

# JUSTICE OUT OF BALANCE

*The theory of munchausen syndrome by proxy, used to blame mothers for hard-to-diagnose illnesses in their children, has been strongly discredited in the UK and Queensland but is mistakenly still regarded as a valid "label" in prosecuting many child protection cases.*

by Michael Nott © 2004

Email:  
nott\_michael@yahoo.com.au

*Thou shalt not suffer a witch to live.*

Exodus 22.18

**D**uring the reigns of Queen Elizabeth I and King James I in England in the 16th and 17th centuries, laws were passed against witchcraft. Under the provisions of these laws, some 70,000 witches were put to death. Alleged witches were searched out, then tortured so that they confessed. They were condemned to death after a superficial trial using hearsay and speculative evidence. There were mass witch burnings. Alice Molland is said to be the last witch executed, in 1685.

What kind of insanity was this? Were the authorities ignorant and overzealous? Is history now repeating itself?

## **The injustices of MSBP profiling**

Consider this. If you are a mother with a young child who has a very difficult-to-diagnose illness, you may find yourself looking down the aggressive barrel of a child protection agency that will take your child into foster care. The courts state that you will only have very limited supervised contact with your child again, if at all. There is no evidence that you caused the child's illness; just speculation and supposition. (Often these very sick children are prematurely born, may have congenital or genetic problems or may have suffered an adverse reaction to drugs; or the parent may have challenged a doctor's medical treatment.)

Such a scene is happening in many countries—Australia, Germany, New Zealand, UK, USA and elsewhere. It is happening without evidence; it is speculative, circumstantial and prejudicial, operating in the same manner as the witch-hunts of old. It is happening as a consequence of the theories of influential British paediatrician Professor Sir Roy Meadow, who introduced the medical child abuse theory known as Munchausen Syndrome By Proxy (MSBP) in the *Lancet* in 1977.<sup>1</sup> It now has currency by other names, including "factitious illness", "paediatric falsification disorder" and the like. No matter what it is called, these nomenclatures link back to Meadow's MSBP theory.

While munchausen syndrome (named after the 18th century German figure Baron von Münchhausen, famous for his "tall stories") is where one is alleged to be causing problems in oneself, e.g., self harm, or to present oneself at hospital too many times, munchausen syndrome by proxy is where one is alleged to be causing problems in another person, usually one's child. In most cases, it is a mother who is alleged to be causing medical problems in her child or requiring what is said to be unnecessary medical treatment for the child—but doctors often don't know what is causing the child's medical problems, so they blame the mother. Generally, in 95% of cases, it is mothers—not fathers—who are accused because they tend to be the principal care-givers of children and therefore have greater access to the child.

The MSBP theory has favour in powerful sections of the medical profession, child protection, academia, law enforcement and the judiciary. However, according to medical sociologist Dr Helen Hayward-Brown, it is a nightmare waiting on the doorstep of every family with a sick child.<sup>2</sup> Hayward-Brown was awarded her doctorate for investigating false allegations of munchausen syndrome by proxy, with many of her case studies based in Australia. "Ordinary mothers and fathers are being accused of child abuse because their children have an illness that some paediatricians cannot diagnose, or the parents strongly question the doctor over the child's treatment. The parents are refused the

opportunity to obtain a second medical opinion as this is labelled 'doctor shopping', part of the MSBP child abuse profile—even though doctors are ethically obliged to allow it and it is a patient's right to obtain a second medical opinion."

According to Dr Hayward-Brown, good mothers are accused of child abuse, as this fits the so-called munchausen syndrome "profile" of a child abuser. These mothers are seen as "perpetrators", pretending to be good, caring mothers. "A mother could be doing nothing wrong, other than showing anxiety and care for her child and questioning doctors on the care of her very sick child. Before long, she could be accused of child abuse and face criminal charges. It is just like the witch-hunts of centuries ago that were based on guesswork."

Munchausen syndrome by proxy is based on a "profile" or "label" that allegedly indicates the mother's behaviour. The "profile" includes the mother who shows too much interest in medical procedures, paradoxically taking no interest in the child's medical care, and the mother who passively accepts everything but also seeks attention by going to the media. The "profile" has also been extended to include the "anxiety" a carer may show concerning the child's illness. If the mother protests her innocence, then that is seen as "denial" in psychological terms, but if she "confesses", as in a response to blackmail, that is seen as confirmation of the physician's conclusions, albeit entirely without corroborative evidence. Dr Terry Donald from the Adelaide Children's Hospital, South Australia, is concerned if a mother calls him by his first name at their first meeting.<sup>3</sup> Hayward-Brown said that generally a mother will be told that she has little hope of her children being returned unless she confesses to MSBP.

