



Affidavit #1, Bob de Faye
Sworn July 23, 2009

No. S-090663
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

CANADIAN INDEPENDENT MEDICAL CLINICS ASSOCIATION,
CAMBIE SURGERIES CORPORATION, DELBROOK SURGICAL CENTRE
INC., FALSE CREEK SURGICAL CENTRE INC., OKANAGAN HEALTH
SURGICAL CENTRE INC., and ULTIMA MEDICAL SERVICES INC.

PLAINTIFFS

AND:

MEDICAL SERVICES COMMISSION OF BRITISH COLUMBIA,
MINISTER OF HEALTH SERVICES OF BRITISH COLUMBIA
and ATTORNEY GENERAL OF BRITISH COLUMBIA

DEFENDANTS

AND:

SPECIALIST REFERRAL CLINIC (VANCOUVER) INC.

DEFENDANT BY COUNTERCLAIM

AFFIDAVIT

I, **BOB DE FAYE**, of Victoria, British Columbia, MAKE OATH AND SAY AS
FOLLOWS:

1. I am the Chair of the Medical Services Commission (the "Commission")
and as such I have personal knowledge of the facts and matters to which are
hereinafter deposed, except where stated to be made on information and belief,
and where so stated, I verily believe the same to be true.

2. I have been the Chair of the Commission since November 6, 2008.
3. The Commission is a body continued under the *Medicare Protection Act* R.S.B.C. 1996, c. 286 (the "Act"), consisting of nine members appointed by the Lieutenant Governor in Council. Three of the Commission's members are appointed from three or more persons nominated by the British Columbia Medical Association. Three of the Commission's members are appointed on the joint recommendation of the Minister of Health Services and the British Columbia Medical Association to represent beneficiaries. Three of the Commission's members are appointed to represent the government.
4. The Commission is responsible for the administration of the Act.
5. Under the Act, beneficiaries are entitled to have the Commission pay for benefits rendered to them by enrolled practitioners. Enrolled practitioners are eligible to be paid for benefits rendered to beneficiaries if the Act, the Regulations made under the Act, and the Payment Schedule established by the Commission under section 26 are complied with. Practitioners include medical practitioners and healthcare practitioners such as chiropractors and optometrists, but these proceedings and this affidavit are only concerned with medical practitioners.
6. Enrolment under the Act as a practitioner is voluntary, and an enrolled medical practitioner may cancel his or her enrolment by giving notice of the cancellation to the Commission.
7. Pursuant to section 14 of the Act, an enrolled medical practitioner may elect to be paid for benefits directly by beneficiaries. When such an election has been made, the practitioner must not submit a claim to the Commission for services rendered after the date the election becomes effective. If such an election is in effect, a beneficiary who pays a practitioner directly may request

reimbursement from the Commission. An enrolled medical practitioner may revoke his or her election.

8. The Medical Services Plan, ("MSP") is the plan originally established by regulation, B.C. Reg. No. 144/68 in accordance with section 10 of the *Medical Services Act*, S.B.C. 1967, c.24, to pay for benefits on behalf of beneficiaries. MSP is continued under section 3(3) of the Act and it is the function of the Commission "to facilitate, in the manner provided for in this Act, reasonable access, throughout British Columbia, to quality medical care, health care and diagnostic facility services for residents of British Columbia under the Medical Services Plan."

9. Pursuant to the Act, a person is a "beneficiary" if the person is a resident of British Columbia who is enrolled in accordance with the Act. A resident must apply to enroll as a beneficiary if not already enrolled and, in some cases, to enroll his or her spouse and children. The Commission may cancel the enrolment of a beneficiary at the beneficiary's request. However, there is no provision in the Act for a beneficiary to decide to be a beneficiary for some purposes and not others. Therefore, a beneficiary cannot decide to "pay privately" for benefits.

10. The Act defines "benefits", in part, as medically required services rendered by a medical practitioner who is enrolled under the Act, unless the Commission determines that the services are not benefits. Medically required services performed in an approved diagnostic facility are also normally considered to be benefits.

11. Section 17 of the Act prohibits anyone from charging a beneficiary for benefits or for matters that relate to the rendering of a benefit. According to section 18, section 17 does not apply to practitioners who have made an election under section 14 to be paid directly by beneficiaries. However, where a

practitioner has made an election under section 14, the Act limits the amounts that can be charged to a beneficiary. In most cases, a person must not charge a beneficiary more than the amount that could have been charged under the MSP. Charges that offend section 17 or section 18 are commonly called "extra billing". I believe that the intent of sections 17 and 18 is to better ensure the principle set out in the preamble to the Act that an individual's access to necessary medical care be solely based on need and not on the individual's ability to pay.

12. The task of ensuring compliance with the Act, and in particular the Act's prohibition of extra billing is one of the Commission's responsibilities in administering the Act.

13. When I was appointed Chair of the Commission, Commission members, Ministry of Health Services personnel, and others informed me about the Commission's efforts to enforce provisions of the Act which prohibit extra billing.

14. In particular, I was fully briefed about a decision the Commission made on or about March 12, 2008, to audit Cambie Surgeries Corporation and Specialist Referral Clinic (Vancouver) Inc. (the "Clinics"). Cambie Surgeries Corporation ("Cambie") is one of the Plaintiffs in these proceedings. Specialist Referral Clinic (Vancouver) Inc. ("Specialist") is the Defendant by Counterclaim.

15. Cambie owns and operates a facility called "Cambie Surgery Centre".

16. Specialist owns and operates a facility called "Specialist Referral Clinic".

17. The Commission made the decision to audit the Clinics pursuant to provisions of the Act which were brought into force on December 2, 2006, by Regulation 306/06. Those provisions gave the Commission the ability to audit medical clinics when the Commission believes on reasonable grounds that those clinics have contravened the extra billing provisions of the Act. The amendments

also provided the Commission, for the first time, with specific enforcement powers as against clinics; specifically, the power to seek an injunction from the Supreme Court to prevent extra billing and other violations under the Act.

18. On May 8, 2007, my predecessor as Chair of the Commission, Mr. Tom Vincent, wrote to Dr. Day about information the Commission had received of possible extra billing taking place at Cambie Surgery Centre. After explaining the Commission's duties and responsibilities, and describing some of the information before the Commission, Mr. Vincent expressed the hope of resolving the Commission's concerns in an informal manner and offered Dr. Day the opportunity to present his perspective on the issues before the Commission decided how to proceed. Now produced and marked as **Exhibit 1** to this affidavit is a copy of Mr. Vincent's letter dated May 8, 2007.

19. Dr. Day responded to Mr. Vincent by a letter dated May 30, 2007. In that letter, Dr. Day asserted various legal opinions and challenged the Commission's authority to audit clinics for extra billing. He also asserted the opinion that "any individual wishing a service to be provided more quickly than is made available in our public facilities is pursuing care that it is outside the timelines of this definition [of medically necessary]". Now produced and marked as **Exhibit 2** to this affidavit is a copy of Dr. Day's letter dated May 30, 2007.

20. The Commission responded to Dr. Day by a letter dated June 25, 2007, signed by Mr. Vincent. Mr. Vincent provided Dr. Day with further particulars of alleged extra billing at Cambie Surgery Centre and offered Dr. Day a further opportunity to resolve the Commission's concerns without resorting to an audit under the Act. Mr. Vincent also noted that the Commission, which has the sole authority under the Act to determine whether a surgical procedure is medically required, did not accept Dr. Day's opinion about timelines and medical necessity. Now produced and marked as **Exhibit 3** to this affidavit is a redacted copy of Mr. Vincent's letter dated June 25, 2007, and a redacted copy of its enclosure.

21. Dr. Day responded to Mr. Vincent by a letter dated July 12, 2007, in which he further elaborated his legal opinion about the constitutional validity of the Act. Dr. Day also indicated that Cambie had "no intention of challenging the validity of the Medicare Protection Act. It is your prerogative to initiate legal action if you so wish", and asserted, "we will not allow any agent of your Commission to access our Centre or its data base". Now produced and marked as **Exhibit 4** to this affidavit is a copy of Dr. Day's letter dated July 12, 2007.

22. Given Dr. Day's response to Mr. Vincent's letters, and based on information about potential extra billing of which the Commission was aware, the Commission believed that some measure of extra billing was taking place at Cambie Surgery Centre and at Specialist Referral Clinic. The Commission decided to audit the Clinics, in part because, in the Commission's assessment, audits would provide the Commission with reliable information about the nature and extent of any extra billing being carried on there, both generally and in relation to the reports and complaints that it had of specific instances of extra billing by the Clinics. The Commission decided to audit Specialist as well as Cambie because it appeared that Specialist had a corporate and business relationship with Cambie.

Background Information Concerning the Payment Schedule and Other Matters

23. In order to better understand some of the matters raised in this affidavit, the Commission's decision to audit the Clinics, and the grounds upon which that decision was made, and to dispel some misconceptions about the Act that might be used to justify extra billing, I describe below in paragraphs 24 to 50 the Payment Schedule established by the Commission under section 26 of the Act, medically required services, and other pertinent matters.

The Medical Services Commission Payment Schedule

24. Under section 26 of the Act, the Commission must establish payment schedules that specify the amounts that may be paid to or on behalf of practitioners for rendering benefits under the Act, less applicable patient visit charges. There are no patient visit charges applicable to any of the services mentioned in this affidavit.

25. The Commission has established a payment schedule for medical practitioners (the "Payment Schedule"), which consists of a preamble setting out the general terms and conditions that apply to the submission of claims by all medical practitioners, and individual listings for general practice and various specialties such as anaesthesia and orthopaedics.

26. Practitioners are paid by the Commission in accordance with the terms of, and the amounts for, fee items set out in the Payment Schedule.

Medically Required Services

27. It is not the case that services that are not covered by a specific fee item are, for that reason alone, not "benefits". Under the Act, all medically required services rendered by a medical practitioner who is enrolled under section 13 are benefits, unless the services are determined under section 5 by the Commission not to be benefits. Most medical services are covered by a specific fee item. The Payment Schedule also has an omnibus fee item for miscellaneous services, complex procedures, or established but infrequently performed procedures that are not specifically listed in the Payment Schedule. Furthermore, the Payment Schedule also has provisions for the creation of new fee items where they do not exist for other medically required services.

28. As these provisions are meant to ensure that the Payment Schedule covers all benefits under the Act, no practitioner can rely on the absence of a specific fee item in order to justify charging a beneficiary for medically required services.

Implied Representation when Submitting a Claim

29. According to the Act, a practitioner who renders benefits to a beneficiary is, if the Act and Regulations are complied with, eligible to be paid for his or her services in accordance with the Payment Schedule. The Commission must, after assessing or reassessing claims for payment from a practitioner, pay for claims that comply with the Act, the regulations, and the Payment Schedule. Claims submitted by practitioners are subject to a computerized adjudication, and approximately 98.7% are paid as submitted. In this respect the MSP is a system based on trust.

30. For these reasons, the Commission takes the view that when a practitioner submits a claim for payment, he or she makes a representation that the service was actually rendered as claimed, and that the service was medically required and, therefore, a benefit under the Act. It is, therefore, inconsistent for a practitioner to charge a beneficiary for a service on the grounds that the service is not a medically required service and, hence, not a benefit, and also to submit a claim for payment under the MSP on the grounds that it *is* a benefit.

Second Opinions

31. A misconception that is apparently commonly held is that a "second opinion" from a general practitioner or a specialist is not a benefit of the MSP. For example, if a beneficiary requests a "second" medical opinion from an enrolled practitioner, to assist the beneficiary in making a decision about the appropriate course of medical treatment, the medical opinion provided by the

second practitioner is a benefit and the second practitioner is entitled to submit a claim for this service.

32. Accordingly, charging a beneficiary for a second opinion, as described above, is extra billing.

Specialist Fees for Self-Referred Patients

33. Another misconception concerning the Payment Schedule is that a specialist is not entitled to submit a claim for services if the patient is "self-referred". However, according to the Payment Schedule, where a specialist attends a patient without a referral from a practitioner authorized by the Commission to make such referrals, the specialist may submit a claim to the Commission for the appropriate general practitioner fee, rather than a specialist consultation fee. In that situation, the specialist may charge the patient a differential fee.

34. In the case of a "self referred" patient, the maximum amount chargeable as a differential fee is the difference between the amount of the general practitioner service rendered and the amount payable under the Payment Schedule had the patient been referred. Differential billing is not considered to be extra billing.

35. Accordingly, a specialist may submit a general practitioner visit claim to the Commission for a "self-referred" patient and, in addition, charge the patient the permitted differential amount. Any charge greater than the differential amount would constitute extra billing.

Self-Referred Surgical Cases: Pre-Surgical Examination

36. The Payment Schedule provides that, where an examination determines that a surgical procedure should be performed on a non-referred patient and the surgical procedure is performed by the same medical practitioner, the examination(s) giving rise to that surgery is included in the surgical fee. In other words, the fee item for the services of a surgeon performing surgery on a non-referred patient includes the pre-operative examination that determined that that surgery was required, and a surgeon who submits a claim for the surgery is not entitled to submit a separate claim for the pre-surgical consultation in this situation.

Independent Medical Assessments

37. An independent medical assessment differs from an ordinary doctor and patient interaction because the purpose of such an assessment is to determine health status and functional status at the time of examination for a third party. The purpose of the encounter is not to discuss or determine treatment, and treatment advice is not given. A report must go to the third party or authority ordering the examination. The patient may request a copy of the report from the third party who may, or may not, provide it.

38. Independent medical assessments are not benefits under the Act. The Preamble provides that, "services requested or required by a 'third party' for other than medical requirements are not insured under MSP".

39. However, a beneficiary visit with a practitioner for the purpose of determining an appropriate course of medical treatment is a benefit. Such services are billable to the MSP as a visit, or as part of the consultation, or may be included as part of the pre-operative service in a surgical fee item.

Practitioners must not charge beneficiaries for such services because they are benefits.

Fees for Surgical Services

40. Some services, including most surgical procedures listed in the Payment Schedule, have fees that are specifically intended to cover multiple services over extended time periods.

41. In the case of surgical services, the Preamble provides that the fees for surgery, unless otherwise specifically indicated in the Payment Schedule, include:

- the usual pre-operative preparation of up to one month's duration;
- the surgical procedure itself; and
- post-operative follow-up, including the removal of sutures and care of the operative wound by the surgeon or associate.

42. The Preamble provides that unless otherwise specifically indicated, the normal post-operative period included in the surgical fee is 42 days and surgery fees include all concomitant service necessary to perform the listed services.

43. Except in unusual circumstances (and in which case a written explanation is required), a specialist ought not to submit a separate claim for pre or post-operative medical services that are provided within the pre- or post-operative period.

Laboratory Services

44. The Payment Schedule provides that laboratory investigations that are provided solely in association with other services that are not benefits are also not benefits and, accordingly, claims should not be submitted to the Commission for them. Accordingly, when practitioners submit claims for the payment of laboratory services, they are making a representation to the Commission that the associated service was a benefit. There should be no charges to a beneficiary for the associated service when a practitioner has submitted a claim to the MSP for related laboratory services.

Practitioner May Elect to be Paid Directly by Beneficiary

45. Pursuant to the Act, a practitioner may notify the Commission that he or she elects to be paid for benefits directly from a beneficiary. This election is commonly referred to as "opting out". Under this arrangement, the practitioner remains enrolled with the Commission and must comply with the Act, regulations, and Payment Schedule. Accordingly, an opted-out practitioner must not charge the beneficiary for, or in relation to, a service an amount that, in total, is greater than the amount that would be payable by the Commission under the Act pursuant to the Payment Schedule.

46. Dr. Day is one of only five medical practitioners in the province who are opted-out. The MSP database records the effective date of Dr. Day's election as June 26, 1993.

47. If a practitioner has opted-out, he or she must not submit a claim to the Commission on his or her own behalf for services rendered to a beneficiary after the date of the election.

48. For the administrative convenience of opted-out practitioners and beneficiaries, the Commission will allow an opted-out practitioner to submit a claim to the Commission on behalf of a beneficiary.

49. When an opted-out practitioner submits a claim on behalf of a beneficiary, the Commission makes payment in one of two ways: (1) by direct (electronic) payment to the practitioner; in this case MSP Guidelines require the physician to have the beneficiary complete an assignment of payment form which must be retained in each beneficiary's medical record, or (2) a cheque payable to the beneficiary is mailed to the practitioner. In this case, MSP Guidelines also require an assignment between the practitioner and the beneficiary in order for practitioners to receive payment from the Commission and in order for the practitioner to deposit the cheque, which is payable to the beneficiary, to his or her account.

50. Dr. Day is paid in accordance with arrangement (2) described in paragraph 49 above. When Dr. Day submits a claim to the Commission on behalf of a beneficiary, a cheque payable to the beneficiary is sent to Dr. Day at 2836 Ash St., Vancouver, BC, V5Z 3C6, which is the address recorded in the MSP database for Dr. Day.

The Commission's Reasonable Grounds

51. I believe that I am fully apprised of all material facts, advice, policy considerations and options considered by the Commission in coming to its decision to audit the Clinics. The Commission's decision was based on three sets of grounds that led the Commission to believe that both Clinics had contravened section 17 or 18 of the Act. The three sets of factors fall under the categories:

- correspondence from beneficiaries, their representatives, the Clinics or others;
- media reports; and
- information from the Clinics' websites.

Reasons continued - Allegations of Extra Billing in Correspondence

52. While the Commission is charged with the administration of the Act, it has no employees of its own and must rely on other persons or bodies to carry out its administrative functions. Those persons or bodies include the employees of the Ministry of Health Services, especially employees of the Medical Services Branch, and Health Insurance British Columbia and its employees.

53. Health Insurance British Columbia ("Health Insurance BC") is a service provider to the Province of British Columbia. Health Insurance BC provides administration services in support of the MSP, specifically the registration of practitioners and beneficiaries, and the routine payment of claims submitted by physicians enrolled under the Act.

54. Around June of 2007, the Commission established a process by which existing and future allegations of extra billing could be addressed and resolved. Under that process, allegations of extra billing received by the Commission, the Ministry of Health Services, or Health Insurance BC, or any other source, were directed to employees of the Medical Services Branch who were to attempt to resolve the allegations by seeking reimbursement for beneficiaries where it appeared they had been charged contrary to the Act. Health Insurance BC, in particular, handles a wide variety of routine enquiries from practitioners and beneficiaries. From time to time, Health Insurance BC receives, in the first

instance, requests from beneficiaries and others for reimbursement of charges for medical services.

55. Under the process established by the Commission, employees of the Medical Services Branch review the information collected, contact the writers, and seek recovery of charges which appear to be extra billing. Employees summarize their efforts for the Commission and present reports to the Commission for its consideration.

56. When the Commission made its decision to audit the Clinics, it was aware of correspondence from approximately 30 individuals, from which it concluded that the Clinics, either individually or together, had charged beneficiaries for medically required services in contravention of the Act. Details of some of that correspondence are set out below in paragraphs numbered 58 to 190. However, an employee of the Medical Services Branch confirmed the following matters were common to all of the correspondence:

- A medical service was rendered to a person enrolled as a beneficiary under the Act.
- The service rendered appeared to be a medically required service that is normally considered to be a benefit, and included such services as knee surgery, knee replacement surgery, hernia repair surgery, shoulder surgery, and medical specialist consultations.
- The services were rendered by enrolled practitioners.
- Of all the practitioners involved, only Dr. Day had made an election under section 14 of the Act permitting him to charge patients directly for benefits (and then only in compliance with the Act and Regulations).

- The dates of service ranged from 2001 to 2007.
- In most cases it appeared that the services were rendered at Cambie Surgery Centre or Specialist Referral Clinic.
- There was an existing fee item in the Payment Schedule for the service.
- The beneficiary was charged for the benefit, or for matters that related to the benefit.
- The fees charged to the beneficiaries ranged from approximately \$400 for a consultation to \$17,000 for an ankle replacement.
- In most cases, the beneficiary prepaid Specialist Referral Clinic for the service by credit card.
- In many cases, the practitioners who rendered the services also submitted a claim or claims to the MSP for payment.
- For many surgical services, the practitioners providing surgical assistance or anaesthetic services charged the MSP for their services.
- In many cases, the practitioner who rendered the surgical services also submitted a claim to the MSP for visits or other services.
- In many cases, the beneficiaries signed forms styled as "consent forms", which contain contested statements of law and misrepresentations about the MSP.
- In many cases, Dr. Day, on behalf of Specialist or Cambie, did not deny charging beneficiaries for services. Instead, Dr. Day argued that the

services were not benefits or that they were not matters related to a benefit. Dr. Day also made appeals to theories about the *Canadian Charter of Rights and Freedoms*.

- Except in the case of a refund for one surgical procedure, the Commission's information was that no beneficiary had received a refund for the charges.
- The Commission does not agree with Dr. Day's interpretation of the Act, the effect of the so called "consent forms", or his theories about the *Canadian Charter of Rights and Freedoms*.

57. Details of nine cases with a date of service in 2006 or 2007 are set out in the following paragraphs.

Reasons - Beneficiary JR

58. On or about December 17, 2007, the Medical Services Branch received a letter dated December 5, 2007, from beneficiary JR, in which JR asked for "compensation" of \$10,144 for expenses incurred for medical services that JR had received in 2007. JR's letter detailed some of the particulars of "a shoulder reconstructive surgery performed by a private health care facility in Vancouver". JR said that JR had met with Dr. Michael Gilbert on May 14, 2007, at the Specialist Referral Clinic in Vancouver, and that Dr. Gilbert arranged for JR to have an MRI done on May 22, 2007.

59. Dr. Gilbert is listed as an orthopaedic surgeon in the MSP database.

60. According to JR's letter, JR saw Dr. Gilbert again on May 29, 2007, and Dr. Gilbert performed a shoulder surgery on JR on June 5, 2007. Among the expenses listed in JR's letter are a consultation with Dr. Gilbert (\$500), a

shoulder operation (\$7,524), and cold therapy equipment, which is standard equipment required for post-operative care and is, therefore, a matter related to the surgery (\$340). Now produced and marked as **Exhibit 5** to this affidavit is a redacted copy of JR's letter and some of its enclosures.

61. JR's letter describes the steps JR took before arranging a meeting with Dr. Gilbert. The meeting with Dr. Gilbert was arranged by JR directly. JR was not referred to Dr. Gilbert by another practitioner.

62. Enclosed with JR's letter was a copy of a document on Specialist Referral Clinic letterhead entitled, "Follow-up Assessment for [JR] on May 29, 2007". The Follow-up Assessment says that Dr. Gilbert reviewed JR's MRI with JR and that he discussed potential non-operative and operative treatment options, as well as the risks, complications and benefits and the techniques of the surgery. The Follow-up Assessment records JR's decision to proceed with shoulder surgery.

63. Also enclosed with JR's letter was an operative report for a June 5, 2007 shoulder operation on Cambie Surgery Centre letterhead, dictated by Dr. Gilbert. The operative report describes a shoulder surgery performed on JR. The operative report notes the anaesthetist was "Dr. W. Penz". Dr. William Penz is listed as an anaesthetist in the MSP data base.

64. Also enclosed with JR's letter was a copy of a June 1, 2007 invoice from Specialist Referral Clinic billed to JR for a "Consultation/Assessment \$500". The "appointment date" for the service is recorded as May 14, 2007, and the "Doctors [sic] Name" is "Dr. M. Gilbert". The invoice does not particularize the charges and does not describe each of the specific services covered by the single fee. Specifically, the invoice does not distinguish between professional fees for services provided by practitioners and charges for other matters, such as clinic or facility fees.

65. Also enclosed with JR's letter was a copy of a June 1, 2007 invoice from Specialist Referral Clinic billed to JR for "Prepayment for Surgery \$7,524" and "Cryocuff/Cold Therapy \$340". The "appointment date" is recorded as June 5, 2007, and the "Doctors [s/c] Name" is "Dr. M. Gilbert". The invoice does not particularize the charges and does not describe each of the specific services covered by the single fee. Specifically, the invoice does not distinguish between professional fees for services provided by practitioners and charges for other matters, such as clinic or facility fees.

66. The MSP claim history for JR shows that one doctor submitted claims to the Commission for payment of benefits rendered to JR on June 5, 2007:

- Dr. Gilbert submitted a \$613.50 claim for a shoulder instability Bankart repair, and a \$290.38 claim for a shoulder instability posterior soft tissue repair.

67. The MSP claim history shows there were no claims submitted to the Commission for a May 14, 2007, or a May 29, 2007, consultation. There were no associated laboratory billings for these services.

68. On January 8, 2008, an employee of the Medical Services Branch received a telephone message from JR's mother enquiring about the status of the correspondence she had sent on behalf of her adult child JR. The employee returned that call and, after determining that JR's mother was actually calling about JR's letter of December 5, 2007, explained the steps that would be taken by the Ministry of Health from that point.

69. On January 29, 2008, the Medical Services Branch wrote to Dr. Gilbert and to Dr. Day (as Medical Director of Specialist Referral Clinic), pointing out the provisions of the Act which prohibit extra billing and asking them to refund unauthorized charges to JR. Now produced and marked as **Exhibit 6** and

Exhibit 7 to this affidavit are redacted copies of the Medical Services Branch letters.

70. On January 29, 2008, the Medical Services Branch also wrote to JR informing JR that the services JR received on May 14 and June 5, 2007, at the Specialist Referral Clinic and at Cambie Surgery Centre, were benefits under the MSP and that JR should not have been charged for them. The letter goes on to say that the Medical Services Branch would request that the inappropriate charges be refunded to JR. The letter concludes by saying that the Medical Services Branch would follow up with JR after 45 days of the letter to determine if JR had received a refund. Now produced and marked as **Exhibit 8** to this affidavit is a redacted copy of the Medical Services Branch letter.

71. The letter sent to Dr. Gilbert on January 29, 2008, was returned marked "MOVED/UNKNOWN".

72. On or about February 11, 2008, the Medical Services Branch received a letter dated February 4, 2008, from Dr. Day on Cambie Surgery Centre letterhead. In that letter, Dr. Day claimed that the \$500 fee charged to JR was for "an independent assessment that bore no relation to any MSP insured activity". Dr. Day further claimed that JR "was fully aware of the fact that [JR] was seeking an independent medical assessment for [JR's] own personal use and benefit, and that this was not an insured service under the MSP. [JR] signed a declaration to that effect. Our clinic does not offer services available under the Medicare Protection Act, and all our files are confidential (3rd party) reports, medico-legal opinions, workers compensation and RCMP assessments." Now produced and marked as **Exhibit 9** to this affidavit is a redacted copy of Dr. Day's letter.

73. There were no enclosures with Dr. Day's letter; however, Dr. Day has sent similar letters to the Medical Services Branch about assessments rendered to

other beneficiaries, in which he enclosed a form styled "Patient Consent to Assessment by Specialist" on Specialist Referral Clinic letterhead. That form contains terms representing that:

- The patient is requesting "an independent assessment for my own personal use and benefit".
- The patient "accepts fully" that the service is not an insured service under the MSP.
- The patient understands there will be "no reimbursement by Medical Services Plan or any government agency for this service".

74. Now produced and marked as **Exhibit 10** to this affidavit is a redacted copy of one such form.

75. With respect to the surgical procedure for which JR was charged, Dr. Day claimed, "this was for an uninsured service, as described in the consent form, which [JR] signed". There was no "consent form" enclosed with Dr. Day's letter; however, Dr. Day has sent similar letters to the Medical Services Branch about surgeries rendered to other beneficiaries in which he enclosed a form styled "Patient Consent to Surgical Treatment at Cambie Surgery Centre". That form contains terms representing that:

- The patient is paying privately for operating theatre costs.
- The service is not an insured service under the MSP of BC.
- The service is not considered medically necessary "because I a [sic] seeking treatment in a timeline that is shorter than the government standard."

- The patient undertakes to "not seek re-imbursement [*sic*] from the MSP of BC or any other BC government agency and I waive any entitlement in that regard".

76. Now produced and marked as **Exhibit 11** to this affidavit is a redacted copy of one such form.

77. Dr. Day's letter also asserts an opinion about the meaning and effect of the Supreme Court of Canada decision in *Chaoulli v. Québec (Attorney General)*.

78. On November 13, 2008, the Medical Services Branch wrote to JR asking JR if JR had received a refund. The return copy of the letter, received on November 28, 2008, indicates that JR did not receive a refund. Now produced and marked as **Exhibit 12** to this affidavit is a redacted copy of the return letter.

79. In short, the information before the Commission concerning JR at the time that it made its decision to audit the Clinics was that:

- Specialist charged beneficiary JR \$500 for a medical assessment performed by Dr. Gilbert at Specialist Referral Clinic.
- Such assessments are benefits under the Act.
- The assessment clearly was not an "independent assessment for [JR's] personal use and benefit" as Dr. Day claimed, insofar as the assessment was made in relation to the June 5, 2007 surgery, which is itself a benefit as evidenced by, among other things, the fact that Dr. Gilbert submitted claims to the Commission for the surgery.

