.
Norman Fitzgerald Pathologist.

If Patients are treated by commission or omission without ethics and debate it is an UNFORTUNATE EXPERIMENT.

The experiment by ACC using the IER document could be termed an UNFORTUNATE EXPERIMENT II. Can it also be called an EVIL EXPERIMENT ?

Did ACC obtain approval from the appropriate Ethics Committee before undertaking the research on the citizens of New Zealand ? The IER stated there was NO Priori on which to base the EPN.

See Section 5 in this submission.

The main instrument of abuse to ration treatment was an accreditation scheme married to an Endorsed Provider Network. This was based on discredited statistics, by a monopoly organization through a monopoly entry, overpriced financials, conflicts of interest, no debate, no appeal process, deliberate division and experimentation, absent patient value, with forecast probable distressed end results. These potential results were highlighted in

8.

the IER Report and eventuated. This affected injured and vulnerable disadvantaged of New Zealanders, Patients and the profession's health and social situation and stability, counter productive to the Acts and Ethics that were to protect and serve.

IPRAC Act 2001.

Purpose

" The purpose of this Act is to enhance the public good and reinforce the social contract represented by the first accident compensation scheme by providing for a fair and sustainable scheme for managing personal injury that has, as its overriding goals, minimising the overall incidence of injury in the community, and the impact of injury on the community (including economic, social, and personal costs),"

PREVENTION was absconded by ACC and now REHABILITATION of magnitude is required.

It was against a very destructive and debilitated accident rehabilitation background that The Accreditation Scheme and Endorsed Provider Network was imposed by ARCIC.

2. PRACTICE IN ACCORDANCE WITH ACCEPTABLE PROFESSIONAL STANDARDS.

2.1 Equipment, premises and personal behaviour should be of an acceptable standard.

It is noteworthy that in the submission by:

**Business New Zealand to ACC on
Cost of Treatment Regulations (adjustment to Rates)
June 2005.**

Business New Zealand recognizes the need for Regulated Fees to increase at regular intervals.

1.3 Business New Zealand's key goal is the implementation of policies that would see New Zealand retain a first world national income and regain a place in the top ten of the OECD (a high comparative OECD growth ranking is the most robust indicator of a country's ability to deliver quality health, education, superannuation and other social services).....

2.2 While Business New Zealand would claim no special expertise in setting the levels of contributions for treatment costs, to require either ACC or indeed employers to meet the full cost of any amount the medical providers might choose to impose would be unacceptable. The would be little accountability in such a system which could in many cases, encourage medical providers to submit grossly inflated bills in the knowledge that ACC and ultimately employers would be obligated to pay them.

2.3 Business New Zealand continues to dispute whether the ACC scheme is in breach of the ILO Convention 17. New Zealand legislation has always provided a qualification to the level of payment provided for medical treatment.

3.) RECOMMENDATIONS

3.1 Business New Zealand recommends that while it is appropriate to review the level of fees re imbursed from time to time, treatment fees should continue to be subject of some form of capping.

3.2 Business New Zealand recommends that indexing fees to the Consumer Price Index (CPI) is inappropriate given the changing costs (both up and down) over time and should not be considered.

* (5) Business New Zealand Submission 2005

Any reasoned New Zealand Business or citizen comprehends the need to have sustainable level of fees to keep a business viable. The Minister, Board and Management of ACC had absolved themselves of entering any negotiations with desiring Physiotherapy groups in regards to fees or Terms and Conditions of Practice. This failure, has stressed directly the Profession's ability to equipt and behave at an acceptable standard.

The wider standard has not lowered morality and it has been a credit to the Profession that personal behaviour has been maintained. The flight from the Profession and Country is obvious which is not an acceptable standard for a healthy New Zealand.

The 'fight' of the Profession with ACC is also not an acceptable standard and only comes at patient expense when treatment is not the focus, but the fight. Safety and Risk arises.

2.2. Financial transactions shall be carried out with honesty and recorded fully and accurately.

Physiotherapists have continued to carry out with honesty financial transactions even though ACC's culture in providing a reasonable income has been abandoned for the majority of Patients seeking rehabilitation. A patient surcharge can be 60% - 80% more than The Regulated Fee. This conflicts with the IPRAC Act where fees to be paid are based on:-

- a) **the nature and severity of the injury**
- b) **the generally accepted means of treatment for such an injury in New Zealand;**
and
- c) **the other options available in New Zealand for the treatment of such an injury;**
and
- d) **the cost in New Zealand of the generally accepted means of treatment and of other options, compared with the benefit that the claimant is likely to receive from the treatment.**

In particular The Regulated Fee does not account for *the nature and severity of the injury*.

11.

The Regulated Fee does not *compare the benefit that the claimant is likely to receive from treatment* (Physiotherapy treatment) as all the other health alternatives are more costly than the \$19.48c (Gst inclusive)per patient, per visit per day.

3. APPLY PRINCIPLES OF BEST PRACTICE OF PHYSIOTHERAPY TO THEIR PROFESSIONAL ACTIVITIES.

Physiotherapists shall:

3.1 Accept the ultimate responsibility for all aspects of their physiotherapy clinical care.

Under the previous and current situation Case Managers will refer patients away from the Primary Care Physiotherapist, often without discussion or liaison with the Primary Care Practitioner. The two main guises for referral by ACC from the Primary Care Practitioner are:

1. A patient can see a no cost to the Patient Practitioner at a EPN Practice, where ACC pay fees providing the patient does not have a surcharge imposed. This is used by Case Managers as a reason for patients to change their practitioner. * (6) Anya Rodgers letter.
2. Or, a Patient has to embark on an Activity Based Programme. (ABP) An ABP is where a patient is supervised at a gymnasium by a Physiotherapist offering guidance on a, probable once weekly basis, the remainder of the time a gym trainer sets the programme with no specific treatment.

ABP programmes are an ACC contracted programme held by a small number of Physiotherapists who are endorsed by ACC(EPN'ers). ACC are meant to offer three alternative ABP's to the patient. This rarely if ever happens. * (7) Rowan Glass Letter.

In both the above mentioned scenarios, The Primary Care Practitioner is excluded from contact with the patient, as specific '*hands on*' individualized treatment has not been allowed until recently. The action of ABP's has neglected The Ethics and caused rift between ACC and the patient, as the patient has been directed by ACC to attend a Physiotherapist who they may not know, like or trust, or is necessarily at the a level of qualification for the patient's injury. Safety may be compromised. "*Ultimate responsibility for all aspects of their physiotherapy clinical care,*" is devoid. This is highlighted especially in small communities. It has also caused a dislocation of the individual treatment the patient has been receiving. Practitioner relationships have dwindled as primary patients care enter '*no mans land.*'

A gymnasium programme is not often an alternative to individual patient care, simply an adjunct. Under the ABP individual treatment has been forsaken by ACC.

If an insurance company staff member were to direct a patient from taking one form of medication and not another, or not receive any other suitable treatment, the insurance company would be sued. It seems ACC can abuse the no faults system with impunity. Variable treatments may be complementary.

ACC without discussion or remorse, cost cut, at the patient's expense and at the cost of Legislation and Ethics being upheld. The cost cutting might be better described as cost shifting as there is no evidence to show patients recovered better or more cost effectively by the actions aforementioned. IPAC Act - to benefit claimant is likely to receive.

The down line effect of premature patient ' *exiting of stock*' can be seen by the Orthopaedic Surgical waiting list overload. What the ordinary New Zealander receives in Physiotherapy Rehabilitation can be compared with that of an All Black Rugby Footballer or a Netball Silver Fern. Were ACC or a physiotherapist to treat an All Black or Silver Fern at the same levels expected and delivered for the general public, the physiotherapist would be sacked. When raised with ACC Staff the response has often been " *But Mr. /Mrs public person. Is not an elite athlete!*" One can only speculate what the public outcry would be if top athletes were ' treated less than the maximum practicable level, ' as stated in the Act.

Controller and Auditor General Accident Compensation Corporation: Case Management of Rehabilitation and Compensation. Background to ACC and Case management.

Health Service Providers

2.40

" ACC relies on a number of health service providers to treat and rehabilitate claimants. Section 6 of the Act defines the providers of various health services, and ACC has a responsibility to contract only to those providers who demonstrate and maintain high professional competence. "

The term contract applies to those practitioners obtaining a Provider Number.

2.44

When Health Service Providers register with ACC they are allocated a provider number, which allows them to receive payment for treatment services.

2.45

However, ACC is now using a more rigorous registration system, which requires all health service providers to have specific qualifications, and to meet licensing, certification, and other requirements. This system will show the current professional status of each health service provider, and will collect data on an individual claimant's treatment regime. The registration system sets a consistent standard for health service providers, for the dual benefit of claimants and ACC.

* (8) Controller and Auditor General.

It is a display of the CULTURE OF ACC, that the dual benefits were alleged for **the claimants and ACC.** The Benefits for the Physiotherapy Profession, The Health System burdens that may arise and New Zealand as a country were not included and suffered.