Charles Pragnell, an expert British defence witness in child protection, now in Melbourne, Australia, said that the labelling of a carer, usually the mother, with child abuse prevents proper investigation of the child's medical condition or legal action by the carer, as the carer is labelled a liar and fabricator. He said bringing legal action or making a complaint against a doctor is therefore very effectively stopped. Pragnell said a high proportion of allegations of munchausen syndrome by proxy followed a threat by the parent to report the physician for malpractice, errors of diagnosis or treatment, doctor negligence or incompetence. "MSBP allegations have also been made with no attempt having been made to thoroughly investigate possible causes of the child's illness from genetic disorders, vaccine damage, effects of prescribed medications, exposure to toxic substances, or severe allergic reactions."

Associate Professor Dr David Coats, an American ophthalmologist, said that child abuse should be considered when the pieces of the medical puzzle don't fit, e.g., when the child has unusual ocular abnormalities or other medical conditions that cannot be explained through medical evaluation.<sup>4</sup>

In this way, Dr Hayward-Brown said, if a doctor cannot determine the cause of a child's illness then the parent, usually the mother, is alleged to have caused the medical problem in the child. "The mother is guilty without appropriate medical or police investigation and it is usually impossible for a mother to prove her innocence. The MSBP profiling is extremely prejudicial, inaccurate, paradoxical and often nonsensical, leading to grave injustices." She also noted: "The MSBP profile used by doctors

contain paradoxes that make it very difficult, almost impossible, for mothers to prove their innocence. For example, being an over-protective parent is part of the MSBP profile, but so is being a negligent parent."

Major public hospitals with child protection units and child protection agencies in New South Wales and other Australian states, in the USA, the UK and other countries share the view that a mother must be guilty, but they fail to undertake appropriate investigations.

Some doctors, according to Hayward-Brown, are predisposed to making child abuse allegations in the medical context. While acknowledging that parents may occasionally harm their children, she said MSBP allegations are prejudicial. Professionals suffer from confirmatory bias where they maintain their beliefs, even in the face of counter-evidence. "It does not matter if it is called a disorder, behaviour or syndrome. It does not matter if it is seen to be psychiatric or paediatric. The outcome is the same."

### Meadow's questionable MSBP research

However, the legitimacy of the munchausen syndrome by proxy theory is now undergoing intense scrutiny worldwide for its lack of scientific integrity, the highly questionable support literature in medical journals and its continuing use by a minority of influential members of the medical profession.

Meadow is facing serious professional misconduct charges by the British General Medical Council, which registers doctors in the UK, and his hearing is scheduled for 2005.<sup>5</sup> He has been accused of giving misleading and contradictory evidence in courts. The Royal Statistical Society on 23 October 2001<sup>6</sup> publicly condemned his statistical methodology, with emphasis on his evidence in the Sally Clark case. One of his strongest supporters, Professor David Southall, was found guilty of serious professional misconduct by abusing

his position in a munchausen syndrome by proxy case. Southall also failed to disclose that he consulted with Meadow on the case. He was banned from child protection work for three years. Southall is facing another seven official complaints. Hayward-Brown is also concerned about the use of US MSBP proponents such as Dr Herbert Schreier in Australian cases.

In the UK, Meadow's theories are under sustained attack in government, legal, medical and community circles and the whole legitimacy of MSBP is being strongly questioned. In the House of Commons on 17 June 2004, Children's Minister Margaret Hodge ordered reviews involving 30,000 care orders.

The government is also investigating the manner in which expert medical evidence is used in child protection courts. The Solicitor-General, Harriet Harman, has alerted prosecutors that Meadow was criticised by the UK Court of Appeal.

Pragnell said it was because of concerns about the validity and integrity of Meadow's evidence that the prosecutors, under pressure from the UK Government, would no longer use Meadow as an expert witness. "Cases where Meadow was involved were being carefully scrutinised and reviewed by child care agencies."

The Opposition spokesperson on children and health in the House of Lords, Earl Howe, has called for a public inquiry into the use of MSBP in prosecutions. Labour MP Vera Baird on 21 June 2004 asked questions in the Commons on munchausen

syndrome by proxy and what role disgraced doctors Meadow and Southall have played in the child protection cases.

Howard Fishman, a former education director at the Harvard Medical School's psychiatry department, said that some so-called eminent paediatricians and self-proclaimed child abuse experts are in the business of manufacturing victims while destroying countless innocent families. "The child abuse industry has devoted itself to the removal of children from their homes based on spectral evidence, phantom disorders and fanciful modes of purported abuse that should be assigned to the trash-bin of junk science."

