SUBMISSION TO THE DAWSON REVIEW OF THE COMPETITION PROVISIONS OF THE TRADE PRACTICES ACT (1974) (Cth).

I write on behalf of a group of five Obstetricians and Gynaecologists working in Brisbane and we are grateful for an opportunity to highlight the practical difficulties we face under the *Trade Practices Act 1974* (Cth) with respect to the provision of antenatal and after-hours care to our Private Obstetric patients.

We are currently seeking an authorisation from the ACCC, Brisbane with respect to the discussion of fees in a genuine private Obstetric roster. **There are currently very real, practical difficulties for individual doctors trying to provide written informed financial consent for our patients and yet not being unable to discuss or agree upon a reasonable fee for antenatal services and delivery when working in a genuine roster.**

Our Situation

> Currently, we all practice separately out of our individual specialist rooms and we all attend a large private maternity hospital in Brisbane. We are planning a roster to cover after-hours care for our patients both during weekends and throughout the week. This roster is due to take effect in February 2003.

We already individually provide written financial informed consent to our patients and we currently individually use the "Known-Gap" products provided by the Private Health Funds. (The No-Gap products have not kept pace with the large increases in Medical Indemnity Premiums Obstetricians have had to endure and it has become necessary for us as individual practitioners to charge a gap to offset our increased practice running costs).

Such products enable us to charge a "known- gap" or co-payment to our patients, the upper limit of which is set by the Private Health Funds .There is a maximum known-gap which can be charged under such an arrangement with the private Health Funds.

We each individually determine our fees for our uninsured private patients and provide written financial informed consent to this effect.

It is quite possible that we all independently have arrived at the same "known- Gap" and that we may already charge our patients the same fee as we all have to bear the same magnitude of cost increase in our Obstetric Practice. We already set our fees on an individual basis after discussion with our respective Accountants and Practice managers.

Already we have two companies each with a medical company and a service trust and we are reluctant to form yet a third company with all the additional cost, paper work and accounting and insurance issues to get around the current provisions in *Trade Practices Act 1974* (Cth).

To incorporate and form yet a third company would cost more than the style of practice we currently propose and this increased cost would need to be passed onto our patients.

Our aim is to provide a quality obstetric service to our patients at a reasonable cost and incorporate sound risk management strategies into our Obstetric Practice. We are reluctant to engender extra costs and have to pass these onto our patients at a time when the cost of running a private Obstetric practice has increased enormously.

We believe instead that there needs to be provision in the *Trade Practices Act 1974* (Cth*)* to allow for the establishment of genuine rosters which includes the ability to discuss billing arrangements and agree on a reasonable fee for the shared antenatal and after-hours care of our Obstetric patients.

Current Private Obstetric Practice Situation

- Currently Private obstetric patients are referred to an individual Obstetrician who works 24 hours per day "on call" throughout the week. The practice of Obstetrics requires 24 hours a day coverage of both Labour ward for deliveries and Gynaecological emergencies in addition to scheduled Consulting and Operating theatre sessions.
- Obstetricians work in loose "group" arrangements and have a group of colleagues cover their practice on weekends.
- This means when an Obstetrician is "On Call" for the weekend he/she works 12 days straight and needs to be available 24 hours a day for patient care.
- During the week, Obstetricians are called out of their consulting rooms to attend labour ward to deliver babies causing disruption to consulting sessions and delays for patient appointments.
- Operating lists are also disrupted while the Obstetrician leaves the operating theatre to attend the labour ward.
- Various financial arrangements are in place to cover this situation and clearly some discussion already takes place between Obstetricians about how to bill patients under present arrangements.

Problems with the Current system of private Obstetrics

1. Patients often meet the "On call" Obstetrician for the first time on a weekend and there is often not a great deal of time for the Doctor and Patient to get to know each other. Patients may not feel they know their Obstetrician well and a potential for misunderstanding or omission may arise.

