

# University of Wollongong - Research Online

## Thesis Collection

Title: Medical fraud and inappropriate practice in Medibank and Medicare, Australia 1975-1995

Author: Kathryn Flynn

Year: 2004

Repository DOI:

### Copyright Warning

You may print or download ONE copy of this document for the purpose of your own research or study. The University does not authorise you to copy, communicate or otherwise make available electronically to any other person any copyright material contained on this site.

You are reminded of the following: This work is copyright. Apart from any use permitted under the Copyright Act 1968, no part of this work may be reproduced by any process, nor may any other exclusive right be exercised, without the permission of the author. Copyright owners are entitled to take legal action against persons who infringe their copyright. A reproduction of material that is protected by copyright may be a copyright infringement. A court may impose penalties and award damages in relation to offences and infringements relating to copyright material.

Higher penalties may apply, and higher damages may be awarded, for offences and infringements involving the conversion of material into digital or electronic form.

**Unless otherwise indicated, the views expressed in this thesis are those of the author and do not necessarily represent the views of the University of Wollongong.**

Research Online is the open access repository for the University of Wollongong. For further information contact the UOW Library: [research-pubs@uow.edu.au](mailto:research-pubs@uow.edu.au)

2004

## Medical fraud and inappropriate practice in Medibank and Medicare, Australia 1975-1995

Kathryn Flynn  
*University of Wollongong*, [kflynn@uow.edu.au](mailto:kflynn@uow.edu.au)

Follow this and additional works at: <https://ro.uow.edu.au/theses>

### University of Wollongong

#### Copyright Warning

You may print or download ONE copy of this document for the purpose of your own research or study. The University does not authorise you to copy, communicate or otherwise make available electronically to any other person any copyright material contained on this site.

You are reminded of the following: This work is copyright. Apart from any use permitted under the Copyright Act 1968, no part of this work may be reproduced by any process, nor may any other exclusive right be exercised, without the permission of the author. Copyright owners are entitled to take legal action against persons who infringe their copyright. A reproduction of material that is protected by copyright may be a copyright infringement. A court may impose penalties and award damages in relation to offences and infringements relating to copyright material.

Higher penalties may apply, and higher damages may be awarded, for offences and infringements involving the conversion of material into digital or electronic form.

Unless otherwise indicated, the views expressed in this thesis are those of the author and do not necessarily represent the views of the University of Wollongong.

### Recommended Citation

Flynn, Kathryn, Medical fraud and inappropriate practice in Medibank and Medicare, Australia 1975-1995, Doctor of Philosophy thesis, School of Social Sciences, Media and Communication, University of Wollongong, 2004. <https://ro.uow.edu.au/theses/2071>

## **NOTE**

This online version of the thesis may have different page formatting and pagination from the paper copy held in the University of Wollongong Library.

## **UNIVERSITY OF WOLLONGONG**

### **COPYRIGHT WARNING**

You may print or download ONE copy of this document for the purpose of your own research or study. The University does not authorise you to copy, communicate or otherwise make available electronically to any other person any copyright material contained on this site. You are reminded of the following:

Copyright owners are entitled to take legal action against persons who infringe their copyright. A reproduction of material that is protected by copyright may be a copyright infringement. A court may impose penalties and award damages in relation to offences and infringements relating to copyright material. Higher penalties may apply, and higher damages may be awarded, for offences and infringements involving the conversion of material into digital or electronic form.

**MEDICAL FRAUD AND INAPPROPRIATE PRACTICE  
IN MEDIBANK AND MEDICARE,  
AUSTRALIA 1975-1995**

A thesis submitted in fulfilment of the  
requirements for the award of the degree

**DOCTOR OF PHILOSOPHY**

from

**UNIVERSITY OF WOLLONGONG**

by

**Kathryn Flynn**

**Science, Technology and Society**

**School of Social Sciences, Media and Communication**

2004

## Table of Contents

<b>Title page</b>	i
<b>Table of Contents</b>	ii
<b>Glossary</b>	vii
<b>Definitions</b>	viii
<b>Abstract</b>	xi
<b>Acknowledgments</b>	xii
 <b>Introduction</b>	 1
1. The philosophy of insurance	3
2. The politics of health	5
3. Accountability to the public purse	7
4. Methodology	9
5. History of health fraud	11
6. Thesis structure	12
 <b>Chapter One – Some themes in the literature</b>	
1. A hospital system in crisis	15
2. Defrauding Medicare – the size of the problem	17
3. Regulatory practice	19
4. Rationale for the thesis	20
5. Key terms – fraud, doctor-shoppers, criminal fraud, overservicing, moral hazard and fee-for-service	23
6. Some themes in the literature on fraud and overservicing	32