Hayward-Brown said the doctors could not acknowledge that some illnesses are very hard to diagnose and treat and that they do make mistakes. The *British Medical Journal* (9 August 2003) cited the UK Court of Appeal which noted the case of a six-year-old boy who was said by Southall to be a victim of fabricated illness.<sup>7</sup> The *BMJ* reported that the boy was removed from the at-risk register after three months when he was diagnosed with severe allergies. Southall has also been involved in Australian MSBP cases.

US lawyer Tracy Emblem said that a problem in her country is the "multi-disciplinary" approach to evaluating cases, as "group think" contributes to erroneous accusations. She wonders how one justifies the reckless abandonment of science and the truth. One of her clients has been in prison for 21 years because of false medical testimony, but it has finally been admitted that the charge was based on insufficient evidence and a new trial has been ordered.

Meadow has been instrumental in many child protection cases and has provided significant evidence for various authorities across the world that has often resulted in children being taken away from their mothers and placed into care.

Pragnell said the so-called MSBP "research" conducted by Meadow was not scientifically based and was merely his own conjecture, speculation and assertions that had questionable origins. "It has never been peer reviewed, although a great deal has been written on the subject. Much of this is people writing on the views of others."

Little information has been made available on the way Meadow prepared his reports and the investigations he undertook, as they are generally confidential as a result of the secrecy of children's courts and closed civil courts. But in one report on an Australian mother, he alleged after he had read medical and other reports sent to him in England that the mother had harmed her children. He had never met the mother or personally discussed the children's medical problems with the mother or any of the doctors involved in the case. Meadow acknowledged that he did not see or he dismissed reports of doctors and specialists who suggested a natural cause for the children's illnesses. One of these doctors was the children's treating paediatrician. In opposition to this paediatrician, Meadow concluded—and without attributing any robust evidence—that the mother had harmed her children. Nowhere in the report does Meadow declare his interest in munchausen syndrome by proxy or that he coined the term in his 1977 *Lancet* article.

When writing on MSBP, Meadow offers no scientific evidence that MSBP exists, and his references generally only include articles written or co-written by him. A great deal of his references include material he wrote for the journal he edited, the *Archives of*

*Disease in Childhood*. The list of reference material does not include any scientific or evidence-based studies on MSBP that were peer reviewed by independent medical specialists.

### Court judgements on MSBP

Evidence involving the label or profile of munchausen syndrome by proxy is also being rejected by courts, e.g., the Queensland Court of Appeal (*R v LM* [2004] QCA 192), as prejudicial and inadmissible. The South Australian Supreme Court (S4118, 1993) ruled that Professor David Southall's MSBP testimony could only be regarded as a layperson's opinion, albeit a well-informed one as he is a paediatrician.

Meadow's cot death theory—one child death in the same family is a tragedy, two suspicious and three murder—has been rejected by the UK Court of Appeal (*R v Angela Cannings* [2004] EWCA Crim. 01) and in Tennessee, USA (2003, no. 99-D-2836). In the Cannings judgement, the Court said the cot death theory "had to stop". Judicial comments in the UK Clark case (*R v Sally Clark* [2003] 200203824 Y3) were that Meadow's medical and statistical evidence in the case is "wrong" and "grossly overstated" and that such evidence "should not have been put before a jury". The flawed evidence Meadow gave at Clark's trial was said to serve "to undermine his high reputation and authority as a witness in the forensic process". Meadow also gave expert evidence against

British woman Julie Ferris, who was held in a psychiatric hospital. Ferris was later released on bail, and in August 2004 it was reported that she will not face a retrial.<sup>8</sup>

In Queensland, Australia, the Court of Appeal (*R v LM* [2004] QCA 192) in a unanimous judgement said MSBP (or factitious disorder by proxy) is not a recognised psychiatric disorder or mental illness in the American Psychiatric Association's *Diagnostic and Statistical Manual (DSM IV)*. The judges went on to say that MSBP has no agreed sets of

symptoms or signs that allow it to be classified into a recognised psychiatric diagnostic system. The Court also found that MSBP is not a recognised medical condition, disorder or syndrome. By finding that MSBP does not relate to an organised or recognised reliable body of knowledge or experience, the Court ruled that evidence from a psychiatrist was "extremely prejudicial" and thus excluded it. Justice Holmes noted that the MSBP argument is inherently circular and does nothing to prove criminal conduct. While the Court agreed it may be a behaviour, it was like "laughing, malingering or engaging in criminal conduct". In other words, a behaviour may exist, but the description of this behaviour is not helpful in determining the guilt of a particular individual in a particular context; facts are required.

