

1st December, 2008
Dr Richard Chadwick
General Manager
Adjudication Branch
Australian Competition & Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

Dear Sir

RE: Exclusive Dealing Notification N93645 lodged by St Vincent's Private Hospital
Your Ref: C2008/1846

I wish to make a submission in relation to the above notification.

I am a specialist anaesthetist currently appointed as a VMO at Bankstown Hospital and accredited to practice at The Hills Private Hospital, Prince of Wales Private Hospital, North Shore Private Hospital, Sydney Private Hospital, Castle Hill Day Surgery, Castlecrag Private Hospital and Westmead Private Hospital. I also have temporary accreditation currently at The Mater Sydney. I am also currently the Chairman, Department of Anaesthetics at The Hills Private Hospital.

I have a personal interest in the outcome of this matter, as I have recently been asked by a surgeon with whom I have had a long professional association currently in the public sector, to provide anaesthesia services to his patients at St Vincents Private when he commences operating sessions at the hospital early next year. He has been advised verbally that I would be free to apply, but unlikely to be accredited, as I am not 'on' at the public (and they are currently not seeking applicants), and the incumbent anaesthetists at St Vincents can provide the services that he requires.

In my experience this attitude is unique to St Vincents Private hospital. I am accredited at 3 other co-located public/private hospitals (North Shore Private, Prince of Wales Private and Westmead Private) and this is the only instance that I have heard of the argument raised that one must be appointed at the public hospital to gain accreditation at the private. I am interested to note also that this condition where one must have appointment at St Vincents Public to gain accreditation at the Private seems to be unique to anaesthetists and not to apply to other specialist craft groups. The surgeon to whom I refer is not required to have an appointment to provide services to public patients at the co-located public hospital, and indeed does not.

With respect to the claim of a 'public benefit' in the argument in support of this notification, I would argue that in fact this conduct results in a public detriment. Firstly, privately insured patients are unable to access care from their choice of provider for anaesthesia. In the case where a prior relationship exists between a patient and anaesthetist, the patient is denied access to a trusted standard of care when the anaesthetist is unable to gain accreditation.

It is also the case that this conduct may be of public detriment in that the surgeon is unable to refer patients to an anaesthetist with whom a trusted professional relationship exists. It is vital that the surgeon is able to confidently assure patients that their 'team' offers the highest standards of care. This assurance can only be given if there is a solid working relationship between surgeon and anaesthetist, such that the surgeon is able to reliably and confidently advise patients of the quality of care and anaesthetic outcomes that they can expect. The opportunity to provide this level of comfort to patients during this most stressful time is denied if the surgeon is not able to select the anaesthetist who best fits with theirs and their patients' anaesthesia care requirements. This restricts choice in professional dealings for both patient and surgeon.

I believe that the proposed conduct is of significant benefit only to the incumbent group of anaesthetists at St Vincents Private who maintain a 'closed workplace' in order to exclude competition from equally qualified colleagues. It is true that 'private' work is potentially, to borrow a term from the notification document, 'more lucrative'. As anaesthetists are free to set their own fees in the private setting, it may be imagined that a small group of anaesthetists with no outside competition could potentially artificially inflate fees, as there is no connection to the true 'market place'. This behaviour, if it exists, would be a profound detriment to the privately insured general public who choose St Vincents Private, potentially exposing them to a financial disadvantage.

It is spurious to claim that a public benefit is achieved by the proposed conduct enhancing public patient access to anaesthetic services by 'obliging' the group of anaesthetists at the Private to also undertake work at the Public hospital. Positions at St Vincents Public Hospital are highly sought after because it is an acknowledged centre of excellence, and thus there is rarely any vacancy. That being the case it is unnecessary to offer the 'incentive' of a Private appointment in order to 'oblige' anaesthetists to undertake public hospital work. Note also if you will that anaesthetists working at St Vincents Public are paid the same as anaesthetists working at any other NSW public hospital so there is no benevolence to be rewarded. Arguably, it may be the case that allowing an increased number of anaesthetists to share in the work burden at St Vincents Private would free up extra time for all of the anaesthetists of St Vincents campus to be available to offer services in the public hospital should they so wish.

It is also spurious to claim that teaching and training of medical students benefits from this arrangement. Teaching and training of medical students, junior doctors and specialist registrar trainees is offered by all public hospitals in NSW. Of the major teaching hospitals, the staff of St Vincents do not offer any greater standard of academia, world class best practice training or devotion to teaching than staff at any other teaching hospital. The absence of a handful of VMO's that may choose to practice solely in the private setting would likely be neither here nor there.

In conclusion, I respectfully request that the application for exclusive dealing by St Vincents Private Hospital with respect to anaesthesia services be denied by the ACCC. I believe that the current proposal as set out in the notification document, is anti-competitive and that on balance these arrangements are weighted to public detriment and serve no benefit other than to protect the group of incumbent anaesthetists from competition from equally qualified colleagues.

Yours Sincerely

Name withheld

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PUBLIC REGISTER**