



**Australian
Competition &
Consumer
Commission**

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23 November 2011

Associate Professor Simon Woods
Executive Director - Medical Services
Cabrini Health
183 Wattletree Road
Malvern Cry 3144

Sent via email: swoods@cabrini.com.au

Dear Professor Woods

**Re: Cabrini Health Limited exclusive dealing notification –
request for further information and interested party submissions**

I refer to the above lodged exclusive dealing notification with the Australian Competition and Consumer Commission (the ACCC) on 19 October 2011.

The purpose of this letter is to provide you with a copy of interested party submissions received to date and to request additional information from you to assist the ACCC in its assessment of the matter.

Interested party submissions

As you are aware, on 28 October 2011 the ACCC wrote to interested parties seeking submissions in relation to the application. The ACCC requested submissions be provided by 15 November 2011.

The ACCC has received submissions from the following interested parties:

- Nexus Pathology
- Royal College of Pathologists of Australasia
- Consumers Federation of Australia
- Australasian Society of Anatomical Pathologists
- Consumers Health Forum of Australia
- 1 x submission from anonymous interested party

- 1 x confidential submission
- The Royal Australian and New Zealand College of Radiologists
- Histolab Pty Ltd
- Anatpath
- Australian Institute of Medical Scientists
- TissuPath
- AMA Victoria
- Dr Lloyd McGuire
- Focus Pathology

All publicly available submissions will be posted on the ACCC internet site at: www.accc.gov.au/AuthorisationsRegister. The ACCC has also attached a copy of the submissions to this letter. The ACCC is continuing to process a number of submissions and understands that some submissions are still forthcoming. We will forward these to you as soon as possible.

Interested parties have raised a number of concerns regarding the notified conduct and the immunity afforded by the notification. If you wish to comment on the submissions, could you please do so by **COB Friday 2 December 2011**.

Request for further information

In addition to responding to the concerns raised in interested party submissions, the ACCC seeks further information from Cabrini as follows:

1. A number of interested party submissions have queried how the exclusive dealing arrangement proposed by Cabrini is consistent with the requirements of the *Health Insurance Act 1973*, which aims to prevent requesters of pathology and diagnostic imaging services from accepting or being offered benefits in order to induce them to request the services from particular providers.

The ACCC also understands that the recent changes to the legislation require or will require requesters of pathology and diagnostic imaging services to place patient notices on referral forms advising the patient that they are free to take their request form and obtain services from any provider they choose, that is, they do not have to go to the provider identified on the form.

To assist the ACCC's understanding, could you please clarify how the notified conduct is consistent with this legislation?

2. The notification states that Cabrini "may choose to make decisions regarding access to its resources such as operating theatres, cardiac catheter laboratory, consulting rooms and delivery suites based on the [referring doctors] usage [that is, number of patient referrals to Cabrini Pathology and Cabrini Medical Imaging]."

Could you please elaborate on this, providing more information on what types of 'decisions regarding access to resources' will be made, and how Cabrini will make these decisions?

I note that Cabrini intends to allow medical practitioners to refer patients to third party providers if they form the opinion that it is in the patient's best interest to do so. If a medical practitioner makes a decision to refer to third party provider on this basis, will that have an effect on their 'usage' (that is, their number of referrals) and therefore potentially their access to Cabrini's hospital resources?

3. In section 2(b) of the Form G provided to the ACCC on 19 October 2011, you state that exclusive dealing conduct would pertain "unless the patients medical practitioner forms the opinion that it is in the best interest of the patient for them to be referred to a third party provider because: [you then list four requirements]". Could you please confirm that just one of these requirements needs to be met and not all four simultaneously?
4. Also in section 2(b) of the Form G, you set out a number of conditions that medical practitioners must meet in order to refer a patient to a third party pathology or medical imaging provider. That is, the referring doctor/medical practitioner:
 - a. has satisfied themselves regarding the capacity of the provider to provide safe, timely, high quality services, and
 - b. has taken all steps to ensure results will be available within the patients Cabrini medical record or electronically to ensure other Cabrini medical practitioners can access such information, and
 - c. must be prepared to provide justification, when requested, and demonstrate that their decision was consistent with the above requirements.

Could you please provide more information on what Cabrini would require from medical practitioners in order to meet their obligations set out in a, b and c above (as set out in section 2(b) of the Form G).

5. Could you please advise what policies and procedures (if any) Cabrini intends to put in place to ensure that medical practitioners are fully informed about when, and under what circumstances, they can make a decision to refer a patient to a third party provider.
6. A number of interested party submissions suggest that the prices of services at Cabrini Pathology and/or Cabrini Medical Imaging are higher than those of competing pathology and medical imaging service providers. Could you please provide a response to this claim? Could you also please provide a price list for all services offered by Cabrini Pathology and Cabrini Medical Imaging? The ACCC would also like any information about the out-of-pocket patient expenses associated with these services and the applicable Medicare and private health insurance rebates. Could you please advise when, and under what circumstances, in-patients and out-patients will be advised of any gap fees?

7. The notification states that Cabrini would not require a patient to travel beyond a reasonable distance to utilise its facilities for out-patient investigations. Please advise what Cabrini considers to be a 'reasonable' distance? Could you please confirm who Cabrini considers to be out-patients of its hospitals?

Please provide a response to these questions by **COB Friday 2 December 2011**.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact Clare McGinness on (03) 9290 6909.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'Richard Chadwick', with a long horizontal line extending to the right.

Dr Richard Chadwick
General Manager
Adjudication Branch

Cc: Fleur Gibbons, DLA Piper Australia, via email: fleur.gibbons@dlapiper.com