Legal opinion is that this Queensland Court of Appeal judgement is very traditional law, where facts—not ambiguous labels—are required to justify a case for guilt. The Australian Capital Territory's Director of Public Prosecutions, Richard Refshauge, said the QCA decision on MSBP is conservative and a down-the-line law judgement. "It makes clear that if a woman is to be prosecuted for harming her children, it is not enough to put a label on it; facts are required to justify the case." This, according to Refshauge, is the normal situation in law. "By labelling the woman in this way with munchausen syndrome by proxy or factitious illness by proxy you are saying the woman is guilty, as the

label creates the guilt. The problem is that labelling is not a process for determining guilt; it is done in a very different way, with doctors, psychiatrists and social workers guessing. People are not convicted for having a syndrome or a particular behaviour; they are convicted for the illegal acts that they do," he added.

Vicki Waye, senior law lecturer at Australia's Adelaide University and author of *Evidence Handbook*, also said the Brisbane decision is traditional law where evidence has to adhere to the facts of a case. "The evidence of witnesses had to be what they observed and what was said. They could not call it a syndrome or label it." Waye believes the decision will be highly persuasive in other courts, but not binding.

Dr Gary Edmond, senior law lecturer at the University of New South Wales, Australia, said it is dangerous to say that just because other people do something—in this case, harm their children—then "this mother" also did it. "The Appeal Court is explaining that the prosecution must use facts rather than a vague label like MSBP to prove its case. The Court seems to be saying that the term 'MSBP' adds very little, is potentially prejudicial and should be avoided." He said the risk will not be eliminated by the use of other similarly vague terms.

UK child care lawyer Sarah Harman thinks UK courts are making "political judgements" by not challenging MSBP. "UK courts are not dealing with MSBP or factitious illness by proxy as the Queensland Appeal Court did. Our courts are still finding against mothers, even when the medical evidence is unsafe."

Earl Howe said MSBP underpinned the Clark and Cannings cases as it was not possible to separate Meadow's expert testimony, given that he was an acknowledged leading expert on MSBP. Further, Earl Howe noted that MSBP was a major plank of the prosecution's Clark case, while in the Cannings case MSBP or a personality disorder led to her arrest. He said that statistics and inferences have often been used with the "MSBP profile" to "damn individuals" in the family courts over the past few years.

"Meadow and his theories are now in complete disrepute and he has been publicly discredited," said Pragnell.

The QCA decision was made in a criminal court, where guilt must be established beyond reasonable doubt, but munchausen syndrome by proxy is frequently used in care proceedings in the Children's Court where a decision rests on the degree of probability and does not necessarily abide by the rules of evidence.

This is the heart of the problem, according to Pragnell. In NSW, in Children's Court care proceedings that involve MSBP, it is up to the discretion of an individual magistrate to determine to what extent the rules of evidence should apply. Pragnell said that in care proceedings, "hearsay" evidence is admissible, while such evidence would be inadmissible in criminal matters. Therefore, in care cases, the cards are heavily stacked against mothers when added to the balance-of-probability decision that these courts make. Pragnell considers that care proceedings should not be an adversarial contest, as the best interests of the child could be lost under a welter of legal arguments and posturing. Care courts, he suggests, should be inquisitorial, aimed at establishing what has happened and what the outcome should be.

Pragnell said the Crown already has the sympathy of the Court and that magistrates won't risk a child's safety. "In this way the

Crown has the case almost won, even before entering the court. Even if the court rules that a child can go home, even for a short period, this is often ignored by child protection social workers." He contends that child protection is not a level playing field and is far from being just and fair. "This is why Meadow and Southall were able to get away with many travesties of the truth for so many years and to completely manipulate the system."

Additionally, as Hayward-Brown stated, parents have limited finances and are often denied government legal aid and support—as opposed to the authorities, which appear to have unlimited funds to pursue these cases. It is unfortunate, she said, that many mothers have been falsely pursued by the authorities, when time and finances could have been more productively used in protecting children who really are at risk of harm.

### Child protection agencies' disregard for the law

In New South Wales, the child protection agency DOCS (Department of Community Services) has confirmed it is "precluded" by law from using allegations of munchausen syndrome by proxy as the basis for removal of a child. Yet it has been using MSBP allegations for many years as the central allegation in child protection proceedings.