ACC as an insurance company have no mandate Legal or Ethical faculty to determine high professional competence. This is the responsibility of The Physiotherapy Board of New Zealand, Health and Disabilities Commission, Health Competency Act, the legal system and others. If an Insurance Company has issue with a Practitioner they may lay a complaint with Competency Boards in the same manner as any citizen. If there is a matter of fraud a complaint can be laid with The Police.

Any insurance company including ACC is not exempt from law and enabled to be judge, jury and executioner.

ACC compounded this aggressive position by refusing to negotiate with The Physiotherapy Profession on this or any other implementation of services, so vital to ACC according to their statements. ACC UNILATEALLY uses their position as a monopoly Insurance Company to neglect Physiotherapy Ethics and usual business relationships and Legislation.

1.1. Ensure treatments do not conflict with any other known treatment the patient is receiving.

Activity Based Programmes and referral to EPN practices do not ensure treatments do not conflict with any known treatment the patient is receiving. The opposite has every potential to arise.

As stated, once a patient is on an Activity Based Programme and supervised by an EPN practice, the Primary Care Practitioner is excluded from the Patient care. The fact that

provider may have been treating the patient over many years for other health problems other than the current injury and will in all likelihood receive the patient back in due course when the ABP Physiotherapist and Gymnasium are no longer interested, is of no relevance to ACC.

In most countries this treatment conflict would enable patients to sue the transgressor. Patient care means gathering of historical medical information on file. ABP's may not receive this information and patient safety is compromised without it.

3.3 Maintain adequate and appropriate professional development and competency.

It seems ACC has been strenuous to promote a system that is " a breeding ground for mediocrity."

"Increasing service audits, claims reviews, and other forms of monitoring for providers that treat consistently outside the Treatment Profiles, while relaxing the controls for those who do not." IER Doco

"The downside of these options are that they would increase transaction and compliance costs for ACC and patients (monitoring, form filling and checking, delays while approvals are being processed and appeals.). Also, if non accredited providers are less effective in their treatment- so it takes longer to get the same outcome, rather than that additional treatments add benefit- then such controls risk lowering or prolonging the recovery of claimants."

By implementing IER report ACC did not mind the risk of lowering or prolonging the recovery of Claimants. It also burdened the practitioner by such action in that the more compliance (form filling, checking etc) the less focus on the actual delivery of treatment to the patient. The delays of treatment also caused the patient and practitioner additional loss of focus on rehabilitation and increased risk or re injury or risk in health compromise by delay. This would be a situation of the patient being able to sue ACC in any other country.

In New Zealand the total disregard to claimant welfare is indefensible and could only occur because a few advocates and individuals views were not subject to rationale debate. National Women's Unfortunate Experiment.

- Treatment Profiles were implemented by ACC to ration patient rehabilitation by impeding the continuity of treatment of the patient's rehabilitation. Few have been evidence based. It affects the worse cases the most, as the minor injuries will always be within the profile and not subjected to the compliance. Physiotherapy practitioners are best to be in practices that do not accumulate the difficult cases to treat. For

15.

example, a new graduate working in a gymnasium is better off in not having the impositions of Profile compliance, than an established practitioner in a community where more diverse and seriously injured patients might attend, thus causing profile expansion.

- * Treatment profiles are ACC's means of subjecting each injury site and pathology a benchmark number of treatments to complete recovery. The definition of treatment recovery is described in the IPRAC Act as "*the maximum extent practicable.*" The Treatment profile breaks this principle and by the Act is illegal.
- The treatment profiles do not account for the occupation of an injured citizen. ie. heavy manual worker, sedentary occupation, housewife with 4 children, of a secretary, but who plays squash to maintain fitness to ensure work capacity can be undertaken.. The treat profiles do not account for social or psychological factors. The treatment profiles do not account for multiple injury sites compounding recovery.
- The Treatment profiles do not account for underlying illness or other health problems experienced by the patient and may be affecting recovery.
- The Treatment profiles do not account for any complications in health the patient may be experiencing.
- Treatment Profiles are based on ' simple non complex injury.'

Many Senior Practitioners have gathered a client base where the patient accumulation is neither simple or non complex. These are the practitioners that "are more likely to treat outside the Treatment Profile.

The enormous compliance cost, personal, time wise and financial, imposed by ACC upon the practitioner added by the reduction in fees, compounded by the ACC Insurance Companies lack of respect for post graduate training, has demotivated and caused economic hardship the practitioner in continuing education and qualification. Not withstanding, despite these odds most Physiotherapists endeavour to meet the standards of The Health Practitioners Competency Act. * (9) Recertification Audit Process NZPT Board

It is clear by the less than 10% of Physiotherapists practicing in New Zealand aged 50 years or more, what the strains and stresses have been. Morale and physical capacity has collapsed most practitioners ability to 'serve,' or survive.

To my knowledge ARCIC have never acclaimed, affirmed or rewarded:-

Post Graduate Qualification

Experience

Years of Service

Skill

Exceptional qualifying factors.

If an ascending career pathway is a manner of normal New Zealand Society valuing there was none from ACC to The Physiotherapy Profession, indeed Doctor David Rankin, Former General Manager of ARCIC stated " *Post graduate qualification and years of experience statistics indicated increased treatment by those providers.*" * (10)

This does not compare with other professionals such as lawyers who are recognised for these attributes.

Hon. Annette King Minister Health

*" I understand that ACC have also recently undertaken a comparison study of physiotherapists with post graduate qualifications and those without. No statistical difference was observed between the two groups. A copy of this report is available from ACC." * (11)*

One could contend this statement, initially emanating from ACC could have substance. It reduces the care of Patients and a Profession to a base of statistics only and does not account for ACC's Legislation "*SPIRIT OF REHABILITATION.*" It also overlooks the common sense of patients, who frequently self select the practitioner they believe best suited to their medical situation. In other words patients will go to the more skilled, qualified or practitioner with reputation pending the severity of their injury. The most skilled and experienced accumulate the more complex injured patient and will by definition, be most likely to fall outside ACC's Bell Curve Statistics. A Bell Curve must by denotation have practices above and below the average.

All other businesses and professions have a career pathway. A Judge probably sees the more complex case and takes longer to deal appropriately with a single case, than a Solicitor who may attend 20 cases in a day effectively. Do the statistical comparisons of a Judge's output reasonably compare with a Solicitors in regard to numbers seen ? If so The Judge does a very poor job compared with a Solicitor by taking so long to solve just one case. Such belief and common sense ignores *The Spirit*, which in the case of ACC is implanted to account in law. The attitude by what was expressed and actioned by ACC is typical of the ACC culture and a failure to follow the very premise of the Injury, Prevention, Rehabilitation Compensation Act. **The culture of ACC has been to assume the exceptional practitioner as a liability not an asset, because they did not fit ACC's index.**

To invent an index there were a number of meetings with Physiotherapists participating in the Pilot Scheme, and ACC during The Pilot Scheme to provide 'direction'. This lack of integrity and objectivity caused unsatisfactory credence in multiple areas regarding results. The figures produced by ACC, though fatally flawed and directed, were still used as the benchmark of excellence then used as the argument for coercing Physiotherapy subservience !

In New Zealand Law, '*how the common person who has the facts acts*' is a vital point. It is not how the statistics are manipulated by any group, that carries priority in justice. The common person will usually seek treatment from the most experienced, qualified, skilled, committed practitioner, not those whose statistics are most co operative with an insurance company.

Purpose of Injury Prevention, Rehabilitation and Compensation Act 2001: IPRAC

" Establishing as a primary function of the Corporation the promotion of measures to reduce the incidence and severity of personal injury. "

Having a quality, qualified profession of expert rehabilitation providers (Physiotherapists) is fundamental to that ambition.

Higher qualification, experience and skill should not be regarded in normal New Zealand Society as a negative, but an aspiration to those who seek to improve. It should also be a commendation of patient's common sense when the patient seeks a person of higher learning, experience and skill for treatment and advice. New Zealanders self select in regard to the standard of treatment they require at a particular time for their particular injury. They choose according to need. ACC did not account for Patient value in its techniques of rationing care to lowest denomination in the EPN.

*" A client- centred approach to care is a characteristic of expert clinicians, and reinforces the central importance of patient values in physical therapy treatment and decision making. Expert clinicians also demonstrate an ability to reflect and learn from past experiences: a clinical reasoning process that involves problem solving and collaboration with the client; and a focus and expertise about how changes in movement abilities impact on function." * (12) Linking research*

If financial institutions adhere to financial recompense as a primary manner of valuing health providers one only needs to compare recompense with other Primary Care professions, Doctors, Nurses, Psychologists, Dentists for whom Patients Regulated Fees have increased markedly. **For Physiotherapist's, Patient's Regulated Fee stayed static from 1987 until April 2006 when an increase was given, 48cents per visit.**

(In 19 years it gave just one rise in fees 48c gst inclusive. It gave a drop in fees 1987 from \$20.00 to 16.89c when Gst commenced.)

