Spier Consulting – Legal

4 Waller Cres, Campbell, ACT, Australia 2612
02 62812030- 0419 239 755
spierconsulting@netspeed.com.au

The Competition Policy Review Secretariat
The Treasury
Langton Crescent
Parkes ACT 2600

5 May 2014

Discussion Paper Question (Page 15 in Consolidated List)

Are there any occupational –based restrictions or restrictions on when and how services can be provided that have an unduly adverse impact on competition? Can the objectives of these restrictions be achieved in a matter more conducive to competition?

This submission is based on the writer's experience in acting for clients in relation to health sector issues. In particular the competitive tension between specialist doctors and non "specialist" doctors where the latter are specialising in certain procedures and in effect challenging the specialists' dominance of the specialty.

This submission is a personal one and not on behalf of any client.

There is an institutional anti-competitive environment aimed at those who are challenging the specialists.

The case put by specialists against the role of the non specialist specialists is one of quality of the service. In my experience that is not a real issue. The non specialist doctors who specialise in certain procedures are often more skilled in that area then the specialists. The issue is one of competition and not skill.

The anti -competitive climate is encouraged by the specialists and supported by hospital administrators and health bureaucrats. The specialist college system is accepted by the health administrators as a surrogate for admission to certain speciality skills and facilities and a barrier to others. Further the Australian Medical Council(AMC) is very loath to accredit new specialties. New specialties such as cosmetic surgery which challenges the domain of the plastic surgeons.

Even the recently established Australian Health Practitioners Registration Authority (AHPRA) apparently discriminates and does not list the full experience and training of non specialists yet a post nominal of FRACS or similar assumes a wide range skills, whether or not that is the case.

The health sector should recognise the actual skills of practitioners and not whether or not they are members of a club. The new AHPRA regime would appear to be ideal to facilitate this.

Furthermore it is important that the health administrators be sensitive to competitive dynamics and decisions as to entry to hospitals and other facilities or professional associations are not left to other health professionals. If it is left to health professionals then there should be some review mechanism. Competition is a dirty word to many health professionals yet many of the restrictions that exist in the sector are for anti-competitive reasons.

Examples of anti-competitive conduct or outcomes

- Overseas qualifications are generally not accepted for admission to RACS, even UK, US or Canadian qualifications.
- Overseas trained or part trained surgeons or non surgeon specialists only admitted to RACS if they start at the bottom. A classic example is an Australian trained surgeon with advanced training in the US and Canada was required to start as a registrar at age 60.
- Unless you are a RACS member accreditation at hospitals is problematic.
- There is a strong bias in the health establishment in favour of Fellow of the Royal Australian College of Surgeons (FRACS) post nominal and other post nominals are disregarded.
- RACS fiercely opposes the accreditation of other speciality groups by the AMC, for example the current and long on going application by the Australasian College of Cosmetic Surgery.
- RACS members often demand, and the health administrators acquiesce, that only they are allowed to be a VMO in public hospitals and undertake all surgical procedures whether or not they have the necessary skills.
- It has been made an offence in some Australian jurisdictions for a medical practitioner to call themselves a surgeon unless they are a member of RACS.
- The specific areas of medical procedures where I have experienced the above are cosmetic surgery, podiatry and maxillo facial dentistry.

This particular issue is one of legal restriction, administrative restriction and cultural restriction.

The TPA and now CCA have not been able to deal with these issues. It needs some direction from Governments and a break away from the current climate where specialists dominate. There will be many areas of medical practices where only fully

trained medical specialists operate but there are areas that are contestable and open to competition where that is allowed to foster.

I would be happy to expand on this issue.

Yours truly,

Hank Spier