7. Health economists and health policy analysts	34
8. Regulatory approaches	38
• Publicity as a regulatory tool	40
• Other legal and criminological approaches	48
9. Entrepreneurial medicine	52

## **Chapter Two – Accountability and social control in an age of neoliberalism**

1. Introduction	57
2. The Enlightenment	60
3. Representative government	63
4. The separation of powers	65
5. The problem of accountability	66
6. On the value of audits – three case studies	75
7. The criminal sanction	79
8. Foucault of governmentality	80
9. Government at a distance	82
10. Social security	83
11. The risk society	86
12. Social control	87
13. The new regulatory state	88
14. Sociology of the media – whistleblowing, scandals and the role of publicity in the structure of accountability	89

## **Chapter Three – Prior to 1975**

1. The growth of health care financing in Australia	99
2. The 1920s and 1930s and the failure of national insurance	104
3. The 1940s and constitutional change	105
4. The Pharmaceutical Benefits Scheme	108
5. The 1950s – the Page National Health Scheme	109
6. The 1960s – The shaping of the health policies of the	

Australian Labor Party	114
7. The Nimmo Report	121
8. Labor wins Power	128
9. Scotton – Canada	131
10. The legislative base - <i>Health Insurance Act</i>	134
11. The AMA aims to defeat the Health Bills in the Senate	136

#### **Chapter Four – Goldrush: 1975 to 1981**

1. Liberal-Country Party Coalition winds back Medibank	139
2. Medibank Review Committee	143
3. Medical fraud emerges as an issue on the political agenda	144
4. The establishment of Medibank Private	146
5. The Pathology Services Working Party	147
6. Parliamentary debate and media analysis	150
7. Australian Medical Association	153
8. The position of the General Practitioners Society of Australia on fraud and overservicing	156
9. Health Insurance Commission	158
10. Setting up a system to manage fraud	162
11. First skirmishes in the ‘minor war’: Dr. Geoffrey Edelsten	163
12. The Royal Commission into Deep Sleep Therapy	165
13. Blue-collar crime discovers medical fraud	167
14. Inadequacies of the legal system	168
15. Dr. Shik Aun Low	171
16. Different perspectives on measures to contain fraud and overservicing	174

#### **Chapter Five – Whistleblowing: knowledge without power**

1. Introduction and definition of whistleblowing	183
2. The ethical dimension	186
3. Investigative journalism	189
4. Medibank's first whistleblower	190
5. John Kelly - the second whistleblower	197
6. AMA agrees with Kelly's estimate of losses of \$100m	199
7. Australian media interest in medical fraud	201
8. Joint Committee of Public Accounts Inquiry into Medical Fraud	202
9. Evidence given to the Committee by staff from the Commonwealth Department of Health	204
10. Recommendations of the JCPA - 1982	215
11. The consequences	217
12. Official views on whistleblowing	223

## **Chapter Six - Medicare and medical militancy: 1983 to 1985**

1. Introduction	225
2. The Hawke government-neoliberalism	228
3. Labor's health policy	232
4. What Medicare offered	234
5. Background to the response from the medical profession	238
6. The NSW doctors' dispute	242
7. The Penington Inquiry	244
8. The Federal Election November 1984	246
9. Government backs down on fraud and overservicing	250
10. The summit	256
11. The terms of the settlement of the doctors' strike	258
12. Media reaction	259
13. The fraud and overservicing function is transferred to the HIC	261
14. Softening of the legislation in fraud and overservicing	264

