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MUNCHAUSEN SYNDROME BY PROXY (MSBP)

Some medico-legal issues

Dr Helen Hayward-Brown*



The integrity of expert medical evidence concerning MSBP has been seriously questioned by recent developments in the United Kingdom and Australia. Cases leading to convictions on the basis of this evidence are under review in the UK and serious infringements of human rights in relation to this “diagnosis” in civil and criminal cases have been revealed. This article explores some of these problematic issues and alerts readers to the substantial risks of wrongful removal of children from families or the imprisonment of innocent parents.

MSBP describes a parent who purportedly induces or exaggerates illness in her or his child to gain attention from the medical profession. It is a recent and controversial “diagnosis”. Debate about MSBP has centred on whether or not it actually exists. In very rare circumstances, parents may harm their child in a medical context. It is submitted, however, that the “diagnosis” of MSBP is largely unhelpful. It is preferable to abandon the label and describe what is actually happening — if it is thought to be poisoning or suffocation, call it that.¹ The issue should not be whether real cases of MSBP exist but whether child abuse has actually occurred. Abandonment of the label should not result in alternative labels or “invisible” labels which still use the MSBP profile. In this way, parents who are guilty of harming their children may be better identified and innocent parents protected.

Recent Developments in the UK

1. Investigation into Sir Roy Meadow

Professor Meadow is credited with devising the term MSBP as a result of his seminal article in *The Lancet*.² He has been widely regarded as the world’s leading expert on MSBP. He has acted as an expert witness in criminal cases where mothers have been accused of infanticide using his much quoted “Meadow’s Law” — “one cot death is a tragedy, two is suspicious, and three is murder”. Meadow’s literature has generally served as the basis for most MSBP

allegations in Australia. His “diagnosis” and testimony have been used in court cases in Australia.³

The British General Medical Council will conduct a full public inquiry in 2004 following a preliminary investigation into Professor Meadow for alleged professional misconduct. Lawyers in the UK have been warned to treat any evidence by Meadow with extreme caution and any cases involving his testimony have not progressed since these allegations were made.⁴

2. Re-examination of convictions

As a result of the landmark *Cannings* judgment,⁵ the UK Attorney General, Lord Goldsmith, announced an immediate re-examination of 258 criminal cases involving harm to children by parents where there was dispute between expert witnesses. A further 18 have since been added. Cases in which parents are still in prison will be given priority. A further 15 cases under consideration by the Crown Prosecution Services will also be re-examined.

3. Review of civil cases involving MSBP

Civil cases in which there has been a dispute between expert witnesses will be reviewed following an announcement by Harriet Harman, Solicitor General (UK) in January 2004. The first two appeals have been quashed on evidentiary grounds despite contradictory court warnings about the expert who is “over-dogmatic” or who has “developed a scientific prejudice”.⁶



Recent developments in Australia

The Queensland Court of Appeal set aside the guilty verdicts of a mother convicted of torturing her child and unlawfully wounding two of her other children and ordered a new trial.⁷

The court ruled that the medical evidence about MSBP given by a psychiatrist was inadmissible because of its minimal probative value and potential to be extremely prejudicial. The court held that the term “factitious disorder by proxy” (MSBP) was merely descriptive of a behaviour and did not specifically identify a psychiatric illness or condition. The evidence was inadmissible as expert evidence because it did not relate to an organised or recognised reliable body of knowledge or experience. The court held that the wrongly admitted evidence may have deprived the appellant of the chance of a fair trial as the jury was likely to place great weight on the evidence about the mother’s alleged behaviour rather than whether the prosecution had established beyond reasonable doubt that the appellant had harmed her children by causing unnecessary medical procedures to be performed on them.⁸

Questionable diagnostic criteria⁹

The recent cases indicate that the risk of an inaccurate allegation of MSBP increases if one or more of the indicators, shown in the table below, are present.