- Despite Dr. Day's assertion that the assessment "bore no relation to any MSP insured activity", Dr. Gilbert submitted claims for his surgical services, thereby representing to the Commission that his services were benefits.
- Despite any form that JR may have been required to sign to the contrary, it appears to the Commission that the assessment was not an independent medical assessment; the assessment was a benefit, and Dr. Gilbert was paid for the service as part of the pre-operative component of the fee item that he submitted for payment.
- Specialist charged JR \$7,524 for shoulder surgery rendered by Dr. Gilbert at Cambie Surgery Centre.
- Contrary to Dr. Day's letter, such surgery is a benefit under the Act.
- Despite any form that JR may have been required to sign to the contrary; the charges to JR were for benefits or for matters that were related to a benefit. The Commission considers such surgeries to be medically required. There is no "government standard timeline" from which the Commission determines whether a service is medically required. Dr. Gilbert was eligible to be paid for the surgery if he submitted a claim to the Commission, and he did so.
- Specialist also charged JR \$340 for cold therapy equipment, which is standard equipment required for post-operative care and, therefore, a matter related to the surgery.
- To my knowledge no money has been refunded to JR to date.

Reasons – Beneficiary GW

80. On or about November 30, 2007, an employee of Health Insurance BC received a telephone call from beneficiary GW during which GW asked for reimbursement of money GW paid for medical services rendered at Cambie Surgery Centre. That call was followed by a letter from GW dated November 30, 2007, enclosing invoices, receipts and an operative report from Cambie Surgery Centre concerning shoulder surgery. Now produced and marked as **Exhibit 13** to this affidavit is a redacted copy of GW's letter and its enclosures.

81. The operative report enclosed with GW's letter describes a shoulder surgery performed on GW on May 11, 2007. The operative report was dictated by Dr. Farhad Moola who is listed as an orthopaedic surgeon in the MSP data base.

82. Also enclosed with GW's letter was a copy of an April 13, 2007 invoice from Specialist Referral Clinic billed to GW for a "Consultation/Assessment \$500". The "appointment date" for the service is recorded as April 13, 2007, and the "Doctors [sic] Name" is "Dr. F Moola". The invoice does not particularize the charges and does not describe each of the specific services covered by the single fee. Specifically, the invoice does not distinguish between professional fees for services provided by practitioners and charges for other matters, such as clinic or facility fees. Also enclosed with GW's letter was a credit card receipt for an April 13, 2007 purchase of \$500 at Specialist Referral Clinic.

83. There was no consultation or assessment report enclosed with GW's letter.

84. Enclosed with GW's letter was a copy of a May 8, 2007, invoice from Specialist Referral Clinic billed to GW for "Prepayment for Surgery \$7,774" and "Cryocuff/Cold Therapy \$340". The "appointment date" is recorded as May 11, 2007, and the "Doctors [sic] Name" is "Dr. F. Moola". The invoice does not particularize the charges and does not describe each of the specific services that are covered by the single fee. Specifically, the invoice does not distinguish between professional fees for services provided by practitioners and charges for other matters, such as clinic or facility fees. Also enclosed with GW's letter was a credit card receipt for a May 8, 2007 purchase of \$8,114 at Specialist Referral Clinic.

85. The MSP claim history for GW shows that three doctors submitted claims to the Commission for payment of benefits rendered to GW on May 11, 2007.

- Dr. Moola submitted a \$170.42 claim for a Shoulder Debridement Synovectomy, and a \$699.84 claim for a Complex Rotator Cuff Reconstruction.
- Dr. Marion Wachsmuth submitted a \$213.40 claim for a Surgical Assistance.
- Dr. Kurt Samer submitted a \$431.47 claim for Anaesthesia Level 4 and a \$53.23 claim for Sitting Position Anaesthesia fee.

86. On May 1 and 7, 2007, Dr. Moola also requisitioned eight laboratory tests that were billed to the Commission.

87. On March 20, 2008, the Medical Services Branch wrote to Dr. Moola, Dr. Wachsmuth, Dr. Samer, and Dr. Day (as Medical Director of Specialist Referral Clinic) pointing out the provisions of the Act which prohibit extra billing and asking them to refund unauthorized charges to GW. Now produced and

marked as **Exhibit 14**, **Exhibit 15**, **Exhibit 16** and **Exhibit 17** to this affidavit are redacted copies of the Medical Services Branch letters.

88. On March 20, 2008, the Medical Services Branch also wrote to GW informing GW that the services GW received on May 11, 2007 at the Cambie Surgery Centre were benefits under the MSP and that GW should not have been charged for them. The letter goes on to say that the Medical Services Branch would contact the physicians involved with a request that the inappropriate charges be refunded to GW. The letter concludes by saying that the Medical Services Branch would follow up with GW after 45 days of the letter to determine whether GW had received a refund. Now produced and marked as **Exhibit 18** to this affidavit is a redacted copy of the Medical Services Branch letter.

89. On April 14, 2008, the Ministry of Health received a letter from Dr. Day on Specialist Referral Clinic letterhead. The letter, dated April 7, 2008, was similar to the letter described in paragraph 72 above which was on Cambie Surgery Centre letterhead, inasmuch as Dr. Day asserts the \$500 fee charged to GW "bore no relation to any MSP insured activity". Dr. Day also claimed that GW "was fully aware of the fact that [GW] was seeking an independent medical assessment for [GW's] own personal use and benefit, and that this was not an insured service under the MSP. [GW] signed a declaration to that effect." Unlike the earlier letter, the letter of April 7, 2008 adds, "Independent reports may be used for many non-MSP insured purposes the individual seeking them requires (legal, driver's licence, disability or life insurance, pilot's physical, executive physical etc.)". Now produced and marked as **Exhibit 19** to this affidavit is a redacted copy of Dr. Day's letter and its enclosures.

90. With respect to the surgical procedure for which GW was charged, Dr. Day claimed, "this was for an uninsured service, as described in the consent form, which [GW] signed".

91. Also attached to Dr. Day's letter was a copy of a form on Specialist Referral Clinic letterhead styled "Patient Consent to Assessment by Specialist". That document contains provisions in the same terms described at paragraph 73 above.

92. Also attached to Dr. Day's letter was a copy of a form on Cambie Surgery Centre letterhead styled "Patient Consent to Surgical Treatment at Cambie Surgery Centre". That document contains provisions in the same terms described at paragraph 75 above.

93. Dr. Moola, Dr. Wachsmuth, and Dr. Samer did not reply to the Medical Services Branch letter requesting repayment.

94. On May 14, 2008, the Medical Services Branch wrote to GW asking GW whether GW had received a refund. The return copy of the letter, received on June 25, 2008, indicates that GW had not received a refund. Now produced and marked as **Exhibit 20** to this affidavit is a redacted copy of the return letter.

95. In short, the information before the Commission concerning GW at the time that it made its decision to audit the Clinics was that:

- Specialist charged beneficiary GW \$500 for a medical assessment performed by Dr. Moola at Specialist Referral Clinic.
- Such assessments are benefits under the Act.
- The assessment clearly was not an "independent assessment for [GW's] personal use and benefit" as Dr. Day claimed, insofar as the assessment was made in relation to the May 11, 2007, surgery which is itself a benefit as evidenced by, among other things, the fact that Dr. Moola,

Dr. Wachsmuth, and Dr. Samer all submitted claims to the Commission for the surgery.

- According to GW's letter, the purpose of the assessment was to seek treatment for a rotator cuff tear, not for any independent purpose.
- Despite Dr. Day's assertion that the assessment "bore no relation to any MSP insured activity", all three doctors submitted claims for their services, thereby representing to the Commission that their services were benefits.
- Despite Dr. Day's letter, there is no evidence that the assessment rendered to GW had anything to do with "legal, driver's licence, disability or life insurance, pilot's physical, executive physical etc." Rather the assessment was related to the May 11, 2007 surgery for which a claim was submitted to the Commission.
- Despite any form that GW may have been required to sign to the contrary; it appears to the Commission that the assessment was not an independent medical assessment; the assessment was a benefit, and Dr. Moola was paid for the service as part of the pre-operative component of the fee item which he submitted for payment.
- Specialist charged GW \$7,774 for shoulder surgery rendered by Dr. Moola at Cambie Surgery Centre.
- Contrary to Dr. Day's letter, such surgery is a benefit under the Act.
- Despite any form that GW may have been required to sign to the contrary, the charges to GW were for benefits or for matters that were related to a benefit. The Commission considers such surgeries to be medically required. There is no "government standard timeline" from which the

Commission determines whether a service is medically required. The doctors involved in GW's care would have been eligible to be paid for the surgery if they submitted a claim to the Commission, and in fact, they did so.

- Specialist also charged GW \$340 for cold therapy equipment, which is standard equipment required for post-operative care and therefore a matter related to the surgery.
- Dr. Moola requisitioned eight laboratory tests that were charged to Medical Services Commission and apparently related to the surgery.
- To my knowledge no money has been refunded to GW to date.

Reasons – Beneficiary GDR

96. On or about August 15, 2007, Health Insurance BC received a letter dated August 8, 2007, from beneficiary GDR's executive assistant asking whether the MSP would reimburse GDR for fees GDR paid for knee surgery. Enclosed with the letter were copies of an operative report, a document styled "Independent Medical Assessment" and invoices. Now produced and marked as **Exhibit 21** to this affidavit is a redacted copy of the letter from GDR's executive assistant and some of its enclosures.

97. The medical assessment enclosed with GDR's letter was faxed from Specialist Referral Clinic. It indicates that GDR was seen by Dr. Day on April 3, 2007. According to the assessment, Dr. Day saw GDR about an injury to GDR'S right knee. The history indicates that GDR injured GDR's knee while skiing. The document indicates that a medical history was taken and that a physical examination undertaken. The document also records medical findings

and recommendations for treatment. The assessment was dictated by Dr. Day and copied to Cambie Surgery Centre and Dr. Walter House.

98. The operative report enclosed with GDR's letter is on the letterhead of Cambie Surgery Centre. It indicates that GDR underwent a knee surgery at Cambie Surgery Centre on May 3, 2007. The operative report was dictated by Dr. Day. The anaesthetist was noted to be Dr. W. Penz. The report was copied to Specialist Referral Clinic, among others.

99. Also enclosed with GDR's letter was a copy of an April 3, 2007, invoice from Specialist Referral Clinic billed to GDR for a "Consultation/Assessment \$550". The "appointment date" for the service is recorded as April 3, 2007, and the "Doctors [sic] Name" is "Dr. B. Day". The invoice does not particularize the charges and does not describe each of the specific services covered by the single fee. Specifically, the invoice does not distinguish between professional fees for services provided by practitioners and charges for other matters, such as clinic or facility fees.

100. Also enclosed with GDR's letter was a copy of an April 27, 2007, invoice from Specialist Referral Clinic billed to GDR for "Prepayment for Surgery \$7,074" and "Cryocuff/Cold Therapy \$340". The "appointment date" is recorded as May 3, 2007, and the "Doctors [sic] Name" is "Dr. B. Day". The invoice does not particularize the charges and does not describe each of the specific services that is covered by the single fee. Specifically, the invoice does not distinguish between professional fees for services provided by practitioners and charges for other matters, such as clinic or facility fees.

101. Also enclosed with GDR's letter was a copy of a May 22, 2007 invoice from Specialist Referral Clinic billed to GDR for "Escort Services, \$425". The "appointment date" is recorded as May 3, 2007, and the "Doctors [sic] Name" is "Dr. Brian Day".

102. I am informed by a medical consultant employed by the Ministry of Health that, in the context of patient care, "escort service" usually means the service provided by a doctor accompanying a patient who is transferred from one hospital to another by Emergency Health Services. There is a specific fee item in the Payment Schedule for accompanying a patient to a distant hospital where medically required, and it pays \$207.27 per ½ hour or major portion thereof. Accordingly, the charges for escort services seemed to be charges for a benefit, or charges for a matter relating to a benefit.

103. The MSP claim history for GDR shows that three doctors submitted claims to the Commission for payment of benefits rendered to GDR on May 3, 2007.

- As an opted-out practitioner, Dr. Day submitted a \$236.30 claim for a knee menisectomy on behalf of GDR, and a cheque payable to GDR was mailed to Dr. Day's Ash Street address.
- Dr. Anthony Otto submitted a \$213.40 claim for Surgical Assistance.
- Dr. William Penz submitted a \$270 claim for Anaesthesia Complexity Level 2.

104. Now produced and marked as **Exhibit 22** to this affidavit is a redacted copy of an image of the front and back of the MSP cheque, payable to GDR, as received from Credit Union Central of British Columbia, together with a redacted image of the related payment details. The back of the cheque is stamped with the following endorsement: "FOR DEPOSIT TO THE ACCOUNT OF DR. B. DAY, INC. SIGNED LIMITED P.O.A. ON FILE."

105. The MSP claim history for GDR also shows that between July 11, 2007 and November 20, 2007, Dr. Day and two other doctors submitted claims for

payment for knee surgeries, and related services, performed on September 6, 2007 and October 4, 2007. The total amount claimed by Dr. Day and the two doctors amounted to \$1,932.11. The Commission also paid for laboratory tests that were ordered by Dr. Day in relation to the October 4, 2007 surgery. According to the MSP claim history, the September 6 and October 4, 2007 surgeries were not rendered in a public facility. Although GDR did not request repayment for services rendered at Cambie Surgery Centre on September 6 or October 4, 2007, given GDR's earlier dealings with the Clinics, Medical Services Branch employees concluded that the Clinics may have extra billed for these benefits as well.

106. On March 27, 2008, the Medical Services Branch wrote to Dr. Anthony Otto, Dr. William Penz, and Dr. Day (as Medical Director of Specialist Referral Clinic), pointing out the provisions of the Act which prohibit extra billing and asking them to refund unauthorized charges to GDR. Now produced and marked as **Exhibit 23**, **Exhibit 24** and **Exhibit 25** to this affidavit are redacted copies of the Medical Services Branch letters.

107. Now produced and marked as **Exhibit 26** to this affidavit are redacted copies of the images of the front and back of five MSP cheques, payable to GDR, as received from Credit Union Central of British Columbia, together with a redacted image of the related payment details. The backs of the cheques are stamped with the following endorsement: "FOR DEPOSIT TO THE ACCOUNT OF DR. B. DAY, INC. SIGNED LIMITED P.O.A. ON FILE."

108. On March 27, 2008, the Medical Services Branch also wrote to GDR informing GDR that the services GDR received on May 3, 2007, at Cambie Surgery Centre were benefits under the MSP and that GDR should not have been charged for them. The letter goes on to say that the Medical Services Branch would contact the physicians involved with a request that the inappropriate charges be refunded to GDR. The letter concludes by saying that

the Medical Services Branch would follow up with GDR after 45 days of the letter to determine whether GDR had received a refund. Now produced and marked as **Exhibit 27** to this affidavit is a redacted copy of the Medical Services Branch letter.

109. On or about April 14, 2008, the Ministry of Health received a letter dated April 7, 2008, from Dr. Day. This letter was similar to the letter referred to in paragraph 72 above insofar as Dr. Day claimed that the \$550 fee charged to GDR was for "an independent assessment that bore no relation to any MSP insured activity". Dr. Day further claimed that GDR "was fully aware of the fact that [GDR] was seeking an independent medical assessment for [GDR's] own personal use and benefit, and that this was not an insured service under the MSP. [GDR] signed a declaration to that effect." Now produced and marked as **Exhibit 28** to this affidavit is a redacted copy of Dr. Day's letter.

110. With respect to the surgical procedure for which GDR was charged, Dr. Day claimed, "this was for an uninsured service, as described in the consent form, which [GDR] signed".

111. Attached to Dr. Day's letter was a copy of a form on Specialist Referral Clinic letterhead styled "Patient Consent to Assessment by Specialist", on the same terms as the form described in paragraph 73 above. Now produced and marked as **Exhibit 29** to this affidavit is a redacted copy of the form styled "Patient Consent to Assessment by Specialist".

112. Attached to Dr. Day's letter was a copy of a form on Cambie Surgery Centre letterhead styled "Patient Consent to Surgical Treatment at Cambie Surgery Centre" on the same terms as the form described in paragraph 75 above. Now produced and marked as **Exhibit 30** to this affidavit is a redacted copy of the form styled "Patient Consent to Surgical Treatment at Cambie Centre".

113. Dr. Otto did not reply to the March 27, 2008 letter from Medical Services Branch. Dr. Penz did not reply to the March 27, 2008 letter from Medical Services Branch.

114. In short, the information before the Commission concerning GDR the time that it made its decision to audit the Clinics was that:

- Specialist charged beneficiary GDR for a medical assessment performed by Dr. Day at Cambie Surgery Centre.
- Such assessments are benefits under the Act.
- The assessment clearly was not an "independent assessment for [GDR's] personal use and benefit" as Dr. Day claimed, insofar as the assessment was made in relation to the May 3, 2007, surgery which is itself a benefit as evidenced by, among other things, the fact that Dr. Penz and Dr. Otto, and Dr. Day himself, all submitted claims to the Commission for, or in relation to, the surgery.
- According to Dr. Day's assessment report, he examined GDR because of a skiing accident in which GDR injured GDR knee, for which Dr. Day proposed treatment. Accordingly, the purpose of the assessment was to seek treatment for a knee injury sustained in a skiing accident, not for any independent purpose.
- Despite Dr. Day's assertion that the assessment "bore no relation to any MSP insured activity", all three doctors submitted claims for their surgical services, thereby representing to the Commission that their services were benefits.

- Despite Dr. Day's letter, there is no evidence that the assessment rendered to GDR had anything to do with "legal, driver's license, disability or life insurance, pilot's physical, executive physical etc." The assessment report dictated by Dr. Day indicates that GDR injured GDR's knee in a skiing accident; therefore, the assessment was related to the May 3, 2007 surgery for which a claim was submitted to the Commission.
- Despite any form that GDR may have been required to sign to the contrary, it appears to the Commission that the assessment was not an independent medical assessment; the assessment was a benefit, and was paid for as part of the pre-operative care component of the claim Dr. Day submitted for the surgery.
- Specialist charged GDR \$7,074 for knee surgery rendered by Dr. Day at Cambie Surgery Centre.
- Contrary to Dr. Day's letter, such surgery is a benefit under the Act.
- Despite any form that GDR may have been required to sign to the contrary, the charges to GDR were for benefits or for matters that were related to a benefit. The Commission considers such surgeries to be medically required. There is no "government standard timeline" from which the Commission determines whether a service is medically required. The doctors involved in GDR's care were eligible to be paid for the surgery if they submitted a claim to the Commission, and in fact, they did so.
- Specialist also charged GDR \$340 for cold therapy equipment, which is standard equipment required for post-operative care and, therefore, a matter related to the surgery. Specialist charged GDR \$425 for escort

services on May 3, 2007. These charges also appear to the Commission to be charges for a benefit or charges for a matter related to a benefit.

- To my knowledge no money has been refunded to GDR to date.

Reasons – Beneficiary GM

115. On or about December 7, 2006, the MSP received a letter by fax from beneficiary GM in which GM requested reimbursement of money GM paid for medical services rendered at "the Cambie Clinic". Enclosed with GM's letter were copies of various documents including invoices, receipts, a "Surgery Cost Breakdown Report", a document styled "Independent Medical Assessment" and a document styled "Independent Medical Follow-up Assessment". Now produced and marked as **Exhibit 31** to this affidavit is a redacted copy of GM's letter and some of its enclosures.

116. Enclosed with GM's letter was a copy of a letter on Seymour Medical Clinic letterhead dated December 4, 2006, signed by Dr. P.E. Wilson. Dr. Wilson's letter says that he saw GM on June 23, 2006, after GM had injured GM's knee at home. Dr. Wilson indicates that his findings "suggested [GM] has sustained a tear to GW left medial meniscus, and would likely need surgery." Dr. Wilson recommended that GM seek private attention "through the Specialist Referral Clinic at Cambie Centre".

117. Enclosed with GM's letter was a copy of a letter on Specialist Referral Clinic letterhead dated August 17, 2006, signed by Dr. Gilbert. Dr. Gilbert's letter says that he met with GM on August 15, 2006, at the Specialist Referral Clinic "for the purposes of an independent medical assessment".

118. The document styled "Independent Medical Assessment" enclosed with GM's letter is on Specialist Referral Clinic letterhead. It indicates that GM was

seen by Dr. Gilbert on August 15, 2006. According to the assessment, Dr. Gilbert saw GM about an injury that GM sustained to GM's knee after running. Dr. Gilbert took a medical history from GM and conducted a physical examination. Dr. Gilbert's assessment was that GM had symptoms consistent with a particular knee injury. Dr. Gilbert discussed operative treatments and options with GM and proposed a surgical procedure to which GM consented.

119. The document styled "Independent Medical Follow-up Assessment" enclosed with GM's letter is also on Specialist Referral Clinic letterhead. It indicates that Dr. Gilbert saw GM on September 26, 2006, for a repeat assessment of GM's right knee one month after knee surgery.

120. GM's letter did not include a copy of an operative report.

121. Also enclosed with GM's letter was a copy of an August 15, 2006 invoice from Specialist Referral Clinic billed to GM for a "Consultation/Assessment \$500". The "appointment date" for the service is recorded as August 15, 2006. The "Doctors [sic] Name" is "Dr. M Gilbert". The invoice does not particularize the charges and does not describe each of the specific services covered by the single fee. Specifically, the invoice does not distinguish between professional fees for services provided by practitioners and charges for other matters, such as clinic or facility fees.

122. Also enclosed with GM's letter was a copy of an August 22, 2006 invoice from Specialist Referral Clinic billed to an individual (not GM) for "Prepayment for Surgery \$3,068". The patient in this invoice is noted to be GM. The "appointment date" is recorded as August 22, 2006, and the "Doctors [sic] Name" is "Dr. M. Gilbert". The invoice is partially obscured by a copy of a Visa receipt for the total amount of the invoice. The invoice does not particularize the charges and does not describe each of the specific services covered by the single fee. Specifically, the invoice does not distinguish between professional

fees for services provided by practitioners and charges for other matters, such as clinic or facility fees.

123. Also enclosed with GM's letter was a copy of a "Surgery Cost Breakdown Report" on Specialist Referral Clinic letterhead, signed by Zoltan Nagy, Clinic Manager. The report indicates the "Place of procedure" is "Cambie Surgery Centre, Vancouver, BC". The report also indicates the "Physician" is "Michael Gilbert, MD, FRCSC". The report shows the following fees associated with a meniscal surgery on August 22, 2006:

- Facility Fee, \$1,900
- Surgeons Fee, \$500
- Anaesthetic Fee, \$200
- Assistant Fee, \$150
- Administration Fee, \$318

124. The MSP claim history for GM shows that two doctors submitted claims to the Commission for payment of benefits rendered to GM on August 22, 2006.

- Dr. Gilbert submitted a \$449.90 claim for a Total Knee Synovectomy.
- A claim was submitted for a diagnostic procedure ordered by Dr. Gilbert prior to the surgery.
- Dr. William Penz submitted a \$120 claim for Anaesthesia Level 2.

125. On April 2, 2007, the Ministry of Health Services received a letter from GM of the same date addressed to Gordon Macatee, Deputy Minister of Health, again asking that the government pay parts of GM's surgical bills from Specialist Referral Clinic. Now produced and marked as **Exhibit 32** to this affidavit is a redacted copy of GM's letter dated April 2, 2007.

126. On May 2, 2007, the Deputy Minister of Health, Gordon Macatee, wrote to GM saying that it appeared the services that GM had received were benefits, that GM should not have been charged for them and that the Ministry would be requesting a refund. Now produced and marked as **Exhibit 33** to this affidavit is a redacted copy of the Deputy Minister's letter dated May 2, 2007.

127. On November 5, 2007, the Ministry of Health received a letter from GM of the same date addressed to the Honourable George Abbott, Minister of Health, again requesting reimbursement of some of the fees charged by Specialist Referral Clinic. GM took issue with the Deputy Minister of Health's May 2, 2007, letter by saying, "With all due respect to Mr. Macatee, why should the specialist have to reimburse me for the pre-operative consultation and the actual surgery itself? He did not double dip by charging both myself and MSP, as far as I know". Now produced and marked as **Exhibit 34** to this affidavit is a redacted copy of GM's letter dated November 5, 2007.

128. On January 8, 2008, the Medical Services Branch wrote to Dr. Gilbert and to Dr. Day (as Medical Director of Specialist Referral Clinic), pointing out the provisions of the Act which prohibit extra billing and asking them to refund unauthorized charges to GM. Now produced and marked as **Exhibit 35** and **Exhibit 36** to this affidavit are redacted copies of the Medical Services Branch letters.

129. On January 14, 2008, the Medical Services Branch wrote to GM on behalf of the Minister of Health in reply to GM's letter of November 5, 2007. That letter

repeats the Ministry's view that GM should not have been charged for the services that GM received at Camble Surgery Centre, and indicates that the matter would be sent to the Commission as it appeared that no money had been refunded to GM. Now produced and marked as **Exhibit 37** to this affidavit is a redacted copy of the Medical Services Branch letter dated January 14, 2008.

130. About mid-January, 2008, the Ministry of Health received a letter dated January 11, 2008, from Dr. Day. This letter was similar to the letter referred to in paragraph 72 above insofar as Dr. Day claimed that the \$500 fee charged to GM was for "an independent assessment that bore no relation to any MSP insured activity". Dr. Day further claimed that GM "was fully aware of the fact that GM was seeking an independent medical assessment for GM's own personal use and benefit, and that this was not an insured service under the MSP. GM signed a declaration to that effect". Now produced and marked as **Exhibit 38** to this affidavit is a redacted copy of Dr. Day's letter.

131. With respect to the surgical procedure for which GM was charged, Dr. Day claimed, "this was for an uninsured service, as described in the consent form, which GM signed".

132. Attached to Dr. Day's letter was a copy of a form on Specialist Referral Clinic letterhead styled "Patient Consent to Assessment by Specialist", on the same terms as the form described in paragraph 73 above. Now produced and marked as **Exhibit 39** to this affidavit is a redacted copy of the form styled "Patient Consent to Assessment by Specialist".

133. Attached to Dr. Day's letter was a copy of a form on Camble Surgery Centre letterhead styled "Patient Consent to Surgical Treatment at Camble Surgery Centre", on the same terms as the form described in paragraph 75 above. Now produced and marked as **Exhibit 40** to this affidavit is a redacted

copy of the form styled "Patient Consent to Surgical Treatment at Cambie Centre".

134. On January 19, 2008, the Medical Services Branch received a letter dated January 19, 2008, from GM in which, among other things, GM expresses surprise that Dr. Gilbert and Dr. Penz submitted claims for payment for the surgery, insofar as the invoice GM received from "Cambie Surgery Centre" included the following charges for the following matters:

| | |
|----------------------------------|--------|
| "Medical specialist consultation | \$530 |
| Surgeons fee | \$500 |
| Anaesthetic fee | \$200 |
| Assistant fee | \$150" |

135. GM again requested reimbursement for some of the charges. Now produced and marked as **Exhibit 41** to this affidavit is a redacted copy of GM's letter dated January 19, 2008.

136. In short, the information before the Commission concerning GM at the time that it made its decision to audit the Clinics was that:

- A business or operating relationship between the Clinics is suggested by Dr. Wilson's letter of December 4, 2006, in which he says he recommended treatment "thru the Specialist Referral Clinic at the Cambie Centre".
- Specialist charged beneficiary GM \$500 for a medical assessment performed by Dr. Gilbert at Specialist Referral Clinic.
- Such assessments are benefits under the Act.

- The assessment clearly was not an "independent assessment for [GM's] personal use and benefit" as Dr. Day claimed, insofar as the assessment was made in relation to the August 22, 2006 surgery which is itself a benefit as evidenced by, among other things, the fact that Dr. Gilbert and Dr. Penz submitted claims to the Commission.
- According to GM's letters, the purpose of the assessment was to seek treatment for an injury GM sustained while jogging, not for any independent purpose.
- Despite Dr. Day's assertion that the assessment "bore no relation to any MSP insured activity", Dr. Gilbert and Dr. Penz submitted claims for their services, thereby representing to the Commission that their services were benefits.
- Despite any form that GM may have been required to sign to the contrary, it appears to the Commission that the assessment was not an independent medical assessment; the assessment was a benefit, and Dr. Gilbert was paid for it as part of the pre-operative care component of the claim he submitted for the surgery.
- Specialist charged GM \$3,068 for knee surgery rendered by Dr. Gilbert at Cambie Surgery Centre. The account of that charge is described in further detail by a report signed by the Specialist Referral Clinic, Clinic Manager, which clearly shows that the fee includes a component for a surgeon's fee, an anaesthetic fee, and an assistant fee.
- Contrary to Dr. Day's letter, such services are benefits under the Act.
- The breakdown also includes a facility fee and an administration fee. Such services are considered part of the overhead component of benefits,

and are clearly matters related to the surgery which should not have been charged to GM.

