



**British
Orthopaedic
Association**

Caring for Patients; Supporting Surgeons

12 June 2013

Ms Christiane Kent
Inquiry Manager
Competition Commission Private Healthcare Investigation
Victoria House
Southampton Row
London WC1B 4AD

Via Email: private-healthcare@cc.gsi.gov.uk

Dear Ms Kent,

Orthopaedic Care of Patients – Bupa's exploitation of information asymmetries

We represent the British Orthopaedic Association (BOA); and its Specialist Societies, the British Hip Society (BHS) and the British Association for Surgery of the Knee (BASK) the British Elbow and Shoulder Society (BESS) and the British Orthopaedic Foot and Ankle Society (BOFAS). Information about the specialist Societies within BOA can be found at:
<http://www.boa.ac.uk/About/Pages/Spec-Socs.aspx>

We are fully aware of the Competition Commission (CC) Inquiry in to the private healthcare market. Independent hospitals are responsible for about 10-11% overall of all surgical procedures in the UK. Orthopaedics is the main specialty involved and the percentage of major joint operations is more than 11% of the national numbers.

Our organisations are principally concerned with clinical standards, education and research. We are increasingly concerned about the care of patients, particularly those covered by Bupa insurance, but more generally about the way in which certain initiatives by Bupa are spreading and have the potential to affect even patients outside the Bupa policy scheme (and ultimately the market as a whole). We believe that it is important in the context of the current investigation that the CC understands how "managed practices" by insurance companies have the potential to affect the patients in fundamental ways.

We wish to highlight some issues that have been drawn to our attention and which are interwoven. We know that the CC has had many letters from consultants, some of which are now on the CC website. We have taken the opportunity to draw your attention to further unsolicited letters from senior orthopaedic surgeons whose patients have been affected by the processes of "managed care" introduced by Bupa.

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In many respects the anxieties expressed outline the problems facing Bupa subscribers. For the purposes of this letter, we have categorised the issues as follows;

1. Information asymmetries
2. Inappropriate "Clinical Guidelines"
3. Inappropriate external reviews of consultant decisions
4. Referrals of patients to inappropriate specialists or to non specialists

1 Information Asymmetries

Much is made by the Private Medical Insurers (PMIs) about the fact that the information on which patients make their choices of treatment is imperfect.

Consultants and consultant groups have pointed out in the context of this investigation that it is the nature of all professions (e.g. law, accountancy and medicine) that the client or the patient would know less about the field than the professional and that in order to acquire that level of professionalism, the professional needs to dedicate years to learning and practising.

Patients are more informed than has been claimed and they commonly have already done Internet research, seen various patient information sheets and obtained word-of-mouth recommendations prior to their first consultation. However, patients often have imperfect information or have failed to interpret the data because they are not professionals, and hence they require medical advice. Once advised, they are able to exercise their own judgement and consent to treatment.

If there is variation of treatment on an individual consultant basis then that can be reviewed and remedies implemented. Unfortunately whilst Bupa has been making various allegations about this they have refused to back their allegations by naming these consultants and they have refused to accept our offers to audit the practices of these doctors.

It is now becoming apparent that certain PMIs, in particular Bupa, are trying to exploit this alleged "information asymmetry" directly, which results in people needing medical advice often not receiving it. We believe that Bupa engages in these practices in order to direct patients to its products and facilities, which may be an important distortion of competition.

2 Inappropriate "Clinical Guidelines"

Clinical guidelines have been developed for most conditions by specialist medical bodies. Whilst they do not need to be slavishly adhered to (as medicine needs to be tailored to an individual patient) these do provide a template for treatments and outcome assessments. However, they must be professionally produced by the National Institute for Health and Care Excellence (NICE) (<http://www.nice.org.uk/>) or specialist bodies and not by companies with vested financial interests.

In producing "guidelines" for knee arthroscopy Bupa have exceeded their remit as an insurer whose role is to facilitate the financial aspects of the treatment of their subscribers within the bounds of their policies. We believe that Bupa's guidelines are clinically unsound and as an example we reject the concept that meniscal tears (knee cartilage tears) should be treated solely by physiotherapy.

We know that Bupa has claimed that it has, or it is developing, “quality information” and it may be that their guidelines are part of a general drive by the insurers to decide medical practice. No other PMI makes such a claim about having “quality information”. PMIs may have certain volume information but they have NO evidence about clinical outcomes apart from crude information about readmissions or returns to theatre (and these need careful analysis before deductions can be made). It is certainly not possible to develop sound clinical guidelines based on information of this type.