Written statements to this author from DOCS, dated 10 and 24 September 2003, suggest that DOCS is in breach of its own legis-

lation when it states that the "*Children and Young Persons (Care and Protection) Act 1998* (Section 71, Subsection 2) precludes DOCS from taking any medical condition of a parent or carer into account when making a child protection decision". The Director-General of DOCS, Dr Neil Shepherd, declined to be interviewed for this article.

In medical child abuse cases, DOCS uses MSBP as the central allegation against a mother to remove a child from its family and place the child into care. DOCS makes no

other substantive allegations against the mother. MSBP allegations are made by DOCS in removal warrants and affidavits to police and the Children's Court, and are the principal element of DOCS cases—despite the aforementioned DOCS statements. DOCS generally only obtains "expert advice" from one or two doctors with "expertise" in the area of MSBP and fails to conduct its own investigation.

According to Pragnell, agencies such as DOCS and some doctors from child protection units at major public hospitals are showing scant regard for legal requirements. "This is causing immense harm to the status of the medical profession and public trust in physicians, as relatives and friends of affected families are alarmed and angered by the needless and unwarranted removal of children and, in some cases, the imprisonment of innocent mothers."

Earl Howe said he feels there is a sinister development occurring in the UK, with MSBP being confined to the "dust-bin" and doctors replacing it with the term "personality disorder". "This has the same result as MSBP; it is a catch-all term to accuse mothers." Sarah Harman agrees with Earl Howe that MSBP or factitious illness by proxy will be used under another name. Earl Howe said it would be a development he would "watch closely".

Hayward-Brown said that doctors are also moving towards "somatisation", where they allege that a young child has a

psychiatric illness where the child makes him/herself sick or believes he/she is ill. "This is often combined with MSBP. It is already known that usage of 'somatisation' has led to the death of one child who did not receive correct medical treatment."

As a result of the Cannings judgement—where the Court of Appeal stated that if the outcome of the trial depends "exclusively on the serious disagreement between...reputable experts, it will be unwise and therefore unsafe to proceed"—the UK Government ordered official reviews of both criminal and civil cases involving Meadow's MSBP and cot death theories. The UK Attorney-General, Lord Goldsmith, reported to the Commons on 22 July 2004 that, in checks to date, about one case in eight is potentially unsafe.

The UK Children's Minister Margaret Hodge also ordered child protection agencies to review care cases and determine if there are "doubts about expert evidence". Solicitor-General Harriet Harman told Parliament on 20 January 2004 that mothers who have had children removed would have their cases reviewed.

However, Earl Howe said the government was just looking at a restricted group of court cases where the verdict may have gone the wrong way. "It is disappointing that the government is not addressing the MSBP or factitious illness by proxy diagnosis that is the core of the problem. They are not looking at MSBP as a condition. They have refused to review policies on MSBP. These policies decline to state that MSBP is subject to high error rate, and the consequence of getting it wrong can be devastating."

Sarah Harman is disappointed that the UK Government is watering down its review of MSBP cases. Commons Shadow Children's Minister Tim Loughton has attacked the decision to allow child protection agencies to review their own cases, as it would not inspire confidence that justice was being done where questionable evidence was used. Other MSBP opponents have said the review of cases is not independent, as so-called experts are known or professionally related to each other.

London's *Guardian* newspaper of 14 July 2004 reported that Scotland Yard is transforming the way suspicious baby deaths are investigated; this is in response to miscarriages of justice involving mothers wrongly accused of killing their children. Senior detectives said they are responding to criticism of failings in infant death investigations after the cases of the wrongly accused mothers Angela Cannings, Sally Clark and Trupti Patel.<sup>9</sup>

BBC News, on 17 June 2004, reported that the UK Government is undertaking a review of the way expert witnesses have been used in child abuse cases. Children's Minister Margaret Hodge told the BBC that this action is in response to widespread concern about the quality and validity of evidence given by medical expert witnesses.<sup>10</sup>

Pragnell suggested that the Cannings judgement on expert evidence should be used in all MSBP cases, as these have been the subject of serious disagreement in the medical profession and in social work for many years. Any case involving MSBP will be the subject of disputes between experts, even before court proceedings. In this regard, he argues that munchausen syndrome by proxy or factitious illness theory should not be used. He agrees that this is a wider interpretation than the Cannings decision, but is a position that should be used; it would prevent

the use of any child abuse theory while it was the subject of considerable professional dispute.

### Professional denial of problems with MSBP charges

There is a high degree of opposition to anti-MSBP forces as influential doctors champion a colleague who has made false MSBP allegations. Other doctors, academics and those who speak out against the use of the munchausen syndrome by proxy theory are discovering a "corrupt" system that is rejecting any change.