- Despite any form that GM was required to sign that says "the patient is paying privately for operating theatre cost", the cost breakdown report shows that GM was charged for professional services related to the surgery and other matters as well as a facility fee.
- To my knowledge no money has been refunded to GM to date.

Reasons – Beneficiary DC

137. On or about January 9, 2008, Health Insurance BC received a letter dated January 3, 2008, from beneficiary DC asking for reimbursement of, among other things, \$750 that DC paid for a medical consultation with Dr. Philip Teal in Vancouver for worsening neurological problems. Dr. Teal is listed as a neurologist in the MSP database. Among the enclosures with DC's letter were copies of an invoice from Specialist Referral Clinic and a credit card receipt. Now produced and marked as **Exhibit 42** to this affidavit is a redacted copy of DC's letter and some of its enclosures.

138. There was no consultation report enclosed with DC's letter; however, there was a copy of a December 19, 2007, invoice from Specialist Referral Clinic billed to DC for an "Independent Medical Assessment for Personal Use \$750". The "appointment date" for the service is recorded as December 19, 2007, and the "Doctors [sic] Name" is "Dr. P. Teal". The credit card receipt attached to DC's letter is for a December 19, 2007, purchase of \$750 at Specialist Referral Clinic. The invoice does not particularize the charges and does not describe each of the specific services covered by the single fee. Specifically, the invoice does not distinguish between professional fees for services provided by practitioners and charges for other matters, such as clinic or facility fees.

139. The MSP claim history for DC shows that the Commission was charged for 10 laboratory tests ordered by Dr. Teal for a December 19, 2007 date of services. There were no other claims submitted to the MSP for December 19, 2007.

140. On April 30, 2008, the Medical Services Branch wrote to Dr. Teal, and to Dr. Day (as Medical Director of Specialist Referral Clinic), pointing out the provisions of the Act which prohibit extra billing and asking them to refund unauthorized charges to DC. Now produced and marked as **Exhibit 43** and **Exhibit 44** to this affidavit are redacted copies of the Medical Services Branch letters.

141. On April 30, 2008, the Medical Services Branch also wrote to DC informing DC that the service DC received on December 19, 2007 at the Specialist Referral Clinic was a benefit under the MSP and that DC should not have been charged for it. The letter goes on to say that the Medical Services Branch would contact the physicians involved with a request that the inappropriate charges be refunded to DC. The letter concludes by saying that the Medical Services Branch would follow up with DC after 45 days of the letter to determine if DC had received a refund. Now produced and marked as **Exhibit 45** to this affidavit is a redacted copy of the Medical Services Branch letter.

142. On or about May 6, 2008, the Ministry of Health received a letter dated May 5, 2008, from Dr. Day. This letter was similar to the letter referred to in paragraph 72 above; insofar as Dr. Day claimed that the \$750 fee charged to DC was for "an independent assessment that bore no relation to any MSP insured activity". Dr. Day further claimed that DC "was fully aware of the fact that DC was seeking an independent medical assessment for DC own personal use and benefit, and that this was not an insured service under the MSP. DC signed a

declaration to that effect." Now produced and marked as **Exhibit 46** to this affidavit is a redacted copy of Dr. Day's letter.

143. Attached to Dr. Day's letter was a copy of a form on Specialist Referral Clinic letterhead styled "Patient Consent to Assessment by Specialist", on the same terms as the form described in paragraph 73 above. Now produced and marked as **Exhibit 47** to this affidavit is a redacted copy of the form styled "Patient Consent to Assessment by Specialist".

144. Dr. Teal did not reply to the April 30, 2008, letter from the Medical Services Branch.

145. On June 17, 2008, the Medical Services Branch wrote to DC asking DC if DC had received a refund. The return copy of the letter, received on June 27, 2008, indicates that DC did not receive a refund. Now produced and marked as **Exhibit 48** to this affidavit is a redacted copy of the return letter.

146. In short, the information before the Commission concerning DC at the time that it made its decision to audit the Clinics was that:

- Specialist charged beneficiary DC \$750 for a medical assessment performed by Dr. Teal at Specialist Referral Clinic.
- This was an assessment for neurological problems. Such assessments are benefits under the Act.
- Despite Dr. Day's assertion that the assessment "bore no relation to any MSP insured activity", Dr. Teal submitted claims for laboratory services, thereby representing to the Commission that his services were benefits.

- Despite any form that DC may have been required to sign to the contrary, it appears to the Commission that the assessment was not an independent medical assessment; the assessment was a benefit, and Dr. Teal was eligible to be paid for the assessment had he submitted a claim to the Commission for it.
- To my knowledge no money has been refunded to DC to date.

Reasons – Beneficiary NS

147. On or about June 26, 2007, Health Insurance BC received, by fax, a letter dated June 25, 2007, from US, the parent of beneficiary NS. US's letter asked for help paying a \$7,974 bill for hip surgery performed by Dr. Day on April 12, 2007. US's letter indicated that NS saw a family doctor and two specialists before seeing Dr. Day. Now produced and marked as **Exhibit 49** to this affidavit is a redacted copy of US's letter and its enclosures.

148. There was no consultation report or operative report enclosed with US's letter.

149. Enclosed with US's letter was a copy of an April 12, 2007 invoice from Specialist Referral Clinic billed to NS for "Hip Arthroscopy \$7,550" and "Administration Fee Surgery \$400." The "appointment date" for the service is recorded as April 12, 2007, and the "Doctors [sic] Name" is "Dr. Brian Day". The invoice is marked "PAID". The invoice does not particularize the "Hip Arthroscopy" charge and does not describe each of the specific services covered by the single fee. Specifically, the invoice does not distinguish between professional fees for services provided by practitioners and charges for other matters, such as clinic or facility fees.

150. On or about July 6, 2007, the Ministry of Health received by fax a letter from NS dated July 1, 2007, in which NS asked for help paying a bill from Specialist Referral Clinic for a hip surgery performed by Dr. Day on April 12, 2007. Now produced and marked as **Exhibit 50** to this affidavit is a redacted copy of NS's letter.

151. The MSP claim history for NS shows that three doctors submitted claims to the Commission for payment of benefits rendered to NS on April 12, 2007.

- As an opted-out practitioner, Dr. Day submitted a \$504.44 claim for an Arthroscopic Hip Joint procedure to the Commission on behalf of NS, and a cheque payable to NS was mailed to Dr. Day's Ash Street address.
- Dr. Penz submitted a \$347.49 claim for anaesthetic services.
- Dr. Wachsmuth submitted a \$213.40 claim for a surgical assist. (The claim had an "April 10, 2007" date of service, which the Medical Services Branch concluded was entered in error; the only surgery mentioned by NS and recorded in the claim history was for April 12, 2007.)

152. Now produced and marked as **Exhibit 51** to this affidavit is a redacted copy of an image of the front and back of the MSP cheque, payable to NS, as received from Credit Union Central of British Columbia, together with a redacted image of the related payment details. The back of the cheque is endorsed with the hand written comment, "Pay to Dr Brian Day Inc. Signed POA on file."

153. The MSP claim history also shows that an orthopaedic surgeon, Dr. Landells, submitted a claim for an orthopaedic consultation with a February 23, 2007 date of service.

154. On March 27, 2008, the Medical Services Branch wrote to Dr. Wachsmuth, Dr. Penz, and Dr. Day (as Medical Director of Specialist Referral Clinic), pointing out the provisions of the Act which prohibit extra billing and asking them to refund unauthorized charges to NS. Now produced and marked as **Exhibit 52**, **Exhibit 53** and **Exhibit 54** to this affidavit are redacted copies of the Medical Services Branch letters.

155. On March 27, 2008, the Medical Services Branch also wrote to NS stating that the services NS received on April 12, 2007, at the Cambie Surgery Centre were benefits under the MSP and that NS should not have been charged for them. The letter goes on to say that the Medical Services Branch would contact the physicians involved with a request that the inappropriate charges be refunded to NS. The letter concludes by saying that the Medical Services Branch would follow up with NS after 45 days of the letter to determine whether NS had received a refund. Now produced and marked as **Exhibit 55** to this affidavit is a redacted copy of the Medical Services Branch letter.

156. On April 14, 2008, the Ministry of Health received a letter from Dr. Day in which he stated that NS underwent a surgical procedure on April 12, 2007, which he claimed was not an insured service. Dr. Day referenced a document he called a "consent form" and enclosed a form styled "Patient Consent to Surgical Treatment at Cambie Surgery Centre" similar to the form mentioned in paragraph 75 above. Now produced and marked as **Exhibit 56** to this affidavit is a redacted copy of Dr. Day's letter and its enclosures.

157. Dr. Wachsmuth and Dr. Penz did not reply to the Medical Services Branch letter of March 27, 2008.

158. On May 22, 2008, the Medical Services Branch wrote to NS asking NS whether NS had received a refund. The Medical Services Branch has not

received a reply to its letter. Now produced and marked as **Exhibit 57** to this affidavit is a redacted copy of the Medical Services Branch letter of inquiry.

159. In short, the information before the Commission concerning NS at the time that it made its decision to audit the Clinics was that:

- Specialist charged NS \$7,974 for hip surgery and an administration fee.
- The surgery was rendered by Dr. Day at Cambie Surgery Centre.
- Contrary to Dr. Day's letter, such surgery is a benefit under the Act.
- Despite any form that NS may have been required to sign to the contrary, the charges to NS were for benefits or for matters that were related to a benefit. The Commission considers such surgeries to be medically required. There is no "government standard timeline" from which the Commission determines whether a service is medically required. Dr. Day and the other practitioners involved in NS's care were eligible to be paid for the surgery if they submitted a claim to the Commission, and in fact, they did so.
- Dr. Day, Dr. Penz and Dr. Wachsmuth all submitted claims to the Commission for payment in relation to this surgery, thereby representing to the Commission that their services were benefits under the Act.
- Dr. Landells also submitted a claim for an orthopaedic consultation in the months before this surgery. An audit will reveal whether it was in relation to the same condition for which NS underwent surgery at Cambie.
- I am not aware if money has been refunded to NS to date.

Reasons – Beneficiary SG

160. On or about June 20, 2007 the MSP received a letter dated December 21, 2006, from beneficiary SG, describing medical services SG received for an injury to SG's right leg suffered on September 12, 2005, which was subsequently diagnosed as a "torn cartilage". SG requested reimbursement of money paid for medical services in relation to this injury. Enclosed with SG's letter were copies of various documents including invoices and a medical report. SG also indicated that SG is on a low income and that, at the time of writing, SG was scheduled to receive surgery for SG's knee injury at Vancouver General Hospital from Dr. Peter O'Brien, orthopaedic surgeon. Now produced and marked as **Exhibit 58** is a redacted copy of the letter from SG and some of its enclosures.

161. Enclosed with SG's letter was a copy of a September 5, 2006, invoice from Specialist Referral Clinic to SG. The appointment date for the service is recorded as September 5, 2006. The invoice indicates that Specialist charged SG \$500 for a "Consultation/Assessment" on that date. The name of the doctor on the invoice is Dr. M. Gilbert. The invoice does not particularize the charges and does not describe each of the specific services covered by the single fee. Specifically, the invoice does not distinguish between professional fees for services provided by practitioners and charges for other matters, such as clinic or facility fees.

162. Also enclosed with SG's letter is a copy of an MRI report. The MRI exam was September 7, 2006. The MRI report for SG indicates that SG was referred for the MRI by Dr. Gilbert. The MRI report concludes that SG had a "small lateral meniscus tear".

163. The MSP Claim History for SG shows that no claims were submitted to the Commission for payment of services rendered on September 5, 2006. However,

a claim was submitted by Dr. O'Brien for a surgical consult on December 19, 2006 and for a surgery on January 12, 2007. An anaesthetist also submitted a claim to the Commission in relation to this surgery.

164. On July 11, 2007, the Medical Services Branch wrote to Dr. Gilbert and Dr. Day (as Medical Director of Specialist Referral Clinic) pointing out the provisions of the Act which prohibit extra billing and asking them to refund unauthorized charges to SG. Now produced and marked as **Exhibit 59** and **Exhibit 60** to this affidavit are redacted copies of the Medical Services Branch letters.

165. On July 11, 2007, the Medical Services Branch also wrote to SG informing SG that the service SG received on September 5, 2006 was a benefit under the MSP and that SG should not have been charged for it. The letter goes on to say that the Medical Services Branch would contact the physicians involved with a request that the inappropriate charges be refunded to SG. The letter concludes by saying that the Medical Services Branch would follow up with SG after 45 days of the letter to determine whether SG had received a refund. Now produced and marked as **Exhibit 61** to this affidavit is a redacted copy of the Medical Services Branch letter.

166. Dr. Gilbert did not reply to the Medical Services Branch letter requesting repayment.

167. On or about August 1, 2007, the Medical Services Branch received a letter dated July 12, 2007, from Dr. Day on Specialist Referral Clinic letterhead. In that letter, Dr. Day claimed that the \$500 fee charged to SG was for "an independent assessment that bore no relation to any MSP insured activity". Dr. Day further claimed that SG "was fully aware of the fact that [SG] was seeking an independent assessment for [SG's] own personal use and benefit, and that this was not an insured service under the MSP. [SG] signed a declaration to that

effect". Now produced and marked as **Exhibit 62** to this affidavit is a redacted copy of Dr. Day's letter.

168. On August 21, 2007, SG contacted staff in the Medical Services Branch and, in the course of that phone call, SG indicated that SG had not received a refund for the charges made by Specialist.

169. In short, the information for the Commission concerning SG at the time it made its decision to audit the clinics was that:

- Specialist charged beneficiary SG \$500 for a medical assessment performed by Dr. Gilbert at Specialist Referral Clinic.
- Such assessments are benefits under the Act.
- The assessment clearly was not an "independent assessment for [SG's] personal use and benefit", as Dr. Day claimed, because the assessment was made in relation to the January 12, 2007 surgery which was itself a benefit as evidenced by the fact that Dr. O'Brien submitted claims to the Commission for the surgery and the related consultation.
- Despite Dr. Day's assertion that the assessment "bore no relation to any MSP insured activity", Dr. O'Brien submitted claims for his surgical services, thereby representing to the Commission that his services were benefits.
- Despite any form that SG may have been required to sign to the contrary, it appears to the Commission that the assessment was not an independent medical assessment, the assessment was a benefit and Dr. Gilbert was eligible to be paid for the service, had he submitted a claim to the Commission for it.

- To my knowledge no money has been refunded to SG to date.

Reasons – Beneficiary TD

170. On or about August 16, 2006, an employee of Health Insurance BC received a call from ED, the spouse of beneficiary TD, in which ED asked for reimbursement of money TD paid for medical services. That call was followed by an undated letter from ED which enclosed an invoice "to be refunded S.A.P." Now produced and marked as **Exhibit 63** to this affidavit is a redacted copy of the letter and the enclosed invoice.

171. The letter from ED indicates that beneficiary TD was referred by Dr. Younger to St. Paul's Hospital for an MRI scan. The letter also indicates that TD was referred to a vascular surgeon.

172. Enclosed with ED's letter was a copy of a May 18, 2006 invoice from Specialist Referral Clinic billed to TD for a "Consultation/Assessment \$500". The "appointment date" for the service is recorded as May 18, 2006, and the "Doctors [sic] Name" is "Dr. Alastair Younger". The MSP database indicates that Dr. Younger is a specialist in orthopaedic surgery. The invoice does not particularize the charge and does not describe each of the specific services covered by the single fee. Specifically, the invoice does not distinguish between professional fees for services provided by practitioners and charges for other matters, such as clinic or facility fees.

173. The MSP claim history for TD shows that Dr. Younger did not submit a claim for a May 18, 2006 service rendered to TD.

174. The MSP claim history for TD shows that one doctor submitted a claim to the Commission for payment of benefits rendered to TD on the following dates.

- On May 18, 2006, Dr. Sidhu, vascular surgeon, submitted a claim for a vascular consultation on referral from Dr. Younger.
- On May 18, 2006, Dr. Sidhu requisitioned 11 laboratory tests.
- On June 6, 2006, Dr. Sidhu requisitioned cardiac diagnostic tests.
- On June 19, 2006, Dr. Sidhu submitted a claim for by-pass surgery.

175. On June 26, 2007, the Medical Services Branch wrote to Dr. Younger and to Dr. Day (as Medical Director of Specialist Referral Clinic), pointing out the provisions of the Act which prohibit extra billing and asking them to refund unauthorized charges to TD. Now produced and attached as **Exhibit 64** and **Exhibit 65** to this affidavit are redacted copies of the letters from the Medical Services Branch.

176. On June 26, 2007, the Medical Services Branch also wrote to TD informing TD that the "Consultation/Assessment" services TD was charged for at the Specialist Referral Clinic were MSP benefits and that TD should not have been charged for them. This letter provides that MSP will contact the physician with a request that the inappropriate charges be refunded to TD and that MSP would follow up with TD after 45 days of the letter to determine whether TD had received a refund. Now produced and attached as **Exhibit 66** to this affidavit is a copy of the letter dated June 26, 2007, from the Medical Services Branch to TD.

177. The Medical Services Branch has not received a response to its letter to Dr. Younger.

178. On or about July 12, 2007, the Medical Services Branch received a letter dated July 9, 2007, from Dr. Day on Specialist Referral Clinic letterhead. In that

letter, Dr. Day claimed that TD "was seen for the preparation of an independent medical examination". Dr. Day further claimed that "the independent assessment bore no relation to any MSP insured activity." Dr. Day continued by saying that the examination was being sought, "in an effort to reopen an old Worker's Compensation claim." Now produced and attached to this affidavit as **Exhibit 67** is the reply of Dr. Day to the letter from the Medical Services Branch about TD.

179. On August 21, 2007, an employee of the Medical Services Branch spoke with TD by phone. During that conversation, TD confirmed TD had had no further contact with the Specialist Referral Clinic or Dr. Gilbert, and that TD had not received a refund.

180. In short, the information before the Commission concerning TD at the time that they made its decision to audit the clinic was that:

- Specialist charged beneficiary TD \$500 for a medical assessment performed by Dr. Younger at Specialist Referral Clinic.
- Such assessments are benefits under the Act.
- The assessment clearly was not an "independent assessment" as Dr. Day claimed, because the assessment apparently led to a referral to Dr. Sidhu, a vascular surgeon. Dr. Sidhu later performed surgery on TD. That surgery was a benefit.
- Despite Dr. Day's characterization of the service, it appears to the Commission that the assessment was not an independent medical assessment, and none of the facts presented by Dr. Day convinced the Commission otherwise.

- Despite Dr. Day's assertion that TD was seeking medical advice in an effort to reopen an "old Worker's Compensation" claim, there is no mention of Workers' Compensation matters in ED's letter.

Reasons – Beneficiary EM

181. On or about April 17, 2008, Health Insurance BC received an undated letter from beneficiary EM, in which EM asked for payment of \$500 incurred for medical services which EM received in 2006 for an injury EM had sustained to EM's shoulder in 2005. EM states that EM consulted Dr. Robert H. Hawkins at the Specialist Referral Clinic. Now produced and marked as **Exhibit 68** to this affidavit is a redacted copy of EM's letter and the enclosed invoice.

182. There was no consultation report enclosed with EM's letter.

183. Enclosed with EM's letter was a copy of an August 2, 2006 invoice from Specialist Referral Clinic billed to EM for a "Consultation/Assessment \$500". The "appointment date" for the service was recorded as August 2, 2006, and the "doctors" [sic] name is "Dr. R. Hawkins". Dr. Hawkins is recorded in the MSP database as an orthopaedic surgeon. The invoice does not particularize the charges and does not describe each of the specific services covered by the single fee. Specifically, the invoice does not distinguish between professional fees for services provided by practitioners and charges for other matters, such as clinic or facility fees.

184. The MSP claim history for EM shows that no doctor submitted a claim to the Commission for payment of benefits rendered to EM on August 2, 2006.

185. On April 22, 2008, the Medical Services Branch wrote to Dr. Hawkins and to Dr. Day (as Medical Director of Specialist Referral Clinic), pointing out the provisions of the Act which prohibit extra billing and asking them to refund

unauthorized charges to EM. Now produced and attached as **Exhibit 69** and **Exhibit 70** to this affidavit are redacted copies of the Medical Services Branch letters.

186. On April 22, 2008, the Medical Services Branch also wrote to EM informing EM that the service EM received on August 2, 2006, at the Specialist Referral Clinic was a benefit under the MSP, and that EM should have not been charged for it. The letter goes on to say that the Medical Services Branch would request that the inappropriate charge be refunded to EM. The letter concludes by saying that the Medical Services Branch would follow up with EM after 45 days of the letter to determine whether EM had received a refund. Now produced and attached as **Exhibit 71** to this affidavit is a copy of the letter dated April 22, 2008, from the Medical Services Branch to EM.

187. Dr. Hawkins and Dr. Day did not reply to the Medical Services Branch letter requesting re-payment.

188. On June 27, 2008, the Medical Services Branch received a letter from EM dated June 24, 2008, indicating that EM had recently received a copy of a "consent form" that EM had signed at the Specialist Referral Clinic. Enclosed with EM's letter was a copy of a form on Specialist Referral Clinic letterhead styled "Patient Consent to Assessment by Specialist". That document contains provisions in the same terms described in paragraph 73, above. Also enclosed with EM's letter was a reply copy of the Medical Services Branch letter dated June 16, 2008, indicating that EM had not received a refund. Now produced and attached as **Exhibit 72** is a redacted copy of the June 24, 2008 letter from EM and its enclosure.

189. On June 16, 2008, the Medical Services Branch wrote to EM asking EM if EM had received the refund. The return copy of that letter, received on

June 27, 2008, indicates that EM did not receive a refund. Now produced and attached as **Exhibit 74** is a redacted copy of the returned letter.

190. In short, the information before the Commission concerning EM at the time that it made its decision to audit the clinics was that:

- Specialist charged EM for a medical assessment performed by Dr. Hawkins at Specialist Referral Clinic.
- Such assessments are benefits under the Act.
- It appeared to the Commission that this assessment was not an independent assessment, insofar as it is related to an injury that EM had sustained to EM's right shoulder in 2005.
- Despite any form that EM may have been required to sign to the contrary, it appears to the Commission that the assessment was a benefit.

Reasons – Media Reports

191. At the time that the Commission made its decision to audit the Clinics, the Commission was aware of media reports suggesting that the Clinics were charging beneficiaries for medically required services, or for matters related to those services.

192. For example, on August 14, 2007, the *Globe and Mail* reported that Dr. Day allowed "patients at his private clinic to avoid long surgical waiting lists by paying cash and having their operations right away". The *Globe and Mail* quoted Dr. Day as saying,

"If someone is in pain and needs surgery and is on a nine-month waiting list, do I think they should be able to bypass that queue? Absolutely yes ... They can pay direct".

193. The *Globe and Mail* article went on to say that:

"Such a policy would seem to violate the Canada Health Act, which prohibits patients from paying for medically necessary services. But Dr. Day said the landmark 2005 Supreme Court of Canada decision known as the Chaoulli case has changed the ground rules for medicare ... Dr. Day said only a small percentage of patients pay cash to be treated at his highly successful Cambie Surgery Centre in Vancouver".

194. Now produced and marked as **Exhibit 74** to this affidavit is a copy of the *Globe and Mail* article.

Reasons – Websites

195. Around the same time that the Commission decided to audit the Clinics, the Commission was aware of information displayed on the Clinics' websites which suggested that the Clinics were extra billing. In particular, the website offered to the general public services such as surgeries and medical assessments, which are normally considered benefits. There was nothing in the Clinics' website which suggested to the Commission that the Clinics' services were limited to services that are excluded under section 27 of the regulations, or that all of the services were cosmetic services, or that the services were rendered by non-enrolled practitioners, or that they were otherwise not benefits.

196. For example, in early 2008 the Specialist Referral Clinic advertised a "Return to Work" program, a "Corporate Program" that gives employers whose

"executives or key employees are waiting for a specialist appointment...rapid access to world class specialists...and advanced surgical techniques". The website also noted "we can expedite all approved surgeries at... the Cambie Surgery Centre". Now produced and marked as **Exhibit 75** to this affidavit is a copy of a printout of a portion of the Specialist Referral Clinic website.

197. Around the same time, the Cambie Surgery Centre website offered a large number of "Surgical Procedures Currently Available", including many procedures that would be benefits if rendered by an enrolled practitioner to a beneficiary. Now produced and marked as **Exhibit 76** to this affidavit is a copy of a printout of a portion of the Cambie Surgery Centre website.

198. In general, it is the Commission's belief that the Clinics' websites offered, and continue to offer, medically required services for a fee to anyone willing and able to pay. Charges to beneficiaries for such services amount to extra billing.

Matters Occurring After the Original Decision to Audit

199. Since the Commission's decision to audit the Clinics, the Commission has, through the process described at paragraph 54 above, continued to receive communications from patients or their family members, from which it can be concluded that the Clinics have continued to extra bill. Details of two of such cases are set out below. In each case, it appears to the Commission that Cambie or Specialist charged a beneficiary for, or in relation to, a medically required service that is considered to be a benefit under the Act.

Beneficiary RWD

200. The MSP, on behalf of the Commission, operates a service verification program in which Ministry of Health employees in the Service Verification Group

conduct random surveys of beneficiaries to ensure that practitioners' claims are submitted honestly and accurately.

201. The Service Verification Group contacts beneficiaries by letter asking them to confirm that they have received services from practitioners as claimed.

202. On or about March 31, 2009, Leslie Halston, Administrator of the Service Verification Group, sent a letter to beneficiary RWD as part of a service verification audit. The service verification letter asked RWD to confirm that RWD had received a surgical procedure rendered by Dr. Ramesh Lal Sahjpaul, a neurosurgeon, on October 29, 2008. Now produced and marked as **Exhibit 77** to this affidavit is a redacted copy of the letter from Ms. Halston to RWD.

203. On or about April 7, 2009, Ms. Halston received a telephone call from RWD during which RWD confirmed that RWD had received a surgical service from Dr. Sahjpaul at Cambie Surgery Centre on October 29, 2008. That call was followed by a letter from RWD dated April 7, 2009, indicating that RWD paid for the surgery through Specialist Referral Clinic. That letter further indicated that RWD signed a document before receiving the surgery at Cambie Surgery Centre. RWD's letter indicated that according to that document, none of the costs RWD paid "would be covered by the BC Medical Services Plan". Now produced and marked as **Exhibit 78** to this affidavit is a redacted copy of a fax cover sheet and a letter from RWD dated April 7, 2009 and its enclosures.

204. The enclosures to RWD's letter include an invoice dated September 19, 2008, which indicates that Specialist charged RWD for an "Independent Medical Assessment for Personal Use \$750". The "appointment date" is September 19, 2008. The doctor's name provided on the invoice is Dr. R. Sahjpaul. The invoice does not particularize the charges and does not describe each of the specific services covered by the single fee. Specifically, the

invoice does not distinguish between professional fees for services provided by practitioners and charges for other matters, such as clinic or facility fees.

205. The enclosures to RWD's letter also include an invoice dated October 28, 2008, which indicates that Specialist charged RWD for "Prepayment for Surgery \$7,520" and for "Overnight stays at CSC \$1,050" for a total of \$8,570. Apart from that breakdown, the invoice does not particularize the charges and does not describe each of the specific services covered by these fees. Specifically, the invoice does not distinguish between professional fees for services provided by practitioners and charges for other matters, such as clinic or facility fees. The "appointment date" on the second invoice is October 29, 2008. The doctor listed on the second invoice is also Dr. Sahjpaul.

206. On or about September 19, 2008, Dr. Sahjpaul wrote a letter to RWD indicating that he had met with RWD on September 19, 2008, at the Specialist Referral Clinic for the purposes of an "Independent Medical Assessment". Now produced and marked as **Exhibit 79** to this affidavit is a redacted copy of Dr. Sahjpaul's letter to RWD.

207. Enclosed with Dr. Sahjpaul's letter was a copy of a document on Specialist Referral Clinic letterhead entitled "Independent Medical Assessment for [RWD] on September 19, 2008". According to the assessment, Dr. Sahjpaul saw RWD on September 19, 2008 for discomfort in the right buttock and leg. Dr. Sahjpaul discussed treatment options and risks of surgery with RWD and concluded that he would make arrangements for an MRI and surgery. Now produced and marked as **Exhibit 80** to this affidavit is a redacted copy of the September 19, 2008 assessment.