ACC used the fund model as a weapon to increase compliance on Physiotherapy practices driving viability downwards so the only way to receive a higher payment was to accept being on The Endorsed Provider Network. **Once under ACC contract ACC could within 3 months terminate an EPN contract for any reason.** By refusing to increase The Patient's Regulated Fee, ACC knowingly jeopardized the patient's relationship of Trust with their Practitioner and The Practitioner Trust with ACC. This appears to have been a tolerable out fall to the few who govern. The IER clearly stated this eventuality. The National Women's Unfortunate Experiment, compares with the deleterious impact on patients of a few making rules in medicine for many, without debate.

When Gatekeeper opened in first year ACC saved \$814,000,000. Physiotherapists were not credited with having any influence on this saving to New Zealand.

4. RESPECT THE RIGHTS AND DIGNITY OF ALL INDIVIDUALS.

Patients shall have the right to:

Be provided with sufficient information, including:

- - **diagnosis**
- - **treatment plan**
- - **significant benefits, risks and side effects**
- - **prognosis**
- - **timeframes**
- - **results of tests**
- - **any costs to the patient**
- - **in a manner they can understand in order to make an informed choice and give informed consent.**

Discuss treatment during its course.

Voice any concerns about the state and quality of service.

Withdraw from or refuse treatment at any stage.

Ask about treatment alternatives and to be told what is available in a manner which they can understand.

Know the name and qualifications of the person giving the treatment.

Have all information pertaining to them kept confidential and only divulged with their permission, except where the law otherwise permits.

Seek a second opinion without prejudicing their subsequent treatment.

Select or change their physiotherapist where practicable.

Be free from discrimination, coercion, harassment and sexual, financial or other exploitation.

Make a complaint.

Expect the physiotherapist to provide:

**appropriate personal privacy.
clean and safe facilities and equipment.**

4.2 Physiotherapists shall:

Practice in a manner which is culturally safe and in recognition of principles under the Treaty of Waitangi.

Ensure that patients give informed consent to treatment by the physiotherapist or by any other health professional under their direct supervision.

Patient Shall Have The Right To:

HAVE ALL INFORMATION PERTAINING TO THEM BE KEPT CONFIDENTIAL AND ONLY DIVULGED WITH THEIR PERMISSION, EXCEPT WHEN THE LAW OTHERWISE PERMITS.

Privacy Laws were broken by ACC Fraud Investigation Unit and Public Relations Departments in regard to several other Primary Care Physiotherapy Providers. (Mr. Chris LaPine Physiotherapist) * (10) ACC Waikato Physiotherapists Minutes

Physiotherapist Providers have been harassed by ACC to provide Patients Personal Clinical Records without Patient Consent. *(12) CEO Dr. Jan White's letter to M Hood. *(13) Minister ACC Ruth Dyson acknowledging Patient vetting. ACC ignored Minister.)

*** (See Confidential Separate Appendix Under Court Suppression)**

WITHDRAW OR REFUSE TREATMENT AT ANY STAGE.

Under the Case Manager system Case managers have directed patients to other the Primary Care Practitioner. ACC in particular tell patients they must go on an activity based programme or lose their rights to compensation. It is difficult to see how this directive meets the Patients right to choose. The Patient may wish to continue rehabilitation with the Provider of their choice rather than lose contact by going to a provider who the patient does not trust, agree with, or is suitably qualified or experienced to treat that condition.

SELECT OR CHANGE THEIR PHYSIOTHERAPIST WHERE PRACTICABLE.

Under the Case Manager scheme, Patients being directed to another Physiotherapist or Activity Based Programme, are not selecting or changing their Physiotherapist where practicable.

The ABP's have no demonstrable clinical outcomes to show patients are recovering better than persisting with the Physiotherapist of their choice. Further it apparently does not concern ACC the patient is being Coerced by ACC to change practitioners, another Ethical breach.

If patients after taking ACC direction of who should treat them do not respond in recovery or deteriorate from whom does the patient have treatment, the Physiotherapist of the Patient's choice ? In due course it is reasonable to expect the Patient to return to the Primary Care Provider they usually see, the practitioner that ACC have directed the patient away from. This does not create any harmony with Patient, Practitioner, Practitioner with Practitioner or with Patient, Practitioner and Insurance Company ACC. The 'culture of ACC' is such that they appear immune from Patient right to select or change their Physiotherapist where practicable. Ethical Breaches do not seem to be an issue with ACC.

One only needs to read public comment, such as letters to The Editor, Requests for Review, or www.accforum.org.nz to see the thousands of patients who are dissatisfied where ACC imposes and fractures Patient /Physiotherapist relationships.

PRACTICE IN A MANNER WHICH IS CULTURALLY SAFE AND IN RECOGNITION OF PRINCIPLES UNDER THE TREATY OF WAITANGI.

As Physiotherapists in total are made up of only 5% of Indian, Asian, Polynesian and Maori there is a major problem in meeting the standards set as a birthright.

If working in the ACC environment is good, why do so many racial groups, either not enter the profession or fall away from practice. It has a parallel with the major health group of claimants being Maori.

Is the culture and onerous requirements of working under the ACC culture not conducive to the older practitioner or Maori and Polynesian, noted by their flight, thus depressing The Treaty of Waitangi Ethics ?

*(14) Letter Te Ururoa Flavell MP

" Tena koe Malcolm I nga ahuatanga o te wa

Thank you for your letter of 4 October 2005. I am humbled by your warm message of support and want to thank you for taking the time to write to me. It is great to hear from you.

I understand your anxiety about the need for a prompt and robust review of regulation and contract fees paid to physiotherapists. I also appreciate the detail you have enclosed which clarifies the disparity evident in funding of treatment provision.

I will certainly bear your information into account if the Maori Party is involved in any discussions about this the physiotherapist service provided within the community.

One thing which really stood out in your letter is the fact that only 5% of all physiotherapists are Maori, Pacific, Asian or Indian. This is a significant issue for the sector, and clearly must be addressed. I would be very interested in learning about any strategies the physiotherapy profession is taking to address such inadequate representation.

Heoi ano "

5. COMPLY WITH ALL LEGISLATION THAT GOVERNS AND IMPACTS UPON THE PRACTICE OF, AND RESEARCH IN THE FIELD OF PHYSIOTHERAPY.

Physiotherapists shall:

- 5.1. Be familiar with and comply with, for example the Health Practitioners Competency Assurance Act 2003, Code of Health and Disabilities Services, Consumers' Rights and Health Information Code 1994.**

" Evidence based practice (EBP) is clinical decision making based on information from three sources, patient values, clinical expertise and knowledge of best research evidence. Knowledge and use of best research evidence depends on an effective transfer of knowledge from research to clinical practice. "(11)

(Linking research and clinical practice in physical therapy: strategies for integration Physiotherapy (UK) 2006 Patricia J. Manns, Johanna Darrah)

ACC implemented the Accreditation Scheme and Endorsed Provider Network as promoted by The Institute of Economic Research document, knowing the model was a fund model only and there were serious likely side effects on patients seeking rehabilitation for injury by accident. (see IER Summary)

In particular Patient values were not accounted for, but also clinical expertise was shunned. The Primary ethic of Physiotherapy was ignored. The relationship between a Physiotherapist and a Patient is one of trust.

" Patient values have historically been central to physical therapy treatment and recent models of clinical decision making in physical therapy stress their importance. "

(Linking research)

The majority of Primary Care Provider Physiotherapists who's patients would be most affected, rejected the Endorsed Provider Network as a means of improving patient clinical outcome. The beliefs of the individuals implementing the experiment did not subject the process to rationale debate and reliance was not placed on sound evidenced based practice. There had been no proven model on which the experiment was based. A pilot study occurred over a minimal selection of practices. The results were dismissed by The Physiotherapy Profession at large, and discredited by Associate Professor of Statistics Auckland University, Professor Chris Triggs. **" there was no statistical valid method used in the gathering or conclusion of data."** * (15) EPN ASS.Profssor Chris Triggs

(16 - 17) validity of actual Accreditation process NOT Bona fide -Bruce Monkton Managing Director Former Health Department Manager.)

In some manner ACC tried to extrapolate, that a funding experiment equated to best evidenced based practice, that where a business model was created patients health in some way improved. In other words, if a patient were treated in an environment that had acute business accounting they would have a better medical outcome than in a situation where a business model was not formalized. Was the converse true, that a person seen on a sports field, home, social or work location, or clinic that was not endorsed by a corporate funder, that the Patient would have a bad medical outcome ?

The Accreditation was not transportable, unlike United Kingdom. The Physiotherapist did not receive the Accreditation, the building in which the Physiotherapist worked received the accreditation. Any Physiotherapist no matter their expertise, who worked in building based on a funding model ' suddenly ' became better in treatment outcome of Patients ! When the Physiotherapist applied their training and skills in an accredited building they provided good outcomes, when outside that location they did not ? If the Patient was treated outside an accredited building their injury would receive a lesser recovery ? From this point on the lie was promulgated, the facts given spin and the public relations exercise implemented to sell the idea to a provider group who are equally versed in the science of medicine as they are in the art of medicine.