2. An "On Call Obstetrician may be covering several Colleagues at different hospitals simultaneously, which may mean that it is not possible to attend every delivery due to the constraints of having to cover other hospitals and patients. Obstetricians may therefore miss deliveries altogether or patients may experience delays in seeing a Doctor both during the week and after- hours.

3. During the day, an Obstetrician has appointments with patients and Operating Theatre sessions in addition to his /her responsibility to cover the labour ward. There are therefore times when it is difficult for an Obstetrician to leave what he/she is doing to attend the labour ward and delays may be experienced.

4. Patients may also be inconvenienced by the interruptions to consultation times and the need to reschedule appointments.

5. Doctors become fatigued and may therefore potentially compromise patient care by being overtired. Mistakes and omissions may occur under these circumstances which could be avoidable if the Doctor was not so tired. In the current highly litigious climate in which we work it is not ideal to have fatigued Doctors providing patient care on a continuous basis .The formation of a formal roster is a sound risk management strategy which benefits both Doctors and their patients.

Benefits of our proposed "Group Obstetric Practice" structure.

1. Our patients are able to meet the other Obstetricians in the "group" by having antenatal visits with our colleagues during the course of their pregnancy. This ensures that patients are given the opportunity to meet the Obstetrician who may be performing their delivery and discuss their concerns and specific needs before hand. We know that currently poor communication and documentation are the two of the main reasons why Doctors are sued. We believe this style of practice will facilitate better communication with our patients and is a good risk management strategy.

To do this we must discuss and determine what the patient will be charged when they see another Doctor for an antenatal visit, as patients are entitled to written informed financial consent at their first visit with a medical practitioner. We are unable to do this currently under the current Trade Practices Act 1974 (Cth) as individual practitioners.

2. As we deliver at one hospital our patients are likely to receive more comprehensive care given that the Obstetrician is likely to be more available on the labour ward and not driving between other hospitals.

3. We propose to have an Obstetrician rostered to cover the labour ward during the day to allow more immediate attention to patient's needs in labour. An Obstetrician will thus be more immediately available to provide acute Obstetric care for emergency situations when they arise. This will provide an improved service to our patients at a time when the clinical situation can change quickly as it often does in Obstetrics.

4. There will be dedicated consulting and operating time which will benefit our patients. There will be less inconvenience to our patients than under the present situation where patients have their appointments rescheduled and delayed while the Obstetrician attends the labour ward to deliver another patient's baby.

5. There will be greater flexibility of appointment times and a choice of practice locations for patients to visit during the week as they are able to consult different doctors in the "group" for an antenatal visit.

6. There will also be better communication between Doctors, both specialists and General practitioners, as patients will carry their pregnancy hand held medical record with them.

7. Patients also will be better informed as they carry their medical record and have at their finger tips, the progress of their pregnancy with all their investigation results.

8. There will be diminished fatigue of the attending Obstetrician allowing a non fatigued obstetrician to make decisions and perform surgery and deliveries.

9. We propose to have Risk Management and quality assurance meetings to ensure that each specialist provides the best possible standard of care. Regular peer review and professional development activities will be pursued and we will be able to assist each other in the management of difficult cases.

10. Our patients and general practitioners will be provided with written information concerning all the benefits of this style of practice and will need to be given written financial informed consent at the first visit for the management of pregnancy.

Benefits to Patient

By using a "Known gap" private Health fund product, there is actually less cost to the patient than charging the patient directly for delivery as the patient only receives 25% of the Medicare Scheduled Fee form the Health fund and 75% of the scheduled fee from Medicare when they are sent the bill directly. There is thus a larger gap for the patient because the Medicare scheduled fee has not kept pace at all with the rising Indemnity premiums, the Call and the levy Obstetricians must endure to practice Obstetrics.

If, however, the Health Fund is billed directly, instead of the patient, the out of pocket cost to the patient is greatly reduced. The style of practice we propose using a "known-gap" product is therefore to the patient's benefit.