208. The Medical Service Branch has come into possession of an operative report on Cambie Surgery Centre letterhead. According to the report, the date of

the operation is October 29, 2008, and the patient is RWD. The "name of operation" is indicated as "Right L4-6 foraminal/extraforaminal disk herniation".

209. The operative report indicates that the "Surgeon" was Dr. Sahjpaul, the Assistant was Dr. Samaroo and the anaesthetist was Dr. Penz. Dr. Samaroo is recorded in the MSP database as a General Practitioner. The operative report describes "operative findings", "clinical notes" and "operative notes" for the procedure. Now produced and marked as **Exhibit 81** to this affidavit is a redacted copy of the report.

210. The MSP claim history for RWD shows that two doctors submitted claims to the Commission for payment rendered to RWD on October 29, 2008:

- Dr. Sahjpaul submitted a \$697.94 claim for Laminectomy for Localized Spinal Stenosis.
- Dr. Penz submitted a \$85.17 claim for Anaesthesia Consultation, a \$26.62 claim for a Fee Modifier Prone Position, and a \$17.74 claim for Anaesthesia Patient's Age 70-79 and a \$417.36 claim for Anaesthesia Complexity Level 4.

211. The Medical Services Branch has come into possession of a copy of a form on Specialist Referral Clinic letterhead styled "Patient Consent to Assessment by Specialist". That document contains provisions in the same terms described at paragraph 73, above. Now produced and marked as **Exhibit 82** to this affidavit is a redacted copy of the form.

212. On June 8, 2009, the Medical Services Branch wrote to RWD stating that the services RWD received on September 19 and October 29, 2008, at the Cambie Surgery Centre were benefits under the MSP and that RWD should not have been charged for them. The letter goes on to say that the Medical Services

Branch would contact the physicians involved with a request that the inappropriate charges be refunded to RWD. The letter concludes by saying that the Medical Services Branch would follow up with RWD after 45 days of the letter to determine whether RWD had received a refund. Now produced and marked as **Exhibit 83** to this affidavit is a redacted copy of the Medical Services Branch letter.

213. On June 8, 2009, the Medical Services Branch wrote to each of Dr. Sahjpaul, Dr. Penz, and Dr. Day as Medical Director of Specialist and Cambie, pointing out the provisions of the Act which prohibit extra billing and asking them to refund unauthorized charges to RWD. Now produced and attached as **Exhibit 84**, **Exhibit 85** and **Exhibit 86** to this affidavit are redacted copies of the Medical Services Branch letters.

214. Dr. Sahjpaul and Dr. Penz did not reply to the Medical Services Branch letter requesting repayment.

215. On or about July 3, 2009, the Medical Services Branch received a letter dated June 16, 2009, from Dr. Day on Cambie Surgery Centre letterhead. This letter was similar to the letter referred to in paragraph 72 above insofar as Dr. Day claimed that the \$750 fee charged to RWD was for "an independent assessment that bore no relation to any MSP insured activity". Dr. Day further claimed that RWD "was fully aware of the fact that [RWD] was seeking an independent medical assessment for [RWD's] own personal use and benefit, and that this was not an insured service under the Medical Services Plan. [RWD] signed a declaration to that effect." With respect to the surgical procedure for which RWD was charged, Dr. Day claimed, "this was for an uninsured service, as described in the consent form, which [RWD] signed." Now produced and marked as **Exhibit 87** to this affidavit is a redacted copy of Dr. Day's letter dated June 16, 2009.

216. On or about July 14, 2009, the Medical Services Branch received a second letter from Dr. Day on Cambie Surgery Centre letterhead, this one dated July 8, 2009. That letter was similar to the letter dated June 16, 2009, received on July 3, 2009, but made specific reference to Dr. Sahjpaul. Now produced and marked as **Exhibit 88** to this affidavit is a redacted copy of Dr. Day's letter dated July 8, 2009.

217. On July 23, 2009, I instructed an employee of the Medical Services Branch to write a letter to RWD following up on its letter June 8, 2009 concerning a refund.

218. In short, the information before the Commission concerning RWD is that:

- Specialist charged beneficiary RWD \$750 for a medical assessment performed by Dr. Sahjpaul at Specialist Referral Clinic.
- Such assessments are benefits under the Act.
- The assessment clearly was not an "independent assessment for [RWD's] personal use and benefit", because the assessment was made in relation to the October 29, 2008, surgery which is itself a benefit as evidenced by, among other things, the fact that Dr. Sahjpaul and Dr. Penz both submitted claims to the Commission for the surgery.
- Despite any form that RWD may have been required to sign to the contrary, it appears to the Commission that the assessment was not an independent medical assessment, the assessment was a benefit, and Dr. Sahjpaul was paid for the service as part of the pre-operative component of the fee item which he submitted for payment.

- Specialist charged RWD \$7,520 for surgery rendered by Dr. Sahjpaul at Camble Surgery Centre.
- Such surgery is a benefit under the Act.
- Dr. Sahjpaul submitted a \$697.94 claim for back surgery.
- Specialist also charged RWD \$1,050 for overnight stays at Camble Surgery Centre, and it is the Commission's view that such services are matters related to a benefit.
- To my knowledge no money has been refunded to RWD to date.

Beneficiary SL

219. On or about March 27, 2009, DL, father of SL, sent a letter and enclosures to the "Minister of Health", the Honourable George Abbott. The letter concerns medical and surgical services for SL for "meniscus" repair, "ACL" and "hamstring auto graft" arising from a sports related injury to SL's knee. The letter describes DL's experience in paying for medical services for SL and concludes by asking the Minister to consider "covering" SL's medical expenses, "as necessary under the Canada Health Act and Provincial Health Act". Now produced and marked as **Exhibit 89** to this affidavit is a redacted copy of the letter and some of its enclosures.

220. Enclosed with DL's letter was an invoice from Specialist which indicates that Specialist charged for an "Independent Medical Assessment for Personal Use \$500". The date of the invoice is indicated as July 28, 2008, and the "appointment date" is also indicated as July 28, 2008. The doctor's name on the invoice is "Dr. M. Gilbert". The invoice does not particularize the charges and does not describe each of the specific services covered by the single fee.

Specifically, the invoice does not distinguish between professional fees for services provided by practitioners and charges for other matters, such as clinic or facility fees.

221. Also enclosed with DL's letter was an invoice dated July 30, 2008, from Specialist which indicates that Specialist charged SL for "Prepayment for Surgery \$7,215". The "appointment date" is noted as August 5, 2008. The doctor's name on the second invoice is also Dr. Gilbert. The invoice does not particularize the charges and does not describe each of the specific services that are covered by the fee. Specifically, the invoice does not distinguish between professional fees for services provided by practitioners and charges for other matters, such as clinic or facility fees.

222. Also Enclosed with DL's letter was a copy of a letter on Specialist Referral Clinic letterhead written by Dr. Gilbert. Dr. Gilbert's letter describes a meeting with SL. The letter from Dr. Gilbert indicates the purpose of that meeting as "an Independent Medical Assessment". Dr. Gilbert's letter refers to an enclosed report, findings and recommendations further to SL's appointment with him on July 28, 2008. The enclosed report is on Specialist Referral Clinic letterhead and is entitled "Independent Medical Assessment for [SL] on July 28, 2008". The report sets out the past medical history, medications and allergies and Dr. Gilbert's conclusions from the physical examination and investigations he conducted on SL. The report includes a section entitled "Assessment and Plan" which sets out Dr. Gilbert's conclusions regarding treatment options and indicates "we discussed all nonoperative and operative treatment options". The report concludes by indicating, "We will make the appropriate arrangements for this surgery in the near future". Now produced and marked as **Exhibit 90** is a redacted copy of Dr. Gilbert's letter and report to SL.

223. Also enclosed with DL's letter was a document on Specialist Referral Clinic letterhead entitled "Post Operative Assessment for [SL] on August 11, 2008". The report contains Dr. Gilbert's findings following SL's knee surgery.

224. Also enclosed with DL's letter was a document on Specialist Referral Clinic letterhead entitled "Follow up Assessment for [SL] on February 9, 2009". The Follow up Assessment describes Dr. Gilbert's findings regarding SL's right knee surgery. The assessment considers whether additional surgery may be required and indicates that "this will likely be required".

225. Also enclosed with DL's letter was a document on Specialist Referral Clinic letterhead entitled "Follow up Assessment for [SL] on February 13, 2009". The Follow Up Assessment describes Dr. Gilbert's findings for SL's "repeat clinical assessment" regarding SL's right knee. The Assessment sets out Dr. Gilbert's conclusions following a physical examination and "Assessment/Plan". The report concludes that SL requires additional surgery of the knee and indicates that this recommendation has been discussed with SL and SL's mother. The assessment concludes that "we will make the appropriate arrangements for this surgery in the near future". Now produced and marked as **Exhibit 91** are redacted copies of Dr. Gilbert's post-operative assessment and two follow up assessments.

226. The MSP claim history for SL shows that three doctors submitted claims to the Commission for payment of benefits rendered to SL on August 5, 2008:

- Dr. Gilbert submitted a \$527.15 claim for knee ligament instability repair and a \$200 claim for a meniscal repair.

- Dr. Anne Marie Bedard submitted a \$213.40 claim for Surgical Assist.
- Dr. Kurt Samer submitted a \$347.49 claim for Anaesthesia Level 3.

227. On April 28, 2009, the Medical Services Branch wrote to each of Dr. Gilbert, Dr. Bedard, Dr. Samer and Dr. Day (as Medical Director of Specialist) pointing out the provisions of the Act which prohibit charging patients for or in relation to benefits and asking them to refund unauthorized charges paid in relation to services provided to SL. Now produced and marked as **Exhibit 92**, **Exhibit 93** and **Exhibit 94** to this affidavit are redacted copies of the Medical Services Branch letters.

228. On April 23, 2009, the Medical Services Branch sent a letter to DL. This letter informs DL that the services received by SL in July and August, 2008 were benefits under the MSP and that DL should not have been charged for them. This letter indicates that the Medical Services Branch will contact the physician with a request that the inappropriate charges be refunded. The letter notes that a review of MSP billing records for SL indicates that "a second knee surgery was performed by Dr. Gilbert on February 18, 2009". The Medical Services Branch asks DL to advise the Branch whether DL paid "privately for this surgery and provide a copy of any invoices or documentation received" in relation to the second surgery. The letter also indicates that the Medical Services Branch would follow up with DL after 45 days of the letter to determine whether DL had received a refund. Now produced and attached as **Exhibit 95** to this affidavit is a copy of the Medical Services Branch letter dated April 23, 2009.

229. On April 23, 2009, the Medical Services Branch received an email from DL. This email states that DL was "quoted over \$3,000 to perform the second surgery"; however, ultimately Dr. Gilbert "relented and did the second surgery at another facility without additional charges".

230. The MSP claim history for SL shows that three doctors submitted claims to the Commission for payment of benefits rendered to SL on February 18, 2009.

- Dr. Gilbert submitted a \$749.83 claim for a knee liberation / major release.
- Dr. Bedard submitted a \$221.04 claim for surgical assist.
- Dr. Maria Alemann submitted a \$199.14 claim for anaesthesia complexity level 3.
- Dr. Gilbert did not submit a claim for a February 9, 2009 service (date of the first follow up assessment).
- Dr. Gilbert submitted a \$43.34 claim for a February 13, 2009 service (date of the second follow up assessment). This claim was rejected by MSP as being within the pre-operative period for the second surgery.

231. On June 9, 2009, the Medical Services Branch received an email from DL in reply to its letter dated April 23, 2009. The email says that DL had "heard nothing from the Cambie Medical Centre."

232. In short, the information before the Commission concerning SL is that:

- Specialist charged beneficiary SL \$500 for a medical assessment performed by Dr. Gilbert at Specialist Referral Clinic.
- Such assessments are benefits under the Act.

- The assessment clearly was not an "Independent Medical Assessment for Personal Use", because the assessment was made in relation to the August 5, 2008 surgery, which is itself a benefit as evidenced by the fact that Dr. Gilbert submitted claims to the Commission for the surgery.
- Dr. Bedard and Dr. Samer also submitted claims for their services, thereby representing to the Commission that the first surgery was a benefit.
- Despite any form that SL or SL's parents may have been required to sign to the contrary, it appears to the Commission that the assessment was not an independent medical assessment, the assessment was a benefit, and Dr. Gilbert was paid for the service as part of the pre-operative component of the surgical fee item which he submitted for payment.
- Specialist charged SL \$7,215 for the first knee surgery rendered by Dr. Gilbert at Cambie Surgery Centre.
- Such surgery is a benefit under the Act.
- Despite any form that SL or SL's parents may have been required to sign to the contrary; the charges to SL were for benefits or for matters that were related to a benefit. The Commission considers such surgeries to be medically required. There is no "government standard timeline" from which the Commission determines whether a service is medically required. Dr. Gilbert was eligible to be paid for the surgery if he submitted a claim to the Commission, and he did so.
- To my knowledge no money has been refunded to SL or DL to date.

Refusal by Cambie and Specialist

233. The Audit and Inspection Committee is a panel appointed by the Commission pursuant to section 6 of the Act. It was created in 1993 under the terms of an agreement negotiated between the government, the British Columbia Medical Association, and the Commission.

234. With respect to extra billing audits, the Commission makes the decisions as to whether or not a particular clinic or person will be audited, and retains ongoing control and oversight of the planning and processes involved in the audit. The Audit and Inspection Committee is responsible for the carriage of the audit. Personnel from the Audit and Inspection Branch (Billing Integrity Program), Ministry of Health, are members of the audit team who attend on-site, together with a medical inspector appointed from outside the Audit and Investigations Branch.

235. By letter dated September 10, 2008, Dr. Robin Hutchinson, Chair of the Audit and Inspection Committee, informed Cambie that the Commission intended to carry out an audit of that clinic in relation to extra billing. Now produced and marked as **Exhibit 96** is a copy of that letter.

236. By letter dated September 12, 2008, Dr. Hutchinson informed Specialist that the Commission intended to carry out an audit of that clinic in relation to extra billing. Now produced and marked as **Exhibit 97** to this affidavit is a redacted copy of that letter.

237. By letter dated September 15, 2008, Dr. Hutchinson informed physicians associated with the Clinics that the Commission intended to conduct on-site audits of Cambie and Specialist, and informed those physicians that it was

possible that medical records relating to services which they had performed for patients at the clinics(s) might be reviewed and copied as audit evidence. Now produced and marked as **Exhibit 98** to this affidavit is a representative copy of the notification letter to the physicians, with the name of the physician redacted.

238. Following the notification letters there was further correspondence between the Audit and Inspection Committee, the auditors, and the Clinics. Among other things, Billing Integrity Program personnel were attempting to obtain agreement from the Clinics for dates for the intended audits. On January 20, 2009, during a telephone conversation between Dr. Day and a Senior Auditor employed by the Billing Integrity Program, Dr. Day informed the Senior Auditor that his lawyers intended to challenge parts of the Act which authorized the audit.

239. On January 28, 2009, Cambie and the other Plaintiffs filed these proceedings seeking, among other things, declarations that the provisions in the Act which prohibit extra billing violate sections 7 and 15 of the *Canadian Charter of Rights and Freedoms*. Further, the Plaintiffs sought interim and interlocutory orders to stay or enjoin the Commission's proposed audit of Cambie until the determination of the constitutional challenge.

240. Specialist is not one of the Plaintiffs in the constitutional challenge filed by Cambie and others.

241. On or about February 2, 2009, the Commission's solicitors wrote to the solicitors for Specialist informing them that the Commission interpreted Dr. Day's telephone call of January 20, 2009, as a refusal by Specialist to permit the Commission's inspectors to enter its premises and inspect its records for the purposes of the audit. Now produced and marked as **Exhibit 99** to this affidavit is a copy of our solicitors' letter dated February 2, 2009.

242. On February 20, 2009, by counterclaim, the Commission sought injunctions against Cambie and Specialist to allow each of the audits to proceed. Further, pursuant to section 45.1 of the Act, the Commission is seeking interim and permanent injunctions restraining Cambie and Specialist from contravening sections 17 and 18 of the Act.

243. On March 11, 2009, the Canwest News Service reported a story concerning the Commission's applications for a warrant for an injunction against the Clinics. The Canwest News Service quoted Dr. Day as saying: "We have not refused anyone entry...".

244. On or about March 11, 2009, counsel for the Commission wrote to counsel for the Clinics inquiring about Dr. Day's statement that the Clinics had not refused entry to the Commission's inspectors, and asking for clarification. Now produced and marked as **Exhibit 100** to this affidavit is a copy of counsel's letter to counsel for the Clinics dated March 11, 2009.

245. On or about March 20, 2009, counsel for the Commission wrote separate letters to counsel for Cambie and Specialist, again requesting clarification of Dr. Day's comments, and notifying them that the Commission would assume refusal if they did not respond with a week. Now produced and marked as **Exhibit 101** and **Exhibit 102** to this affidavit are copies of counsel's letters to counsel for Cambie and Specialist, both dated March 20, 2009.

246. The reply from counsel for Specialist, dated March 23, 2009, was unresponsive. Now produced and marked as **Exhibit 103** to this affidavit is a copy of counsel for Specialist's letter dated March 23, 2009.

247. In a letter dated March 25, 2009, counsel for Cambie wrote that "Dr. Day's comments during his discussion with the media were misconstrued" and stated

that it was the Plaintiffs' position "that the statute against which your client wishes to audit the Plaintiff clinics is unconstitutional" but did not clarify whether or not Dr. Day had refused the audit. Now produced and marked as **Exhibit 104** to this affidavit is a copy of counsel for Cambie's letter dated March 25, 2009.

248. On or about March 31, 2009, counsel for the Commission wrote separate letters to counsel for Cambie and Specialist, informing counsel that the Commission was taking the position that Dr. Day had refused and was refusing entry to the Commission's auditors and asking counsel to advise if that was not Dr. Day's position. Now produced and marked as **Exhibit 105** and **Exhibit 106** to this affidavit are copies of counsel's letters to counsel for Cambie and Specialist, both dated March 31, 2009.

249. On or about April 20, 2009, counsel for the Commission wrote to counsel for the Clinics and confirmed that he had not heard back from counsel for the Clinics to contradict the Commission's understanding that Dr. Day had refused and was refusing entry to the Commission's auditors to carry out the audits which the Commission has ordered. Now produced and marked as **Exhibit 107** to this affidavit is a copy of counsel's letter to counsel for the Clinics, dated April 20, 2009.

250. Counsel for Cambie has not yet provided clarification as to whether or not Dr. Day has refused and is refusing entry to the Commission's auditors.

251. The reply from counsel for Specialist, dated April 21, 2009, was unresponsive. Now produced and marked as **Exhibit 108** to this affidavit is a copy of counsel for Specialist's letter dated March 23, 2009.

252. On or about May 6, 2009, counsel for the Commission wrote to counsel for Specialist, noting that he had not received any meaningful response to his request for clarification, which had been repeated in writing on several occasions,

beginning on March 11, 2009. Now produced and marked as **Exhibit 109** to this affidavit is a copy of counsel's letter to counsel for Specialist dated May 6, 2009.

253. Counsel for Specialist has not yet provided clarification as to whether or not Dr. Day has refused and is refusing entry to the Commission's auditors.

254. Since the Commission made its decision to audit the Clinics, the media has continued to report that the Clinics are contravening the Act. In a January 2009 article in the *Vancouver Sun*, Dr. Day, speaking on behalf of private clinics in B.C. in general, was reported as saying, "Since the 2005 Supreme Court of Canada case, private clinics in B.C. have been convinced that charging patients facility fees is legal so 'we basically ask patients to agree in advance that their service is not an insured service [under the public plan].'" The report goes on to say that Dr. Day "acknowledged that some patients try to recover the fees from government, on the grounds the surgery should have been paid by the public system".

255. On February 1, 2009, in reference to these proceedings, the Canwest News Service quoted Dr. Day as saying that the litigation had "nothing to do with the audit", which, Dr. Day claimed, "was to find out if we are billing patients a facility fee". Dr. Day went on to state, "There's no hiding the fact that we charge facility fees, so the audit is absolutely unnecessary".

256. Since the Commission made its decision in March 2008 to audit the Clinics, there has been no change to either Clinics' website that would cause the Commission to believe that the Clinics are no longer charging beneficiaries for medically required services.



This is Exhibit 1
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 23 day
of JULY, 2009

A Commissioner for taking Affidavits
within British Columbia

May 8, 2007

687652

Dr. Brian Day, CEO
Cambie Surgery Centre
2836 Asb Street
Vancouver BC V5Z 3C8

Dear Dr. Day:

I am writing to you as Chair of the Medical Services Commission about reports received by the Commission concerning possible extra-billing taking place at the Cambie Surgery Centre. I wish to explore these reports with you in the hope of resolving these concerns in an informal manner.

As you may be aware, the Commission is constituted under the *Medicare Protection Act* and is responsible for the administration of the Act and the Medical Services Plan. The Commission's function is to facilitate reasonable access to quality medical care, health care and diagnostic facility services for residents of British Columbia. The purpose of the Act is to preserve a publicly managed and fiscally sustainable health care system for British Columbia in which access to necessary medical care is based on need and not on an individual's ability to pay. To that end, the Act prohibits a person from charging a beneficiary for a benefit or for materials, consultations, procedures, the use of an office, clinic or other place or for any other matters that relate to the rendering of a benefit (extra-billing). The Commission was recently given new powers to permit it to administer the prohibition of extra-billing more effectively. In particular, the Act now allows the Commission to audit both practitioners and clinics who may have extra-billed beneficiaries. The Act also permits the Commission to seek an injunction restraining a person from extra-billing.

Over the years, as you know, the Commission has received complaints and reports of alleged extra-billing at the Cambie Surgery Centre. In some cases the Commission sought and achieved the reimbursement of fees that were improperly charged to beneficiaries. However, some complaints have not been resolved and complaints and reports of alleged extra-billing have continued. Based on the information currently available to the Commission, it appears that the Cambie Surgery Centre may have improperly charged beneficiaries for a number of services which are benefits under the Act or for matters in relation to benefits under the Act including:

- Anterior cruciate ligament (ACL) reconstruction
- Spinal nerve block
- Lumbar laminectomy
- Cataract surgery
- Shoulder surgery

.. /2

- Consultation and knee debridement
- Consultation and partial knee replacement
- Knee surgery
- Arthroscopic meniscectomy
- Hernia repair
- Specialist consult
- Trapeziectomy

The Commission will be considering what, if any, further steps should be taken under the Act regarding the Cambie Surgery Centre at its meeting of May 30, 2007. The Commission would like to offer you an opportunity to present your perspective on these issues before it makes any decisions about this. Accordingly, we would appreciate receiving a written reply by May 25, 2007.

Sincerely,

ORIGINAL SIGNED BY

Tom Vincent
Chair
Medical Services Commission

pc: Members of the Medical Services Commission



CAMBIE SURGERY CENTRE

This is Exhibit 2
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 23 day
of JULY, 2007

A Commissioner for taking Affidavits
within British Columbia

May 30, 2007

Tom Vincent
Medical Services Commission Chair
3-1, 1515 Blanshard Street
Victoria BC V8W 3C8

Dear Mr. Vincent:

Thank you for your letter of May 8 2007.

As you may realize, I am very much aware of the problems we all face relating to the issues that you raise in your letter, and I do not envy you your current role.

Your description of the Commission's role "to facilitate reasonable access to quality medical and diagnostic facility services for residents of British Columbia" is the key point in your letter. Clearly, (through no fault of your own) you are not fulfilling this role, and I would suggest that your Commission would garner many more potential complainants (perhaps a 100,000 or so of the patients now waiting for care in B.C.) against the Commission itself, if the public knew that you had taken on the responsibility for their plight.

Patients in British Columbia are clearly frustrated by waiting periods that contravene all appropriate guidelines and ethical standards, and it is clear that they are not receiving the "reasonable access" that your Commission is charged with ensuring. In fact, your concerns should be addressed to those health regions and authorities that are not delivering that promised access. In your letter, you did not explain how curtailing access to private facilities would help improve access.

Our legal advice is that the recent legislation that you believe has empowered you to audit those "who may have extra-billed beneficiaries" is in contravention of the principles outlined by the Supreme Court of Canada in the "Chaoulli case". In addition, the described amendments to the *Medicare Protection Act* almost certainly contravene federal and provincial privacy laws.

I strongly suggest that you discuss this matter with the office of the Attorney General of British Columbia. Our legal opinion is based on the views of one of Canada's leading constitutional experts.

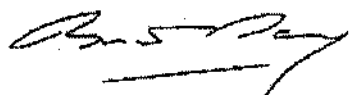
I agree that it is a matter of public record that many individuals, including a current B.C. cabinet minister, have been treated at certain facilities and have paid for this privilege. This does not, in my opinion, constitute "extra billing" in that the service is clearly not "medically necessary" as defined under the *Medicare Protection Act*. Based on the current law, I would assume that your Commission is required to ensure that services are provided in a "medically necessary" timeframe, and that any individual wishing a service to be provided more quickly than is made available in our public facilities is pursuing care that is outside the timelines of this definition. The concept of phrases such as "access to necessary medical care" as mentioned in your letter, or of the terms "medically necessary" or "medically required", is ill defined. In fact they have never been statutorily or judicially defined by any authority that we are aware of.

As an intervener in the Chaoulli case, who personally sat through the Court hearing in Ottawa, I am aware that there is much confusion surrounding its impact. Six of the 7 Supreme Court judges ruled that restrictions on access to care contained in existing laws that restrict private options violate the rights to life, liberty, and security of person. All 7 judges ruled that patients forced to wait are exposed to both physical and psychological suffering, and again all 7 stated that waiting imposed a risk of death and irreparable harm. These are the facts of the ruling. We agree with our counsel that the judgment applies in B.C. (and in every other province), and the pending Murray case in Alberta and the McCreith case in Ontario will confirm this.

In summary therefore, you may wish to consider my request to discuss these issues with the B.C. Attorney General's office. Any attempt to try and act on legislation that contravenes the laws of Canada will be rejected by us, and will certainly precipitate B.C. cases similar to those that are currently underway in Alberta and Ontario. There are many examples of patients on wait lists suffering irreparable harm, and even death in this province. We have many documented examples of this type on file and would not hesitate to ask the courts in British Columbia to rule on the constitutionality of legislation that infringes on their rights under the Canadian Charter.

In conclusion, I would affirm that all activity at our centre is in conformity with the laws of Canada. We do not permit our physicians to "extra-bill" patients.

Yours sincerely,



Brian Day, MD,
Medical Director,
Cambie Surgery Centre



This is Exhibit 3
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 23 day
of JULY, 2009

A Commissioner for taking Affidavits
within British Columbia

June 25, 2007

691923

Dr. Brian Day, CEO
Cambie Surgery Centre
2836 Ash Street
Vancouver BC V5Z 3C8

Dear Dr. Day:

Thank you for your letter dated May 30, 2007.

Attached to this letter are further particulars of complaints received about fees charged to beneficiaries for medical services received at the Cambie Surgery Centre, apparently in contravention of section 17 of the *Medicare Protection Act*.

Determining whether a surgical service is, or is not, a benefit under the Act is the exclusive role of the Medical Services Commission. The Commission does not accept your interpretation of the definition of "medically required" and the Commission has not excluded any of the services noted in the attached table as benefits under the Act. To the contrary, each of these surgical procedures noted in the attached table clearly appears to be a benefit.

My intention in writing is to give you an opportunity to have the concerns of the Commission resolved without the need to invoke the formal powers under the Act. Your letter of May 30, 2007 indicates that it is the Centre's intention to challenge the validity of the *Medicare Protection Act*. Despite this stated position, the Commission would like to provide the Centre with the further opportunity to resolve this matter informally.

The Commission would appreciate receiving your reply by August 15, 2007, would appreciate your cooperation in resolving this matter, and looks forward to hearing from you.