A VERY IMPORTANT OUTSTANDING QUESTION SHOULD BE ASKED OF ACC:-

DID ACC CONTEND ACCREDITATION ' IMPROVED ' PATIENT CLINICAL OUTCOME, OR DID HOLDING AN EPN CONTRACT 'IMPROVE' PATIENT OUTCOME ?

If ACC contend (and we disagree it did,) accreditation improved patient clinical outcomes, why is accreditation of the building and not the practitioner ? Further, Doctor David Rankin former General Manager of ACC stated "*the only clinical outcome is patient satisfaction.*")

If accreditation of a building improves patient's clinical outcomes, why was an Endorsed Network required ?

Clearly ACC wanted to Endorse selected Physiotherapists, where ACC could control income, by the termination of a Physiotherapists contract for higher fees ' for any reason' Including, superficial inference, perhaps reduced advocacy for the patient. There is no independent appeal process for termination.

It would seem ACC is concerned about contracting directly, the Physiotherapist at any cost, not patient welfare.

The wider base of ACC's consumers, Patients were not consulted as to appropriateness of care, or the influence on their primary medical care. Despite these interested parties being recipients and deliverers of healthcare, Patient clinical outcome and opinion was disregarded. "ACC wish there was a good method of obtaining best clinical outcomes. The Accreditation Scheme does not provide this." (Doctor David Rankin General Manager ACC November 2005. First ACC Meeting with Physiotherapy Advisory Group.)

Experiment - procedure undertaken to make a discovery, test a hypothesis or demonstrate a known fact. *

Evil- morally bad, wicked, harmful or tending to harm. Disagreeable, unlucky causing misfortune *

Ethical - a set of moral principles,* (Oxford Modern English Dictionary)(rules of conduct, Collins Dictionary)

The implementation of The Accident Rehabilitation Compensation Insurance Corporation Accreditation Scheme was based on The Institute Of Economic Research document 2002 compiled for ARCIC (ACC). It was a means to limit Rehabilitation to Patients by financial restriction and robust policing of those Physiotherapy Practitioners who did not comply. The IER admitted there were very potential dangers insofar as:-

It was an experiment.

It was Cost Compliance expensive. (Approximately \$23,000 per practice.)

It was a restriction solely for the patients of Physiotherapists alone. (No other Primary Care Provider Group has had to submit to this procedure)

It was a method of rationing rehabilitation.

It did not have any Medical ethical base.

It was possible to lose the trust of Physiotherapy Profession (and their patients. - author's note.)

It would take 3 - 5 years to see if the experiment worked. (a time that would and has disadvantaged the most vulnerable in New Zealand the accident victim. - author's note)

It is noteworthy that Hon Paul Swain, Minister of Labour in Compliance Committee findings 2001 recommended ACC meet with Auckland Private Physiotherapy Practitioners (APPPA) This never occurred ACC ignored the proposal. * (18) Finding The Balance Hon Paul Swain. (19) Paul Adams MP letter .

MINISTERIAL PANEL ON BUSINESS COMPLIANCE COSTS - FINDING THE BALANCE JULY 2001

ACC supplier (treatment provider) issues:

- 76 Collect only necessary data in the current ACC45 form - DONE.**
- 77 Introduce new category of minor injury - NOT DONE**
- 78 Introduce web-based, electronic forms to reduce compliance costs for treatment providers and reduce ACC administration) - PARTIAL DONE.**
- 79 Reduce the claim accept/decline cut off time from three weeks to seven working days. - NOT DONE.**
- 80 Investigate the introduction of separate disputes tribunals: one for fees and compliance cost complaints, the other for treatment complaints. - NOT DONE.**
- 81 Require ACC to urgently meet Physiotherapists to ensure the new accreditation scheme is mutually beneficial. - NOT DONE.**

Therefore in interpreting whether ACC has or has not shown good faith and fair dealing to Physiotherapists and the Patients they treat, regard can be given to the ERA2000 and what is meant by good faith and fair dealing.

It is submitted ACC has not shown good faith and fair dealing to Physiotherapists and the patients they treat and advocate for.

If it accepted that ACC must show good faith and fair dealing to Physiotherapists then ACC are in serious trouble, because even if they have acted legally (which is denied) they are still in breach of duty for acting in bad faith and unfairly.

If ACC were subject to good faith requirements of the Act, then from an employment law perspective they would face thousands of 'personal grievances' and have to pay millions to Physiotherapists for the hurt, humiliation and stress caused them (since compensation for hurt, humiliation and stress is a remedy for a personal grievance)

It is no exaggeration to say that if ACC were subject to litigation of breaching the duty of good faith and fair dealing, they would be close to insolvency with a few years.

It is only since December 2005 that ACC have met The Physiotherapy Profession on a regular basis.

Good faith and fair dealing has been absent, indeed as the submission will show ACC has been oppressive, provocative, and faithless towards the Physiotherapy profession and therefore to the Patients Physiotherapists serve. This is distinctly in contrast in ACC dealings with all the other Primary Care Professions, such as Dentists, Nurses, Counsellors, Doctors and others occupations that been dealt with in contrasted manner and have had their patients financially compensated. No other Primary Care Profession has to undergo authenticated or unauthenticated accreditation process or then be 'Endorsed' and have patients re directed to other 'preferred provider' practices.

Further, ACC implemented a programme of deliberate targeting of those Physiotherapists who spoke up about the ACC behaviour and were subsequently investigated by ACC Fraud Unit. Patients were re directed by ACC Clinical Advisors to Endorsed Provider Network practitioners from the Practitioners the patient trusted and that they had been attending, in some cases over many years.

The Failures of the Accreditation Scheme were apparent to The Minister of ACC, The ACC Board, The Senior Management, and Executive of The New Zealand Society of Physiotherapy from the initiation.

The Accreditation Scheme did not improve:-

The standard of clinical output.

A better clinical output.

A better clinical outcome for The Patient.

Patient satisfaction.

Practitioner satisfaction.

The Accreditation Scheme was not transferable with the Physiotherapy Practitioner. In other words if the Physiotherapist worked in another environment any alleged improvement of accreditation was no longer valid. This action may have increased the value of The Physical Location of The Practice, especially for sale, and lowered the saleable value of those practices without accreditation, but did not increase the value of The Practitioner or the Value of Treatment to the Patient. It was a business issue only and method of curtailing treatment for Patients.

It is clear that some Physiotherapists in positions of having Executive powers were able to not only influence the way ACC and wider Physiotherapy profession was to operate, but also purchased several non EPN practices and turned them into EPN practices. These practices could then claim much higher fees, so long as '*the termination of the contract by ACC for any reason*' was acceptable to the purchaser.

EXPERIMENT

I.E.R. Document 2002. Did not even conclude what *priory* would result from the EPN. At the best the EPN was an Experiment.

" THESE COUNTERVAILING EFFECTS MAKE IT DIFFICULT TO CONCLUDE A PRIORI WHAT BENEFIT OF THE EPN WILL BE OVER A THREE TO FOUR YEAR TIMEFRAME, IF IT WERE TO BE ROLLED OUT NATIONALLY. "

**** ' a priory' denoting deductive reasoning from general principle to expected facts or effects; denoting knowledge gained independently of experience.***

* Collins English Dictionary

The Marginal benefit may drop.

There may be an increase in treatments per claim.

There is a constraint on how fast non accredited providers can become accredited.

The lag creates a queue of people waiting to see the " free " endorsed provider.

Established lines of trust were not seemingly important to IER or ACC as queue's of people requiring healthcare was acceptable. Pain and suffering for patients due to time lags were not a concern as long as the new experimental economic system was in place the people's health was immaterial. IER doco

To whom could the people, (patients) and medical treatment providers and advocates (Physiotherapists) complain when their medical conditions deteriorated ? ACC did not have an ACC Ombudsman despite the Compliance Committee's report suggesting the same. People had to go to the non specific The Office of The Ombudsmen.

Ombudsmen Report / ACC -2004

" Last year we indicated that complainants felt at times they had been given the run around by various agencies in consideration of their complaints about medical assessors. They have no one to whom to turn who is prepared to investigate their complaints and as a consequence they contact our office. We note that no action has been taken to clarify this issue. "

2002/2003	2003/2004	2004/2005	
186	175		190

As a result of our investigation of a complaint, ACC has reviewed its procedures relating to individual rehabilitation plans. Following discussions between ACC and this office, ACC has made a number of changes to its procedures for the preparation of individual rehabilitation plans, to ensure that legislative requirements are met. In particular, changes have been made to:

- * the letters sent to claimants about their rehabilitation plans.
- * relevant fact sheets.
- * the layout of individual rehabilitation plan form that is completed for each claimant. (20) Ombudsmen Report

It was against this background failure that Physiotherapists were expected to operate. If comment of advocacy for Patients was made by The Physiotherapist Provider, that Physiotherapist was under intense scrutiny by ACC and likely to face investigation on some false premise by ACC Fraud Unit.