Benefits to the Workforce

There are also workforce implications as presently some 30% of Obstetricians do not practice Obstetrics due largely to the rising cost of medical indemnity premiums and lifestyle issues of needing to be on call 24 hours per day seven days per week.

This style of practice will also be attractive to young aspiring specialists and will be a positive strategy to attract Doctors back into the practice of Obstetrics which will benefit the community in the broader sense.

Benefits for Doctors

There is also sadly evidence in our specialty of a high rate of divorce, family disruption and early retirement from the practice of Obstetrics. We believe this style of practice has positive benefits for both obstetricians and their patients and has already been endorsed in other countries such as the USA and Canada. There are Medical Defence Organizations overseas who actively encourage and endorse this style of medical practice.

In a sense we are seeking a special arrangement where individual Doctors can work collaboratively for their patients benefit as well as for the doctor's benefit.

Problems with the current Provisions of the *Trade Practices Act 1974* (Cth)

Our specific problem is that we have patients due to deliver their babies and we have established a roster to cover our patients on a 24 hour a day basis during the week and on weekends commencing February 2003.

Under the Trade Practices Act, we are currently unable to discuss billing arrangements for our patients as individual practitioners unless we incorporate and form yet a third company with all the extra cost that it would entail.

There is a very real and genuine need to establish such a roster as no professional human being can work 24 hours a day 7 days per week and provide a quality service.
What we are proposing is a positive risk management strategy for Doctors with sound benefits for our patients and consumers.

It has been previously acknowledged by the ACCC that "a team approach to the provision of Health care is likely to have a positive impact on patient health outcomes".[1] Yet we have the situation where "for Doctors who are independent, agreeing on a fee level will be in breach of the price fixing provisions of the Act although a roster does not breach the Act".[2]

How can we work on a roster and not discuss or agree on a reasonable fee for our services? This current situation is impractical and creates an unnecessary barrier to a Doctor's duty of providing informed financial consent for their patients at the first visit.

If a group of five Independent Doctors all charge different fees their patients will soon question this and for the sake of uniformity a reasonable fee should be able to be agreed upon. This is both for the patient and Doctor's benefit.

[1] ACCC draft determination, application for authorization lodged by the Royal Australian College of general practitioners, 20 June 2002.
[2] General practitioners A guide to the Trade Practices Act march 2001, p21.

Likewise, if all five Doctors just happen to charge the same fee for an antenatal visit or for a pregnancy management fee, or Gap, it does not mean that they have colluded as the Private Health Funds currently set out what the maximum gap is that can be charged to the patient.

Each Doctor may have independently reached the same maximum gap after discussion with their individual Practice manager and accountant without any discussion with their colleagues or any collusion.

The need for change

We applaud the opportunity to review the Trade Practices Act as we believe Obstetricians and their patients are seriously disadvantaged by the current lack of provisions in the Act in relation to the ability to discuss and agree upon a reasonable fee for Obstetric Antenatal services and after-hours care on a rostered basis.

We ask that there be provision in the Trade Practices Act for Doctors to establish genuine rosters to provide 24 hours a day care for their patients in an environment where Doctors can discuss billing arrangements and determine a reasonable fee for services provided.

There needs to be a mechanism where Doctors can come to an agreement on what fees are charged for shared services to Obstetric patients such as antenatal visits and delivery so that full written financial consent can be given to our patients at the beginning of their pregnancy.

Benefits for other Specialties and patients.

Our patients can only benefit from the provision of better after-hours services on a rostered basis as technology improves and patients expectations increase.
There are other specialties that would also benefit from a change to the Trade Practices Act such as Anaesthetics and Paediatrics. Benefits would be achieved in both rural and metropolitan practices giving Doctors and patients the very real advantage of substantial improvements to the provision of after-hours health services and some clarity to the issue of fees for rostered medical services.

Thank-you for the opportunity to highlight our position with respect to the Trade Practices Act and the provision of Antenatal and after- hours Obstetric services and the discussion of fees.

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