Sincerely,

ORIGINAL SIGNED BY

Tom Vincent
Chair
Medical Services Commission

pc: Members of the Medical Services Commission

CAMBIE SURGICAL CENTRE PATIENT CHARGES REPORT

CONFIDENTIAL

| | Patient Name | Procedure | Date of Service | Patient Charges |
|----|--------------|--|--------------------------------------|---------------------------|
| 1 | | Meniscal Surgery | August 22, 2006 | \$3,068.00 |
| 2 | | Consultation & Trapeziectomy (Hand) | August 24, 2005 September 2, 2005 | \$3,909.50 |
| 5 | | Ankle Replacement | January 4, 2005 | \$17,076.00 |
| 6 | | Rotator Cuff | August 31, 2004 | \$5,871.00 |
| 7 | | Orthopedic Consultation & Partial Knee Replacement | July 29, 2004 | \$17,826.00 |
| 8 | | Lumbar Laminectomy | July 22, 2004 | \$6,621.00 |
| 9 | | Cataract x 2 | May 3, 2004 | \$1,900.00 |
| 10 | | | May 10, 2004 | |
| 11 | | Consultation & ACL Reconstruction | August 18, 2004 | \$5,452.50 |
| 12 | | Consultation & Elbow Excision / Debridement | April 13, 2004 May 5, 2004 | \$4,302.50 |
| 13 | | Spinal Nerve Block | August 8, 2003 | \$1,864.00 |
| 14 | | ACL Reconstruction | May 1, 2003 | \$4,214.00 |
| 15 | | Arthroscopic Meniscectomy | May 13, 2002 | \$2,500.00 |
| 16 | | Knee Replacement & prosthesis | May 11, 2002 | \$14,000.00 |
| 17 | | Incisional Hernia Repair | April 9, 2002 | \$4,295.00 *(\$800.00) |
| 18 | | Shoulder Debridement | February 14, 2002 | \$6,358.50 |
| 19 | | Arthroscopic Synovectomy | August 30, 2001 | \$1,500.00 |

*Patient received refund from physician in this amount



CAMBIE · SURGERY · CENTRE

This is Exhibit 4
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 23 day
of JULY, 2009

[Signature]
A Commissioner for taking Affidavits
within British Columbia

July 12, 2007

Mr. Tom Vincent
Chair, Medical Services Commission
3-1 1515 Blanchard Street
Victoria, BC V8W 3C8

Dear Mr. Vincent,

In response to your letter of June 25, 2007, I note that you failed to respond to many of the points that I raised in my letter of May 30, 2007.

In addition, the list that you appended does not contain any "complaints", and if you have had such complaints I would appreciate receiving copies of that correspondence. In fact, I have followed up on some of the supplied names and in every case the assertion from the complainant was that the problem was with the lack of accessibility in the public system, and was a complaint against the MSC and the government, not against our facility.

With respect to the point you raised about determining whether a surgical service is a benefit under the Act, you refer to my interpretation of the definition of "medically required". That definition and interpretation was not mine, but rather that of a recent Minister of Health in the current government and a current cabinet minister.

In determining a definition for "medically required", one would have to explain how supplemental fees charged at government hospitals for "upgraded" hip implants, foldable cataract lenses, private rooms, private nurses and a host of other items that are indeed prescribed and performed in the public system by physicians, fall under the category of not "medically required".

Further, one would have to explain why crutches are not "medically required" after breaking one's leg and attending an Emergency Department, why an ambulance called for an individual who has had a heart attack is not "medically required", and why drugs required for infections or pain control are not considered "medically required".

It is not our intention to challenge the validity of the Medicare Protection Act. The validity of the Medicare Protection Act has already been addressed by the Supreme Court of Canada in the Chaoulli case. We have an opinion from Canada's leading constitutional lawyer that this case applies in British Columbia and applies to the Medicare Protection Act. We would therefore not need to challenge its validity. For your information, of the three current examples of litigation against provincial health acts, namely the Chaoulli case in Quebec, the McCrellish case in Ontario, and the Murray case in Alberta, each has been initiated by the patient or the provider and not by a government agency or ministry. If the Commission were to proceed with a challenge to a centre such as ours, it would be the first example of such an act in Canada. The Commission would have to argue in court that patients who are "suffering and dying on wait lists" (direct quotation from the Supreme Court of Canada in the Chaoulli case), are appropriately being allowed to suffer in order to justify maintenance of the status quo as outlined in the Medicare Protection Act.

2836 Ash Street, Vancouver, BC, V5Z 3C6, Canada

Telephone 604 874 1349 1 800 558 1338 Facsimile 604 874 1549 Internet/website www.cambiesurgery.com

Page 2

With respect to the seven judge ruling of the Chaoulli case, in contrast to the misinterpretation by many, six of the seven judges ruled that the Act in Quebec violated the rights to life, liberty, and security of person, and described the system there as a "de facto monopoly". Seven of seven judges ruled that the Act in Quebec was responsible for physical and psychological suffering, and all judges ruled that the system imposed the risk of death and irreparable harm to patients waiting for care. Any judge hearing a case in B.C. would have to be guided by these statements.

If the Commission were to proceed to court, you would have to argue that all of these statements are without validity in British Columbia. You would have to argue that the maintenance of the Medicare Protection Act was more important than the health and welfare of patients. I would not envy your lawyers their task in putting forward such arguments.

We therefore have no intention of challenging the validity of the Medicare Protection Act. It is your prerogative to initiate legal action if you so wish.

In that our Centre provides many uninsured services, we would not allow any agent of your Commission to access our Centre or our database. This would be contrary to law and would contravene regulations in the provincial and federal privacy acts.

In that new legislation is currently being designed, and there is a current B.C. case before the courts (launched by the Nurses' Union of British Columbia), and because there are currently cases proceeding (in Ontario and Alberta), it may be more appropriate for us to agree to defer further action pending the resolution of these matters and any pending new legislation that may, in fact, supersede the Medicare Protection Act.

If you prefer to pursue further action in the courts, which will be at your discretion, and of course we will respond accordingly.

Cambie Surgeries Corporation



Brian Day, MD, FRCSC
Medical Director.
BD/cg

d: July 12, 2007
t: July 12, 2007

This is Exhibit 5
referred to in the Affidavit
of B.B. DE FAYE
sworn before me this 23 day
of JULY, 2009

03:25:31 p.m.

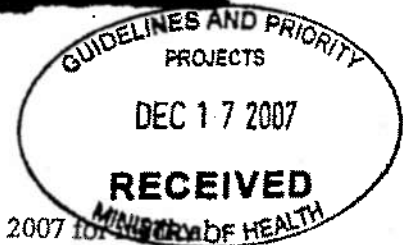
02-08-2008

8/19

December 5, 2007
Health Insurance BC
P.O. Box 9035 Stn Prov. Govt.
Victoria, BC, V8W 9E3

Attention: Operations Director

Re: [REDACTED] MSP # [REDACTED]
Claim for private medical expenses incurred



I am seeking compensation for medical expenses I incurred in 2007 for procedures, covered by the public health care system, but which were not available to me on a timely basis to prevent further injury.

I had shoulder reconstruction surgery performed by a private health care facility in Vancouver after trying unsuccessfully to have the procedure done through the public system on a timely basis. The time from my referral to an orthopedic surgeon to when I could possibly get an appointment was 10-12 months. I contacted the surgeon's office to ask what the time line was from when I finally got an appointment with the specialist to when surgery could be performed. She said on average it would be another 1-2 years after the appointment for surgery to be performed. I was in significant and increasing pain which was impairing my ability to work, exercise and sleep. In addition, the sports medicine specialist felt that if my shoulder problem was not dealt with quickly, there may be permanent impairment of movement in my arm. After receiving this information and with the commitment of my parents to help me out financially, I sought a consultation and treatment with a private health care physician and facility in Vancouver.

I am a 20 years old resident of [REDACTED] BC. I had been experiencing growing pain and instability in my left shoulder during 2006. I tried resting my arm and using over the counter medications to relieve the pain. By November, 2006 the pain was constant and was impacting my ability to work, do any exercise and some of the daily tasks of living.

I began physiotherapy in November 2006. I went three times a week for 2 months. The pain and instability continued to worsen. I went to see Dr. Monteleone (B.Sc., Ph.D., C.C.F.P., Fellowship in Sports Medicine, Diploma in Sports Medicine (CASM)). He diagnosed that I had an inflamed bicep tendon and bursa sac. He did a cortisone shot on January 19th, 2007 which had no effect and the pain continued to worsen. At this time I was taking 600mg of ibuprofen 3 times a day to keep functional. I had lost muscle mass on my left arm and was finding it increasingly difficult to work and get around comfortably (driving was painful). My occupation, as a [REDACTED] had become too painful to perform and I temporarily changed to administration and supervisory duties within the company.

On February 16th, 2007 my family doctor, Dr. Louise Lacroix, referred me to an orthopedic surgeon, Dr. Krywulak. On April 25th, two months later, a letter was sent from Dr. Krywulak's office to Dr. Lacroix, stating that I had been placed on their wait list "which runs approximately 10-12 months from the date of your referral. I contacted the surgeon's office a number of times to try to get an earlier appointment emphasizing my discomfort. When I asked about the wait time for surgery, should I need it, I was told the

time period from an appointment to surgery could be 1 – 2 years. I phoned around to other orthopedic surgeon's offices in [REDACTED] and Vancouver and was told that they had the same waiting periods. I also contacted the Allan McGavin Sports Centre.

Dr. Monteleone referred me for an MRI arthrogram. After waiting several months and having my appointment pushed back to December, 2007 I felt I had to look for an alternative. I could not function with the level of impairment, was in constant pain, had difficulty sleeping and working and was extremely concerned that the delay in treatment could cause permanent disability to my arm. I was beginning to suffer depression affecting my relationships and self esteem.

On May 09th, 2007 I contacted the Specialist Referral Clinic in Vancouver. On May 14th I met with Dr. Michael Gilbert, MD., M.ED., an orthopedic surgeon. He advised that he needed an arthrogram of the shoulder in order to properly consult with me on the condition of my shoulder and possible treatment. I told them I could not get an MRI through the public system until December 2007. The Specialist Referral Clinic phoned to the Canada Diagnostic Center in Vancouver and I had an appointment set for May 22, 2007 – 8 days later! Dr. Gilbert reviewed the results of the MRI with me on May 29th, 2007

The MRI revealed a fairly capacious capsule especially in the anterior and inferior aspects. After consultation with Dr. Michael Gilbert, MD, M.ED., it was decided that the best option was to proceed with a left shoulder arthroscopic anterior posterior stabilization. He informed me that if my injury was left untreated it would not be able to repair on its own.

On June 5th, 2007 I had shoulder surgery, performed by Dr. Michael Gilbert at the Cambie Surgery Centre in Vancouver. During the surgery they shortened my tendons and ligaments and tightened the anterior and posterior labrum capsule. They also removed the bursa capsule as it was severely inflamed.

Since the operation I have no pain in my shoulder and the joint feels stable. I have been able to regain much of the movement and strength that I previously lost and am progressing back to [REDACTED] at work and all of my athletic activities. I am able to sleep without discomfort. As part of the recovery from the operation I have been receiving physiotherapy to build up the muscle in the shoulder. Another cost which would have been available at a public hospital after surgery.

The financial and emotional cost to me has been huge!

Look at the difference in the timeliness of care provided - or not provided - by the public health care system and the private health care route I was forced to take in order to preserve my health;

Public system:

10 - 12 months to get in to see an orthopedic surgeon

8 months for an MRI

2 - 3 years from date of referral to a possible operation date

compared to

Private health care in our province:

Less than a week to get in to see a specialist

One week to get in for an MRI

3 weeks to date of surgery from first consult

It is truly shocking to experience the lack of timely medical care in our province.

The response to my medical condition by the Canadian Medical Health system did not amount to medical health care. The lack of timely response - from the reply to referrals, to the 10 and 12 month wait lists for MRI's and specialists - is not medical care. It is medical neglect! It is not medical care when an injury or condition is left to deteriorate and when the impairment affects all aspects of working and personal life.

I am seeking compensation for the personal expenses I was forced to incur to retain my personal health. Following is a list of medical expenses I have incurred to date in relation to the medical condition outlined in this letter. Attached are all backup documents supporting my claim.

Expenses incurred:

| | |
|--|--------------------|
| MRI arthrogram | |
| Canadian Diagnostic Centre, Vancouver, BC | \$1,225.00 |
| Consultation with Dr. Michael Gilbert | |
| Specialist Referral Clinic, Vancouver, BC | 500.00 |
| Shoulder operation | |
| Specialist Referral Clinic, Vancouver, BC | 7,524.00 |
| Cryocuff/Cold Therapy Equipment | |
| To optimize recovery time from operation | |
| Specialist Referral Clinic, Vancouver, BC | 340.00 |
| Ongoing physiotherapy to recover from operation | |
| [REDACTED] Physiotherapy | |
| [REDACTED] BC | 280.00 |
| [REDACTED] BC | 275.00 |
| Total medical expenses incurred to date, not inclusive of travel | |
| Costs from [REDACTED] to Vancouver | <u>\$10,144.00</u> |

[REDACTED]
MOH MEDICAL SERVICE

03:27:00 p.m. 02-08-2008

11/19

Please contact me at your earliest convenience in response to this request for expense reimbursement.

Thank you,
[REDACTED]
[REDACTED]

[REDACTED]
Cc Medical Services Operation and Policy, Ministry of Health
Cc Ombudsman of BC

SPECIALIST
REFERRAL
CLINICFollow-up Assessment for [REDACTED] on May 29, 2007

I reviewed [REDACTED]'s MRI arthrogram of [REDACTED] left shoulder today. This reveals a fairly capacious capsule especially in the anterior and inferior aspects, but no frank labral tear involving the anterior, posterior, or superior aspect of the glenoid labrum.

Radiographs of the right shoulder also reveal no bony, joint space, or soft tissue abnormalities. I have reviewed this diagnosis with [REDACTED]. We discussed potential nonoperative and operative treatment options. At this point in time, [REDACTED] wishes to proceed with a left shoulder arthroscopic anterior posterior stabilization. -I feel this would be appropriate. We discussed the risks, complications, benefits and techniques of surgery. Informed consent as obtained today for the above mentioned surgery. We will make the appropriate arrangements for this surgery in the near future.

Michael Gilbert, MD, M.Ed., FRCSC(C)
Assistant Professor, Department of Orthopaedic Surgery
University of British Columbia
Dictated but not read
MG/er

CAMBIE · SURGERY · CENTRE

OPERATIVE REPORT

DATE OF OPERATION: June 5, 2007

PATIENT NAME: [REDACTED]

PREOPERATIVE DIAGNOSIS: Left shoulder recurrent instability.

POSTOPERATIVE DIAGNOSIS: Left shoulder recurrent instability

NAME OF OPERATION: Left shoulder arthroscopic anterior and posterior stabilization, minimal subacromial bursectomy.

ANAESTHETIST: Dr. W. Penz

Clinical History:

[REDACTED] is a 20-year-old [REDACTED] who presented with recurrent instability in [REDACTED] left shoulder. [REDACTED] preoperative MRI revealed evidence of a capsular capsule in the antero-inferior aspect of [REDACTED] shoulder, and otherwise a normal shoulder labrum. Preoperatively these results were discussed with [REDACTED]. Due to [REDACTED] ongoing symptoms of instability as well as pain associated with these instability episodes, a decision was made to proceed with a left shoulder arthroscopy. Preoperatively, the risks, complications, benefits, and techniques of operative intervention were discussed with the patient and the patient consented to the above-mentioned procedure.

Procedure and Findings:

The patient was taken to the Operating Room and, in the supine position, placed under general endotracheal anesthesia. Examination under anesthesia of the left shoulder revealed forward elevation of 170 degrees, external rotation 40 degrees, and abduction 120 degrees. The patient was turned into the lateral decubitus position. All bony prominences were adequately padded. [REDACTED] had 3+ anterior and 2+ posterior glenohumeral translation. Minimal positive sulcus.

The left arm was prepared and draped in the usual sterile manner. The left arm was placed on 15 pounds of tension and 30 degrees of abduction.

The arthroscope was placed through the posterior portal. An accessory anterosuperior portal was established. Inspection of the glenohumeral articular revealed a normal glenohumeral joint. There was capsular capsule in the antero-inferior aspect of the glenoid. The glenoid labrum was intact. The humeral head articular surface was intact. A rasp was used to rasp both the anterior and posteroinferior capsulolabral tissue. An anterior portal was established just superior to the subscapularis, as was a posterior portal. The arthroscope was then placed through the anterosuperior portal to allow anterior and posterior visualization of the joint.

The two Bio Mini Revo anchors were placed in the anterior aspect of the glenoid rim at the 5:30 and 7:30 positions. A Spectrum suture shuttle device was then used to shuttle a suture through the capsulolabral tissue and an antero-inferior capsulolabral plication was performed based at these two anchor sites. This allowed excellent antero-inferior capsular shift.

2838 Ash Street, Vancouver, BC, V5Z 3C6, Canada

Telephone 604 674 1349 x 600 658 1333 Facsimile 604 674 1548 Internet/website www.cambiesurgery.com

CAMBLE SURGERY CENTRE - OPERATIVE REPORT
DATE OF OPERATION: June 6, 2007
PATIENT NAME: [REDACTED]

Page 2

Following this, the posterior aspect of the glenoid labrum was inspected. There was no posterior glenoid tear. The posterior inferior capsule was rasped. A Spectrum suture shuttle device was used to shuttle sutures through the capsulolabral tissue. One Bio Mini Ravo anchor was placed posteroinferiorly at the 4:30 position on the glenoid.

Arthroscopic knot tying techniques were performed. This allowed for adequate anterior-posterior stabilization.

At the end of the procedure, the arthroscope was placed in the subacromial space. There was marked subacromial bursitis present a minimal subacromial bursectomy was performed.

The arthroscope was then removed from the shoulder once the shoulder was thoroughly irrigated.

The incisions were closed with 3-0 Monocryl. Steri-Strips were applied. The shoulder was injected with 60 cc of 0.25% Marcaine with epinephrine.

A sterile bandage was applied. The patient's left arm was placed in a sling. The patient was then extubated and taken to the Recovery Room in stable condition. There were no complications during the procedure and the patient tolerated the procedure well.

Of note, the patient was administered 1 gram of intravenous Ancef at the beginning of the procedure.

Camble Surgeries Corporation

Michael Gilbert, MD, FRCSC
Dictated but not read
MG/og

cc: Dr. Michael Gilbert
CSC

d. June 6, 2007
c. June 7, 2007



**SPECIALIST
REFERRAL
CLINIC**

City Square Mall
#121 - 555 W 12th Ave.
Vancouver, BC V5Z 3X7

| Date | Invoice # |
|-----------|-----------|
| 5/14/2007 | 15656 |

PAID



| |
|------------|
| Bill To |
| [Redacted] |

| Terms | Appointment ... | Doctors Name |
|----------------|-----------------|----------------|
| Due on Receipt | 5/14/2007 | Dr. M. Gilbert |

| Description | | | Rate | Amount |
|-------------------------|--------------|--------------------------|-------------|----------|
| Consultation/Assessment | | | 500.00 | 500.00 |
| Phone # | Fax # | E-mail | GST 0.00 | |
| 604 737-7464 | 604 637-0941 | info@specialistclinic.ca | Total | \$500.00 |
| | | | Balance Due | \$0.00 |

Thank you for your business.



SPECIALIST
REFERRAL
CLINIC

City Square Mall
#121 - 555 W 12th Ave.
Vancouver, BC V5Z 3X7

| | |
|----------|-----------|
| Date | Invoice # |
| 6/1/2007 | 15949 |

811 To

| Terms | Appointment ... | Doctors Name |
|----------------|-----------------|----------------|
| Due on Receipt | 6/5/2007 | Dr. M. Gilbert |

[illegible]

Thank you for your business.



This is Exhibit 6
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 23 day
of JULY, 2008
A Commissioner for taking Affidavits
within British Columbia

January 29, 2008

710296

Dr. Michael Gilbert
Allan McGavin Sports Medicine Clinic
3055 Westbrook Mall
Vancouver BC V6T 1Z3

Dear Dr. Gilbert:

The Medical Services Branch has received information indicating you provided insured services to a Medical Services Plan (MSP) beneficiary, and that the beneficiary was charged in relation to these services. The details are as follows:

Beneficiary: [REDACTED]
PHN: [REDACTED]
Procedure: Consultation and Shoulder Surgery
Date of Service: May 14 and June 5, 2007
Amount Paid by Beneficiary: \$500 + \$7,864

Operating under the authority of the *Medicare Protection Act* (the Act), and the direction of the Medical Services Commission, MSP pays for insured medical services (benefits) provided to residents of British Columbia.

The Act establishes rules regarding billing for services provided by physicians who are enrolled with MSP. Specifically, section 17 of the Act, expressly prohibits a person from charging a beneficiary [or a beneficiary's representative] for a benefit or for materials, consultations, procedures, the use of an office, clinic or other place or for any other matters that relate to the rendering of a benefit unless the charges are specifically authorized under the Act, regulations or by the Commission.

There are a range of options available to the Commission in the event of a contravention of section 17. The Act allows the Commission to assess and withhold payment for claims submitted by practitioners in cases of non-compliance. The Commission may also cancel a practitioner's enrolment for cause (which includes unlawful extra billing) for a period of time if the Commission determines that section 17 has been contravened.

...2

Ministry of Health

Medical Services Branch

Medical Services Division

3-1, 1515 Blanshard Street
Victoria BC V8W 3C8
Telephone: 250 952-1706
Facsimile: 250 952-3133

- 2 -

Also, you should be aware that new powers under the Act have recently been proclaimed which, among other things, allow the Commission to apply to the Supreme Court for an injunction restraining a person from contravening section 17.

In view of the fact that the services received by [REDACTED] on May 14 and June 5, 2007, were benefits, it seems that [REDACTED] should not have been charged a fee for those services or for any matter relating to the services.

In light of this information, I ask that you please review the details of the services you provided to [REDACTED] as well as any related charges for these services, and ensure that any charges not permitted under the Act are refunded to the payer within 30 days of receipt of this letter. If this does not occur, this matter will be referred to the Medical Services Commission for their review and possible action.

Thank you in advance for your cooperation in this matter.

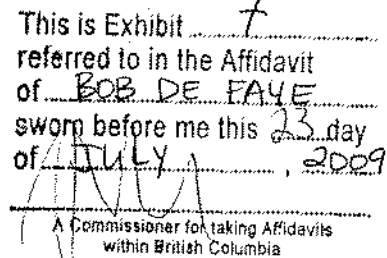
Sincerely,

ORIGINAL SIGNED BY

Phyllis Chuly
Executive Director
Medical Services Branch

[REDACTED]

[REDACTED]



710296

- 2 -

In view of the fact that the services received by [REDACTED] on May 14 and June 5, 2007, were benefits, it seems that [REDACTED] should not have been charged a fee for those services or for any matter relating to the service.

In light of this information, I ask that you review the details of the services provided to [REDACTED], as well as the related charges for these services, and ensure that any charges not permitted under the Act are refunded to the payer within 30 days of receipt of this letter. If this does not occur, this matter will be referred to the Medical Services Commission for their review and possible action.

Thank you in advance for your cooperation in this matter.

Sincerely,

ORIGINAL SIGNED BY

Phyllis Chuly
Executive Director
Medical Services Branch

[REDACTED]

[REDACTED]

This is Exhibit 8
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 23 day
of JULY, 2009

A Commissioner for taking Affidavits
within British Columbia



January 29, 2008

710296

[REDACTED]

Dear [REDACTED]

Thank you for your letter of December 4, 2007, concerning charges you paid in return for services you received from Dr. Michael Gilbert in May and June, 2007.

I was sorry to read of the experience you had in receiving timely treatment for your shoulder injury. As you may realize, shoulder surgery is a highly specialized procedure which only select orthopaedic surgeons perform.

Your letter requests that the Medical Services Plan (MSP) reimburse you for the surgical costs you incurred. There is no authority in the *Medicare Protection Act* (the Act) which would permit MSP to do this. You may be interested to know that MSP did in fact pay the surgeon's professional fee for your surgery as Dr. Gilbert billed and was paid by MSP for your shoulder surgery.

Operating under the authority of the Act, and the direction of the Medical Services Commission, MSP pays for insured medical services (benefits) provided to residents of British Columbia. The Act establishes rules regarding billing for services provided by physicians who are enrolled with MSP. In general, patients (or their representatives) must not be charged for benefits. The Act also prohibits anyone from charging patients for "materials, consultations, procedures, use of an office, clinic, or other place, or for any other matters that relate to the rendering of a benefit" unless specifically permitted by the Medical Services Commission.

The Government of British Columbia is committed to upholding the principles of the *Medicare Protection Act* and to our publicly funded health care system, in which access to medically necessary services is based on a patient's clinical need rather than his or her ability to pay.

.../2

- 2 -

Based on the information you have provided, it appears the services you received on May 14, and June 5, 2007, were MSP benefits and you should not have been charged in relation to them. In light of this, we will send a request to the physician for a refund to you of any inappropriate charges. We will contact you within the next 45 days to determine if you have received your refund.

As a staff member suggested in a phone conversation with your mother, [REDACTED], if you do not receive a refund from the clinic or the physician, you may be able to claim some of these expenses your extended health carrier (if you have one) or on your income tax return.

I appreciate you bringing this matter to my attention. I hope you have fully regained your health and mobility.

Sincerely,

ORIGINAL SIGNED BY

Phyllis Chuly
Executive Director
Medical Services Branch


[REDACTED]

[REDACTED]

CAMBIE

SURGERY CENTRE

Phyllis Chuly
Executive Director
Medical Services Division
3-1, 1515 Blanshard Street
Victoria, BC
V8W 3C8

This is Exhibit 9
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 23 day
of JULY, 2009

A Commissioner for taking Affidavits
within British Columbia

February 4, 2008

Dear Ms. Chuly:

Re: [REDACTED] PHN [REDACTED]

Further to your letter of January 29, 2008, [REDACTED] was seen for the preparation of an Independent Medical Assessment. With respect to the assessment fee, this was an independent assessment that bore no relation to any MSP insured activity.

[REDACTED] was fully aware of the fact that [REDACTED] was seeking an independent medical assessment for [REDACTED] own personal use and benefit, and that this was not an insured service under the Medical Services Plan. [REDACTED] signed a declaration to that effect.

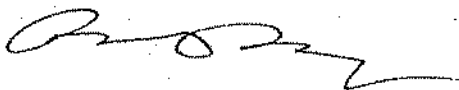
Our clinic does not offer services available under the Medicare Protection Act, and all of our files are confidential (3rd party) reports, medico-legal opinions, worker's compensation and RCMP assessments.

With respect to the surgical procedure, again, this was for an uninsured service, as described in the consent form, which [REDACTED] signed. In the Chaoulli decision of the Supreme Court of Canada, it was determined that individuals have a constitutional right to bypass medically unacceptable wait lists. Our legal advice is that this ruling supersedes the authority of the sections of the Medicare Protection Act to which you refer.

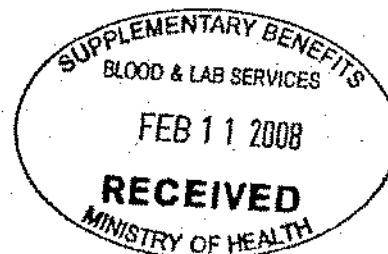
[REDACTED] simply exercised [REDACTED] constitutional right as guaranteed by the Supreme Court of Canada. It is clear from the consent form that [REDACTED] was fully aware [REDACTED] was doing so.

Finally, New Zealand's Accident Compensation Corporation (ACC) administers all medical claims for accidents that occur in that country. This [REDACTED] injury was covered under that jurisdiction, and it is likely that all medical expenses and compensation relating to [REDACTED] injuries are their responsibility.

Yours truly,



Brian Day, MB, MSc, MRCP, FRCS (Eng. & C)
Medical Director
Specialist Referral Clinic




25

SPECIALIST REFERRAL CLINIC

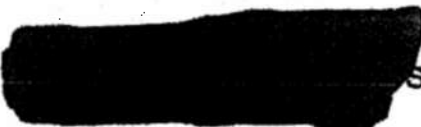


City Square Mall
#121 - 555 W. 12th Ave
Vancouver, BC V5Z 3X7
www.specialistclinic.ca

phone 604.737.7464
fax 604.637.0941
toll free 1.866.737.7460

This is Exhibit 10
referred to in the Affidavit
of BOB DE FAVE
sworn before me this 23 day
of JULY, 2009

A Commissioner for taking Affidavits
within British Columbia

Patient Consent to Assessment by Specialist

- I understand that by attending the Specialist Referral Clinic (SRC) I am requesting an independent assessment by the SRC physician, which is for my own personal use and benefit.
- I accept fully that this is not an insured service under the Medical Services Plan of British Columbia (MSP).
- I further understand that there will be no reimbursement by MSP or any government agency for this service.
- A full report will be provided to the patient and if desired copies will be provided or sent to any designated third party, including any physician.