6. ACCEPT THE RESPONSIBILITY TO UPHOLD THE INTEGRITY OF THE PROFESSION;

Physiotherapists should :

- 6.1. Accept responsibility to ensure the behaviour, whether in another physiotherapists in another health professional, which may be considered unprofessional, is brought to the attention of the appropriate authority.**

Why did the New Zealand Society of Physiotherapy Executive submit to Accreditation and EPN ?

- 1.2.1. One had to be a Member of NZSP union to enter the EPN Scheme. A fee (approximately \$600.00 pa) to join The Society was entailed. This was an advantage in recruiting numbers to the union and increased cash reserves. The Scheme was a monopoly. It gave total control over who could enter EPN to NZSP.**

- 1.2.2. A Physiotherapist had to be a Member of The New Zealand College of Physiotherapy. (a fee of approximately \$80.00 pa)NZ College of Physiotherapists is a subgroup of NZSP. One can only be a College Member by being a Member of NZSP. This increased membership and fees recovered for The College.**

- 1.2.3. The NZSP owned the Standards through its subgroup, New Zealand Physiotherapy Accreditation Standards, NZPAS. (a fee of up to \$23,000 per practice was payable for a 3 year term) There no restriction on fees charged to become accredited and receive an EPN Contract.**

The 'so called ' standards were not recognized by any New Zealand or International Quality Control Agency or Body outside ACC and NZPAS, itself. It was an incestuous arrangement.

There were impediments of allowing alternative competitors to create standards.

4. There was no Appeal process. This is against natural justice.

Any Physiotherapist 'out of favour ' with either ACC or NZSP on discussion with ACC was potentially able to have EPN contract terminated without legal or any reason. It is an unholy relationship to have a professional society in such a relationship with an insurance company, particularly when both are monopolies.

Those executive of the New Zealand Society of Physiotherapists who were contracted to ACC both as consultants, clinical advisors and directly under the EPN were in conflict of interest.

CONFLICT OF INTEREST

*** Is defined in the Public Service Code of Conduct as:-**

" any financial or other undertaking that could directly or indirectly compromise the performance of their duties, or the standing of their department in its relationship with the public, clients or Ministers. This would include any situation where actions taken in an official capacity could be seen to influence or be influenced by an individual's private interest (e.g. company directorships, shareholdings, offers of outside employment) (21)

* (New Zealand State Services Commission Walking The Line - Managing Conflicts of Interest)

ACC Management appears to have disregarded Conflicts of Interest requirements by directly and deliberately employing Senior Executive Members of the New Zealand Society of Physiotherapy. Not only were Executive Physiotherapists employed by ACC these officers were employed in ' non neutral ' positions within ACC. Clinical Advisors to ACC are in positions of privilege and great trust. Colleagues have to supply patient and practice confidential information and submit to Clinical Advisors advice as to continuation of patient treatment. Clinical Advisors are housed in the offices of ACC where access to other departments is boundary less.

The Chairman of New Zealand Private Physiotherapist Practitioner Association (NZPPPA) and Executive member of NZSP was employed by ACC to tour New Zealand and 'sell' the accreditation scheme.

The Chairperson of NZPAS, an executive member of The NZSP was employed as a 'clinical advisor' by ACC.

Senior Executive of NZSP have appeared to have disregarded the conflict of interest protocols by becoming employed by ACC then voting on issues that were the detriment to the majority of their colleagues and Patients in New Zealand.

Other Executive Board Members and The CEO of NZSP have not maintained their independent position of trust by allowing Executive Members to be employed by ACC while still holding trusted positions within The NZSP. Further, some were in the position of chairing vital ' Special Interest Groups,' where any subsequent influence on The Executive was even more meaningful and influential. Actions taken by The Executive of the New Zealand Society of Physiotherapy for the majority of the profession hence were

' clouded. ' ACC were able to exploit this situation, knowing Executive were in direct employ of ACC and were on EPN Contract and could have these contracts terminated by ACC ' *for any reason.* '.

Special relationships were formed by Executive Members of NZSP and Staff of ACC that were not transparent and did not benefit the Physiotherapy Profession they were representing at a Board level. dk

Of note. One can only become a member of The Executive of NZSP by serving 2 years at branch level. Executive appointment is restricted by this wait for the average paid up Physiotherapy Member of good standing, as a member also has to be 3 years a NZSP paid member.

While ACC Management are Government Employees, Physiotherapists in private practice are not Government employees. However, the ethics of Physiotherapists are as high, if not higher, than those employed by The Public Service. (Standards of Ethical Conduct Physiotherapy Board NZ. Physiotherapists must obey New Zealand Law article 5) The principles of Conflict of Interest are still valid.

Avoidance and Disclosure

In particular, public servants are expected to :

- **Avoid giving preferential treatment (whether by access to goods and services or access to "inside information") to any individual or organization with which the employee is involved;**
- **Avoid any financial or other interest or undertaking that could directly or indirectly compromise performance of their duties or the standing of their department in its relationships with the public, clients, or Ministers;**
- **Avoid abusing the advantages of their official position for private purposes, for example they should not solicit or accept gifts, rewards or benefits which might compromise, or be seen to compromise, their integrity, (where such an offer is made, the public servant is expected to report the matter to his or her employer.)**

(18 cont.)

Some Executive Members profited financially by the Accreditation Scheme. While it took approximately 2 - 3 years for the average Physiotherapist who chose to become Accredited and then sign a contract for higher fees with ACC becoming part of an Endorsed Provider Network, EPN, those Executive with early entry gained advantage. *

(22) Physiotherapist Jenny Wills Affidavit

The NZPPA Chair and NZPAS were on the NZSP Executive and meant to represent The Profession 'in total.' **Along with ACC, those involved did knowingly aid and abet Conflict of Interest.** The result was those early entry Physiotherapists were able to

expand their practices rapidly to encompass Physiotherapists who were wanting higher fees but did not have an Accredited Practice. This is a conflict of interest.

ACC- Physiotherapy discussion group included Executive Members who had a Conflict of Interest. This was with NZSP, CEO and Executive, apparent endorsement or acquiescence.

The conflict of interest transferred to the majority of Physiotherapist's patients being disadvantaged by receiving higher fees via EPN than The Regulated Fees which remained static for almost 20 years.

Once exposed through the intervention of Political office (New Zealand First Party) NZPAS Scheme was purchased by ACC for an undisclosed amount of taxpayers money and the Accreditation Scheme 'buried.'

ACC's has continued to 'grandfather' the Accreditation Scheme to those Physiotherapists on the EPN who paid for the Accreditation, even though it has no recognized standard, is defunct, excessively costly to purchase. The question arises, does ACC wish this to be rolled on so they can 'terminate the contract for any Reason,' or is it because of ACC's embarrassment of the failure to follow any procedure, follow the law or hold debate.

This is a corruption of what Standards are about. It is probably illegal practice and is medically unethical to experiment with Patient's healthcare without consent, in such manner. The experiment has split the Physiotherapy Profession. It has created a two tiered layer of Patient Care and Welfare, those Patients who receive \$36.00 per treatment from ACC and those who receive \$19.48c per treatment. Patients who receive treatment at the Regulated Fee level are discriminated against by having to pay both ACC levies and surcharge.

Mr. Rodney Hide MP In The House April, 4, 2001

2894 Rodney Hide to the Minister for Accident Insurance

Has ACC any plans for developing a two tiered remuneration system based upon a nationwide implementation of the Endorsed that has been under trial; if so why, and what is the timetable ?

REPLY

Hon Lianne Dalziel (Minister for Accident Insurance) replied:

ACC currently has no plans to develop a two tiered remuneration system. ACC's Board will consider the results of the Endorsed Provider Network trial in April / May

2893 RODNEY HIDE to Minister for Accident Insurance

What is the purpose of ACC's Endorsed Provider Network Trial and what have been the results ?

REPLY

Hon Lianne Daziel (Minister for Accident Insurance) replied:

The purpose of ACC's Endorsed Provider Network Trial is to assess the feasibility of ACC recognizing quality health care providers who achieve good outcomes for ACC claimants by paying their full reasonable costs.

*Results from the current pilot are being analysed. * (23)*

The IER specifically stated such economic disincentives should apply to Patient Regulated Fees and The Minister of ACC, The ACC Board, Senior Management of ACC and some Executive Members of NZSP have collaborated to split Patient Care in New Zealand. The willpower of Executive Members who were receiving preexistent and higher financial benefit for their patient by being on contract to ACC must be eroded by this position held. Cf. Other Primary Provider Groups. No other Primary Care Practitioner Group has been so placed. This is a monstrous Fracture of The Profession and in New Zealand, unheralded Dislocation of Patient treatment. Nowhere in New Zealand's History has there been such precedent for inequality and two tiers of treatment for the most vulnerable. It is a statement on the health of The Nation in its responsibility and its medical delivery. The original summations by ACC that the Pilot's showed improvement in Patient outcome, but was discredited by Associate Professor Triggs of Statistics Department of Auckland University, shows total disregard to best evidence practice, a warning stated by The National Women's Unfortunate Experiment.

