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ACCC
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15/11/11

Dear Sir/Madam

Re: Cabrini Health Limited – Notification – N95607

I write this letter to you with respect to the above notification for Cabrini Health to have exclusivity of referrals for pathology and radiology to their “in-house” providers.

Firstly, I would like to provide some background. The medical discipline of Pathology can be broadly divided into Anatomical Pathology and Clinical Pathology (encompassing Chemical Pathology, Haematology and Microbiology). The latter are largely automated branches, with much of the work, including interpretation, performed by machines, and overseen by medically trained Pathologists.

In contrast, Anatomical Pathology (of which the major sub-branch is Histopathology or Tissue Pathology) refers to the diagnosis of disease, performed by medically trained and specialist accredited Pathologists, physically looking through a microscope at glass slides which have sections of stained tissue. The pathologist provides a diagnosis based on recognition of patterns and appearances, again based on previous experience. As such, it is an interpretive branch of medicine, and can be compared to other aspects of clinical medicine, whereby a clinician makes a diagnosis based on symptoms and signs seen in a patient. In effect, when a biopsy of tissue is sent to us, it is akin to a doctor sending a patient to a specialist for a specialist opinion or diagnosis.

Doctors have specialist doctors who they prefer to refer their patient to for further assessment and management. They refer to these specialists based on the clinical issue to be resolved, the particular skill set/expertise of the specialist and previous experience of a positive outcome for their patients from these referrals. A degree of trust and confidence develops between referrer and specialist, and a professional relationship is established.

This is exactly the same situation that occurs in Anatomical Pathology. There are a number of smaller-scale, independently owned and operated, specialist Histopathology laboratories in Melbourne. Referrals are made to these laboratories because referring doctors have developed trust and confidence in the pathologists at the laboratories, and their particular skill sets and interests. These may be quite sub-specialised and include skin, gastrointestinal, urological, breast and gynaecological systems. There

is often a preference to refer to these laboratories because the referring doctor can be confident that a certain pathologist, with the appropriate skill set, will report their referrals.

Histolab Pty Ltd is one such laboratory, where the emphasis is on reporting tissue referrals (predominantly skin biopsies) from Plastic Surgeons and Dermatologists. The principal pathologist has been, and is still involved, in teaching pathology to trainees in these two specialties. Histolab receives referrals based on confidence that the reporting pathologist will provide accurate and consistent opinions in a timely fashion. Histolab does not operate collection centres. Histolab's fees to patients are modest and well below those recommended by the AMA. An explanation of our billing policy can be found on our website www.histolab.com.au.

There are major implications to the industry which may arise from approval of this submission, most notably:

1. The potential for a reduction of competition by funneling referrals to a smaller number of laboratories
2. The restriction of choice for doctors to refer to other doctors of their choosing
3. The potential of price rises for patients in a "monopoly" situation
4. A lack of disclosure and transparency to patients about alternatives
5. The potential for compromise in quality of provision of pathology services and its effect on patient outcomes

The reduction in competition is a major and realistic outcome. The vast majority of private pathology is performed by three operators: two ASX-listed companies Sonic Healthcare and Primary Healthcare (through their regional subsidiaries) and private equity backed Healthscope. It should also be understood that Sonic and Primary also own general practices and Healthscope own private hospitals.

With specific reference to Cabrini Health, it needs to be understood that while Cabrini owns and operates Cabrini Pathology, the laboratory is staffed by pathologists who are employed by Melbourne Pathology (a subsidiary of Sonic Healthcare), and that there is a profit-sharing arrangement between the two entities. It is also understood that there is a profit-sharing arrangement between Cabrini and MIA, which staffs Cabrini Medical Imaging with radiologists. Hence any exclusivity arrangements will not only benefit Cabrini Health, but also a subsidiary of a for-profit, publicly-listed corporate service.

There are likely to be flow on effects industry-wide. Private hospital operators will seek profit-sharing arrangements with the larger pathology/radiology operators. This has also already happened with Epworth Health and Melbourne Pathology re-branding as "Epworth Pathology" at Epworth Hospital campuses. There will be increasing pressure to "encourage" or "incentivize" their doctors to refer to the in house services.

In summary, I ask you to consider this application very carefully. I urge you to reject it on the basis of the points made above. It has the potential to increase medical costs, reduce competition and compromise patient care and is not in the public interest.

I look forward to your response.

Yours sincerely,

Dr Andrew J Ryan MBBS, FRCPA, Associate Member ACD

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