

20 April 2012

Dr Richard Chadwick
General Manager
Adjudication Branch
A C C C
GPO Box 3131
Canberra ACT 2601

Dear Dr Chadwick

**Application for authorisation (A91295, A91296,A91297)
Lodged by St Vincent's Health Australia & Ors.
Interested Party Consultation.**

Thank you for your letter dated 5th April 2012 inviting us to comment on the proposal by St Vincent's Health Australia Limited and associated entities.

Bespoke Pathology Pty Limited trading as TissuPath (TissuPath) is a three partner pathology practice operating in Mount Waverley, Victoria. Specialising in anatomical pathology, the practice employs over 30 staff and regularly provides diagnostic services to clinicians throughout Victoria, and less regularly to clinicians in other states. The practice has a strong interest in urology and consequently in diseases and cancers of the prostate. TissuPath also contributes to the discipline of anatomic pathology through teaching and research, representing a strong contribution to "public benefit". Through its research arm, Tissupath Research Pty Limited, we have published over 20 papers since 2004, and we are actively involved in research collaborations with Monash University, Melbourne University, the Cancer Council of Victoria and other entities including biotechnology companies in Australia and from overseas. We also participate actively in the training of pathology registrars through lectures and practical exercises; one of our pathologists is the Royal College of Pathologists of Australasia (RCPA) Coordinator for Online Education and is coordinating the production of website for that purpose. The practice relies on the referral from specialist clinicians who operate in a variety of environments including their own rooms and practices located in private and public hospitals, such as those operated by SVHA.

We have reviewed the contents of the Application lodged by the applicants and, although we do not have an issue with the general direction taken, with respect to the creation of an single economic entity for purposes of negotiation with health funds and with suppliers of commodities such as electricity and office supplies, we are concerned with the potential for abuse of market power and restriction of competition, no matter how well intentioned the initial motives of SVHA may be

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Our recent experiences with Cabrini Health Limited (ACCC reference: Cabrini Health Limited - Notification - N95607) We question whether organisations of the size of SVHA s can be granted authorisation to engage in conduct such as :

“..tying up of goods or services in such a way that the supply of goods or services at one entity (such as SVPHS) may be conditional on a third person’s acquiring goods or services from another entity in the SVHA Group, where the **third person is a patient, a doctor** or a Funding Organisation”(emphasis added). (Page 13 of the Submission)

If SVHA’s requests are agreed to by the ACCC, it is conceivable that doctors operating out of SVHA facilities could be “encouraged” to use only SVHA pathology services in exchange for the right to use facilities at one of their hospitals, thus locking out private, independent providers of pathology services.

For TissuPath with referring clinicians operating in at least 3 of SVHA’s subsidiary hospitals in Melbourne, this becomes an issue that potentially affects our financial viability and the impacts on doctors and patients in the following ways:

- Removes patient choice in selection of pathology providers – a condition which has been strongly supported by Medicare and the Commonwealth Government
- Removes and/or impairs doctor choice and their independence of practice
- Impedes access to speciality services
- Costs are set by SVHA in the absence of normal market forces due to the impact of their size and coercive powers, thereby decreasing competition

It would appear to TissuPath that SVHA has all but admitted that the treatment and entitlements of practitioners in their hospitals will vary depending upon the number of purchase orders submitted to SVHA pathology or radiology services. To quote, “..tying up of goods or services in such a way that the supply of goods or services at one entity (such as SVPHS) may be conditional on a third person’s acquiring goods or services from another entity in the SVHA Group, where the **third person is a patient, a doctor** or a Funding Organisation” (emphasis added). (Page 13 of the SVHA Submission).

TissuPath notes that to the extent that these arrangements represent the conferral of a “benefit” on practitioners in return for the referral of pathology services, the arrangement contravenes the prohibitions on the provision of an inducement for pathology services, as prescribed in the Health Insurance Amendment (Inappropriate and Prohibited Practices and Other Measures) Act 2007 [Cth]). TissuPath submits that practices contrary to law should neither be endorsed nor encouraged.

As an example of why this provision is unreasonable at odds with government policy, consider the situation if Cardinal Pell was hospitalized at St Vincent’s Hospital in Sydney for evaluation of possible prostate cancer, and the attending urologist and Cardinal Pell both asked that prostate biopsies obtained from him be sent to a specific pathologist with expertise in prostate cancer (e.g. to Dr Warwick Delprado at Sonic in Sydney, or to A/Prof John Pedersen at TissuPath in Victoria). Would it be reasonable for St Vincent’s hospital to reject that request? It is understood that a system

which ignores or defies patient choice is completely at odds with government policy, including the “patient choice” policies recently articulated in the Health Insurance Amendment (Pathology Requests) Bill 2010 (Cth). If the Cardinal and his attending doctor can choose their pathology provider, every patient and every doctor should be able to as well.

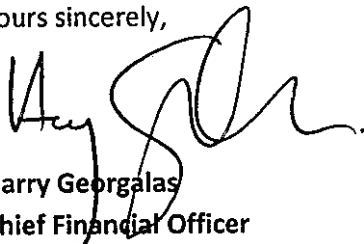
SVHA argues that the provisions they are requesting are important because “[SVHA] should operate as effectively and efficiently as possible”. TissuPath is unaware of any public policy to the effect that activities of private operators such as SVHA, whether not-for-profit or for-profit, should be underpinned by anticompetitive practices.

As to public benefit, we agree that the entities comprising SVHA do provide public benefit, but that is also true for TissuPath and arguably for other private pathology companies.

We urge the Commission to carefully consider whether the authorisation to engage in exclusive dealing arrangements would have broader implications for competition in the health services market than those briefly touched on by the Applicant’s Submission.

Should you have any queries, or wish to discuss this further, please do not hesitate to contact me directly.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Harry Georgalas', written over the printed name.

Harry Georgalas
Chief Financial Officer
Bespoke Pathology Pty Limited
Trading as TissuPath