Corrupt - lacking integrity, open to involving bribery, wicked, spoilt by mistakes, altered for the worse. (* Collins English Dictionary)

Only recently has competition of accreditation been allowed.

The Accreditation/EPN/ Treatment Profile was a sham created to ration rehabilitation to patients in New Zealand even though ARCIC legislation states:-

" Treatment is for Restoring The Claimant's Health to The Maximum Extent Practicable. ")

6. Accept the responsibility to uphold the integrity of the profession - cont.

Physiotherapists should :

Behave towards members of other health professions as they would members of their own profession.

ACC Breached the Physiotherapy ethics by burdening nebulous fraud investigations on Practitioners who would not contract directly with ACC.

Increased Policing ("Gestapo Tactics ")

IER Report 2002

"Increasing service audits, claim reviews, and other forms of monitoring for providers that consistently treat outside the Treatment Profiles, while relaxing the controls for those who do not. (author's note. the treatment profiles are based on a simple non complex injury)

The downside of these options are that they would increase the transaction and compliance costs for ACC, providers and patients (monitoring, form filling and checking, delays while approvals are being processed, and appeals) Also if non accredited providers are less effective in their treatment - so that it takes longer to get the same outcome, rather than additional treatments add non benefits then such controls risk lowering or prolonging the recovery of claimants. Taking a more 'adversarial or control approach can have negative impacts on the funder-provider relationship, which in the face of information asymmetry and poorly aligned incentives relies (according to the contracting literature) on mutual trust to be effective. "

ACC have not only failed to give merit in normal business practice custom to Physiotherapists, they have been deliberately and knowingly aggressive to The Profession by showing disregard to the Patient welfare or and The Patient/ Physiotherapist relationship. The pain and suffering for patients while treatment is denied or hampered, was of no regard to ACC.

Practitioner time in focusing on compliance rather than treatment of patients in need was of no regard to ACC. Indeed the stated command was to increase the

audit on practitioners that do not necessarily see patients that fall within simple, non complex patient profile.

Mr Peter Brown MP. New Zealand First 4 May 2005

"These investigations are more of an "in your face" interrogation than an audit.

To a recent written question I posed to the Minister about these so called random audits, the answer was not worth the paper it was written on. So much so that to an oral question Dr Cullen, deputising for the Minister, had to admit the answer was partly wrong. What he still didn't know, it was all wrong !

The truth is these physiotherapists will not sign up to the Endorsed Provider Network scheme because it is flawed and unfair so the Minister is ensuring they get persecuted.

Talk about Big Brother - this is a case of Big Sister - which is far worse - in New Zealand today, "

concluded Mr Brown. * (24)

The ACC Fraud Unit appeared to use threats and unfounded investigation to try to force Practitioners into an experimental system for purely cost savings to an insurance scheme. (Doctor David Rankin. General Manager ACC Waikato Minutes Friday 18th November 2005 " David said 'some investigations in the past had been "adversarial and inappropriate".) (10)

Mr Peter Brown MP, Deputy Leader New Zealand First called the investigations " *Gestapo Tactics.*" * (25)

The action that did take place was heralded in IER document. It is interesting to see that once an Enquiry into ACC was likely how many Fraud Investigators left or had their contracts terminated by ACC.

Has any other patient group and their professional Primary Care Providers been held so contemptuously with a failure of comprehending careers and so blatantly using it's Fraud Unit to pursue those who became an 'outlyer'. The Outlyers were frequently the exceptional Practitioners committed to working long hours, involved in volunteer and Pro bono work, often with difficult case loads and educated in post graduate qualification. ACC appeared to target a group of Physiotherapists who were at

National level of representation and in particular, Executive Members of the Auckland Private Physiotherapy Practitioner Association. APPPA was the only independent group of Physiotherapists outside the jurisdiction of the New Zealand Society of Physiotherapy, (Physiotherapy Union) whose Executive had an especially cosy relationship with ACC.

There were no protocols for ACC Fraud Unit, such as those used by New Zealand Police, SIS or IRD.

(Protocols have been formalized for New Zealand Medical Association 2005, but not yet presented or signed off for Physiotherapy.)

Dr. Michael Cullen, on behalf of ACC Minister Ruth Dyson stated:

" PETER BROWN: Is the Minister aware that many physiotherapists who have been surveyed by the Accident Compensation Corporation (ACC) fraud squad do charge ACC on a per-patient basis, not on an hourly basis, and that the New Zealand Society of Physiotherapists has not agreed to any audit protocols-in other words, is the Minister aware that the written answer she gave me is not worth the paper it is written on; if that is true, what is the Government going to do about it?

HON DR MICHAEL CULLEN: To answer the last part first, I will do exactly what I did just now, which is to say that the first part of the question was answered correctly. In relation to the second part, the Minister was advised that the Society had endorsed the audit protocols. In fact, what happened was that the Society was involved in discussions around them and wrote toBut in general, the Society considers the protocol to beand clearly-

PETER BROWN: So half-right is ok, is it?

Hon DR MICHAEL CULLEN: In general, the Society considers the protocol to be thorough and clearly presented. That, of course, does not amount to a specific endorsement.

PETER BROWN: Is the Minister concerned that Physiotherapists being served by the ACC fraud squad are in the main being told that it is a random audit-which it is not-and that they are being interrogated rather than being interviewed, and is she aware that several have just been cleared already in recent months by a more orthodox random audit; and, if the Minister is concerned about that, what will be done about it?

Continues

Wednesday 4 May 2005 General debate in The House

Peter Brown. I want to talk about the physiotherapists in this country. Some time ago the Government brought in what it calls the Endorsed Provider Network and it wanted every physiotherapist in the country to sign. In theory it is good, because that means an accident victim does not pay anything. Visits to physios would be free, basically. The taxpayer pays. But the deal put to the physiotherapists was so poor, and with no meaningful consultation, that many of the physiotherapists would not accept it. There are a few in Christchurch, effectively none in Auckland and very, very few in the Waikato area and other areas. The member opposite thinks it is a joking matter. Let me say it is far from that. But the Minister for ACC, through the Accident Compensation Corporation (ACC) has given instructions to bring these guys into line. It is the biggest bully-boy tactics I have ever heard of in New Zealand. They are being told that they are subject to a random audit, but, in fact they are being audited by the ACC fraud unit. The ACC accreditation standards are flawed. Some argue they are non-existent. The cost of accreditation for a physiotherapist with a practice certificate in this country is somewhere between \$20,000 and \$30,000. In Australia it is \$500. In this country it takes 18 months to become accredited. In Australia it takes only a couple of weeks. Is it any wonder that some senior physiotherapists in this country are closing their doors? Is it any wonder that if some have not already closed their doors already they are considering such action. It is my understanding that the fraud squad consists of several ex South African police officers. It is not an interview that they subject physios to, it is an interrogation. It is in-the-face interrogation. It is a deliberate tactic by the Accident Compensation Corporation, with the Minister's knowledge to bring physios into line. Today I asked a question in this House and the Minister of Finance answered it, because the Minister for ACC was not here. He had to state that that was only half right and the half he said was correct, was wrong. He was right when he said that the half that was wrong was wrong. In other words, the answer to the question was absolute garbage. I am prepared to say that it was actually a pack of lies. Whoever compiled that answer knew what he or she was putting down on the piece of paper. I tell Government members that that is not good enough. (25)

Many of the Fraud Unit personnel were ex Police Officers, but the only restriction to investigation was the investigating officer's word that the case was handled legally. ACC have subsequently said " *we took our staff's word that they were working within the law.* " Doctor David Rankin General Manager ACC Dec. 2005. Minutes doco 10 Recent Protocols / past errors)

Subsequent to the investigations a number of Fraud Unit staff have had their contracts terminated. One is not aware of ACC offering apology to any Physiotherapist Practitioners who were investigated without procedure and illegally.

Abuse of Physiotherapists rights caused considerable damage to Practitioners with Patients being told by ACC ' *"we are investigating your Physiotherapist for fraud."* There was no contact by ACC to The Physiotherapist beforehand or formally afterwards with the Patient to undo the damage when matters did not progress to fraud, or when there were no other problems, by The Physiotherapist.

