

**FORM G**

Commonwealth of Australia

*Trade Practices Act 1974 – Sub-section 93(1)*

**NOTIFICATION OF EXCLUSIVE DEALING**

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93(1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to in subsection 47(2) of that Act in which the person giving notice engages or proposes to engage.

**1. Applicant**

**(a) Name of person giving notice:**

Bruce Heal, Janene Lea Garde and Megan Farnsworth trading as HPS Pharmacies ABN 93 629 434 870 (HPS).

N93592  
N93593  
N93594

**(b) Short description of business carried on by that person:**

HPS supplies pharmaceutical services to hospitals, disability and aged care facilities and correctional services throughout Australia.

**(c) Address in Australia for service of documents on that person:**

Bruce Heal  
c/- HPS Pharmacies  
5 Greenhill Road Wayville, SA, 5034  
Wayville, SA, 5034

**2. Notified arrangement**

**(a) Description of the goods or services in relation to the supply or acquisition of which this relates:**

HPS will be exclusively supplying pharmaceutical services to Calvary Central Districts Hospital, Calvary College Grove Hospital, Calvary North Adelaide Hospital and Calvary Wakefield Hospital (**Hospitals**). The Hospitals are operated by Calvary Health Care Adelaide Limited (**CHCA**).

**(b) Description of the conduct or proposed conduct:**

HPS has entered into an agreement with CHCA whereby HPS will supply pharmaceutical services to CHCA at its Hospitals (**Agreement**). The term of the Agreement is five years with an option to renew for a further five years. HPS will,

during the initial term of the Agreement, pay to CHCA \$2,600,000 in exchange for the right to exclusively provide the pharmaceutical services and CHCA will pay HPS fees for those services, which fees will be calculated in accordance with the Agreement. Details of the fees payable by CHCA to HPS are shown at annexure A.

For the term of the Agreement, CHCA will be bound to obtain all the Hospitals' pharmaceutical needs from HPS. However, the Hospitals' patients will still retain the right to choose their own pharmacist and fill their prescriptions where they want.

**3. Persons, or classes of persons affected or likely to be affected by the notified conduct:**

**(a) Class or classes of persons to which the conduct relates:**

- Pharmaceutical suppliers to hospitals in the Adelaide area. (This includes both pharmaceutical wholesalers who supply drugs but not prescription services, as well as pharmaceutical suppliers who provide prescription services and drugs.)
- Members of the public who are from time to time patients at the Hospitals.

**(b) Number of those persons:**

**(i) At present time:**

- (1) There are presently approximately 501 available beds in the Hospitals, the actual number of which being occupied will vary from time to time.
- (2) There are approximately:
  - (A) two other national providers of both prescription and imprest supply
  - (B) two national wholesale providers of pharmaceuticals, and
  - (C) two smaller pharmaceutical providers in the Adelaide area.

**(ii) Estimated within the next year:**

- (3) There will be approximately 425 patients per day in the Hospitals during the next year.
- (4) The same as in point 3(b)(i)(2) above.

**(c) Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses:**

Not applicable

#### 4. Public benefit claims

(a) **Arguments in support of notification:**

HPS is able to secure cheaper prices from pharmaceutical suppliers due to its size and market strength. Because of this, HPS can keep the prices of its pharmaceutical products low. CHCA is a subsidiary of Little Company of Mary Health Care Limited, a charitable institution, and any savings it receives may be used in pursuit of its charitable purposes. These purposes in turn benefit the community at large.

The increased sophistication in the market and the high level of expertise required in administering prescriptions has created a demand for highly experienced pharmaceutical providers. Many hospital patients are prescribed a variety of different medications and it is imperative hospital pharmacists understand the potential effects of each of those drugs on a patient as well understand the effect the combination of drugs may have on a patient. For this reason, many community pharmacists are leaving the hospital market and this is giving way to the emergence of larger, more experienced organisations specialising in pharmaceutical supplies and clinical services to hospitals.

The patients at the Hospitals will gain the benefit of the experience, skill and expertise of HPS who are one of the largest independent suppliers of pharmaceutical services within Australia. HPS has been operating since 1975 and is a specialist pharmaceutical supplier, servicing over 15,000 hospital, aged care, disability and correctional service beds across Australia.

(b) **Facts and evidence relied upon in support of these claims:**

The fees payable to HPS by CHCA under the Agreement are as shown in annexure A.