Patient Name: Signature: Witness Name: Signature: Date: APR 3 2007

How did you hear about us? _____

**CAMBIE
SURGERY
CENTRE**

CAMBIE SURGERY CENTRE
2836 Ash Street, Vancouver, BC V5Z 3C6
Phone: (604) 874-1349 FAX: (604) 874-1549

This is Exhibit 11
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 23 day
of JULY, 2009
A Commissioner for taking Affidavits
within British Columbia

Patient Consent to Surgical Treatment at Cambie Surgery Centre

- I understand that by undergoing surgery at the Cambie Surgery Centre I am paying privately for operating theatre costs.
- I accept fully that this is not an insured service under the Medical Services Plan of British Columbia (MSP) and because I am seeking treatment in a timeline that is shorter than the government standard that this represents a service that is not considered medically necessary.
- I understand that there is no entitlement to reimbursement by MSP or any government agency for this service, and that I will not seek government funding for these costs.
- I undertake to not seek re-imbursement from the MSP of BC or any other BC Government agency and I waive any entitlement in that regard.

Patient Name: [REDACTED]

Signature: [REDACTED]

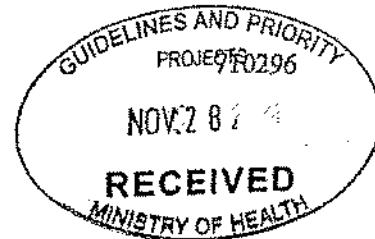
Witness Name: [REDACTED]

Signature: [REDACTED]

Date: April 13, 2008



November 13, 2008



Dear [REDACTED]

I am following up on my letter to you dated January 29, 2008, regarding charges you paid in relation to services you received from Dr. Gilbart in May and June 2007.

We sent a letter to the physician and clinic requesting a refund to you of the fees you paid. Would you please let us know if you have received your refund by providing the following information and returning this letter to us?

1. Did you receive a refund?

Yes _____ No ☒

2. If so, how much did you receive?

\$ _____

If responding by mail, please return this letter to my attention at:

Medical Services Branch
Ministry of Health Services
3-1, 1515 Blanshard Street
Victoria BC V8W 3C8

If you would rather respond by email, please direct responses to questions 1 and 2 to:
MEDSERVE@gov.bc.ca.

If you have not received the refund, we will refer the matter to the Medical Services Commission for review and possible action. Thank you for your attention to this letter.

Sincerely,

Phyllis Chuly
Executive Director
Medical Services Branch

This is Exhibit 12
referred to in the Affidavit
of BOB DE FAVE
sworn before me this 23 day
of JULY, 2009

A Commissioner for taking Affidavits
within British Columbia

This is Exhibit 13
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 23 day
of JULY, 2009

A Commissioner for Taking Affidavits
within British Columbia



28

Nov. 30/07

To: Paddy Thistle Fwy (250) 465-3593
Health Insurance BC
PO Box 9480
Stn. Prov. Govt
Victoria BC V8W 9E7
ATTENTION: Paddy Thistle

DEC 04 2007

Dear Sir or Madam: Health Care # [REDACTED]

Re: Claim for Rotator Cuff Surgery & Consultation Fees.

Further to my telephone conversation with your staff today I am submitting my receipts for the above. I have only just now been able to have good movement of my arm after all my physio & am now writing to you.

I am an avid tennis player & was devastated as to how my rotator cuff tore which caused great pain. Going on the waiting list in Victoria for an appointment prior for consultation would be at least a year which was no quality of life for me. Other people I talked to who were successful with claims & went the same route as me to the Cambie Surgery Center have a good quality of life now & can go on with their lives. Going this route freed up the system for others.

I am also attaching the surgeon Dr. Hooley's report on my successful surgery.

I very much appreciate your help & await to hear from you as to my claim on the above.

Thank you so much!

[REDACTED]

CAMBIE · SURGERY · CENTRE

OPERATIVE REPORT

DATE OF OPERATION:

May 11, 2007

PATIENT NAME:

PREOPERATIVE DIAGNOSIS:

Right rotator cuff tear.

POST OPERATIVE DIAGNOSIS:

Right rotator cuff tear.

NAME OF OPERATION:

1. Right arthroscopic glenohumeral debridement.
2. Right arthroscopic subacromial decompression.
3. Right arthroscopic rotator cuff repair, components used Bio corkscrew FT suture anchors x 2.

ANAESTHETIST:

Kurt Samer

Procedure and findings:Operative Findings:

1. 1.5 cm x 1.5 cm tear supraspinatus.
2. Coracoacromial abrasion.

Operative Note: Under a general anesthetic, the patient was positioned in the beachchair position on the table. The head was secured and the left arm was padded. The right arm was prepped and draped in the usual sterile fashion. A posterior portal was established. An in to out technique was established in the anterior portal. Upon the diagnostic arthroscopy, it was noted that the biceps, as visualized on the MRI, was absent from the glenohumeral joint. The stump of the biceps was debrided. There were intact glenohumeral articular surfaces. The subscapularis was intact. The anterior glenohumeral ligaments were intact as well.

The rotator cuff was observed and there was a 1.5 cm tear noted. This was present in the supraspinatus tendon. From the inside of the joint, a debridement was done of the footprint with the 3.5 full radius shaver. As well, the undersurface of the tendon was debrided for later repair.

Having completed this, the scope was placed into the subacromial space and the lateral portal was established. A bursectomy was performed. The ArthroCare wand was utilized to resect the coracoacromial ligament and maintain hemostasis. The 6.0 bur was used to convert a type 2 acromion to a type 1. There was a very minor spur noted on the anterior acromion and it was smooth by the end of the procedure. The bur was also used to freshen the greater tuberosity footprint. Having completed this, the edges of the tendon were freshened. Sequentially two Bio corkscrew FT suture anchors were placed in the lateral aspect of the humerus. Four simple sutures were passed through the tendon using a Scorpion suture passer. These were tied down sequentially. One of the sutures pulled through the tendon and it was converted to a mattress suture and was able to be reutilized with nonsliding half hitch sutures. Sliding arthroscopic knots were tied for the rest of the suture limbs.

We obtained an excellent reduction of the rotator cuff over the footprint. The fixation was secure with rotation of the arm.

2838 Ash Street, Vancouver, BC, V6Z 3C6, Canada

Telephone 604 674 1349 1 800 558 1338 Facsimile 604 674 1549 Internet/website www.cambiesurgery.com

CAMBLE SURGERY CENTRE - OPERATIVE REPORT
DATE OF OPERATION: May 11, 2007
PATIENT NAME: [REDACTED]

Page 2

The portals were closed with 3-0 Monocryl suture and a sterile dressing was applied. The arm was placed into a Polysling. A pain pump was placed within the subacromial space.

Postoperative instructions have been provided and follow-up has been arranged. Sling use will be for four weeks, after which physiotherapy will be commenced.

Camble Surgeries Corporation

Farhad Moola, MD, FRCSC
Dictated but not read
FM/er

cc: Dr. Farhad Moola
Specialist Referral Clinic
CSC

dt: May 11, 2007
t: May 14, 2007

ST. REFERRAL
CLINIC
12TH AVENUE
VANCOUVER BC

CARD *****
CARD TYPE VISA
DATE 2007/04/13
TIME 5957 13:45:52
RECEIPT NUMBER
S05626185-001-12B-002-0

PURCHASE
TOTAL-CAD

\$500.00

APPROVED

AUTH# 065358 01-027
THANK YOU

CARDHOLDER COPY



**SPECIALIST
REFERRAL
CLINIC**

City Square Mall
#121 - 555 W 12th Ave.
Vancouver, BC V5Z 3X7

| Date | Invoice # |
|----------|-----------|
| 5/8/2007 | 15602 |

| |
|------------|
| Bill To |
| [REDACTED] |

PAID

| Terms | | Appointment ... | Doctors Name |
|--------------------------|--------------|----------------------------|--------------|
| Due on Receipt | | 5/11/2007 | Dr. F. Moola |
| Description | | Rate | Amount |
| Prepayment for Surgery # | | 7,774.00 | 7,774.00 |
| Cryocuff/Cold Therapy | | 340.00 | 340.00 |
| Phone # | Fax # | E-mail | GST |
| 604 737-7464 | 604 637-0941 | info@specialistreferral.ca | 0.00 |
| Total | | | \$8,114.00 |
| Balance Due | | | 50.00 |

Thank you for your business.

SPECIALIST REFERRAL
CLINIC
555 WEST 12TH AVENUE
VANCOUVER BC

CARD *****
CARD TYPE VISA
DATE 2007/05/08
TIME 0535 15:36:44
RECEIPT NUMBER
M06626185-001-147-009-0

PURCHASE
TOTAL-CAD

\$8,114.00

\$7,774.00 - Rotator Cuff Surgery

APPROVED

AUTH# 093283 01-027
THANK YOU

CARDHOLDER COPY

This is Exhibit 14
 referred to in the Affidavit
 of BOB DE PAVE
 sworn before me this 23 day
 of JULY, 2009

[Signature]
 A Commissioner for taking Affidavits
 within British Columbia



[Redacted]
 MAR 27 2008
[Redacted]

March 20, 2008

719742

Dr. Farhad Moola
 102 65 Richmond St
 New Westminster BC V3L 5P5

Dear Dr. Moola:

The Medical Services Branch has received information indicating you provided insured services to a Medical Services Plan (MSP) beneficiary, and that the beneficiary was charged in relation to these services. The details are as follows:

Beneficiary: *[Redacted]*
PHN: *[Redacted]*
Procedure: Consultation and Rotator Cuff Surgery
Date of Service: April 13 and May 11, 2007
Amount Paid by Beneficiary: \$500 and \$7,774

Operating under the authority of the *Medicare Protection Act* (the Act), and the direction of the Medical Services Commission, MSP pays for insured medical services (benefits) provided to residents of British Columbia.

The Act establishes rules regarding billing for services provided by physicians who are enrolled with MSP. Specifically, section 17 of the Act, expressly prohibits a person from charging a beneficiary [or a beneficiary's representative] for a benefit or for materials, consultations, procedures, the use of an office, clinic or other place or for any other matters that relate to the rendering of a benefit unless the charges are specifically authorized under the Act, regulations or by the Commission.

There are a range of options available to the Commission in the event of a contravention of section 17. The Act allows the Commission to assess and withhold payment for claims submitted by practitioners in cases of non-compliance. The Commission may also cancel a practitioner's enrolment for cause (which includes unlawful extra billing) for a period of time if the Commission determines that section 17 has been contravened.

- 2 -

Also, you should be aware that new powers under the Act have recently been proclaimed which, among other things, allow the Commission to apply to the Supreme Court for an injunction restraining a person from contravening section 17.

In view of the fact that the services received by [REDACTED] on April 13 and May 11, 2007, appear to have been benefits, it seems that [REDACTED] should not have been charged a fee for those services or for any matter relating to the services.

In light of this information, I ask that you please review the details of the services you provided to [REDACTED] as well as any related charges for these services, and ensure that any charges not permitted under the Act are refunded to the payer within 30 days of receipt of this letter. If this does not occur, this matter will be referred to the Medical Services Commission for their review and possible action.

Thank you in advance for your cooperation in this matter.

Sincerely,

Phyllis Chuly
Executive Director
Medical Services Branch

[REDACTED]

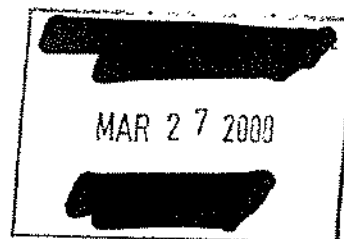
[REDACTED]

This is Exhibit 15
 referred to in the Affidavit
 of BOB DE FAYE
 sworn before me this 23 day
 of JULY, 2009

A Commissioner for taking Affidavits
 within British Columbia



The Best Place on Earth



March 20, 2008

719742

Dr. Marion Wachsmuth
 4638 Marine Drive NW
 Vancouver BC V6R 1B9

Dear Dr. Wachsmuth:

The Medical Services Branch has received information indicating you provided insured services to a Medical Services Plan (MSP) beneficiary, and that the beneficiary was charged in relation to these services. The details are as follows:

Beneficiary: [REDACTED]

PHN: [REDACTED]

Procedure: Consultation and Rotator Cuff Surgery

Date of Service: April 13 and May 11, 2007

Amount Paid by Beneficiary: \$500 and \$7,774

Operating under the authority of the *Medicare Protection Act* (the Act), and the direction of the Medical Services Commission, MSP pays for insured medical services (benefits) provided to residents of British Columbia.

The Act establishes rules regarding billing for services provided by physicians who are enrolled with MSP. Specifically, section 17 of the Act, expressly prohibits a person from charging a beneficiary [or a beneficiary's representative] for a benefit or for materials, consultations, procedures, the use of an office, clinic or other place or for any other matters that relate to the rendering of a benefit unless the charges are specifically authorized under the Act, regulations or by the Commission.

There are a range of options available to the Commission in the event of a contravention of section 17. The Act allows the Commission to assess and withhold payment for claims submitted by practitioners in cases of non-compliance. The Commission may also cancel a practitioner's enrolment for cause (which includes unlawful extra billing) for a period of time if the Commission determines that section 17 has been contravened.

...2

- 2 -

Also, you should be aware that new powers under the Act have recently been proclaimed which, among other things, allow the Commission to apply to the Supreme Court for an injunction restraining a person from contravening section 17.

In view of the fact that the services received by [REDACTED] on April 13 and May 11, 2007, appear to have been benefits, it seems that [REDACTED] should not have been charged a fee for those services or for any matter relating to the services.

In light of this information, I ask that you please review the details of the services you provided to [REDACTED] as well as any related charges for these services, and ensure that any charges not permitted under the Act are refunded to the payer within 30 days of receipt of this letter. If this does not occur, this matter will be referred to the Medical Services Commission for their review and possible action.

Thank you in advance for your cooperation in this matter.

Sincerely,

Phyllis Chuly
Executive Director
Medical Services Branch

[REDACTED]

[REDACTED]

This is Exhibit 16
 referred to in the Affidavit
 of BOB DE FAYE
 sworn before me this 23 day
 of JULY, 2009
 A Commissioner for taking Affidavits
 within British Columbia



[REDACTED]
 MAR 27 2008
 [REDACTED]

March 20, 2008

719742

Dr. Kurt Samer
 310 - 2055 Yukon St
 Vancouver BC V5Y 4B7

Dear Dr. Samer:

The Medical Services Branch has received information indicating you provided insured services to a Medical Services Plan (MSP) beneficiary, and that the beneficiary was charged in relation to these services. The details are as follows:

Beneficiary: [REDACTED]
PHN: [REDACTED]
Procedure: Consultation and Rotator Cuff Surgery
Date of Service: April 13 and May 11, 2007
Amount Paid by Beneficiary: \$500 and \$7,774

Operating under the authority of the *Medicare Protection Act* (the Act), and the direction of the Medical Services Commission, MSP pays for insured medical services (benefits) provided to residents of British Columbia.

The Act establishes rules regarding billing for services provided by physicians who are enrolled with MSP. Specifically, section 17 of the Act, expressly prohibits a person from charging a beneficiary [or a beneficiary's representative] for a benefit or for materials, consultations, procedures, the use of an office, clinic or other place or for any other matters that relate to the rendering of a benefit unless the charges are specifically authorized under the Act, regulations or by the Commission.

There are a range of options available to the Commission in the event of a contravention of section 17. The Act allows the Commission to assess and withhold payment for claims submitted by practitioners in cases of non-compliance. The Commission may also cancel a practitioner's enrolment for cause (which includes unlawful extra billing) for a period of time if the Commission determines that section 17 has been contravened.

- 2 -

Also, you should be aware that new powers under the Act have recently been proclaimed which, among other things, allow the Commission to apply to the Supreme Court for an injunction restraining a person from contravening section 17.

In view of the fact that the services received by [REDACTED] on April 13 and May 11, 2007, appear to have been benefits, it seems that [REDACTED] should not have been charged a fee for those services or for any matter relating to the services.

In light of this information, I ask that you please review the details of the services you provided to [REDACTED] as well as any related charges for these services, and ensure that any charges not permitted under the Act are refunded to the payer within 30 days of receipt of this letter. If this does not occur, this matter will be referred to the Medical Services Commission for their review and possible action.

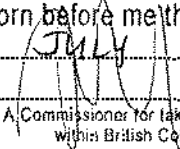
Thank you in advance for your cooperation in this matter.

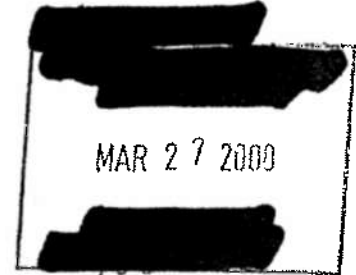
Sincerely,

Phyllis Chuly
Executive Director
Medical Services Branch

[REDACTED]
[REDACTED]

41

This is Exhibit 17
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 23 day
of JULY, 2009

A Commissioner for taking Affidavits
within British Columbia





March 20, 2008

719742

Dr. Brian Day
Medical Director
Specialist Referral Clinic
2836 Ash St
Vancouver BC V5Z 3C6

Dear Dr. Day:

The Medical Services Branch has received information indicating insured services were provided at your clinic to a Medical Services Plan (MSP) beneficiary, and that the beneficiary was charged in relation to these services. The details are as follows:

Beneficiary: 
PHN: 
Procedure: Consultation and Rotator Cuff Surgery
Date of Service: April 13 and May 11, 2007
Amount Paid by Beneficiary: \$500 and \$7,774

Operating under the authority of the *Medicare Protection Act* (the Act) and the direction of the Medical Services Commission (MSC), MSP pays for insured medical services (benefits) provided to residents of British Columbia.

The Act establishes rules regarding billing for services provided by physicians who are enrolled with MSP. Specifically, section 17 of the Act, expressly prohibits a person from charging a beneficiary (or a beneficiary's representative) for a benefit or for materials, consultations, procedures, the use of an office, clinic, or other place, or for any other matters that relate to the rendering of a benefit, unless the charges are specifically authorized under the Act regulations or by the Commission.

There are a range of options available to the Commission in the event of a contravention of section 17. Some of these powers pertain only to physicians. However, the Lieutenant Governor in Council has recently proclaimed in effect, new powers under the Act which allow the MSC to audit the business practices of persons who carry on a business, and who the MSC believes have contravened the prohibition on extra billing. Additionally, the MSC may apply to the Supreme Court for an injunction restraining a person from contravening section 17.

...2

- 2 -

In view of the fact that the services received by [REDACTED] on April 13 and May 11, 2007, appear to have been benefits, it seems that [REDACTED] should not have been charged a fee for those services or for any matter relating to the service.

In light of this information, I ask that you review the details of the services provided to [REDACTED], as well as the related charges for these services, and ensure that any charges not permitted under the Act are refunded to the payer within 30 days of receipt of this letter. If this does not occur, this matter will be referred to the MSC for their review and possible action.

Thank you in advance for your cooperation in this matter.

Sincerely,

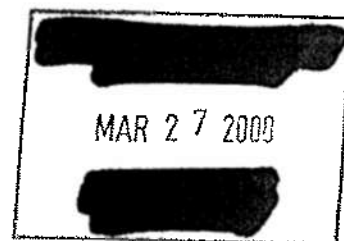
Phyllis Chuly
Executive Director
Medical Services Branch

[REDACTED]

[REDACTED]

This is Exhibit 18
 referred to in the Affidavit
 of BOB DE FAYE
 sworn before me this 22 day
 of JULY, 2009

A Commissioner for taking Affidavits
 within British Columbia



March 20, 2008

719742

Dear [REDACTED]

Thank you for your letter of November 30, 2007, addressed to Health Insurance BC concerning charges you paid in return for services you received from Dr. Farhad Moola in April and May, 2007.

Operating under the authority of the *Medicare Protection Act* (the Act), and the direction of the Medical Services Commission, the Medical Services Plan (MSP) pays for insured medical services (benefits) provided to residents of British Columbia. The Act establishes rules regarding billing for services provided by physicians who are enrolled with MSP. In general, patients (or their representatives) must not be charged for benefits. The Act also prohibits anyone from charging patients for "materials, consultations, procedures, use of an office, clinic, or other place, or for any other matters that relate to the rendering of a benefit" unless specifically permitted by the Medical Services Commission.

The Government of British Columbia is committed to upholding the principles of the *Medicare Protection Act* and to our publicly funded health care system, in which access to medically necessary services is based on a patient's clinical need rather than his or her ability to pay.

Based on the information you have provided, it appears the services you received on April 13 and May 11, 2007, were MSP benefits and you should not have been charged in relation to them. Drs. Moola, Wachsmuth, and Samer billed MSP and were paid according to the MSC Payment Schedule for your surgical services performed on May 11, 2007.

.../2

- 2 -

In light of this, we will send a request to the Specialist Referral Clinic and the attending physicians for a refund to you of any inappropriate charges. We will contact you within the next 45 days to determine if you have received your refund.

Sincerely,

Phyllis Chuly
Executive Director
Medical Services Branch

[REDACTED]



SPECIALIST
REFERRAL
CLINIC

April 7, 2008

Phyllis Chuly
Executive Director
Medical Services Division
3-1, 1515 Blanshard Street
Victoria, BC
V8W 3C8

Dear Ms. Chuly:

Re: [REDACTED]

Further to your letter of March 20, 2008, [REDACTED] was seen for the preparation of an Independent Medical Assessment. With respect to the \$500 fee, this was an Independent assessment that bore no relation to any MSP insured activity.

[REDACTED] was fully aware of the fact that [REDACTED] was seeking an Independent medical assessment for [REDACTED] own personal use and benefit, and that this was not an insured service under the Medical Services Plan. [REDACTED] signed a declaration to that effect. Our clinic does not offer services available under the Medicare Protection Act, and all of our files are confidential (3rd party) reports, medico-legal opinions, worker's compensation and RCMP assessments.

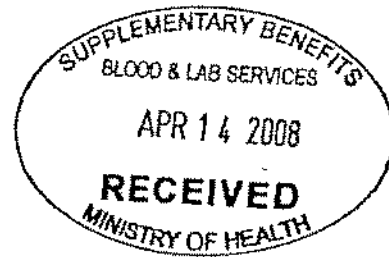
Independent reports may be used for many non-MSP insured purposes the individual seeking them requires (legal, driver's licence, disability or life insurance, pilot's physical, executive physical etc.).

With respect to the surgical procedure, again, this was for an uninsured service, as described in the consent form, which [REDACTED] signed. In the Chaoulli decision of the Supreme Court of Canada, it was determined that individuals have a constitutional right to bypass medically unacceptable wait lists. [REDACTED] simply exercised [REDACTED] constitutional right as guaranteed by the Supreme Court of Canada. It is clear from the consent form that [REDACTED] was fully aware [REDACTED] was doing so.

Our legal advice is that the Chaoulli decision of the Supreme Court of Canada supersedes the authority of the sections of the Medicare Protection Act to which you refer. I would add that no surgeon, assistant, or anesthesiologist bills privately, or "extrabills," for their component of the service. Please note therefore, that in the case of [REDACTED] Dr. Farhad Moola, and others involved in [REDACTED] care, were not involved in any "extra billing", and had no financial dealings with the patient whatsoever.

Yours truly,

Brian Day, MB, MSc, MRCP, FRCS (Eng. & C)
Medical Director
Specialist Referral Clinic



This is Exhibit 19
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 23 day
of JULY, 2009

A Commissioner for taking Affidavits
within British Columbia

SPECIALIST REFERRAL CLINIC

City Square Mall
#121 - 555 W. 12th Ave
Vancouver, BC V5Z 3X7
www.specialistclinic.ca

phone 604.737.7464
fax 604.637.0941
toll free 1.866.737.7460

Patient Consent to Assessment by Specialist

- I understand that by attending the Specialist Referral Clinic (SRC) I am requesting an independent assessment by the SRC physician, which is for my own personal use and benefit.
- I accept fully that this is not an insured service under the Medical Services Plan of British Columbia (MSP).
- I further understand that there will be no reimbursement by MSP or any government agency for this service.
- A full report will be provided to the patient and if desired copies will be provided or sent to any designated third party, including any physician.

Patient Name: [REDACTED]

Signature: [REDACTED]

Witness Name: [REDACTED]

Signature: [REDACTED]

Date: April 13, 2007

How did you hear about us?

Through my [REDACTED]
who had hip surgery with
Dr. Kendall [REDACTED]

47

CAMBIE
SURGERY
CENTRE

CAMBIE SURGERY CENTRE
2836 Ash Street, Vancouver, BC V5Z 3C6
Phone: (604) 874-1349 FAX: (604) 874-1549

Patient Consent to Surgical Treatment at Cambie Surgery Centre

- I understand that by undergoing surgery at the Cambie Surgery Centre I am paying privately for operating theatre costs.
- I accept fully that this is not an insured service under the Medical Services Plan of British Columbia (MSP) and because I am seeking treatment in a timeline that is shorter than the government standard that this represents a service that is not considered medically necessary.
- I understand that there is no entitlement to reimbursement by MSP or any government agency for this service, and that I will not seek government funding for these costs.
- I undertake to not seek re-imbursment from the MSP of BC or any other BC Government agency and I waive any entitlement in that regard.

Patient Name: [REDACTED]

Signature: [REDACTED]

Witness Name: [REDACTED]

Signature: [REDACTED]

Date:

April 13, 2008

This is Exhibit 20
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 23 day
of JULY, 2009

[Signature]
A Commissioner for taking Affidavits
within British Columbia



May 14, 2008

719742

[Redacted]

* June 22/08
To: Phyllis Chuly
Please close this file as I am now
in agreement I will NOT pursue
receiving any funds of reimbursement
from the Specialist Referral Clinics
Thank you, *[Redacted]*

Dear *[Redacted]*

I am following up on my letter to you dated March 20, 2008, regarding charges you paid in relation to services you received from Dr. Moola in April and May, 2007.

We sent a letter to the physician and clinic requesting a refund to you of the fees you paid. Would you please let me know if you have received your refund by providing the following information and returning this letter?

1. Did you receive a refund?
Yes _____ No _____
2. If so, how much did you receive?
\$ _____

If responding by mail, please return this letter to my attention at:

Medical Services Branch
Ministry of Health
3-1, 1515 Blanshard Street
Victoria BC V8W 3C8

If you would rather respond by email, please direct responses to questions 1 and 2 to:
MEDSERVE@gov.bc.ca

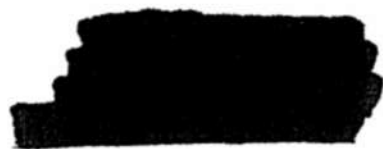
If you have not received the refund, we will refer the matter to the Medical Services Commission for review and possible action. Thank you for your attention to this letter.

Sincerely,

Chicwick & Manning
for Phyllis Chuly
Executive Director
Medical Services Branch

This is Exhibit 21
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 22 day
of JULY, 2009

A Commissioner for taking Affidavits
within British Columbia



Medical Services Plan
PO Box 9035 Stn Provincial Government
Victoria, B.C. V8W 9E3

August 8, 2007

Dear Medical Services Plan,

I am writing you on behalf of my employer, [REDACTED] required
knee surgery on this year on May 3, 2007. [REDACTED] information follows:

Full Name: [REDACTED]
Date of Birth: [REDACTED]
Care Card #: [REDACTED]

Enclosed is the invoice for the surgery and letters from [REDACTED] practitioners. Can you please
tell me if any or all of this surgery is reimbursed by [REDACTED] Medical Services Plan? Further, [REDACTED]
had a nurse provide [REDACTED] care after the surgery. This invoice is also enclosed. I am unsure
if this is covered by MSP. Please advise.

Please feel free to call or email directly at:

[REDACTED]
[REDACTED]

Thank you for your time and help.

Regards,

[REDACTED]
Executive Assistant to [REDACTED]
[REDACTED]
[REDACTED]

AUG 15 2007

25/2007 FRT 12:21 PM Specialist Ref Clin

FAX No. 604-637-0941

P. 004

Independent Medical Assessment for [REDACTED] on April 3, 2007

I saw and examined [REDACTED] on April 3, 2007.

[REDACTED] was skiing on March 19, 2007 in Aspen, when after three fairly relaxing turns, [REDACTED] experienced a twisting type mechanism and felt as though a blow had occurred behind the right knee. [REDACTED] experienced a significant onset of discomfort in the knee and was aware that [REDACTED] had injured the joint. [REDACTED] packed the area around the leg with snow, awaiting the ski patrol. [REDACTED] had x-rays taken at the base. [REDACTED] was aware that there was a significant degree of weakness in the joint. [REDACTED] had no significant prior problems with the knee, although [REDACTED] recalls having a possible waterskiing injury when [REDACTED] was 17 or 18 years of age.

[REDACTED] subsequently re-injured the right knee when [REDACTED] was cossack dancing. [REDACTED] had been mobilizing the knee subsequent to my examination of [REDACTED]. [REDACTED] had been stretching and mobilizing in order to regain range. [REDACTED] was aware of some swelling.

Past Medical History: [REDACTED] health is otherwise good. [REDACTED] was diagnosed as having pseudoangina about ten years ago. [REDACTED] has occasional reflux esophagitis. [REDACTED] is sensitive to penicillin which causes skin lesions.