In 2001, the UK Department of Health issued new guidelines in an attempt to give a form of validity and authenticity to MSBP, and introduced a new title of "fabricated and induced illness in children". But Pragnell claims these guidelines were produced without any independent and scientifically based research or inquiry into the existence of munchausen syndrome by proxy/FII (fabricated and induced illness). The department merely regurgitated the unsubstantiated opinions of MSBP/FII proponents, in complete disregard for conflicting opinions.

At Professor David Southall's professional misconduct hearings before the British General Medical Council (GMC) (6 August 2004),<sup>11</sup> Professor Sir Alan Craft, President of the Royal College of Paediatrics and Child Health, supported Southall. The GMC noted that Craft praised Southall as an "academic leader" who

undertook important ground-breaking research that "has greatly influenced the way that babies and children have been managed all over the world". The GMC said of other submissions that they all "testify to Southall's clinical skills and unparalleled commitment to the welfare of children all over the world".

Liverpool University academic Dr Lynne Wrennell, who attended the Southall hearings, said the case hinged on what was accepted practice in child protection cases. "Southall's support was cautious and carefully

worded," Wrennell noted.

In Australian states such as New South Wales, Victoria and Queensland, MSBP allegations are still being made against mothers. In Queensland, the Appeal Court judgement is binding on lower courts, according to Edmond, but the Children's Minister Mike Reynolds does not acknowledge that there have been legal and civil problems with MSBP's continued usage. In NSW, Meadow's evidence is still being used in a court case, despite the Director of Public Prosecutions Nicholas Cowdrey being aware of the UK situation and the professional misconduct charges Meadow is facing. The NSW Department of Community Services continues action against mothers, despite clear knowledge of the problems that the MSBP charge has caused in the UK. The NSW Attorney-General's office will take no action in the matter. According to Hayward-Brown, there is no indication of any body in NSW or Australia showing concern about the need for review of current and previous cases involving Meadow's evidence, diagnoses and theories.

Australia's federal government, through its Institute of Family Studies and its Child Protection Clearing House, promotes MSBP as a valid "diagnosis", despite knowledge of the discrediting of Meadow and court decisions against his theories. Similarly, the Royal Australasian College of Physicians makes use of Meadow's theories on its website.<sup>12</sup> At the ISPCAN 15th International

Congress on Child Abuse and Neglect (Brisbane, September 2004), many papers presented attest to the existence of MSBP, including many from MSBP proponents in the UK.<sup>13</sup>

Hayward-Brown stated that medical professionals are afraid to speak out publicly against their colleagues for fear of marginalisation and persecution. While senior professionals have voiced their concerns, this has generally only occurred in private. It is particularly a problem in Australia, as the medical community is small and cohesive, leaving less room for outspoken critics.

Professionals supporting mothers fear that so-called "evidence" is being fabricated to ensure MSBP convictions. Fishman said that in the USA the credibility of the legal system is very much strained when it comes to the way MSBP child abuse cases are typically investigated and prosecuted. He believes perjury is rampant in child abuse cases. Fishman has accused mental health and medical professionals of perjury and the justice system of failure to hold them accountable. Hayward-Brown agrees she has seen a good deal of evidence of fabrication, inaccuracy, bullying, deception, cover-up and tampering of files in these cases.

In the UK, doctors are complaining that paediatricians are refusing to carry out child protection work due to the possibility of official complaints. However, Hayward-Brown said such widespread community concerns about discourse and practice have only occurred in this particular area of medicine. There is a reason for this, she claimed: a society will accept many deficiencies, but it will not accept the repeated harm by professionals of innocent families. "This problem is not going to go away. It is pointless for authorities to argue that the problem is 'small' and should therefore be ignored."

Hayward-Brown said that legal firms and lawyers have refused to take on MSBP cases as these are too controversial. "Legal aid has been refused to MSBP cases by legal-aid bodies in both NSW and Victoria on the grounds that they will not succeed." This has also occurred in the UK. Additionally, since these cases are often long and complex, they involve the need for expensive medical witnesses. This denial of legal representation has been found by the European Court of Human Rights to be a breach of human rights in an MSBP case (*P, C & S v the UK*; no. 56547/00; 2002) where the UK Government was found guilty and fined. This same court found that it was a breach of human rights to remove a child at birth due to a previous allegation of MSBP. This practice is occurring in New South Wales.

"No one seems to want to take responsibility over MSBP allegations: the doctors and hospitals, DOCS and the Health Department keep blaming each other. The office of the DOCS Minister does not want to know about the issues, and in NSW the Health Minister's office and Opposition Health spokesman are quiet on the allegations," said Hayward-Brown.