- a. **Specific targeting of Physiotherapy Leadership especially APPPA Executive. Almost all Executive Members of APPPA were investigated. My understanding is, none were found to have been in fault in any way.**
- b. **Physiotherapists were not told of their Rights, probably in part because there were no protocols. ACC acted above the law. These independent actions were against natural justice and illegal under New Zealand Law. If any other department so behaved there was immediate recourse. Physiotherapists only had The Minister and Senior ACC Management to complain to, both who were the architects of The IER document being instigated. Physiotherapists were considered guilty before being proven guilty. The Gestapo Practice (Mr. Peter Brown M.P. Deputy Leader of New Zealand First) caused severe mistrust between Patient and Physiotherapist, Patient and ACC, ACC and Physiotherapist. The former relationship has not been regained and ACC continue to harass many Physiotherapists that are claiming fees under Regulations ie \$19.48c (see Karen Mole requests June 2006 (23)**
- c. **Targeting of Regulated Fee Practitioners to force them to enter EPN. See IER document.**
- d. **Additional compliance costs imposed on Physiotherapists in order to economically compromise them and their patients. IER Doco Failure of ACC and NZSP to negotiate. In at least 10 years ACC Management and NZSP have not had meaningful discussions on the terms and conditions facing Patient Care, Safety or Need or The Professions including financial recompense. This is a failure of normal business practice and been an acute point as to the damage that has eventuated on the consumer, The Patient.**

Harassment is defined as :-

1997 Under The Act "harassment" means a pattern of behavior directed against you that includes doing any "specified act" on at least two separate occasions within a 12 month period.* (Harassment Act 1997) (26)

Doctor Paul Hutchison MP National. 24 August 2005

*"Dr Hutchison says that the alleged methods used by ACC to investigate the physiotherapists is worthy of a formal Enquiry." * (27)*

Harassment continues today as demonstrated by ACC Provider Monitoring Unit writing and telephoning those Physiotherapists who are working under Regulated Fees and see more than 20 patients a day and have a higher than 30% request for extended treatment. (see Karen Mole Letter Provider Monitoring Unit) These Physiotherapists in general have been investigated before and cleared of any wrong doing, but remain those who speak up against ACC methods and have not joined EPN.

The Provider Monitoring Unit offices are within ACC Corporate Office Molesworth Street Wellington.

The unit is not neutral, but the Management paid by ACC. The Unit directly reports to ACC Fraud Unit. *"as me (Karen) and Kathryn see fit, but we have a high threshold!"*

In the Monitoring Unit there is no reference in template of action for Physiotherapist innocence. The levels of guilt are rated 1 - 5 the first being, Practitioner *'inadequate knowledge'* the last *'Fraud.'* * (see ACC template Fraud) (28) (29)

* Note - *"Use Tool to determine Aberrant Behaviour. "*

A/ The tool is not used to in ACC's mind to determine exceptionally good behaviour.

B/ Physiotherapists have requested 'The Tool' via Ombudsmen's Office. If a tool is to be used in New Zealand to modify and create good behaviour the public should be aware of the tool. Cf Speed cameras.

New Zealand as a country still legislatively relates to people being innocent until proven guilty. The culture of ACC is reversed.

LEGISLATION - & COMPARITIVE LEGISLATION

INJURY PREVENTION REHABILITATION and COMPENSATION ACT 2001 Commenced: 1.April 2002

3 Purpose

The purpose of this Act is to enhance the public good and reinforce the social contract represented by the first accident compensation scheme by providing for a fair and sustainable scheme for managing personal injury that has, as its overriding goals, minimising both the overall incidence of injury in the community, and the impact of injury on the community (including economic, social and personal costs), through--

- (a) establishing as a primary function of the Corporation the promotion of measures to reduce the incidence and severity of personal injury:**
- (b) providing for a framework for the collection, co-ordination, and analysis of injury-related information:**
- (c) ensuring that, where injuries occur, the Corporation's primary focus should be on rehabilitation with the goal of achieving an appropriate quality of life through the provision of entitlements that restores to the maximum practicable extent a claimant's health, independence, and participation:**
- (d) ensuring that, during their rehabilitation, claimants receive fair compensation for loss from injury, including fair determination of weekly compensation and, where appropriate, lump sums for permanent impairment:**
- (e) ensuring positive claimant interactions with the Corporation through the development and operation of a Code of ACC Claimants' Rights:**
- (f) ensuring that persons who suffered personal injuries before the commencement of this Act continue to receive entitlements where appropriate. ⁽³⁰⁾**

ACC loses over 25% of Formal Reviews, recently 50% +. Now 1/3rd resolved before review. (ACC Annual report 2005. total reviews requested 3,500+)

The Ombudsmen's Office continues to have misgivings of ACC. See Annual Reports 2003, 2004, 2005.

RELATIONSHIPS:

The Employment Relations Act 2000 should be comparable to the Accident Rehabilitation Prevention Compensation Insurance Corporation (ACC) and Physiotherapy Profession relationship.

"Physiotherapists are not employed by ACC. Therefore the ERA2000 Act has no application to the relationship between ACC and Physiotherapists. But as 80% of a Physiotherapist's income is derived from ACC, a Physiotherapist is in a position somewhat analogous to an employee.

More importantly, the relationship between ACC and a Physiotherapists is, like an employment relationship, a relationship of trust where good faith and dealing should apply in order to provide rehabilitation to the PATIENT. (See doco 31 - 32 Labour Department 2004 Good faith in employment relationships)

" The ultimate goal of the Employment Relations Act is to build productive employment relations.

Employer, employees and unions will always see change to employment relationships as needs and conditions change. New Issues will always arise in the workplace.

The goal of the Act is for employers, employees and unions to make changes, and work through the issues themselves, by dealing with one another in good faith, which includes mutual obligations of trust and confidence.

At all times, the benefits of collective bargaining - as well as the right to individual choice- should be respected. "

The Big Picture: Good Faith

While employees may have a range of different interests, they have a common interest in the validity and success of business.

"If sensible people deal with one another in good faith, then most differences should be able to be resolved amicably. "

Good faith is...

" ...being active and constructive in establishing and maintaining productive relationships. It is about how people and organisations treat one another every day, including being responsive and communicative.

At the most basic level, good faith is about telling the truth. It means employers, employees and unions are not allowed to do anything that misleads or deceives one another. "

Text of the code of good faith

. Department of Labour Fact sheet section 35 (1) Employment Relations Act 2000 (the Act) Hon Paul Swain. Minister of Labour 2005.)

1.1 The purpose of this generic code is to give guidance to employers and unions (the parties') on their duty to act in good faith when bargaining.....

1.2 This code is not a substitute for the Act. However, the Employment Relations Authority (the Authority) or employment court (the Court) may have regard to it in determining whether or not the parties have dealt with each other in good faith bargaining for a collective agreement.

1.3 Good faith under the Act requires parties to an employment relationship to be active and constructive in establishing and maintaining a productive employment relationship.....

Employment Relations Act 2000

" The Employment Relations Act 2000 (ERA) is performance based legislation which has the objective of building productive employment relationships through actions of good faith behaviour."

The ERA covers the entire employment relationship, from negotiating an agreement - continues.

While Physiotherapists are not employees of ACC, 80% of a private Physiotherapist Practitioner comes from ACC work related injuries. The Spirit of The Act should apply. Historical Acts such as ERA are a reasonable guide for relationships and negotiation.

If the Spirit of the Act and particular the duty of good faith and fair dealing was used as the criteria by which to measure the performance of ACC, there would be a backlog of 'personal grievances' by Physiotherapists for the way which ACC have breached the duty, eg Fraud Unit investigations and interrogations, procedural fairness is not observed, Physiotherapists harassed.

The NZSP eventually had pressure put upon The Executive by members to negotiate terms and conditions with ACC. The NZSP then for its own reasons, sought legal opinion from Kensington Swan-lawyers The Executive then stated to Members " *We are unable to negotiate due to The Commerce Act.*" * (33)

Mr. Peter Craighead Barrister gave independent opinion to the Physiotherapy APPPA that the advice given was probably made on insufficient facts or was for other than valid reason by NZSP.

1. Not being able to formally negotiate with ACC and a major Medical Primary Care Provider Group is frankly absurd as all other Primary Providers negotiate for their members. What is a Union for if not to negotiate on behalf of members ? This is of serious concern and about which the Conflict of Interest is acute. ERA 2000 states negotiation is an essential part of employment relations.
2. There have been no formal negotiations with ACC and Physiotherapy groups until December 2005.
3. Only one Medical Person on ACC Board -ever. (Dr.Morgan Fahey) This is indicative of how much ACC regards itself as a funding agency compared with Rehabilitation.
4. Board will only provide minutes at huge cost to person or persons making request. The Auckland Private Physiotherapy Practitioners has requested same on several occasions. This appears provocative in age of IT and E mails. Is it a deliberate impediment to prevent Primary Providers knowing what are ACC Boards intentions and priorities ? This is not conducive to being on the same team. Most would regard exclusion as poor business management. * (34)
5. ACC had little or no liaison with Physiotherapy groups until December 2005. A small group of Physiotherapy Practitioners mainly from The New Zealand Society of Physiotherapy would meet on an Ad hoc basis. Frequently ACC cancelled the meetings at the last minute.
6. Conflicts of interest arose as a result dealing with individuals. Other Physiotherapy groups have offered to negotiate, but until December 2005 ACC have refused to follow normal business procedure and negotiate with any interested Physiotherapy Primary Care Provider Group.
7. ACC has disregarded and even aimed for exit of large number (30%) of Physiotherapists from practicing Physiotherapy. Deputy Prime Minister Dr. Michael Cullen's stated this in The House. In fully competitive environment would be almost reasonable, but in monopoly corporate it has been termed "*Gestapo tactics*." ACC have knowingly seen patients requiring Rehabilitation will be compromised by Physiotherapists resigning.
8. Currently New Zealand wide approximately 1 Physiotherapist per 1,142.85 people. Cf. 1 Physiotherapist per 35 All Black Players or Silver Fern athletes. Commonwealth Games Team of 270 total, 150 athletes. 11 Physiotherapists = 13.6 per athlete or one Physiotherapist per 24.5 Team members including management.