Physical Examination: Examination of [REDACTED] right knee reveals that [REDACTED] has an effusion. [REDACTED] has a positive Lachman and pivot shift test. [REDACTED] has 2 cm of relative atrophy. [REDACTED] has some stiffness of the patello-femoral joint. [REDACTED] has no other abnormal findings.

Clinically, [REDACTED] has positive Lachman and pivot shift test indicative of a disruption of the right anterior cruciate ligament.

Assessment and Recommendations: I discussed this with [REDACTED]. [REDACTED] is aware of the nature of this injury. I have described to [REDACTED] the type of injury and the proposed treatment which would be arthroscopically aided ACL reconstruction. [REDACTED] is planning to undergo this procedure on May 3, 2007. [REDACTED] imaging studies are consistent with the diagnosis.

Brian Day, MB, MSc, MRCP, FRCS (Eng. & C)
Orthopaedic Surgeon
Dictated but not read
BD/er

cc: Camble Surgery Centre
Dr. Walter House



CAMBIE SURGERY CENTRE

OPERATIVE REPORT

DATE OF PROCEDURE: May 3, 2007

PATIENT NAME: [REDACTED]

PRE PROCEDURE DIAGNOSIS: Ligamentous laxity, right knee.

POST PROCEDURE DIAGNOSIS: Ligamentous laxity, right knee.

NAME OF PROCEDURE: Arthroscopy and repair of ligaments.

ANAESTHETIST: Dr. W. Penz

PROCEDURE & FINDINGS:

Under general anaesthesia, the right knee was prepared and draped in the usual way after an examination under anesthesia had revealed grade 3 ligamentous laxity with a positive Lachman and pivot shift test, grade 3, indicating anterolateral instability. Initially an incision was made over the proximal medial tibia, carried through skin and subcutaneous tissue, down to the fascia over the semitendinosus tendon and gracilis tendons. The fascia was incised, elevated, and the semitendinosus and gracilis were traced to their musculotendinous junctions and divided using a slotted tendon stripper.

They were then freed to the bony attachment to the tibia (maintaining that attachment) and were folded, doubled and sutured using #2 Polysorb sutures. This created a strand of approximately 8-mm in diameter.

Following this a low medial and a normal lateral inferior anterior portals were created and a superomedial drainage portal was made.

Examination of the knee joint revealed a nonfunctioning, hemorrhagic stump of the anterior cruciate ligament with a cyclops lesion. This was débrided. There was a posterior horn tear of the medial meniscus that was fragmented and split, and this was débrided. There was minor fibrillation of the articular surface adjacent to where the tear had been impinging. A stable rim in the meniscus was obtained. There was some fragmentation of the posterior horn of the lateral meniscus, which was also débrided superficially until it was stable. There was some fibrillation of the tibial articular surface on the lateral side and there was minor patellofemoral chondromalacia, grade 1 essentially.

The remaining examination revealed healthy appearances.

The femoral remnant of the ACL stump was débrided from the superolateral area of the notch back to the anatomical site of location of the previous ACL ligament on the femur. Following this a drill hole was made in the proximal medial tibia just proximal to the semitendinosus and gracilis attachments, exiting through the site of the tibial attachment at the previous ACL.

A series of drill holes were made in the proximal medial tibia exiting through the stump, in order to allow passage of the gracilis and semitendinosus tendon through into the joint.

After insertion of a K-wire through the tibial ACL attachment site, an 8-mm drill hole was made in the proximal medial tibia exiting through the stump, in order to allow passage of the gracilis and semitendinosus graft through into the joint.

JUL 23 2007 MON 06:06 PM Specialist Ref Clin

FAX No. 604-637-0941

P. 006

CAMBIE SURGERY CENTRE - OPERATIVE REPORT

Page 2

DATE OF OPERATION: May 3, 2007

PATIENT NAME: [REDACTED]

The offset guard was used to identify the anatomic insertion site of the ACL, and a 2.4 Beath pin was passed through and out through the lateral thigh. Using appropriate size drills and reamers, a socket was prepared, 45-mm deep, in order to accept the combined double graft.

The 8.5-mm dilator was used to make the socket the appropriate diameter, and the notcher was used superoanteriorly. The graft was then passed up into the knee joint and then the strands of suture holding the two grafts was passed through the eyes of the Beath pin after it had been extracted through the anteromedial portal. The grafts were then passed into the socket, and with tension applied a Nitinol pin was used into the notched area, and the selected size screw was inserted until the head was slightly recessed.

An 8-mm x 30-mm BioInterference screw was used to stabilize the graft in the proximal femoral socket.

Following this the Nitinol pin was removed and the pin was inserted through the tibial drill hole and an appropriate size bio interference screw was inserted to stabilize the graft near to the joint level.

In this instance a 9-mm x 30-mm BioInterference screw was inserted.

The graft was probed and was stable. Examination under anesthesia confirmed that the pivot shift and instability had been corrected.

Closure was then carried out using 4-0 Dexon and Steri-Strips, and 60 cc of bupivacaine 0.25% were infiltrated and injected prior to closure. Dressings and a bandage were applied.

The patient tolerated the procedure well and was sent to the Recovery Room in good condition.

Cambie Surgeries Corporation

Brian Day, MB, MSc, MRCP, FRCS (Eng. & C)

Dictated but not read

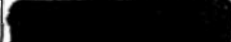
BD/eg

cc Dr. Brian Day
Dr. Peter Cropper
Specialist Referral Clinic
Cambie Surgery Centre

d: May 3, 2007
t: May 4, 2007

SP
RE
CL

City Square Mall
#121 - 555 W 12th Ave.
Vancouver, BC V5Z 3X7

| | |
|---|--|
| Bill To | |
|  | |

| Description | | | Rate | Amount |
|-------------------------|--------------|--------------------------|-------------|----------|
| Consultation/Assessment | | | 550,00 | 550,00 |
| Phone # | Fax # | E-mail | GST 0.00 | |
| 604 737-7464 | 604 637-0941 | Info@specialistclinic.ca | Total | \$550.00 |
| | | | Balance Due | \$0.00 |

Thank you for your business.

54



**SPECIALIST
REFERRAL
CLINIC**

City Square Mall
#121 - 555 W 12th Ave.
Vancouver, BC V5Z 3X7

| Date | Invoice # |
|-----------|-----------|
| 4/27/2007 | 15462 |

PAID

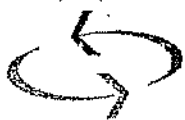
| |
|------------|
| Bill To |
| [REDACTED] |

| Terms | Appointment ... | Doctors Name |
|----------------|-----------------|--------------|
| Due on Receipt | 5/3/2007 | Dr. B. Day |

| Description | Rate | Amount |
|------------------------|----------|----------|
| Prepayment for Surgery | 7,074.00 | 7,074.00 |
| Cryocuff/Cold Therapy | 340.00 | 340.00 |

| Phone # | Fax # | E-mail | GST | |
|--------------|--------------|--------------------------|--------------------|------------|
| 604 737-7464 | 604 637-0941 | info@specialistclinic.ca | | |
| | | | Total | \$7,414.00 |
| | | | Balance Due | \$0.00 |

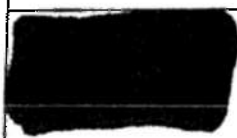
Thank you for your business.



**SPECIALIST
REFERRAL
CLINIC**

City Square Mall
#121 - 555 W 12th Ave.
Vancouver, BC V6Z 3X7

| Date | Invoice # |
|-----------|-----------|
| 5/22/2007 | 15743 |

| |
|---|
| Bill To |
|  |

| Terms | | Appointment ... | Doctors Name |
|-----------------|--|-----------------|--------------------------|
| Due on Receipt | | 5/3/2007 | Dr. Brian Day |
| Description | | Rate | Amount |
| Escort Services | | 425.00 | 425.00 |
| Phone # | | Fax # | E-mail |
| 604 737-7464 | | 604 637-0941 | Info@specialistclinic.ca |
| GST | | 0.00 | |
| Total | | \$425.00 | |
| Balance Due | | \$425.00 | |

Thank you for your business.



Credit Union Central of British Columbia
1441 Creekside Drive
Vancouver, British Columbia
Canada V6J 4S7

This is Exhibit 22
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 23 day
of JULY, 2009

A Commissioner for taking Affidavits
within British Columbia

06/19/09

Account: [REDACTED]

Name: [REDACTED]

Address: [REDACTED]

The image shown below represents an official copy of the original document as processed by our institution

BRITISH COLUMBIA Medical Services Plan of British Columbia MSP ACCOUNT

CREDIT UNION CENTRAL OF BRITISH COLUMBIA
1441 CREEKSIDE DRIVE
VANCOUVER BC V6J 4S7

06532135

20070829
DATE

81075542701797

236.30

236.30

TO [REDACTED]
2336 ASH ST
VANCOUVER BC V5Z 3C6

97953

[Signature]

[REDACTED]

07/12/07

236.30

77522042079712 2000523205K0-0102150710

CIBC
VANCOUVER BRANCH
8/12/07

4200449120

BACKENDOS

CONTROL # 4490636

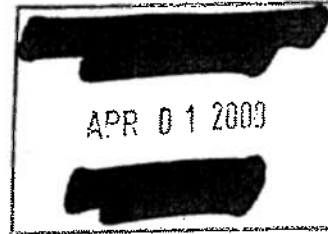
THE ACCOUNT DEBITED
ON THE DAY OF THE
DEPOSIT TO THE
ACCOUNT

Endorsement - Signature or Stamp
Endorsement - Signature du Mandat

[illegible]

This is Exhibit 23
 referred to in the Affidavit
 of BOB DE FAYE
 sworn before me this 23 day
 of JULY, 2009

A Commissioner for taking Affidavits
 within British Columbia



March 27, 2008

720081

Dr. Anthony Otto
 3237 Fraser St
 Vancouver BC V5V 4B8

Dear Dr. Otto:

The Medical Services Branch has received information indicating you provided insured services to a Medical Services Plan (MSP) beneficiary, and that the beneficiary was charged in relation to these services. The details are as follows:

Beneficiary: [REDACTED]
PHN: [REDACTED]
Procedure: Consultation and Knee Arthroscopy
Date of Service: April 3 and May 3, 2007
Amount Paid by Beneficiary: \$550 and \$7,414

Operating under the authority of the *Medicare Protection Act* (the Act), and the direction of the Medical Services Commission, MSP pays for insured medical services (benefits) provided to residents of British Columbia.

The Act establishes rules regarding billing for services provided by physicians who are enrolled with MSP. Specifically, section 17 of the Act, expressly prohibits a person from charging a beneficiary [or a beneficiary's representative] for a benefit or for materials, consultations, procedures, the use of an office, clinic or other place or for any other matters that relate to the rendering of a benefit unless the charges are specifically authorized under the Act, regulations or by the Commission.

There are a range of options available to the Commission in the event of a contravention of section 17. The Act allows the Commission to assess and withhold payment for claims submitted by practitioners in cases of non-compliance. The Commission may also cancel a practitioner's enrolment for cause (which includes unlawful extra billing) for a period of time if the Commission determines that section 17 has been contravened.

...2

- 2 -

Also, you should be aware that new powers under the Act have recently been proclaimed which, among other things, allow the Commission to apply to the Supreme Court for an injunction restraining a person from contravening section 17.

In view of the fact that the services received by [REDACTED] on April 3 and May 3, 2007, appear to have been benefits, it seems that [REDACTED] should not have been charged a fee for those services or for any matter relating to the services.

In light of this information, I ask that you please review the details of the services you provided to [REDACTED] as well as any related charges for these services, and ensure that any charges not permitted under the Act are refunded to the payer within 30 days of receipt of this letter. If this does not occur, this matter will be referred to the Medical Services Commission for their review and possible action.

Thank you in advance for your cooperation in this matter.

Sincerely,

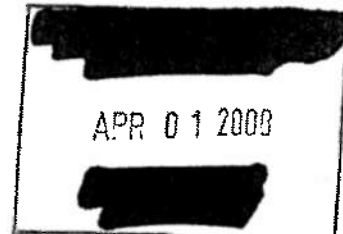
Phyllis Chuly
Executive Director
Medical Services Branch

[REDACTED]

[REDACTED]

This is Exhibit 24
 referred to in the Affidavit
 of BOB DE FAYE
 sworn before me this 23 day
 of JULY, 2009

A Commissioner for taking Affidavits
 within British Columbia



March 27, 2008

720081

Dr. William Penz
 30 - 3088 Francis Rd
 Richmond BC V7C 5V9

Dear Dr. Penz:

The Medical Services Branch has received information indicating you provided insured services to a Medical Services Plan (MSP) beneficiary, and that the beneficiary was charged in relation to these services. The details are as follows:

Beneficiary: [REDACTED]
PHN: [REDACTED]
Procedure: Consultation and Knee Arthroscopy
Date of Service: April 3 and May 3, 2007
Amount Paid by Beneficiary: \$550 and \$7,414

Operating under the authority of the *Medicare Protection Act* (the Act), and the direction of the Medical Services Commission, MSP pays for insured medical services (benefits) provided to residents of British Columbia.

The Act establishes rules regarding billing for services provided by physicians who are enrolled with MSP. Specifically, section 17 of the Act, expressly prohibits a person from charging a beneficiary [or a beneficiary's representative] for a benefit or for materials, consultations, procedures, the use of an office, clinic or other place or for any other matters that relate to the rendering of a benefit unless the charges are specifically authorized under the Act, regulations or by the Commission.

There are a range of options available to the Commission in the event of a contravention of section 17. The Act allows the Commission to assess and withhold payment for claims submitted by practitioners in cases of non-compliance. The Commission may also cancel a practitioner's enrolment for cause (which includes unlawful extra billing) for a period of time if the Commission determines that section 17 has been contravened.

...2

- 2 -

Also, you should be aware that new powers under the Act have recently been proclaimed which, among other things, allow the Commission to apply to the Supreme Court for an injunction restraining a person from contravening section 17.

In view of the fact that the services received by [REDACTED] on April 3 and May 3, 2007, appear to have been benefits, it seems that [REDACTED] should not have been charged a fee for those services or for any matter relating to the services.

In light of this information, I ask that you please review the details of the services you provided to [REDACTED] as well as any related charges for these services, and ensure that any charges not permitted under the Act are refunded to the payer within 30 days of receipt of this letter. If this does not occur, this matter will be referred to the Medical Services Commission for their review and possible action.

Thank you in advance for your cooperation in this matter.

Sincerely,

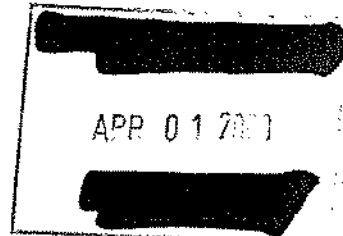
Phyllis Chuly
Executive Director
Medical Services Branch

[REDACTED]

[REDACTED]

This is Exhibit 25
 referred to in the Affidavit
 of BOB DE FAYE
 sworn before me this 23 day
 of JULY, 2009

A Commissioner for taking Affidavits
 within British Columbia



March 27, 2008

720081

Dr. Brian Day
 Medical Director
 Specialist Referral Clinic
 2836 Ash St
 Vancouver BC V5Z 3C6

Dear Dr. Day:

The Medical Services Branch has received information indicating insured services were provided at your clinic to a Medical Services Plan (MSP) beneficiary, and that the beneficiary was charged in relation to these services. The details are as follows:

Beneficiary: [REDACTED]
PHN: [REDACTED]
Procedure: Consultation and Knee Arthroscopy
Date of Service: April 3 and May 3, 2007
Amount Paid by Beneficiary: \$550 and \$7,414

AS SENT 3/27/08

Operating under the authority of the *Medicare Protection Act* (the Act) and the direction of the Medical Services Commission (MSC), MSP pays for insured medical services (benefits) provided to residents of British Columbia.

The Act establishes rules regarding billing for services provided by physicians who are enrolled with MSP. Specifically, section 17 of the Act, expressly prohibits a person from charging a beneficiary (or a beneficiary's representative) for a benefit or for materials, consultations, procedures, the use of an office, clinic, or other place, or for any other matters that relate to the rendering of a benefit, unless the charges are specifically authorized under the Act regulations or by the Commission.

...2

- 2 -

There are a range of options available to the MSC in the event of a contravention of section 17. Some of these powers pertain only to physicians. However, the Lieutenant Governor in Council has recently proclaimed in effect, new powers under the Act which allow the MSC to audit the business practices of persons who carry on a business, and who the MSC believes have contravened the prohibition on extra billing. Additionally, the MSC may apply to the Supreme Court for an injunction restraining a person from contravening section 17.

In view of the fact that the services received by [REDACTED] on April 3 and May 3, 2007, appear to have been benefits, it seems that [REDACTED] should not have been charged a fee for those services or for any matter relating to the service.

In light of this information, I ask that you review the details of the services provided to [REDACTED], as well as the related charges for these services, and ensure that any charges not permitted under the Act are refunded to the payer within 30 days of receipt of this letter. If this does not occur, this matter will be referred to the MSC for their review and possible action.

Thank you in advance for your cooperation in this matter.

Sincerely,

ORIGINAL SIGNED BY

Phyllis Chuly
Executive Director
Medical Services Branch

[REDACTED]

[REDACTED]



Credit Union Central of British Columbia
1441 Creekside Drive
Vancouver, British Columbia
Canada V6J 4S7

This is Exhibit 26
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 23 day
of JULY, 2009

A Commissioner for taking Affidavits
within British Columbia

06/19/09

Account: [REDACTED]

Name:

Address:

The image shown below represents an official copy of the original document as processed by our institution

| | | | | | |
|---|--|--|--|-------------------------|--|
| | | BRITISH COLUMBIA Medical Services Plan of British Columbia | | MSP ACCOUNT | |
| CREDIT UNION CENTRAL OF BRITISH COLUMBIA 1441 CREEKSIDE DRIVE VANCOUVER BC V6J 4S7 | | 06553924 | | 20071015 DATE | |
| PAY SIX HUNDRED NINETY-NINE DOLLARS 84CENTS | | \$699.84 | | 06316 | |
| 2836 ASH ST VANCOUVER BC V5Z 3C6 | | 11/07/07 | | 699.84 | |

| | | | |
|---|--|--|--|
| 02592042071107 2700050005000-51000100916 | | 4753248 | |
| 02592042071107 2700050005000-51000100916 | | BACKENDOS | |
| 02592042071107 2700050005000-51000100916 | | FOR DEPOSIT TO DR. B. DAY, INC. SIGNED LIMITED P.O.A. ON FILE | |

| CAS Payment Details | | | |
|--|-------------------------------------|-------------------|-------------|
| Payment Details | | | |
| Payment # | 00006553921 | Date | 15 OCT 2007 |
| Amount | 699.84 | Paygroup | MSP CHQ |
| Supplier | ZZZ HS MEDICAL SERVICES PLAN CI 001 | Special Handling | 1 |
| Payee | [REDACTED] | EFT Advice | [REDACTED] |
| | | Ministry Id | HE |
| Address | 2836 ASH ST | CGI Feeder Number | 3190 |
| | VANCOUVER BC V5Z 3C6 | CGI Reference | 30014 |
| | | Void Date | |
| City | | Prov | |
| Country | | Original Pay # | |
| Postal Code | | Replacement Pay # | |
| Payment Comments | | | |
| 0000366 | | | |
| DAY BRIAN ORTHOPAEDIC SURGERY 2007-10-15 | | | |
| 2007-09-06 56525 699.84 56525 699.84 | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| TOTAL \$699.84 | | | |



Credit Union Central of British Columbia
1441 Creekside Drive
Vancouver, British Columbia
Canada V6J 4S7

06/19/09

Account: [REDACTED]

Name:

Address:

The image shown below represents an official copy of the original document as processed by our institution

| | | | | |
|--|--|---|--|---------------------------|
| | | BRITISH COLUMBIA Medical Services Plan of British Columbia MSP ACCOUNT | | 06563588 |
| CREDIT UNION CENTRAL OF BRITISH COLUMBIA 1441 CREEKSIDE DRIVE VANCOUVER BC V6J 4S7 | | #10752802701777 | | 20071130 DATE YYYYMMDD |
| PAY TWO HUNDRED THIRTY-SIX DOLLARS SOCENTS | | \$*****236.30 | | |
| TO 2835 ASH ST VANCOUVER BC V5Z 3C6 | | 05355 | | |

[REDACTED] 12/17/07 [REDACTED] 236.30

| | | |
|--|-----------|------------------|
| FOR DEPOSIT TO THE ACCOUNT OF DR. B. DAY, INC. SIGNED LIMITED P.O.A. ON FILE | | CONTROL# 4875541 |
| Endorsement - Signature or Stamp Endorsement - Signature ou tampe | | |
| 48755412071217 704705000000-010-0100714 | | |
| CIBC VANCOUVER 2100529314 | BACKENDOS | |

| CAS Payment Details | | | |
|----------------------------|-------------------------------------|--------------------------|-------------|
| Payment # | 00006563580 | Date | 30-NOV-2007 |
| Supplier | ZZZ HS MEDICAL SERVICES PLAN CI | Amount | 236.30 |
| Payee | [REDACTED] | Special Handling | F |
| Address | 2836 ASH ST VANCOUVER BC V5Z 3C5 | EFT Advice | |
| City | Vancouver | Ministry Id | HIE |
| Country | Canada | CGI Feeder Number | 3190 |
| Postal Code | V5Z 3G5 | Source | GCI |
| | | CGI Reference | 30017 |
| | | Void Date | |
| | | Original Pay # | |
| | | Replacement Pay # | |



Credit Union Central of British Columbia
1441 Creekside Drive
Vancouver, British Columbia
Canada V6J 4S7

06/19/09

Account: [REDACTED]
Name: [REDACTED]
Address: [REDACTED]

The image shown below represents an official copy of the original document as processed by our institution

| | | |
|--|--|------------------------------|
| | BRITISH COLUMBIA Medical Services Plan of British Columbia MSP ACCOUNT | 06566090 |
| CREDIT UNION CENTRAL OF BRITISH COLUMBIA 1441 CREEKSIDE DRIVE VANCOUVER BC V6J 4S7 | | 20071231 DATE |
| PAY FORTY-FIVE DOLLARS 44CENTS | | \$ 45.44 |
| TO [REDACTED] 2836 ASH ST VANCOUVER BC V5Z 3C6 | | 06033 <i>Cheryl Kelly</i> |

[REDACTED] 01/16/08 [REDACTED] 45.44

| | | |
|--|------------|-----------------|
| FOR DEPOSIT TO THE ACCOUNT OF DR. B. DAY, INC. SIGNED LIMITED P.O.A. ON FILE | | CENTRAL 4951063 |
| Endorsement - Signature or Stamp Endorsement - Signature ou Stamp | | |
| 77762042080115 170120405000-010-02100916 | | |
| CIBC CIBC PROCESSING CTR 8/1/08 210000000000 | BACK/ENDOS | |

| CAS Payment Details | | | |
|--|-------------------------------------|-------------------|-------------|
| Payment Details | | | |
| Payment # | 00006566090 | Date | 31-DEC-2007 |
| Supplier | 777 HS MEDICAL SERVICES PLAN CI 001 | Amount | 45.44 |
| Payee | [REDACTED] | Paygroup | MSP/CHO |
| Address | 2836 ASH ST VANCOUVER BC V5Z 3G5 | Special Handling | 31 |
| City | [REDACTED] | EFT Advice | 1 |
| Country | [REDACTED] | Ministry Id | HS |
| Postal Code | [REDACTED] | Source | GGI |
| Prov | [REDACTED] | CGI Feeder Number | 5190 |
| | | CGI Reference | 80019 |
| | | Void Date | [REDACTED] |
| | | Original Pay # | [REDACTED] |
| | | Replacement Pay # | [REDACTED] |
| Payment Comments | | | |
| TOTAL 45.44 | | | |
| [REDACTED] 0002877 | | | |
| DAY BRIAN ORTHOPAEDIC SURGERY 2007-12-31 | | | |
| 2007-07-11 51012 45.44 51012 45.44 | | | |



Credit Union Central of British Columbia
1441 Creekside Drive
Vancouver, British Columbia
Canada V6J 4S7

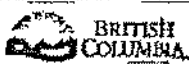
06/19/09

Account: [REDACTED]

Name: [REDACTED]

Address: [REDACTED]

The image shown below represents an official copy of the original document as processed by our institution

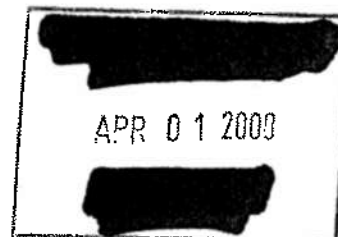
| | | | |
|--|--|-----------------|---------------------------|
|  | BRITISH COLUMBIA Medical Services Plan of British Columbia | MSF ACCOUNT | 06577448 |
| CREDIT UNION CENTRAL OF BRITISH COLUMBIA 1441 CREEKSIDE DRIVE VANCOUVER BC V6J 4S7 | | 810752932701797 | 20080229 DATE YYYYMMDD |
| PAY NINETY DOLLARS EIGHT CENTS | | \$ 90.88 | |
| TO [REDACTED] 2838 ASH ST VANCOUVER BC V5Z 3C6 | | 08137 | <i>Allyson J. Kelly</i> |

[REDACTED] 03/13/08 [REDACTED] 90.88

| | | |
|--|------------|---------|
| FOR DEPOSIT TO THE ACCOUNT OF DR. B. DAY, INC. SIGNED LIMITED P.O.A. ON FILE | | 5102797 |
| Endorsement - Signature or Stamp Endorsement - Signature ou tampe | | |
| 537F2C67060013 1000104005800-010-02100916 | | |
| CIBC VANCOUVER BRANCH 43/04/08 2100152735 | BACK/ENDOS | |

| CAS Payment Details | | | | | | | | | | |
|--|---------------------------------|--|-------------|------------------|-------|-------------------|-------------------|------|----------|---------|
| Payment Details | | | | | | | | | | |
| Payment # | 00006577448 | | Date | 29-FEB-2008 | | Amount | 90.88 | | Paygroup | MSP CHO |
| Supplier | ZZZ HS MEDICAL SERVICES PLAN CI | | 001 | Special Handling | 3 | | Rensed Type | | | |
| Payee | | | | EFT Advice | | | Ministry Id | HE | | |
| | | | | Source | GG | | CGI Feeder Number | 3190 | | |
| Address | 2836 ASH ST | | | CGI Reference | 50023 | | Void Date | | | |
| | VANCOUVER BC V5Z 3G6 | | | | | | | | | |
| | | | | | | | | | | |
| City | | | Prov | | | Original Pay # | | | | |
| Country | | | Postal Code | | | Replacement Pay # | | | | |
| Payment Comments | | | | | | | | | | |
| 10003748 | | | | | | | | | | |
| DAY BRIAN ORTHOPAEDIC SURGERY 2008-02-29 | | | | | | | | | | |
| 2007-10-02 51012 45:44 51012 45:44 | | | | | | | | | | |
| 2007-11-20 51012 45:44 51012 45:44 | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| TOTAL 90.88 | | | | | | | | | | |

This is Exhibit 27
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 23 day
of JULY, 2009
A Commissioner for Taking Affidavits
within British Columbia



March 27, 2008

720081

[Redacted]

Dear [Redacted]

YH 01:03:13 JAN 09/00

This is in response to [Redacted]'s letter to Health Insurance BC concerning charges you paid in return for services received from Dr. Brian Day at the Specialist Referral Clinic in May, 2007.

Operating under the authority of the *Medicare Protection Act* (the Act), and the direction of the Medical Services Commission, the Medical Services Plan (MSP) pays for insured medical services (benefits) provided to residents of British Columbia. The Act establishes rules regarding billing for services provided by physicians who are enrolled with MSP. In general, patients (or their representatives) must not be charged for benefits. The Act also prohibits anyone from charging patients for "materials, consultations, procedures, use of an office, clinic, or other place, or for any other matters that relate to the rendering of a benefit" unless specifically permitted by the Medical Services Commission.

The Government of British Columbia is committed to upholding the principles of the *Medicare Protection Act* and to our publicly funded health care system, in which access to medically necessary services is based on a patient's clinical need rather than his or her ability to pay.

.../2

- 2 -

Based on the information you have provided, it appears the physician services (consultation and surgical services) you received on April 3 and May 3, 2007, were MSP benefits and you should not have been charged in relation to them, therefore, I will send a request to the physician for a refund to you of any inappropriate charges. Please note nursing/medical escort services are not benefits of MSP.