### The need for urgent reform

It should be noted that there are no official statistics kept on Australian MSBP allegations, and for authorities such as the NSW Children's Commission to say the problem is small ignores the harm caused to parents who are either suspected or accused of MSBP. There are many parents who have been affected by false allegations. These allegations are not benign: they have serious

implications for the health and well-being of the child.

However, some statistics are kept on child abuse notifications. In Australia in the year 2002–03, there were 198,355 notifications according to the Australian Institute of Health and Welfare (AIHW), but only 40,416, or roughly 20%, were "substantiated".<sup>14</sup> This suggests that in the other 80% of reports there was no child abuse. The cases that were "not substantiated" showed, in the words of the AIHW, that "there was no reasonable cause to suspect prior, current or future abuse, neglect or harm to the child".

This is consistent with similar figures in the USA, where Fishman said over 70% of child abuse reports were not deemed worthy of investigation or were determined to be "unfounded" or "unsubstantiated". In pragmatic terms, he said, what this means is that two million innocent families were falsely accused of child abuse in the USA during 2002.

Pragnell said that of the most concern were the AIHW figures from New South Wales that showed 109,498 child abuse reports, with only 16,765 of these "substantiated". This means that over 90,000 children were unnecessarily brought into child protection procedures—and it has long been known that such procedures can cause severe, long-lasting harm to children. "Some other states have a screening process and therefore they could eliminate false accusations and unnecessary investigations," he noted, adding that there is no national definition of "child abuse" and Australian states could make their own determination of what constitutes child abuse.

The NSW Commission for Children and Young People's office, when asked if it would use its powers to review or investigate MSBP, said the matter should be "put in perspective". This implies that the Commission is not concerned about the families who are suffering under these accusations. Irrespective of numbers and even if one family is being seriously damaged, it is a matter of concern. In a statement to this

author dated 26 July 2004, Commissioner Gillian Calvert (who is also co-chair of the ISPCAN Congress on Child Abuse) said there is no consensus among the professionals on MSBP. Calvert said MSBP is "a complicated and difficult diagnosis with significant differences of opinion among medical and legal professionals: there are some medical experts who support and diagnose the syndrome and those who dispute its existence". Despite admitting a problem, the Commission has declined to take any firm action or use its legislative power to order an inquiry. The Commission has also declined to answer questions on whether it is "irresponsible and careless" to allow the current situation to continue. The Commission's Parliamentary Committee head, Barbara Perry, declined to be interviewed for this article.

NSW Police has declined to release information on its use of Meadow, Southall and USA MSBP proponent Dr Herbert Schreier of the Children's Hospital at Oakland in California—although I have seen official NSW Police letters to Meadow and the reports that Meadow has written. The NSW Solicitor-General's office denies it has written to Meadow requesting reports. However, I have seen the office's letters to Meadow and the information it required.

Hayward-Brown voiced her concerns about the fact that the "diagnosis" of MSBP is not being properly addressed in Australia. "No one wants to change the status quo and upset the careers of

many doctors and social workers. It should be noted that there is a great deal of status and prestige for doctors and psychologists who specialise in this area. It is a thriving industry, providing work for many individuals who would be better employed in other areas." Fishman went further by claiming that the concocted "diagnosis" of MSBP has become a vehicle for prestige and recognition. Hayward-Brown suggested there has been a reluctance by authorities to review cases, as this would provide a pathway for negligence claims.

It is difficult to see how governments worldwide, which have followed the fabricated-illness child protection policies in line with British practice, can fail to conduct an official review as the UK is undertaking—even in its limited sense. The evidence is that munchausen syndrome by proxy or fabricated illness "diagnosis" should be abandoned. The label is unhelpful. It is necessary to look at the facts of a case, rather than using a prejudicial label that presumes guilt. Governments, child protection doctors, social workers and police seem intent and content to ignore the issue.

Hayward-Brown said that there are major and disturbing problems in the procedures and attitudes of the medical and social service professions in relation to MSBP, and that she wonders how the medical profession can prove that an MSBP diagnosis is indeed positive. "These cases rarely rely on robust evidence and seldom consider alternatives for a child's illness. Additionally, there is a reluctance to accept that we may not know what is wrong with a child. Ambiguity, throughout history and across cultures, has been shown to be poorly tolerated and often regarded as 'polluted'. A child with an ambiguous illness and his/her family are therefore seen as polluted, sinful and morally inadequate. This forms an excellent pathway for the MSBP trajectory."