## **Chapter Seven - Policing Pathology**



1. Introduction – pathology offered the greatest opportunities for fraud and overservicing	269
2. Inducements	275
3. Early signs of the abuse of medical benefits	276
4. The Approved Pathology Practitioners Scheme	279
5. The JCPA – report 236 – Pathology	283
6. Macquarie Pathology Services	286
7. The Bates Report	298
8. The Bachich Case	300
9. The Audit Office and the media respond	301
10. A new legislative approach	303
11. The culture of kickbacks continues	305
12. The view from the Department of Health and Aging	306
<b>Conclusion</b>	309
<b>Interviewees</b>	315
<b>Bibliography</b>	323
<b>Appendices</b>	373
A Media attention to fraud and overservicing 1975 – 1981	
B Media attention to fraud and overservicing 1982	
C Department of Health - staff memorandum on whistleblowing	
D Letter to Michael MacKellar from Kevin Newman Minister for Administrative Services	
E Quinn document	
F Letter to Neal Blewett, Minister for Health from Thomas Wenkart	
G Letter to staff from Thomas Wenkert and Ross Sutton	
H Macquarie Professional Services – Office Minutes written by Ross Sutton	

## Glossary

### Abbreviations

AAPP	Australian Association of Pathology Practitioners
ABC	Australian Broadcasting Corporation
ACOA	Australian Clerical Officers' Association
the Act	<i>Health Insurance Act 1973</i>
AFP	Australian Federal Police
AFR	<i>Australian Financial Review</i>
ALP	Australian Labor Party
AMA	Australian Medical Association

ANAO	Australian National Audit Office
ATO	Australian Taxation Office
APA	Approved Pathology Authority
APL	Approved Pathology Laboratory
APP	Approved Pathology Practitioner
CPD HR	Commonwealth Parliamentary Papers, House of Representatives
CT	<i>The Canberra Times</i>
the Department	Commonwealth Department of Health and Ageing
DPP	Commonwealth Director of Public Prosecutions
DRS	Doctors' Reform Society
FODS	Fraud and Overservicing Detection System
FOI	<i>Freedom of Information Act</i>
HIC	Health Insurance Commission
JCPA	Joint Committee of Public Accounts
MBR	Medibank Review Committee
MBS	Medical Benefits Schedule
MJA	<i>Medical Journal of Australia</i>
MPRC	Medicare Participation Review Committee
MSCI	Medical Services Committee of Inquiry
NATA	National Association of Testing Authorities
OECD	Organisation for Economic Co-operation and Development
OP	other pathologist (Medicare benefit rate)
PM&C	Department of Prime Minister and Cabinet
PSR	Professional Services Review
PSWP	Report of the Pathology Services Working Party
RCPA	Royal College of Pathologists of Australasia
SH	<i>The Sun Herald</i>
SMH	<i>The Sydney Morning Herald</i>
SP	Specialist Pathologist (Medicare benefit rate)

## Definitions

**allocative efficiency** The extent to which resources are allocated to best effect among competing programs. Allocative efficiency is concerned with choosing to allocate resources to those programs that yield the highest benefits.

**bulkbilling** Where doctors accept 85 per cent of the scheduled fee as full payment for a medical service.

**coning** The reduction of fees and benefits for identical services which are either performed together or sequentially, rather than as individual items.

**co-payment** A payment made by a consumer at the point of service which is a contribution to the cost of providing that service.

**corruption** Usually defined as the exploitation of public office for personal gain or the abuse of power for institutional ends, where there is no explicit personal gain for the offender. In this thesis the definition is broadened to include laws and administrative systems that foster illicit behaviour.

**efficiency** The production of health services at a minimum cost and in a way that improves health outcomes.

**entrepreneurial medicine** A group medical practice involving vertical integration, where both general practitioners and other referral services are linked in some form of financial interrelationship, either individual or corporate, often with the involvement of commercial risk capital.

**economics** The art of choice in the use of scarce resources.

**fee-for-service** The doctor charges the patient for the cost of the medical service provided. Medicare reimburses this cost, either in part or full, to the patient.

**fraud (against medical benefits)** This occurs when a doctor makes claim is made for a service not rendered to a patient, or where the service is incorrectly described when billing the patient. Patients and other members of the community can also defraud the system in a variety of ways including lodging false claims and computer crime.