Dr. Cullen's comments regarding 30 percent loss of Physiotherapists is thus, interesting.

9. Effectively made New Zealand a most harsh and difficult environment in which to practice. The Spirit of the IPRAC Act must be adhered to in relationships with Practitioners and the Patients practitioners advocate for.

Auckland Private Physiotherapist Practitioner's Association met with Hon. Paul Swain Compliance Cost Committee 2001. Hon Ruth Dyson replied to a letter of concern regarding compliance costs for Physiotherapists.

"I appreciate your interest in this matter. I can assure you that ACC is taking the recommendations from the Ministerial Panel on Compliance seriously and will endeavour to implement changes as quickly as possible."

*(35) Letter Minsister ACC Ruth Dyson

At the best ACC's generalship was a case of those in authority 'knowing best' for the public at large, democracy over ridden and bully boy approach required due to the inadequacies of the system being implemented on merit and agreement.

Mr. Paul Adams MP United Future 21 October 2004

" I will try to get alongside the Hon Paul Swain to find out why ACC have neglected to meet and negotiate with the relevant bodies, especially seeing this is exactly what was recommended.

If I do get a response that brings any hope I will contact you. " (17)

7. OUTFALL.

NZ statistics Physiotherapy Board. (33)

90% Age 50 years or more have left the profession -

cf Queensland Physiotherapy where 35% are of similar age many over 60 years. Compare with Parliament the New Zealand Age ratio would equal 2.4 MP's aged over 50 years in Parliament. This obvious destruction of corporate knowledge appears to have been of little consequence to ACC as many of The Practitioners investigated were the most experienced and highly appointed nationally and internationally. * (36)

Only 45 Males in NZ over age 50 years still practicing.

151 total Physiotherapists over age 50 years

Less than 5 % of all Asian, Polynesian, Maori and Indian

Higher quality Medicine simply does not occur under the funded model, one bereft of ethics, legal and clinical status. The most vulnerable, the disabled injured patients of New Zealand have faced the experiment that is unacceptable in a civilized state, even if the experiment was to be regarded as a partial success (and we contend it was not). In medicine 'close enough care' can be one that puts the Provider before a disciplinary Council.

The same has occurred for ARCIC and one asks will there be Recognition of fault, Remorse, Recompense and no Repetition by ACC? The Patient is entitled under law and ethically to full Rehabilitation. A funding organization must be brought to account by their treatment of The Physiotherapy Profession and the patients for which they care. If ACC is to continue as a no fault scheme, Management must face the responsibilities of the spirit of the Act.

How successful has rationing Rehabilitation to Patients been ?

The Orthopaedic waiting list has reached epidemic proportions.

20% Patients are outraged of their treatment by ACC. It is the only Government Department which lock their toilets to the public due to safety concerns of the staff. (1.2 million claims annually. ACC Annual report 2005. 20% = 240,000 dissatisfied Patients)

ACC Forum.co.nz a patient lobby group has multiple sad tales of woe. ACC 'tail' is at epidemic proportions of people not fully rehabilitated.

47.

Excessive costs for average Physiotherapists to achieve Accreditation. Usual small business qualification cost, ie tourism \$500 -\$1000.00) The costs repeat for Physiotherapy every three years with no limits in requirements or costs. Had to be member of Physiotherapy Union NZSP. Cf UK.

No other Profession has faced same selectivity or pogrom.

Individuals have been targeted, namely those under Regulated Fees and in leadership positions ie APPPA

ARCIC have gone so far from Woodhouse intention, current Law and spirit enshrined unusually in IPRCA.

8. SOLUTION.

Law *"The Patient should expect to receive rehabilitation to fullest level possible."*

1. THE EXPERIMENT OF ENDORSED PROVIDER NETWORK BASED ON THE ECONOMIC RESEARCH REPORT SHOULD STOP IMMEDIATELY.

THERE SHOULD BE NO DISCRIMINATION BETWEEN REGULATED FEE PATIENTS AND ENDORSED PROVIDER NETWORK PATIENTS. ALL PRIMARY CARE PROVIDER GROUPS SHOULD BE TREATED EQUALLY. PHYSIOTHERAPY SHOULD NOT BE SINGLED OUT FOR THE ONEROUS AND DEBILITATING COMPLIANCE AND FINANCIAL ENCUMBRANCE.

- 2. All Patients and Physiotherapists and their Patients should be treated with respect and equally.**
- 3. Fees should be paid for all patients Regulated Fee or Endorsed Provider Patient, at equal rate, as it is for patients attending treatment with any other Primary Care Practitioner Group.**
- 4. Accreditation should not be the entry requirement for fees at higher rate.**
- 5. Practitioner competence, skills, experience, qualification should be the criteria for higher fees, as it is in the international market place. Internationally the physical location is not the discerning factor as to practitioner competence. New Zealand needs to align to World trend.**
- 6. The Practitioner should be accredited, not the practice.**
- 7. The cost of accreditation should be minimal or subsided by government or its agency.**
- 8. The costs of accreditation should be capped.**
- 9. The Appointment Accreditation Referees should be open to challenge.**
- 10. There should be a negotiation team set up with Physiotherapy Groups and ACC. Negotiations should be fair and reasonable on an annual or biannual basis. Or more if required.**

11. **A Physiotherapy Primary Care Provider should be appointed to ACC Board. This would ensure the ACC Minister had a direct information from the profession regarding the best manner of prevention problems in rehabilitation. ***
(36) Minister ACC Ruth Dyson
12. **A Patient advocate should be appointed to The ACC Board.**
13. **Protocols should be set up and ratified by Physiotherapy Groups and Provider Investigation Unit. (Fraud Unit)**
14. **ACC Provider Investigation Unit should be independent of The Funder**
15. **ACC. It should not be beholden to ACC financially or in any other manner. Physiotherapists are frightened to speak out, fear for their ability to practice and generally insecure regarding the methods ACC employ to investigate them.**
16. **ACC should be Au fait with Harassment law 1979 and comply.**
17. **ACC should acknowledge it used illegal tactics against Physiotherapy Providers and their Patients and make restitution as determined by this Equiry Authority.**
18. **NZSP should acknowledge Conflict of Interest by NZSP Board Members and Others has occurred and make restoration and restitution as determined by the Equiry Authority.**
19. **Individuals who have transgressed against The Physiotherapy Profession and Patients should acknowledge and make restoration and restitution as determined by The Equiry Authority.**
20. **The Minister of ACC, ACC Board, ACC Senior Management should acknowledge the miscarriage of justice against The Physiotherapy Profession and their Patients and make restoration and restitution as determined by The Enquiry Authority.**
21. **The ACC Board should have an open pathway of Board Minutes and other relevant material available to the Physiotherapy Profession and their Patients.**
22. **Appeal processes should be implemented at all points when there is miscarriage of natural justice.**
23. **The Physiotherapy Profession, especially Executive Directors, should be taught their Rights and the Responsibilities, especially Privacy Act, Health and Disabilities, ARCIC Patient Bill of Rights, Human Rights. These are now taught at under graduate level.**

24. Any paid up Member of good standing should be able to stand for The Physiotherapy Executive and hold any position within The Executive

25. A failure by ACC to address all the above problems affecting Patients receiving rehabilitation by Physiotherapists should immediately see restoration the right to sue as the contract between ACC and Patients has been broken.

There is a simple method of judging if New Zealanders receive equal treatment via the experts of rehabilitation Physiotherapists. Do the All Blacks, and Silver Ferns who one supposes set a benchmark in treatment standards, have the same level of treatment as all other New Zealanders ?

The Accreditation Scheme and Endorsed Provider network have further eroded treatment levels to create a two tiered system of Primary Health Care Delivery for Patients, unlike that affecting any other Primary Care Group of Patients.

The experiment must cease immediately and All New Zealanders be treated with the same equality as the other.

The Original Woodhouse Principle.

" All New Zealanders are entitled to full, fair and equal treatment and rehabilitation.

Fees will be fair and reasonable by New Zealand Standards.

For these the patient gives up the right to sue."

Malcolm Hood

Manipulative Physiotherapist