Politicians, Fishman asserts, have little political will to reform what he calls a "dysfunctional" and "destructive" child protection system. "Politicians and the medical and mental health professions have avoided any change despite the evidence that the child protection system is unjust, ineffective and incompetent." Fishman agrees there is a legitimate need for child protection programs but the current USA system is ineffective and dysfunctional. He believes that unless and until there is a groundswell of public outrage, we will continue to see that "figures lie and liars figure".

Pragnell holds that child protection systems are deeply flawed, erratic and dysfunctional, and that total reform with safeguards to minimise the incidence of false accusations is required. "There is now a worldwide storm brewing regarding child protection injustices, and governments across the globe should take notice as the current situation will no longer be tolerated."

There is a punitive approach by authorities in munchausen syndrome by proxy cases towards parents and their children, who need support rather than punishment and suspicion. Compassion is sadly lacking for some sick children and their mothers.

If governments and society want to encourage women to have children, they will need to change. We are facing many new illnesses in the 21st century, many of which are related to environmental toxins and drugs. These need to be addressed in a humane and just manner. In many respects, it is not happening now.

We need to reverse the "witch-hunt" trend and stop persecuting anxious mothers and children on the "religious heresy" of some

authority figures driven by bigotry who are persecuting and punishing women for challenging their professional powers.

### **Author's Note:**

Quotes and responses from individuals, departments and agencies named in this article are sourced from telephone conversations and email discussions conducted by this author, primarily between July and August 2004. Interviews and comments were requested with the following people, but they declined to respond: Australian Federal Families Minister, Senator Kay Patterson; Australian Federal Children's Minister, Larry Anthony; Queensland Acting Commissioner for Children and Young People and Child Guardian, Barry Salmon; NSW Minister for Community Services (Child Protection), Carmel Tebbutt.

### **About the Author:**

Michael Nott is a former radio and TV journalist and a senior media/communications officer for Australian federal and state (NSW and Queensland) government departments and agencies including NSW Police. He is an advocate for mothers accused of munchausen syndrome by proxy. While actual case studies of mothers and children have not been presented, the issues and circumstances faced by them are drawn from the many conversations he has had with mothers accused of munchausen syndrome by proxy as well as with their families. He can be contacted by email at [nott\\_michael@yahoo.com.au](mailto:nott_michael@yahoo.com.au).

### **Endnotes**

1. Meadow, R., "Munchausen Syndrome by Proxy, The Hinterland of Child Abuse", *The Lancet* (1977) 310(8033):343.
2. For more information, visit Dr Helen Hayward-Brown's website at <http://www.pnc.com.au/~heleneli/>.
3. Dr Terry Donald's presentation, "Fabricated and induced illness by carers", is at [http://www.racp.edu.au/asm/asm2004/program\\_paed.htm](http://www.racp.edu.au/asm/asm2004/program_paed.htm).
4. See <http://www.aao.org/aao/news/release/20030807.cfm>.
5. For more on the British GMC Meadow hearing of 18 December 2003, see <http://www.gmc-uk.org/news/current/Meadows%20Statement.htm>. In a telephone conversation, the BGMC confirmed that the hearing will now be in 2005.
6. Royal Statistical Society (RSS), 23 October 2001, at <http://www.rss.org.uk/archive/evidence/index.html>; also see Letter from the President of the RSS to the Lord Chancellor regarding the use of statistical evidence in court cases, 23 January 2002, at [http://www.rss.org.uk/archive/evidence/sc\\_letter.html](http://www.rss.org.uk/archive/evidence/sc_letter.html).
7. *British Medical Journal* 327:305, 9 August 2003.
8. *The Times*, London, 9 August 2004.
9. *The Guardian*, 14 July 2004, at [http://www.guardian.co.uk/uk\\_news/story/0,3604,1260765,00.html](http://www.guardian.co.uk/uk_news/story/0,3604,1260765,00.html).
10. BBC News, 17 June 2004, at <http://news.bbc.co.uk/1/hi/uk/3814813.stm>.
11. The British GMC's Southall determination of 6 August 2004 is at [http://www.gmc-uk.org/probdocs/decisions/pcc/2004/SOUTHALL\\_20040806.htm](http://www.gmc-uk.org/probdocs/decisions/pcc/2004/SOUTHALL_20040806.htm).
12. RACP website, <http://www.racp.edu.au>.
13. International Society for the Prevention of Child Abuse and Neglect (ISPCAN) website, <http://www.ispcan.org>.
14. Australian Institute of Health and Welfare (AIHW) website, <http://www.aihw.gov.au/publications/cws/cpa02-03/index.html>.