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Price fixing in general practice

Case study – Dr Bev Young

Dr Bev Young has just finished packing up her office. This is her last day in her Preston practice of 19 years. Bev enjoys the autonomy of being a solo general practitioner, but lately she finds managing the practice increasingly stressful. Teaming up with a fellow GP seemed a good alternative.

Dr Atul Kumar was an obvious candidate. Bev mentored Atul in his preparation for The Royal Australian College of General Practitioners (RACGP) Fellowship examination. Then he opened his own practice. More recently, Atul refers his female patients to Bev when they want to see a woman doctor. Bev is hopeful that with Atul's interest in the business side of practice, she can now focus on her favourite side, 'doctoring'.

Bev and Atul have chosen an associateship. They share a common trading name, bank account, fee collection, medical records, equipment, policies and procedures, but remain legally independent. Bev and Atul have also chosen to agree on a set of fees they charge patients.

Bev is about to leave when Atul calls: 'Bev, we have to talk... we could have a problem with the law for price fixing!' Bev tries to calm Atul down and suggests calling the RACGP to clarify. She remembers seeing something about price fixing on the RACGP website.

■ **'Price fixing is taken very seriously by the ACCC and the courts... fixing prices is anti-competitive... [it] causes significant economic and consumer harm. Doctors therefore need to know what does and does not amount to price fixing'... Graeme Samuel, Chairman, Australian Competition and Consumer Commission (ACCC).¹**

In Australia, competition has been promoted as a major technique for ensuring an efficient 'marketplace'. Within the meaning of the *Trade Practices Act, 1974*, general practitioners working in private general practice are 'carrying on a business'.² Therefore, GPs who work through 'separate legal entities' within a single practice, for example an associateship, are regarded as competing business entities.^{3,4} This is also very likely to be the case for most GPs who work in 'corporates', as the corporate provides a serviced office to GPs who function as associates.

Under the competition provision of the *Trade Practices Act*, price fixing is 'unlawful' irrespective of evidence of harm to competition, competitors or consumers.⁵ Thus setting a common fee schedule among many GPs and other medical practitioners (OMPs) in a practice might be defined as price fixing, and be unlawful. The ACCC can however 'authorise' anticompetitive arrangements or conduct when it is satisfied that the public benefit from the arrangements or conduct outweighs any public detriment. Authorisation provides immunity from legal action under the *Trade Practices Act*.

Competitors or collaborators

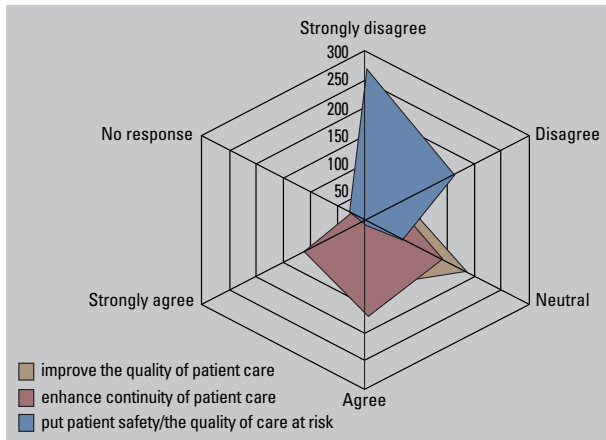
Bev and Atul, as associates, are competitors in the eyes of the *Trade Practices Act*. They break the law if they agree on a common set of fees without the authorisation of the ACCC.⁶

Like many other GPs in similar situations, Bev and Atul consider one another as team members⁷ rather than competitors. General practitioners value mutually supportive relationships within the teams as important to the provision of high quality patient care,⁸ and to the safety of both patients and doctors.

The influence of intrapractice price setting

The results of a national survey conducted by The Royal Australian College of General Practitioners (RACGP) reveals GPs' perceptions about

Figure 1. Perceived influences of intrapractice price setting



the influences of intrapractice price setting.⁹ As *Figure 1* illustrates, GPs tend to believe that intrapractice price setting may be associated with enhanced quality of patient care, in particular continuity of care. General practitioners are also likely to disagree with the idea that patient safety or quality of care can be jeopardised by intrapractice price setting.

The RACGP requested immunity for GPs and OMPs

In 2002, the RACGP first requested that the ACCC authorise intrapractice price setting by GPs (and OMPs) operating within a single practice (in particular business structures). This authorisation was of particular value to GPs in an associateship who are co-located and share an interest in a service entity or are registered to be accredited as a single entity. The authorisation enabled these GPs to agree on fees they and their locums charged to patients irrespective of whether they are incorporated or not.¹⁰

The original ACCC authorisation was scheduled to lapse in January 2007. The RACGP sought revocation of the authorisation and the substitution of a further/new authorisation. In addition to the setting of common fees for patients, the RACGP requested authorisation for GPs (and OMPs) within a single practice operating (in particular business structures) to agree on fees that they charge a local hospital (hospital agreements) as visiting medical officers (VMOs).¹¹

This new authorisation was granted in May 2007 for a period of 4 years.¹² This new authorisation is of particular value to GPs (and OMPs) who provide services to a local hospital as VMOs. The 2007 authorisation applies to Atul and Bev.

The importance of business structure

In Australia, around 70% of all GPs operate from some form of private practice.¹³ They use a wide range of business models including incorporated companies, corporate GP services, unit trusts, partnerships, associateships, and mixed business models.¹⁴ More recently, there is a noticeable trend toward larger practices comprising several GPs. Thus in 2004–2005 about 51.3% of general practices comprised five or more GPs.¹³ The corporate involvement is relatively low; the three largest GP companies have an estimated combined 8% of all general practice.¹³ The results of the recent RACGP survey⁹ indicate that a significant proportion

of GPs (~12%) are uncertain about their legal status. This is of concern because the Competition Law application in relation to intrapractice price setting is directly linked with the legal arrangements of the practice.¹

As a result, it is important for GPs to be clear about the legal structure of their practice. If a GP does not understand these structures and the implications they have for compliance with the *Trade Practices Act*, they may unintentionally breach the *Trade Practices Act*.

It is also important to understand the operation of the practice. The authorisation covers partnerships where at least one of the partners is a body corporate, and associateships that operate in certain ways. Thus, GPs need to understand the ACCC authorisation,¹ and meet ACCC requirements.¹²

Conclusion

Bev and Atul are covered by the ACCC authorisation, their legal structure and operations bring them within its scope.¹² This allows them to agree on the set of fees they charge their patients. The authorisation provides detail about the scope and operational requirements.

Conflict of interest: none declared.

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