

TRADE PRACTICES ACT 1974

**UNDERTAKING
TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION
GIVEN UNDER SECTION 87B**

by DR PAUL PONG TIAH KHOO and PAUL P.T. KHOO PTY LTD ACN 010 226 749

13 September 2002

Definitions

"the Act" means the *Trade Practices Act* 1974 (Cth).

"Commission" means the Australian Competition and Consumer Commission.

"Dr Khoo" means Dr Paul Pong Tiah Khoo personally and also, as the context otherwise requires, the company, Paul P.T. Khoo Pty Ltd ACN 010 226 749.

"Dr Leyden" means Mark Andrew Phillip Leyden.

"Dr Robson" means Stephen James Robson personally and also, as the context otherwise requires, the company, Stephen Robson Medical Pty Ltd ACN 090 610 245.

"Medical Benefits Schedule" means the table of medical services setting out the:

- (a) items of medical services;
- (b) amount of fees applicable in respect of each item; and
- (c) rules for interpretation of the table.

"Patient" means a patient who is a member of a registered health benefits organisation.

"private in-hospital obstetrics services" means the management of labour and delivery by an obstetrician - being services referred to in one or more of item numbers 16515 to 16525 of the Medical Benefits Schedule - at the Mater Private Hospital, Rockhampton, Queensland.

"Doctors" means Dr Khoo, Dr Robson and Dr Leyden.

"Proceedings" means Federal Court matter Q52 of 2002 between the Commission and the Doctors.

Background

On 16 April 2002, the Commission commenced the Proceedings against the Doctors alleging that they breached various provisions of the Act or the Competition Code of Queensland.

The Commission has agreed to settle the Proceedings against Dr Khoo on the basis that, inter alia, Dr Khoo gives the following undertakings pursuant to section 87B of the Act.

Commencement of Undertakings

- 1.1 These undertakings come into effect when:
- (a) the undertakings are executed by Dr Khoo;
 - (b) the undertakings as executed are accepted by the Commission; and
 - (c) Dr Khoo and the Commission agree to terms for the settlement of the Proceedings.

Undertakings

- 1.2 Dr Khoo will, within 28 days of the commencement of the Undertakings, send a copy of the letter in Attachment A to the Patients listed in Attachment B, enclosing the payments referred to in paragraph 1.3 below.
- 1.3 Dr Khoo will pay to the Patients listed in Attachment B 40% of the value of the gap payments paid by those Patients to Dr Khoo in relation to the provision of private in-hospital obstetrics services provided during the period 1 January 2001 to 31 July 2001.

Obligations to procure and notify

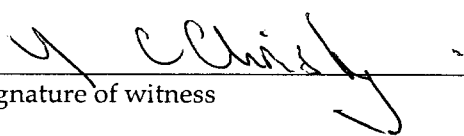
- 1.4 Dr Khoo must promptly provide to the Commission (in confidence) all information reasonably requested by the Commission which is relevant to the performance of these undertakings.

Confidentiality

- 1.5 Dr Khoo acknowledges that the Commission will make this Undertaking available for public inspection.
- 1.6 Dr Khoo acknowledges that the Commission may, from time to time, publicly refer to this Undertaking.

DATED:


SIGNED by **Paul Pong Tiah Khoo** in the presence of:



Signature of witness

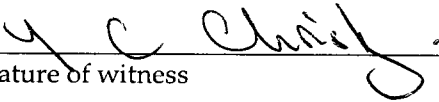
CARDZ CHRISTY

Name of witness



PAUL KHOO

**SIGNED by Paul P.T. Khoo Pty Ltd ACN
010 226 749 by its sole director and sole
company secretary in the presence of:**



Signature of witness

CAROL CHRISTY

Name of witness



DIRECTOR/SECRETARY

**ACCEPTED by THE AUSTRALIAN
COMPETITION & CONSUMER COMMISSION**


.....

Chairman

Date: 20th 9 2002

ATTACHMENT A

Dear Patient

On the 15th of February 2002, an article appeared in the Rockhampton Morning Bulletin in relation to an investigation being carried out by the Australian Competition and Consumer Commission (ACCC) concerning the billing practices of local obstetricians including me.

The ACCC concluded its investigation in April 2002 and formed the view that I had agreed with Dr. Leyden not to provide private in-hospital obstetrics services on a 'No-Gap' billing basis which meant that health insurance funds could not pay in full the bills I rendered on behalf of their members. As a consequence, you were required to make a gap payment in relation to my services. My reason for doing this was to maintain a working relationship with Dr Leyden and to prevent him from sending you a bill directly if he treated you (on my behalf) during periods when I was not available. The ACCC alleges that the same agreement was reached between Dr. Leyden and Dr. Robson.

Since the outset of the ACCC's investigation, I have co-operated with the Commission. Given the public interest nature of this issue it was necessary for the ACCC to commence proceedings in the Federal Court alleging that the arrangement I had entered with Dr. Leyden breached the *Trade Practices Act 1974* and the *Competition Code of Queensland*. I admitted the allegations made by the ACCC. At the time I entered the arrangement I was unaware that I may have been breaching the *Trade Practices Act 1974*.

I have now reached agreement with the Commission in relation to settling the Commission's case against me. As a part of that settlement, I have given the ACCC a court enforceable undertaking to make a payment to you of a proportion of the gap payment you were required to make in relation to the service I provided you at the birth of [name]. Enclosed is a cheque in the amount of \$[amount]. I understand that the ACCC is working to secure payment to you of the balance of the payment you were required to make to me.