

15th November, 2011

Ms Clare McGinness
Australian Competition & Consumer Commission
GPO Box 520
MELBOURNE VIC 3001

Herewith is a final draft of my comments regarding Cabrini application N95607, which, I believe, are acceptable for circulation.

Re: Cabrini Application N95607

I write to you as a matter of urgency regarding the Cabrini application for exclusive rights to pathology within their hospital groups. I intend to take further legal steps, which may involve some delay, and, in view of this, I have chosen to write to you as a matter of considerable concern to warn you of the widespread implications this seemingly benign yet spurious application may have in the long term and in the broader practice of pathology. Our practice supplies a very small component of the Anatomical Pathology at Cabrini Hospitals and we learned of the application indirectly by coincidence. We were not even notified of the lodgment.

- (1) Firstly, I should like to point out that the practice of the discipline of pathology includes two very different facets. A small but crucial part involves the conduct of Anatomical Pathology, which requires considerable medical skill and is a medical consultation rather than a pathology 'test', conducted individually and manually by a specialist doctor or anatomical pathologist (histopathologist). This contrasts with the rest of pathology, which is largely an automated operation, and functions along usual business lines. Automated or clinical pathology generally requires little medical input to the results produced. Anatomical Pathology makes up a tiny percentage of the entire pathology budget.
- (2) In the past, Cabrini performed virtually all its pathology 'in house', including both automated clinical and specialist anatomical aspects. It lost some of the specialist anatomical pathology as the discipline of anatomical pathology became more sub-specialised and closer clinical links were formed between medical clinician and pathologist. Another reason, which may have even had more impact in Cabrini losing some of the pathology referrals was the high price Cabrini charged its 'captive market', annoying the doctors, who often switched away from its 'in house' operation. You could check this with any of the major health funds. Cabrini has since lowered its prices, but

only due to the pressure of having lost a significant component of the work to external providers.

- (3) If you make a ruling with regard to Cabrini, the broader implications of this decision are immense. Other major hospital operators have formed similar alliances with pathology practices to monopolise pathology services. Most recently, Epworth Hospitals have entered into a joint venture with Melbourne Pathology known as Epworth Pathology, in order to monopolise the pathology work generated by its group of hospitals, which includes three of Melbourne's major private hospital operators. It is very important to note that Cabrini operates its pathology services in association with Melbourne Pathology, itself a wholly owned subsidiary of Sonic Healthcare, a listed public company. Indeed even the diagnostic pathologists at Cabrini Pathology appear on the Sonic Melbourne Pathology website and, I believe, are contracted to work at Cabrini.
- (4) The implication of the Cabrini application is that the 24 hour comprehensive service stands to lose the lucrative work that the smaller operators are processing. This could not be further from the truth. The smaller operators are currently processing a large proportion of the difficult complex cases in the field of Anatomical Pathology. Anatpath would welcome any inspection of our operation by the ACCC. Certainly in the case of our practice, Anatpath, we do offer a 24 hour service, including courier operations, tissue processing, pathology reporting and frozen sections, including after hours and at weekends. The latter have always been available to our providers, whenever required. We have performed frozen sections at Brighton Cabrini, which, significantly, is geographically closer to our own laboratory than the main Cabrini laboratory in Malvern. I do not believe that Cabrini have a laboratory for on-site Anatomical Pathology at Cabrini Brighton Hospital.
- (5) A further indirect implication of the Cabrini application is that collection centre size is a measure of running costs or perhaps even case complexity. Collection centres are irrelevant to the conduct of anatomical pathology and apply only to the automated blood tests, where the sample is collected by a technician. Collection centres are a service provided by pathology operators in pursuit of increasing their share of high turnover clinical pathology tests. Our practice does not operate any collection centres, for which we have no operational need, nor do we choose to deploy such centres to market our services.

Our practice, Anatpath, is relatively large in the field of Anatomical Pathology in comparison with the corporates and performs approximately one half to one third of the biopsy numbers of the two major operators, Dorevitch Pathology and Melbourne Pathology respectively, with more complicated cases than the former and a higher proportion of complex cases, usually cancer related cases, than either of the corporates. It is hardly a 'Cindarella' operation, syphoning off the simple lucrative cases produced in the discipline. Once again, we would welcome any assessment of our case complexity

and laboratory procedures, in defence of apparent 'cherry picking' alluded to in the Cabrini application to the ACCC.

- (6) The Cabrini application for exclusivity to pathology services bears superficial resemblance to the NSW and Queensland application previously tendered. This is, however, only a very superficial similarity. As far as I am aware, the other applications relate exclusively to public hospitals and specifically to private patients in these public hospitals. In the public hospital setting, there is shunting of patients between public and private classifications. Commonwealth and state cross funding and the question of double dipping become issues of prime concern. In the case of Cabrini Hospital, I believe the inpatient population to be exclusively one of private patients. It is bordering on the absurd to facilitate any exclusivity of service to a population of private patients in a wholly private hospital. Further, and perhaps even more remarkable, is the Cabrini application for exclusivity to pathology services for outpatient procedures it regards as integral to the Cabrini operation. I should like to point out that Cabrini runs collection centres in the community, where any such exclusivity rights would also apply.
- (7) Cabrini makes a point that their in-house pathology facilitates downloading reports into the parent hospital computer system. Our practice, and, I believe, other external practices routinely download reports successfully to a number of hospitals, and the ACCC should ensure that all hospitals are required to facilitate computer downloading facilities to all pathologists, in the interest of patient care.
- (8) Cabrini has been marketing itself actively within its hospitals and in the broader patient community, in much the same way as any private operation does. Our practice, and almost certainly other specialist practices, do not actively market ourselves to clinicians at Cabrini. The small component of our work which does come from Cabrini hospitals or Cabrini associated doctors relates primarily to the perceived quality of service and the pricing issues, rather than the effects of marketing.

The practice of the subspecialty of Anatomical Pathology is difficult enough. We do not have a supportive college, as our own organisation, the Royal College of Pathologists of Australasia largely confines its activity to education and credentialing in Pathology. Many of the fellows of the Royal Australian College of Pathologists are now corporate employees, and, as such, the Royal Australasian College of Pathologists appears to have confined and minimised any political and commercial activities, in stark contrast to other learned colleges in the field of medicine.

In conclusion, I should like to point out Sonic Healthcare subsidiaries in Victoria are closely aligned to other attempts at promoting alliances in the field of Pathology, specifically the Epworth Pathology and Cabrini Pathology models. Such alliances lead to monopolies.

Any monopoly that is afforded would compromise the quality of conduct of Anatomical Pathology and serve to drive up costs in all areas of pathology considerably. To allow Cabrini

such exclusivity would open the door to other operators and would have a very detrimental effect in the pathology marketplace.

I thus appeal urgently to your organisation to investigate this application by Cabrini most carefully. I look forward to your early response. If I can be of any assistance, please do not hesitate to phone me (03) 9596 0777.

Yours faithfully,

DR DAVID MACHET
ANATPATH
MELBOURNE