Poor scientific validity

MSBP is not a definitive “diagnosis”. It is a research “diagnosis” only, appearing in the appendix of the DSM IV(R) as “factitious disorder by proxy”.¹⁰ Proponents of MSBP have exhaustively worked towards redefining this “diagnosis” in order to give it some semblance of scientific credibility. It has variously been described as a psychiatric or paediatric “diagnosis”, a disorder, syndrome or behaviour.

A close study of Meadow’s seminal article in *The Lancet* reveals two highly problematic case studies as “evidence” of the existence of MSBP. The second case study is of particular concern, as it describes a child presenting with hypernatremia (excessive sodium in the blood). This child was force-fed 20 g of sodium, with difficulty, by Meadow and his colleagues. Despite accusing the mother of MSBP, Meadow admits he had no idea how the mother was able to successfully feed large amounts of salt to the child. The child later died.¹¹

MSBP has not been subjected to replicated controlled studies in order to determine the legitimacy of its existence. Peer reviewed literature is often based on the literature of other case studies rather than on direct experience with cases. The literature is recursive.¹² In other words, MSBP has been written about frequently and this is erroneously regarded as evidence of its existence.

Profile Indicator	Critique
Unexplained medical problems	<ul style="list-style-type: none"> • “Diagnosis” by default – assumes medical knowledge is finite • “Diagnosis” by default – assumes medical knowledge of individual practitioner is finite • Ignores medical debate over illnesses such as chronic fatigue syndrome, multiple chemical sensitivity • Ignores drug and vaccination effects (eg Cisapride, now banned in UK and withdrawn in US) • Ignores pre-existing problems such as whether a child was born prematurely or has suffered reflux or other gastric problems
Child’s health improves away from mother	<ul style="list-style-type: none"> • Many illnesses resolve spontaneously, especially as toddler grows, eg reflux • Removal from primary carer with intimate knowledge of child’s difficulties places child’s health at risk • Faulty records ignore continued illness of the child (eg temp charts, weight gain) • Ignores changes in drugs (started or finished) and changes in environment
Parent has knowledge of medical terminology and/or has asked lots of questions about child’s medical care	<ul style="list-style-type: none"> • Fits all intelligent, concerned parents • A parent has the right to engage in debate over treatment of his/her child • MSBP “diagnosis” used against parent who has made or threatened to make a complaint about medical negligence • Specialist doctor with keen interest in MSBP uses MSBP diagnosis to deal with difficult parent
Highly attentive parent (“over-protective”)	<ul style="list-style-type: none"> • Any parent of a sick child will be anxious
“Doctor shopping” and frequent visits to medical practitioners	<ul style="list-style-type: none"> • Search for a diagnosis is normal behaviour for concerned parents • What is a “normal” number of visits? • Number of visits recorded are generally inaccurate or do not take into account surgery and its effects • It is a parent’s right to seek a second or third opinion

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MSBP's lack of scientific validity is illustrated by the difficulty of applying the *Daubert*¹³ five factor non-exclusive test.¹⁴

- **Factor 1:** Whether the expert's theory can be or has been tested. No attempts have been made to replicate any controlled studies of MSBP.
- **Factor 2:** Whether the theory has been subject to peer review and publication. The literature is generally based on limited case studies. Recursivity of the literature gives a false air of legitimacy.
- **Factor 3:** Whether the potential rate of error of a technique or theory is known. It is not known for MSBP.
- **Factor 4:** Whether standards and controls exist and are maintained. There is no consensus on MSBP diagnostic criteria and no official adoption of criteria by DSM IV(R).
- **Factor 5:** The degree to which the theory has been accepted. The medical profession cannot agree on the acceptability of MSBP.