**groupthink** A deterioration of mental efficiency, reality testing, and moral judgement that results from in-group pressures.

**health care inflation** The extent to which medical price inflation exceeds general inflation.

**health economics** A specialized study into the allocation of health resources and how valued goals are achieved.

**Health Maintenance Organisations** An insurance system prevalent in the United States providing managed care. Many believe that managed care eliminates the problem of fraud. This is not the case.

**managed care** The arrangement whereby an organisation assumes responsibility for all necessary health care for an individual in exchange for fixed payment.

**medicaid (United States)** State funded health insurance for the poor.

**medicare (United States)** Federally funded health insurance for the elderly.

**medicare (Australia)** A system of universal health insurance providing free access to public hospitals and access to the services of general practitioners and specialists. Specialist services are available on referral from a general practitioner. It includes services by pathologists and radiologists.

**moral hazard** A term used in the insurance industry that refers to the recklessness induced by the security induced by insurance cover. Fraud is also part of moral hazard but poses different problems, in being a deliberate exploitation of the insurance contract. Moral hazard has been more broadly defined as the ways in which an insurance relationship fosters behaviour by *any* party in the relationship that immorally increases risk to others.

**opportunity cost** Every time resources are used in one way in health care, opportunities are forgone to use these resources in some other way.

**overservicing** Medical services that were not reasonably necessary for the adequate medical care of the patient concerned.

**qui tam suits** (Latin for “who as well”; that is, who sues for the state as well as for him or herself). It is a civil and not a criminal statute. The statute authorises private citizens to sue on behalf of the government, and to share in any recovery of defrauded funds eventually recovered by the government. In the United States more than half the settlements awarded the Department of Justice in health care fraud cases arise from *qui tam* suits.

**resource allocation** The extent to which resources are allocated to best effect among competing programs.

**symbolic power** Activities and resources gain in symbolic power, or legitimacy, to the extent that they become separated from underlying material interests, and hence go misrecognised as representing disinterested forms of activities and resources.

**symbolic capital** Symbolic capital is a reformulation of Weber’s idea of charismatic authority that legitimates power relations by accentuating selected personal qualities of elites as supposedly superior and natural.

**universal public health insurance** Health insurance which provides coverage to the entire population.

**white-collar crime** This term excludes conventional street crimes. An early definition of white-collar crime was deviance committed by people of high status or repute in the course of their occupation. The definition has been broadened to cover illegal acts committed by non-physical means and by

concealment or guile to obtain money or property or to obtain business or personal advantage. The term includes deviant behaviour by corporations or officers of corporations in the service of the organisation.

## **Abstract**

The Australian system of universal health insurance has enjoyed great electoral popularity but the system has been open to abuse and has been beset by administrative inertia, a reluctance by governments to establish reliable estimates of the extent of fraud and overservicing, lack of adequate legislative policy and a very low rate of prosecutions.

The aim of this research is to provide an historical and sociological account of institutional responses to medical fraud and overservicing and the media's engagement with this issue over twenty years from 1975 to 1995.

Archival sources and interviews with key politicians, public servants and whistleblowers are used to tell the story of how universal health insurance was accepted as a necessary part of the social fabric from the introduction of the Pensioners Medical Scheme in 1951, Medibank in 1975 and Medicare in 1984 but measures to deal with the financial abuse of these systems did not have the same priority. The pathology industry provided the greatest scope for illicit profits through offers of kickbacks and inducements from pathology companies to referring general practitioners and this practice fuelled the growth of entrepreneurial medicine. Whistleblowers in the late 1970s and early 1980s campaigned for legislative and administrative change, but the reform agenda was more successful when it was led by a managing director of the Health Insurance Commission committed to change. These events are contextualised by several theoretical perspectives, including Foucault's theory of governmentality, the sociology of insurance and of whistleblowing.

The challenges for the 21<sup>st</sup> century are to maintain the level of resources needed to provide the intensive policing required for the regulation of the financial abuse of medical benefits particularly in the area of electronic fraud and sophisticated criminal fraud.

## **Acknowledgments**

The years of work on this thesis have now drawn to a close.

