SPINE SOCIETY OF AUSTRALIA

Mr Darrell Channing
Director
Competition Exemptions Branch
Australian Competition and Consumer Commission

By email: exemptions@accc.gov.au

10 June 2021

Dear Mr Channing

**Re AA1000542 Honeysuckle Health and NIB – Submission**

I refer to the Draft Determination of the Australian Competition and Consumer Commission (ACCC) dated 21 May 2021 and the previous submission of the Spine Society of Australia (SSA) dated 15 February 2021 in regard to the Application by Honeysuckle Health Pty Ltd (HH), on behalf of itself and nib Health Funds Limited (nib) (the Applicants), for approval from the Australian Competition and Consumer Commission (ACCC) to create a buyers' group for healthcare payers.

The SSA has grave concerns about the Draft Determination and its proposal to provide nib & HH a 5 year authorisation for the buyers' group. The ACCC has stated what it is required to do to balance the potential public benefit versus public detriment. It is clear from that discussion that the legislative framework of the ACCC does not function in a way so as to protect the viability of the private health sector in Australia so that it will preserve our world leading public/private healthcare system for the benefit of all Australians.

The SSA acknowledges that the ACCC is constrained by its governing legislation and legal precedent. But the definition applied in relation to 'public benefit' in the Applicates' case demonstrates our previous point. The definition is so broad that the legitimate interests of the privately insured Australians and their treating doctors are irrelevant. The definition applied was:

> *…anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements … the achievement of the economic goals of efficiency and progress.*

The application of the principles of weighing public benefit and detriment by the ACCC has resulted in a draft decision that, in the real world, opens the door wide for the US healthcare giant Cigna and the failed US style managed care system to enter Australia and fundamentally change the practice of private medicine in Australia.

The ACCC is making determinations in an environment where the cart is clearly before the horse. In this regard we note the ACCCs statement:

> *1.40. The ACCC notes there is significant disagreement between the Applicants and interested parties about 'value-based contracting' including fundamental issues such as what the term actually means.*

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The ACCC is approving a framework where the workings of that structure have not been defined and clearly are not understood by the decision makers at the ACCC. Yet, it has been plainly demonstrated in our previous submission, and by the other interested parties, that *value based contracting* combined with the proposed data analytics (and information sharing) through *performance and quality targets* will result in an overall public detriment. A detriment that would outweigh any of the minor benefits documented in the Draft Determination.

The patient/doctor relationship will be disrupted and US styled managed care decision making introduced. Therapeutic decision making will end up in the hands of the private insurers. Further, the data analytics and sharing, combined with performance based reporting, will inevitably result in the standard of care in a therapeutic relationship being determined by a monolith insurer group and not by the laws and courts of Australia.

The SSA previously pointed out: 'At this time, Australia has no federal legislation in place to ensure that the rights and interests of patients and their healthcare providers are protected within such a system.' This is clearly echoed in the Draft Determination, where the ACCC clearly concedes its decision is premature:

> *1.41. The ACCC understands there is no specific regulatory oversight or limitation on how parties contract with each other in the medical supply chain, and any such limitation (for example, to prevent value-based contracting) would be a matter for Government, through the Commonwealth Department of Health, to determine.*

Clearly, the rights, expectations, and needs of Australian patients and their treating medical practitioners are not considered as a result of the decision making constraints of the ACCC. And the ACCCs role is limited in the determination of the Application and considerations regarding to the long term future of both the private and public health sectors Australia have no part to play in the decision making processes.

The SSA stands by the submissions it made on 15 February 2021 and also supports the most recent submissions made by the AMA, ASSOS, the AOA, the APHA and the other professional organisations who have attempted to provide the ACCC with insight into the real world consequences of this determination.

The Draft Determination has added to the ever increasing body of evidence that there is now an urgent need for the federal government and commonwealth legislation to get ahead of the introduction of managed care in Australia with the creation of an independent private health insurance regulator.

The SSA would be willing to participate in a conference to further discuss our concerns regarding the Application and the Draft Determination.

Yours sincerely

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