3 Inappropriate external reviews of consultant decisions

The CC will be aware that as part of the process of a patient gaining pre-authorisation, Bupa have been “second guessing” consultant opinions. In our field, this has happened predominantly about knee arthroscopy but this is extending to other procedures. The Royal College of Surgeons has said unequivocally that the system whereby a clerk or a doctor makes a pro-active decision on a patient without even having seen either the patient or even any scans or X-rays, is entirely wrong. WPA have published a legal opinion (http://www.wpa.org.uk/literature/counsels_opinion.pdf) suggesting that any insurer or employee who does this will have a vicarious liability in the event the patient suffers detriment due to their cancellation or postponement of treatment.

In our view these actions by Bupa are entirely motivated by commercial objectives and are causing severe patient detriment.

4 Referrals of patients to inappropriate specialists or to non specialists

The Bupa “Open Referral” system has resulted in patient delays in some cases and referral to an inappropriate specialist in many others. This system is really unacceptable.

As orthopaedic consultants, we are also concerned about patients confronted with initiatives such as Bupa Knee Clinic, <http://clinic.bupa.co.uk/>, and treatment by APOS Therapy <http://apostherapy.co.uk/en/home>.

The link, <http://clinic.bupa.co.uk/>, shows that patients may be persuaded to go for treatment at a Bupa facility by a Bupa employee, preferably not an orthopaedic consultant and not even a medical doctor. By following the various links patients are exhorted to get in touch with the “expert physiotherapist”, the MSK physician (not an orthopaedic consultant) and the “knee support team”. The following is an extract seen at <http://clinic.bupa.co.uk/Assess.aspx> :

You don't have to be a Bupa member and you don't have to play sport to take advantage of our knee specialists. They will listen to you, understand your aspirations and your lifestyle, and shape your treatment around you.

If you are a Bupa member, and have a knee problem, you don't need to see your GP for a referral, simply call our knee support team on 0808 1150 654† and we will arrange a telephone call with an expert physiotherapist to discuss your symptoms.

The physiotherapist will talk through your symptoms with you to understand exactly what's going on and decide the appropriate course of treatment. They can give you exercises and advice which will help you to recover and if you require face-to-face treatment, they will give you names of healthcare professionals, such as a physiotherapist or consultant, near you.

If you are not a Bupa member, you can self refer by speaking to one of our advisors. To discuss your health concern or to make an appointment please call us FREE on 0808 1151 474*.

- ***Call us direct – no need to see your GP.***
- ***Get fast access to expert advice about you knee problem.***
- ***No travelling – you can start your exercises at home.***

Our concern about the way in which non medical people are making decisions without seeing patients, based on clinical guidelines which are not sanctioned by the profession is also illustrated by Bupa's method of recommending Apos Therapy. Again, by following the link it will be clear what this is, namely a device attached to the shoes of the sufferer which, it is claimed, is

“Clinically proven to deliver long-lasting pain relief and to restore function, mobility and quality of life. More than 40,000 patients have benefited already worldwide”.

We have no clinical evidence to support this as a routine part of treatment for the various orthopaedic complaints that the device is alleged to help with, and even cure. APOS Therapy is heavily marketed as a solution that fits into the patients' lifestyle. What happens has been described by Virginia Ironside in her article in “The Oldie”, a paper targeted towards older people. In this article, she highlights her personal negative experiences with Bupa who directed her away from her consultant, towards non-invasive “Apos Therapy” for her knee problem. This is attached in Appendix 1 to this letter.

It is important to note that, for example, back pain is a very difficult condition to treat and may mask a variety of other diseases such as osteoporosis, pathological fractures and various forms of cancer whether primary or secondary. Of course people with a back pain can elect to have a device fitted to their shoes, but at the very least they should see a GP first, to see whether there is no other serious disease process or a more conventional way to treat their specific problem.

As in the case described in the Oldie, it is possible that Bupa may eventually relent, faced with determined patients and their doctors but the pain and suffering caused by this practice is such that we feel we must bring this to the attention of the CC.

In summary, the impact on patients is considerable and there seems to be no sign of Bupa stopping this process. The effects of these practices on consultants cannot be understated. Many consultants are seeing their patients being diverted and this has an adverse effect on their practice and morale. Whether this amounts to an abuse of power by the insurer or is anti-competitive is a matter which we cannot comment on but we would hope that the CC will consider this aspect of a dominant insurer controlling treatment administration as a competition issue which is vital for thousands of patients.

For the patients there are few options. Whilst some may be able to argue their case with Bupa, most will not. It is the elderly patients, often personal subscribers, who will be most disadvantaged as they are locked in to their policy and will be unable to transfer to another PMI. For those who cannot change their insurer the only option is to accept these new stringent and inappropriate clinical procedures and referrals or to leave private healthcare altogether.

This letter has the full support of the Presidents of the following:

British Association for Surgery of the Knee

British Hip Society

British Elbow and Shoulder Society

British Orthopaedic Foot and Ankle Society

Yours sincerely,

Martyn Porter
President