Concluding Statements

Child protection practices are a priority in any civilised society. Such practices can only be safeguarded if they are accountable and transparent. This is not the case with MSBP allegations. Emphasis should not be placed on MSBP, but on whether or not a child has been harmed. □

Endnotes

- * Dr Helen Hayward-Brown is a medical anthropologist/sociologist who completed her doctorate on false and highly questionable accusations of MSBP. She is currently completing a research fellowship with the Social Justice and Social Change Research Centre at the University of Western Sydney, in addition to her teaching and advocacy work.
- 1 C Morley, "Practical Concerns about the Diagnosis of Munchausen Syndrome by Proxy" (1995) 72 *Archives of Disease in Childhood* 528.
 - 2 R Meadow, "Munchausen Syndrome by Proxy, The Hinterland of Child Abuse" (1977) 310 (8033) *The Lancet* 343.
 - 3 See H Hayward-Brown "Misdiagnosed Children, Misdiagnosed Parents: Chronic Illness and the Spectre of Munchausen Syndrome by Proxy", 2003 PhD Dissertation, Charles Sturt University, Bathurst, pp 163–197.
 - 4 An example of Meadow's inaccurate testimony and unsound use of statistics can be found in *R v Sally Clark* [2003] EWCA Crim 1020; 2 FCR 447. The Court of Appeal described his testimony as having "misled the jury" and "grossly" overstated the risks. His evidence in two other cases *R v Angela Cannings* [2004] 1 All ER 725 and *R v Patel* (cited in [2004] EWHC 411 (Fam)) has been discredited and these mothers acquitted.
 - 5 *R v Angela Cannings* [2004] 1 All ER 725.
 - 6 *Re LU and Re LB* [2004] EWCA Civ 567.
 - 7 *R v LM* [2004] QCA 192.
 - 8 A number of US cases have successfully argued that evidence about MSBP should not be admissible eg *State v Lumbrera* 845 P 2d 609 (Kan 1992) and *Commonwealth v Robinson* 565 NE 2d 1229 (Mass 1991).
 - 9 For a more comprehensive table see H Hayward-Brown, "False And Highly Questionable Allegations Of Munchausen Syndrome By Proxy", available url: <<http://www.pnc.com.au/~heleneli/paper.htm>>.
 - 10 *Diagnostic and Statistical Manual of Mental Disorders*, 1994, 4th ed, American Psychiatric Association, Washington, p 725.
 - 11 Meadow, op cit n 2 at 344.
 - 12 D Allison and M Roberts, *Disordered Mother or Disordered Diagnosis? Munchausen Syndrome by Proxy*, 1998, The Analytic Press, Hillsdale.
 - 13 *Daubert v Merrell Dow Pharmaceuticals* 509 US 579 (1993).
 - 14 E Mart, *Munchausen's Syndrome by Proxy, Reconsidered*, 2002, Bally Vaughan Publishing, Manchester.

SELECT LEGISLATION

- *Bail Amendment (Terrorism) Act 2004* (No 34) commenced on the assent date of 4 June 2004 (s 2). This amendment to the *Bail Act 1978* removes the presumption in favour of bail and provides that bail is not to be granted in respect of offences relating to terrorist activities unless the accused person satisfies the officer or court hearing the bail application that bail should not be refused. These amendments apply to offences committed before the commencement of the Act.
- *Children Detention Centres Amendment Act 1998* (No 28) commenced on the assent date of 13 May 2004 (s 2).
- *Freedom of Information Amendment (Terrorism and Criminal Intelligence) Act 2004* (No 30) commenced on 28 May 2004. Gazette 91, 2004, p 3220.

JUDICIAL MOVES

District Court

- *His Honour Judge O'Reilly QC* has retired.

Commission wins silver award

The Judicial Commission's 2002–2003 Annual Report received a silver award from the Australasian Reporting Awards in May 2004.

The *Judicial Officers' Bulletin* informs Judicial Officers of current law and promotes consideration of important judicial issues. To respond to articles or to make a contribution to a future issue of the *Judicial Officers' Bulletin* please contact the Editor, Kathryn Lumley:

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