Along the way many individuals have given generously of their time for my interviews, and imparted their historical knowledge of events and their own key role in them. In addition to this there have been organisations and institutions that have provided the infrastructure for research: the parliament,

the bureaucracies, the libraries, the archives, the media and most importantly the universities. The completion of the thesis is the opportunity to place in the public domain, a document that offers formal acknowledgment to the university system, for the opportunities it provides to students to pursue their research.

I have a huge debt of gratitude to my thesis supervisors Associate Professor Dr. Brian Martin and Dr. Wendy Varney at the University of Wollongong and Dr. David McKnight and Associate Professor Wendy Bacon at the University of Technology, Sydney for all their help and support.

Thanks go to Professor Philip Schlesinger, Dr. Richard Kilborn, and senior staff and post-graduate students at the Centre for Media Studies, Stirling University, Scotland for their gracious hospitality during my stay at the university. Good fellowship, a new appreciation of the intellectual life and important breakthroughs in my research are etched in my memories from my time at the University of British Columbia in Vancouver and for this I am particularly indebted to Professors Maurice Barer, Anne Crichton, and Richard Ericson. Professor Malcolm Sparrow, of the Kennedy School of Government, Harvard University, too was gracious in answering my questions in regard to his influential texts.

At the Australian National University, in Canberra, help has also come from Professors John Braithwaite, John Deeble and John McMillan; and in Melbourne, Dr. Richard Scotton, and Professor Chris Selby Smith at Monash University, and at Deakin University, from Dr. Karen Wheelwright.

Others who have not been reticent in the face of my questions have been former Commonwealth Health Ministers Michael MacKellar, Professor Neal Blewett



and Dr. Michael Woodridge, and former head of the Commonwealth Department of Health, Bernie McKay. Past and present staff at the Health Insurance Commission have been most hospitable and I offer many thanks to former Managing Directors Laurie Willett, John Evered, Dr. Jeff Harmer, and to Dr. John Nearhos, Dr. Janet Mould, Ralph Watzlaff, Geoff Proban, Paul Orwin, Dr. Ken Doust, and Dr. Warwick Graco.

Help has also come from Dr. George Repin, former Secretary-General of the Australian Medical Association, Dr. Lindsay Thompson, a former President of the Australian Medical Association, Dr. Peter Taylor, consultant to Medibank Private, Dr. James Ironside, fraud investigator for the NSW Dental Board and Associate Professor Dr. John Dale, President of the NSW Dental Board.

I extend my deep gratitude to the whistleblowers: Joe Shaw, John Kelly, Katherine Beauchamp, Chris Haviland, Gary Patterson, Associate Professor Roy Harvey and to the unauthorised, unofficial confidential sources who have gone the extra kilometre to provide information. Also providing unique background material was Michael Boyle, formerly of the Australian Security Intelligence Organisation, now a consultant with the National Archives of Australia.

In the parliamentary arena particular thanks goes to the assistance I received from the Joint Committee of Public Accounts and Audit, to the Hon. Jenny Macklin and from the coalition side of politics, Senator Amanda Vanstone, who was instrumental in helping to obtain some much needed documents.

Also offering their research skills have been Narelle Gregory: Library, Commonwealth Department of Health and Ageing; staff at the J. V. Barry Memorial Library of the Australian Institute of Criminology, Canberra; Anne McLean: National Archives of Australia. It was a great privilege to have been a

Petherick Reader at the National Library of Australia and my thanks go to the librarians who gave so generously of their time and expertise, especially Helen Pechenuik from the Oral History Collection. Thanks also to Petherick Readers, Lado Shay and Josette Wells who were ever ready to celebrate the life of ideas over lunch, morning and afternoon tea and any other occasion at the Bookplate Café.

At the Australian Broadcasting Corporation thanks to Norman Swan of *The Health Report*, Anne Delaney, Sabrina Lipovic, Judith Walker, Quentin Dempster and in *Four Corners*, Chris Masters, Quentin McDermott, Ticky Fullerton and Sarah Kernot.

Thanks to D. D. Flynn who patiently listened to the early chapters of the thesis and brought a sound critical judgment to the material and Olga and Max Theodore for their encouragement along the way.

And thanks above all else, to my sons Bernard and Brenden, who provided lots of patience, understanding and support to enable this project to be drawn towards completion.