The pharmaceutical provider at CHCA's Calvary Wakefield Hospital notified CHCA that it would no longer be supplying the pharmaceutical services and was leaving the market. This has prompted CHCA to find a replacement provider for its Wakefield hospital. CHCA wanted to retain the same pharmaceutical service provider at each of the Hospitals as one provider will provide consistency over the Hospitals and make it easier to negotiate on standards and services in line with CHCA's mission and philosophy. Additionally, a larger more experienced provider will:

- (i) improve clinical and professional services by supplying such things as education, drug information services, medication reviews, drug reaction reporting, therapy monitoring, risk assessments, audits, accreditations, drug recalls and drug interactions
- (ii) provide specialised services in line with CHCA's business development plans, such as oncology pharmacy

- (iii) improve access to products and supply flexibility (for example, a better on call coverage over the Hospitals)
- (iv) increase access to alternative products in the event of shortages in the smaller hospitals
- (v) improve imprest management
- (vi) introduce newer technologies and systems, such as barcoded stock and PDA input of prescriptions
- (vii) reduce the need for nurses input and free-up these nurses for greater patient care, and
- (viii) provide a comprehensive reporting framework on all area, including usage, errors and product selection.

## 5. Market definition

The market is the supply of pharmaceutical services to hospitals in Adelaide.

There are presently approximately 2738 public hospital beds and approximately 1645 private hospital beds in the Adelaide area. The total number of hospital beds is 4383 in Adelaide, comprised as follows:

(a)	<u>Public</u>	<u>Approximate No of Beds</u>
	Royal Adelaide Hospital	700
	Queens Elizabeth Hospital	350
	Modbury Hospital	180
	St Margaret's Rehabilitation Hospital	48
	Hampstead Rehabilitation Centre	150
	Lyell McEwin Hospital	240
	Repatriation General Hospital, Daws Park	300
	Flinders Medical Centre	556
	Glenside Psychiatric Hospital	129
	Noarlunga Hospital	85
	<b>Total Public Beds</b>	<b>2738</b>
(b)	<u>Private</u>	<u>Approximate No of Beds</u>
	Ashford Hospital	200

St Andrew's Private Hospital	180
Calvary Wakefield Hospital	205
Flinders Private Hospital	128
Calvary North Adelaide Hospital	153
Burnside War Memorial Hospital	90
Calvary Central Districts Hospital	78
Calvary College Grove Rehabilitation Hospital	65
North Eastern Private Hospital	68
Parkwynd Private Hospital	32
Western Hospital	45
Glenelg Community Hospital	51
The Memorial Hospital	105
Sportsmed SA Hospital	45
Stirling Private Hospital	30
Blackwood and District	40
The Adelaide Clinic	80
Fullarton Private Hospital	50
<b>Total Private Beds</b>	<b>1645</b>

Public and private hospitals each have the same ability to outsource their pharmaceutical needs. While it is generally common practice for private hospitals to retain pharmaceutical service providers, public hospitals usually employ pharmacists to take care of these needs. However, there are some public hospitals that do outsource their pharmaceutical requirements (particularly oncology pharmacy) and HPS also supplies its services to two public hospitals in Adelaide (Modbury Hospital and Noarlunga Hospital) as well as to the 80 bed Whyalla Hospital.

HPS currently supplies selective pharmaceutical services to 1084 hospital beds in Adelaide (being approximately 25.5% of the market). Following execution of the Agreement with CHCA, HPS will provide its services to 1585 Adelaide hospitals (approximately 37.3% of the market).

## 6. Public Detriments

- (a) **Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2(a) above and the prices of goods or services in other affected markets:**

HPS cannot see any real or immediate detriment to the public by virtue of its entry into the Agreement. It currently holds approximately 25% of the market and after execution of the Agreement, its hold in the market will increase to approximately 37%. HPS does not believe there will be any substantial impact on or change in the market flowing from the Agreement. This is partly due to the increase in demand for highly skilled providers in the market resulting in many smaller community based providers leaving the market of their own volition.

The barriers to entry into the market are the necessity for highly skilled providers, not only to compete with other market participants but also to meet the ever increasing demand for expertise sought by hospitals. As is the case presently, pharmaceutical service providers employ pharmacists with the necessary skill set to fulfil these requirements and this ability will not change by virtue of the Agreement. Another barrier to entry is the requirement for approval under ss90 or 94 of the *National Health Act 1953*, being a legislative requirement which allows providers to access the pharmaceutical benefits scheme. This is a requirement placed on all hospital pharmacists, with each having to meet the obligations of the legislation in order to access the scheme.

HPS does not believe the Agreement will have the effect of substantially lessening competition in the market. This is because the existing service providers (particularly the large national providers) will remain in the market and HPS's entry into the Agreement will do little to change that.

Additionally, there will be no obligation on patients to fill their prescriptions with and obtain their medication from HPS. While, in practical terms, hospital patients do generally obtain their medication through the Hospitals' pharmaceutical suppliers, patients always have the right to choose their own pharmacist and fill their prescriptions where they want.

- (b) **Facts and evidence relevant to these detriments:**

The private hospitals in Adelaide are currently serviced by the following pharmaceutical suppliers:

Hospital	No of licensed beds	Pharmaceutical provider
Ashford Hospital	200	HPS *
Burnside War Memorial	90	APHS

Hospital		
Flinders Private Hospital	128	HPS *
Glenelg Community Hospital	46	HPS
Parkwynd Private Hospital	50	HPS *
St Andrew's Private Hospital	180	HPS *
Western Hospital	45	Local provider
North Eastern Pvt Hospital	60	Local provider
The Memorial	105	HPS
Sportsmed SA Hospital	45	HPS *
Stirling Private Hospital	30	Local provider
Blackwood and District	40	HPS *
The Adelaide Clinic	80	HPS *
Fullarton Private Hospital	50	HPS *

\*HPS provides only the scripting service, not the wholesale (imprest) supply. Imprest can be up to approximately 50% of the drug cost of a private hospital.

In addition to the above, APHS will be partnering Baxter Health in providing pharmaceutical services in a large oncology facility which is presently under construction and should be operational within a year's time. The Agreement will do nothing to change the present structure of pharmaceutical supplies in the other hospitals operating in Adelaide.

Further, the Agreement between HPS and CHCA and does not in any way attempt to bind the Hospitals' patients. Clause 2.1(c) of the agreement states:

"Notwithstanding the Contract Rights Fee and the other provisions of this Agreement, (HPS) acknowledges that the Patients have the right to acquire pharmaceutical services and products from a provider of their choice."

## 7. Pharmaceutical Benefits Scheme

The Primary source of income for HPS and most community pharmacies is the Pharmaceutical Benefits Scheme. HPS will supply PBS benefits to the clients of the hospital only whilst they are in hospital. Upon leaving Hospital they will return to their community pharmacy for the future supplies.

8. **Further information**

**Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:**

Mr Bruce Heal, HPS Pharmacies, 5 Greenhill Road, Wayville, SA, 5034

Date: 18<sup>th</sup> September 2008

Signed by the applicant giving notice:

A handwritten signature in black ink, appearing to read 'Bruce Heal', is written over a horizontal line.

(Signature)

Bruce Heal

HPS Pharmacies

## ANNEXURE "A"

## Schedule 5 – Fees

Item	Price (ex GST)
1. Imprest products	Net-into-store (NIS) cost price (benchmarked against current SA Public Hospital Contract Price and best available not-for-profit private hospital price)
2. Imprest management	No charge
3. PBS prescriptions (including PBS Authority scripts for approved PBS Authority conditions) with or without prescription in advance of supply	PBS patient co-payment
4. Private (non-PBS) prescriptions – applied to all non-PBS medications and those PBS items for which it is cheaper to dispense as a private medication than it is for the Hospitals to pay the PBS patient co-payment.	<p>(a) less than \$100 – NIS cost + 10%</p> <p>(b) Greater than or equal to \$100 but less than \$200 – NIS cost plus 5%</p> <p>(c) Greater than or equal to \$200 – NIS cost price</p>
5. EDL drugs	NIS cost price
6. Over-the-counter medication	NIS cost price + 25%
7. Reconstituted chemotherapy fees	At PBS patient co-payment (for PBS items) and at NIS cost price (for non-PBS items)

8. Total parenteral nutrition (TPN)	<p>For TPN which requires no additives to be added by the Service Provider: at NIS cost price</p> <p>For TPN which require additives to be added by the Service Provider: at NIS cost price + \$25</p>
9. Professional service fees: to be provided and payment made on a phased-in basis with commencement date to be mutually agreed:	<p>Calvary Central Districts Hospital: \$1,976 per month</p> <p>Calvary College Grove Hospital: \$988 per month</p> <p>Calvary North Adelaide Hospital: \$9,386 per month</p> <p>Calvary Wakefield Hospital: \$9,386 per month</p>
10. Patient medication summary	No charge
11. Discharge medication summary	No charge
12. Call back fee (except where the call back is due to an error or omission of the Service Provider)	No charge