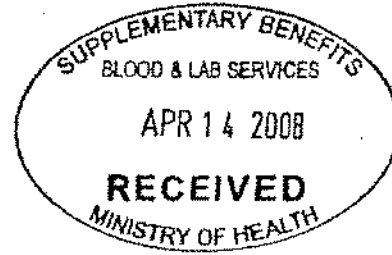
I will contact you within the next 45 days to determine if you have received your refund. Thank you for bringing this matter to my attention.

Sincerely,

ORIGINAL SIGNED BY

Phyllis Chuly
Executive Director
Medical Services Branch





April 7, 2008

Phyllis Chuly
Executive Director
Medical Services Division
3-1, 1515 Blanshard Street
Victoria, BC
V8W 3C8

This is Exhibit 28
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 23 day
of JULY, 2009

A Commissioner for taking Affidavits
within British Columbia

Dear Ms. Chuly:

Re:

PHN: [REDACTED]

Further to your letter of March 27, 2008, [REDACTED] was seen for the preparation of an Independent Medical Assessment. With respect to the \$550 fee, this was an independent assessment that bore no relation to any MSP insured activity.

[REDACTED] was fully aware of the fact that [REDACTED] was seeking an independent medical assessment for [REDACTED] own personal use and benefit, and that this was not an insured service under the Medical Services Plan. [REDACTED] signed a declaration to that effect. Our clinic does not offer services available under the Medicare Protection Act, and all of our files are confidential (3rd party) reports, medico-legal opinions, worker's compensation and RCMP assessments.

Independent reports may be used for many non-MSP insured purposes the individual seeking them requires (legal, driver's licence, disability or life insurance, pilot's physical, executive physical etc.).

With respect to the surgical procedure, again, this was for an uninsured service, as described in the consent form, which [REDACTED] signed. In the Chaoulli decision of the Supreme Court of Canada, it was determined that individuals have a constitutional right to bypass medically unacceptable wait lists. [REDACTED] simply exercised [REDACTED] constitutional right as guaranteed by the Supreme Court of Canada. It is clear from the consent form that [REDACTED] was fully aware [REDACTED] was doing so.

Our legal advice is that the Chaoulli decision of the Supreme Court of Canada supersedes the authority of the sections of the Medicare Protection Act to which you refer. I would add that no surgeon, assistant, or anesthesiologist bills privately, or "extrabills," for their component of the service. Please note therefore, that in the case of [REDACTED] the surgeon, and others involved in [REDACTED] care, were not involved in any "extra billing", and had no financial dealings with the patient whatsoever.

Yours truly,

Brian Day, MB, MSc, MRCP, FRCS (Eng. & C)
Medical Director
Specialist Referral Clinic

75

SPECIALIST REFERRAL CLINIC

City Square Mall
#121 - 555 W. 12th Ave
Vancouver, BC V5Z 3X7
www.specialistclinic.ca

phone 604.737.7464
fax 604.637.0941
toll free 1.866.737.7460

This is Exhibit 29
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 23 day
of JULY, 2009
A Commissioner for taking Affidavits
within British Columbia

Patient Consent to Assessment by Specialist

- I understand that by attending the Specialist Referral Clinic (SRC) I am requesting an independent assessment by the SRC physician, which is for my own personal use and benefit.
- I accept fully that this is not an insured service under the Medical Services Plan of British Columbia (MSP).
- I further understand that there will be no reimbursement by MSP or any government agency for this service.
- A full report will be provided to the patient and if desired copies will be provided or sent to any designated third party, including any physician.

Patient Name: [REDACTED]

Signature: [REDACTED]

Witness Name: [REDACTED]

Signature: [REDACTED]

Date: APR 3 2007

How did you hear about us? _____

**CAMBIE
SURGERY
CENTRE**

CAMBIE SURGERY CENTRE
2836 Ash Street, Vancouver, BC V5Z 3C6
Phone: (604) 874-1349 FAX: (604) 874-1549

This is Exhibit 30
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 23 day
of JULY, 2009
A Commissioner for taking Affidavits
within British Columbia

Patient Consent to Surgical Treatment at Cambie Surgery Centre

- I understand that by undergoing surgery at the Cambie Surgery Centre I am paying privately for operating theatre costs.
- I accept fully that this is not an insured service under the Medical Services Plan of British Columbia (MSP) and because I am seeking treatment in a timeline that is shorter than the government standard that this represents a service that is not considered medically necessary.
- I understand that there is no entitlement to reimbursement by MSP or any government agency for this service, and that I will not seek government funding for these costs.
- I undertake to not seek re-imburement from the MSP of BC or any other BC Government agency and I waive any entitlement in that regard.

Patient Name:

Signature:

Witness Name:

Signature:

Date:

April 3, 2007

THU, DEC-07-06 1:58PM

P. 02/11

Medical Services Plan,
PO Box 9035 Stn Prov Govt,
Victoria, B.C.
V8W 9E3

This is Exhibit 31
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 23 day
of JULY, 2009

December 6, 2006

Residence: [REDACTED]
Fax: [REDACTED]
E-Mail: [REDACTED]

A Commissioner for taking Affidavits
within British Columbia

FAX TO: (250) 405-3593
FAX FROM: [REDACTED]

Attention: Benefits Services

Dear Sir/Madame,

Subject: Special Consideration For Reimbursement of Medical Expenses - Orthopaedic Surgery (Care Card) [REDACTED]

I have waited until the return of my family physician from holidays, to allow for his input before submitting my request to the Medical services Plan for reimbursement for the serious knee surgery I underwent in August of this year at a private specialist clinic in Vancouver. Because I am a [REDACTED] on a very limited pension income, I do hope that you will consider my case for special consideration.

We live at [REDACTED] here in the [REDACTED], and I pride myself on keeping as fit as my years will allow. For the past 45 years I have enjoyed running, which, up to this past Spring, had admittedly trickled to a slow jog, but at least reasonable exercise nonetheless. In early May of 2006 I went out for my usual morning jog along Highway [REDACTED] and everything seemed normal. I returned to our home and sat down in my chair for a breather, but when I went to stand again, my left knee collapsed and I fell to the floor. I got myself up, only to walk a couple of steps before going down again. Over the next few weeks I stayed off my feet as much as possible, hoping I guess that whatever damage I had sustained would heal. However the condition appeared to be deteriorating, and finally, I was driven into Emergency at the [REDACTED] Hospital. The attending physician diagnosed my injury as a suspected torn cartilage, had x-rays taken, and suggested that I have the knee looked at right away by a specialist. She forwarded my x-rays down to our family physician in Vancouver. I was able to secure an appointment with my family physician, Dr. Wilson for June 23, 2006. During the examination of my knee in his office, Dr. Wilson diagnosed the damage as a torn meniscus, with locked knee, and recommended that I see a specialist as soon as possible. He expressed concern that, based on his most recent efforts I would not likely get even a preliminary examination appointment with a specialist for 18 months. I asked what my options were, whereupon he indicated that my only alternative would be one of the private clinics, but that it would cost me. Recognizing that I could hardly walk, that

THU, DEC-07-08 1:59PM [REDACTED] [REDACTED]

P. 03/11

-2-

my condition health-wise was deteriorating, and that I could not see myself in this condition for much longer, especially given where we resided, I elected to contact the clinic. I was able to arrange an appointment for August 15, 2006 at the Cambie Clinic, with a Dr. Gilbert, who works with the Sports medicine Department at UBC. After a careful examination of my knee, he scheduled arthroscopic surgery for the following week. My recovery and rehabilitation since the surgery has been remarkable. Although I doubt I will ever be able to jog or play old-timers' hockey again, I am now walking approximately 2-5 km a day, and doing a program of leg exercises at a fitness facility in [REDACTED] 3 times a week.

I am attaching copies of the documentation provided by both Dr. Wilson (my family physician), and Dr. Gibart (the Orthopaedic Surgeon who performed the surgery), as well as a breakdown of the costs which I requested from the Specialist Referral Clinic. These I charged to my credit card, and am slowly paying down.

I sincerely hope that MSP will consider my case, and allow me some financial relief. Ten years ago I suffered less serious knee damage, but canceled surgery at the last minute, replacing it with a program of knee rehabilitative exercises. This time I was not so fortunate, and have had to pay the price.

Respectfully,

[REDACTED]

[REDACTED]

attach

THU, DEC-07-06 1:59PM



P. 04/11
VANCOUVER, B.C.
V6J 1E3
TELEPHONE: 604-738-2131
www.seymourclinic.com

FAMILY MEDICINE:

G. R. BENNION, M.D.
DAVID G. BROUGHTON, M.B., B.S.
TAMARA L. DUNN, M.D., C.C.F.P.
BARBARA L. DUNN, B.S.W., M.D., C.C.F.P.
JOHN JOFFE, M.D., B.S., M.B.S.C.
PAUL M. LEUNG, M.B., C.C.F.P.
MELANIE MASON, B.S., M.D., M.B., C.C.F.P.
ANGELO A. MAZZARIELLO, M.D., C.C.F.P.
COLIN MCNEIL, M.B., D.C.I.T., M.C.C.G.
DAN C. MICKELSON, B.A., M.D., C.C.F.P.
D.V. MERRIS, M.D., C.C.F.P.
MARSHALL MORTON, M.B., B.S., B.A.
V. MURLEY, M.D., C.C.F.P.
A. B. NOBLE, M.D., M.D.
R. J. O'KEY, M.B., C.M.B.
ROCKFORD S. SANCORSKI, PH.D., M.D., C.C.F.P.
MILOSH S. SURKA, M.D., M.D.
V. TONG, M.D., C.C.F.P.
P. E. WILSON, M.D., C.C.F.P.
R. WRIGHT, B.S., C.C.F.P., M.D.
RUI ZHANG, M.D., M.B., C.C.F.P.

DERMATOLOGY:

CECEL SIGAL, M.D., F.R.C.P.(C)

EYE, NOSE & THROAT:

ROBERT I. DICKSON, M.D., F.R.C.S.

GASTROENTEROLOGY:

JAMES R. GRAY, M.D., A.B.I.M. CORP., F.R.C.P.(C)

INTERNAL MEDICINE:

HIROO WATANABE, M.D., F.R.C.P., F.A.C.P.

STEVEN WONG, M.D., F.R.C.P.(C)

NEUROLOGY:

KRISTINE M. CHAPMAN, M.D., F.R.C.P.(C)

OBSTETRICS AND GYNECOLOGY:

NANCY L. INTENKO, M.D., F.R.C.S.(C)

PEDIATRICS:

MARY A. BERNERS, M.D., F.A.A.P., F.R.C.P.(C)

ROY A. SAUNDERS, M.R.C.P.(U.K.), L.M.C.C., F.R.C.P.(C)

PHYSICAL MEDICINE AND REHABILITATION:

A. IAN MURRAY, M.B., B.S., F.R.C.P.(C)

PODIATRY:

RODNEY C. RUSSELL, D.F.M.

PSYCHIATRY:

D. J. ZHANG, M.D.

KARLE E. OBERDIERCK, M.D.

RESPIROLOGY AND SLEEP DISORDERS:

ISMAEL H. NABRO, M.D., F.R.C.P.(C), M.P.H.

RHEUMATOLOGY:

NEHA SHOJANA, M.D., F.R.C.P.(C)

PLASTIC SURGERY:

J. L. STOLLER, M.B., F.R.C.S.(C)

EMILY C. H. WONG, M.D., F.R.C.S.(C)

UROLOGY:

ERCOLE F. LEONE, M.D., F.R.C.S.(C)

December 4, 2006

Medical Services Programme
Victoria, B.C.

RE:

MSK
DOB: [REDACTED]

This letter is to confirm that on June 23, 2006 I saw this patient at the Seymour Medical Clinic following an injury near [REDACTED] home at [REDACTED] on May 8, 2006.

My finding suggested [REDACTED] had sustained a tear to [REDACTED] left medial meniscus and would likely need surgery.

Because of the very long backlog in getting these patients timely care with an orthopedic surgeon in the public system, and also because this patient enjoys a very active athletic life style, I recommended that [REDACTED] seek private attention thru the Specialist Referral Clinic at the Cambie Centre.

[REDACTED] subsequently underwent left knee surgery (reports included) by Dr. M. Gilbert around the end of August and is recovery very favourably.

[REDACTED] is seeking financial recovery thru MSP on the grounds that [REDACTED] has been able to return to activities in a timely fashion.

Sincerely

P. E. Wilson, M.D.

PEW/r

THU, DEC-07-06 1:59PM [REDACTED] [REDACTED]

P. 05/11

SPECIALIST
REFERRAL
CLINIC

August 17, 2006

[REDACTED]

Dear [REDACTED]

I met with you on August 15, 2006 at the Specialist Referral Clinic for the purposes of an independent medical assessment.

The enclosed report documents my findings and recommendations.

Thank you for the opportunity of being involved in your care.

Sincerely,

Dr. M. Gilbert, MD, MEd., FRCS(C)
Assistant Professor, Department of Orthopaedic Surgery
University of British Columbia
Dictated but not read
MG/er

Enclosure

THU, DEC-07-06 2:00PM

P. 06/11



SPECIALIST
REFERRAL
CLINIC

Independent Medical Assessment for [REDACTED] on August 15, 2006

I reviewed [REDACTED] for an Independent Medical Assessment regarding [REDACTED] left knee today. [REDACTED] is a 64-year-old male who is currently retired. [REDACTED] is extremely active. [REDACTED] enjoys running as well as playing a number of other sports, including skiing. [REDACTED] is also an avid recreational hockey player.

Up until May, 2006, [REDACTED] was running every second day. [REDACTED] ran approximately 10 km a day. In May, 2006, [REDACTED] sat down after a run. When [REDACTED] went to get up after the run, [REDACTED] left knee gave out from under [REDACTED] was unable to put weight on the knee following this. [REDACTED] was seen in the Emergency Department at [REDACTED] followed by an evaluation by [REDACTED] family physician, Dr. Paul Wilson.

Since this initial locking injury, [REDACTED] has been unable to fully extend the left knee. [REDACTED] has occasional clicking, locking and swelling episodes in the left knee. [REDACTED] also has medial knee pain. [REDACTED] has had decreased quadriceps strength and quadriceps atrophy develop since then. [REDACTED] has tried to maintain [REDACTED] range of motion and is strengthening with squatting exercises.

[REDACTED] recalls ten years ago, injuring [REDACTED] left knee. [REDACTED] eventually cancelled the surgery as [REDACTED] states [REDACTED] was able to work out the pain [REDACTED] had in the knee. Unfortunately, following this recent injury, [REDACTED] has been unable to work out the pain in [REDACTED] left knee.

Past Medical History: Significant for previous hernia repair, no anesthetic complications. [REDACTED] has no history of cardiac or pulmonary problems. No history of diabetes or hypertension.

Medications: Mobicox (occasional).

Allergies: Penicillin.

Physical Examination: [REDACTED] ambulates with a flexed left knee gait and an antalgic gait on the left. [REDACTED] has overall mild varus standing limb alignment bilaterally. [REDACTED] is unable to fully straighten the left knee. Range of motion in the left knee is 20° to 120°. [REDACTED] has quadriceps atrophy with 2 cm of circumferential difference in his quad measurement on the left side compared to the right. [REDACTED] has point tenderness along the medial joint line. There is mild patellofemoral crepitus. No significant lateral joint line tenderness. The left knee is otherwise stable with negative Lachman and negative anterior drawer. The left knee is stable to varus and valgus stress testing.

Radiographs: Radiographs of the left knee, which are non-weightbearing views, reveal tricompartment osteoarthritis with peripheral osteophyte formation and sharpening of the tibial spines. This is most marked in the medial compartment.

Assessment and Recommendations: [REDACTED] has signs and symptoms consistent with left tricompartmental osteoarthritis, which is mild throughout the knee with moderate joint space narrowing and medial compartment osteoarthritis. In all probability, [REDACTED] as an associated medial meniscal tear. [REDACTED] has a mechanical block to [REDACTED] motion and has been unable to fully extend [REDACTED] left knee since May, 2006. We discussed the diagnosis today, as well as potential treatment options. In my opinion, due to the mechanical block to [REDACTED] motion, it is not truly necessary to perform an MRI of [REDACTED] left knee.

THU, DEC-07-06 2:00PM [REDACTED] [REDACTED]

P.07/11

Page 7

RE: [REDACTED]

We discussed operative treatment options in the form of a left knee arthroscopy and debridement. [REDACTED] was in favor of this. I discussed with [REDACTED], the risks, complications, benefits and techniques of surgery. Informed consent was obtained today for a left knee arthroscopy, debridement and meniscal surgery. We will make the appropriate arrangements for this to proceed in the near future.

Dr. M. Gilbert, MD, M.Ed., FRCSC(C)
Assistant Professor, Department of Orthopaedic Surgery
University of British Columbia
Dictated but not read
MG/er

cc: CSC

THU, DEC-07-06 2:00PM

P.08/11



SPECIALIST
REFERRAL
CLINIC

Independent Medical Follow-up Assessment for [REDACTED] on September 26, 2006

I reviewed [REDACTED] for a repeat assessment of [REDACTED] left knee. [REDACTED] is now one month following [REDACTED] left knee arthroscopy, debridement and partial medial meniscectomy. [REDACTED] is progressing well. [REDACTED] pain has decreased. [REDACTED] is regaining some of his range of motion of the knee. [REDACTED] is progressing slowly with [REDACTED] range of motion exercises.

On physical examination, [REDACTED] incisions are clean, dry and all healed. [REDACTED] has a minimal knee effusion. Range of motion of the knee is 5° to 125°. [REDACTED] knee is stable in all planes.

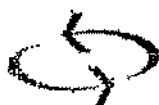
I have discussed with [REDACTED] is progressing well at this time. [REDACTED] could attempt a slow progression back to [REDACTED] activities. We talked about possible activities in the future including running. [REDACTED] is probably not going to try to return to run, which I feel at this point would be appropriate given [REDACTED] current level of symptoms and degree of Grade 4 chondrosis within the knee. I will be happy to review [REDACTED] on a prn basis in the future.

Michael Glibart, MD, M.Ed., FRCSC(C)
Assistant Professor, Department of Orthopaedic Surgery
University of British Columbia
Dictated but not read
MG/er

84

THU, DEC-07-06 2:01PM

P.11/11



**SPECIALIST
REFERRAL
CLINIC**

PAID

City Square Mall
#121 - 555 W 12th Ave.
Vancouver, BC V5Z 3X7

| Date | Invoice # |
|-----------|-----------|
| 8/15/2006 | 12102 |

| |
|------------|
| Bill To |
| [Redacted] |

| Description | | Rate | Amount |
|-------------------------|--|--------|--------|
| Consultation/Assessment | | 500.00 | 500.00 |

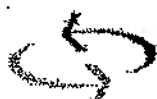
| | | |
|---|--|--|
| SPECIALIST REFERRAL CLINIC 555 WEST 12TH AVENUE VANCOUVER BC | CARD NUMBER EXPIRY DATE CARD TYPE DATE/TIME RECEIPT NUMBER PURCHASE TOTAL PAID | 01 APPROVED 027 AUTH. # 097827 THANK YOU CARDHOLDER COPY |
|---|--|--|

| | | | | |
|--------------|--------------|--------------------------|-------------|----------|
| Phone # | Fax # | E-mail | GST | 30.00 |
| 604.737-7464 | 604.637-0941 | info@specialistclinic.ca | Total | \$530.00 |
| | | | Balance Due | \$530.00 |

Thank you for your business.

THU, DEC-07-06 2:01PM

P. 10/11



SPECIALIST
REFERRAL
CLINIC

PAID

City Square Mall
#121 - 555 W. 12th Ave.
Vancouver, BC V6Z 3X7

| Date | Invoice # |
|-----------|-----------|
| 8/22/2006 | 12201 |

| |
|------------|
| Patient |
| [REDACTED] |

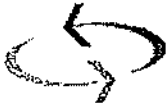
| |
|------------|
| Billed To |
| [REDACTED] |

| File Number | Terms | Appointment Date | Doctors Name |
|---|----------------|--------------------------|--------------|
| | Due on Receipt | 8/22/2006 | Dr. McGilban |
| Description | Rate | Amount | |
| Prepayment for Surgery | 3,068.00 | 3,068.00 | |
| <p> SPECIALIST REFERRAL CLINIC 555 WEST 12TH AVENUE VANCOUVER BC 2006/08/22 15:48:54 2006/08/22 15:48:54 PAID/STOCK-019-005 43,068.00 01 APPROVED 037 NOTAL 4 004821 THANK YOU QINCHUEN CUI </p> | | | |
| Phone # | Fax # | E-mail | GST |
| 604 737-7164 | 604 637-0941 | info@specialistclinic.ca | 0.00 |
| Total | | | 53,068.00 |
| Payments/Credits | | | 50.00 |
| Balance Due | | | 53,068.00 |

Thank you for your business.

THU, DEC-07-06 2:01PM [REDACTED] [REDACTED]

P.09/11

SPECIALIST
REFERRAL
CLINIC

Surgery Cost Breakdown Report

October 11, 2006

Re: [REDACTED]

Procedure: Meniscal surgery
Date of procedure: August 22, 2006
Place of procedure: Cambie Surgery Centre, Vancouver, BC
Physician: Michael Gilbert, MD, FRCSC

| | |
|-----------------|--------------|
| Facility Fee: | \$1,900 |
| Surgeons Fee: | \$500 |
| Anesthetic Fee: | \$200 |
| Assistant Fee: | \$150 |
| Administration: | <u>\$318</u> |
| Total: | \$3,068 |

Yours truly,

Zoltan Nagy
Clinic Manager
Specialist Referral Clinic
604.874.5506
zoltan@specialistclinic.ca
www.specialistclinic.ca

MINISTRY OF HEALTH,
1515 Blanshard Street,
Victoria, B.C.
V8W 3C8



April 2, 2007

This is Exhibit 32
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 23 day
of JULY, 2007

Residence:
Fax:
E-Mail:

A Commissioner for taking Affidavits
within British Columbia

FAX TO: (250)
FAX FROM:

Attention: Gordon Macatee, Deputy Minister of Health

Dear Mr. Macatee,

Subject: No Response After Five Attempts - Reimbursement of Medical Expenses
Incurred in B.C. - Orthopaedic Surgery (Care Card #

I am an active senior here in British Columbia, and have helped in building what I feel is a better Province over the years. However a year ago, I sustained a serious knee injury, and after attending at Hospital Emergency for x-rays, and seeing my physician, I was advised that knee surgery must be effected as soon as possible. At the time my physician advised me that the waiting list, just to see an orthopaedic specialist was currently 18 mos., and that the only alternative was private clinic surgery.

Rather than resigning myself to a lengthy period on crutches I chose the latter, and was operated on in August of 2006. The cost, \$3,600, I could ill afford, but with little choice, paid for it with my credit card. Now I am trying to pay off the expense, month by month, but at least am back walking again. The problem however lies in the fact that my efforts at getting someone, anyone, at MSP to even answer my letters have been totally ignored, and telephone calls to their office have all been met with claims of non-receipt of my letters, excuses, denials, and at times a very condescending approach. To the staff it appears I am a non-entity now that I'm a senior. Here is what has transpired to date:

- May, 2006: sustained knee injury, attended Emergency Room in where x-rays taken
- June, 2006: saw family physician who recommended attention by orthopaedic surgeon ASAP, but advised waiting time was 18 months just for an appt. Suggested that the only alternative would be surgery through a private clinic.
- Aug., 2006: appointment with orthopaedic specialist at Cambie Surgical Clinic. One week later,

-2-

arthroscopic surgery performed. Back walking within 7 days. Cost \$3,600

Sep-Dec 2006: gathered information, documentation and receipts together to support request for reimbursement from MSP.

Dec. 6, 2006: first letter together with complete supporting documentation faxed to MSP

Jan. 15, 2007: called MSP to determine status of claim. Staff member claimed fax never received. Re-faxed entire package again.

Jan. 19, 2007: called MSP to confirm receipt of fax. Told it had been received.

Mar. 16, 2007: having received no communication from MSP I called again. Told by a staff member that she could not find my file, but "thinks" my file was in the hands of her supervisor, who would call me on March 19. I stayed in all day waiting for the call, but none was received.


Mar. 22, 2007: faxed another letter to MSP, expressing my disappointment and frustration with their failure to keep promises, and asking if there was anything I could do to help expedite my claim.

As of today I have heard from no-one at MSP, neither verbally nor in writing. I have had to initiate all communication from the beginning, and am sure that if I did not do so, my file, if it does in fact exist in their office, would disappear. Each time I have called, I immediately ask the name of the person I am speaking with. They give me their first name, and follow up by stating that policy dictates that they can not give out their last name or an employee identification number. It seems more like a game to them. As a result all I have been able to record are first names in my telephone calls, including Joanne?, Betty?, Freda?, Andrea?, and Paddy?

All I am asking is that the government cover my surgical bills. I have paid into the medical plan all my working career. Now, the first time I need immediate surgery, the Government turns its back on me. That is why I have taken the unusual step of contacting your office.

Rather than include at this time copies of all the previous correspondence I've outlined above, I felt it best to contact your office with a single letter first. I would very much like to hear from you or your assistant at your earliest convenience. Clearly it is a waste of time and effort trying to deal with MSP staff. By taking this next step, I hope that the response I receive is more positive.

Respectfully,



11/05/2007 17:34

PAGE 04/07



This is Exhibit 33
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 23 day
of JULY, 2007

A Commissioner for taking Affidavits
within British Columbia

685372

MAY 02 2007

Dear [REDACTED]

Thank you for your letters of December 6, 2006, and April 2, 2007 concerning charges you paid in return for surgical services you received from Dr. M. Gilbert at the Cambie Surgical Clinic. I apologize for the delay in responding and want to assure you that Ministry of Health staff are dutifully assigned to your case.

Operating under the authority of the *Medicare Protection Act* (the Act), and the direction of the Medical Services Commission, the Medical Services Plan (MSP) pays for insured medical services (benefits) provided to residents of British Columbia. The Act establishes rules regarding billing for services provided by physicians who are enrolled with MSP. In general, patients (or their representatives) must not be charged for benefits. The Act also prohibits anyone from charging patients for "materials, consultations, procedures, use of an office, clinic or other place, or for any other matters that relate to the rendering of a benefit" unless specifically permitted by the Medical Services Commission.

The Government of British Columbia is committed to upholding the principles of the *Canada Health Act* and to our publicly funded health care system, in which access to medically necessary services is based on a patient's clinical need rather than his or her ability to pay.

Based on the information you have provided, it appears the services you received on August 22, 2006, were MSP benefits and you should not have been charged in relation to them. In light of this, we will send a request to the physician for a refund to you for any inappropriate charges. We will contact you within the next forty-five days to determine if you have received your refund.

... 2

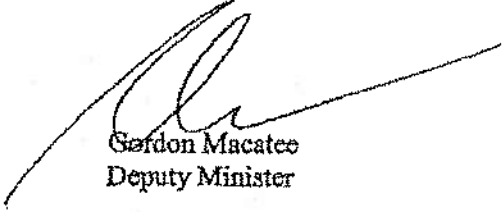
11/05/2007 17:34 [REDACTED]

90
PAGE 05/87

- 2 -

If you have any further questions please do not hesitate to contact Phyllis Chuly,
Executive Director, Medical Services Branch at 250 [REDACTED] Again, I apologize for the
delay in responding and thank you for bringing this matter to our attention.

Sincerely,



Gordon Macatee
Deputy Minister

pc: Phyllis Chuly, Executive Director
Medical Services Branch

The Honourable George Abbott, Health Minister,
P.O. Box 9050,
STN PROV GOVT
Victoria, B.C.
V8W 9E2

This is Exhibit 34
referred to in the Affidavit
of BOB DE PAUL
sworn before me this 23 day
of JULY 2007

A Commissioner for taking Affidavits
within British Columbia

Residence:
Fax:
E-Mail:

FAX TO: (250) [REDACTED]
FAX FROM: [REDACTED]

November 5, 2007

Dear Minister,

Subject: Lack of Action on Partial Reimbursement For August 2007 Orthopaedic Knee Surgery
Care Card # [REDACTED]

It has now been almost 15 months since I underwent knee surgery at the *Cambie Surgical Clinic*, and as yet my efforts to be at least partially reimbursed for the \$3,600 I spent for the pre-operative medical consultation and surgery have fallen on deaf ears. I've contacted the *Medical Services Plan* (letter dated Dec. 6, 2006), *Medical Services Plan* (second letter dated January 15, 2007), *Medical Services Plan* (by telephone March 16, 2007), *Medical Services Plan* (third letter dated March 22, 2007), and the *Ministry of Health* (letter to Gordon Macatee, Deputy Minister of Health, dated April 2, 2007). Finally, in May I received a letter from Mr. Macatee, date stamped May 2, 2007, wherein he agreed that I should not have been charged for at least the pre-operative consultation and the actual surgery itself.

I am a senior, and pay monthly MSP premiums which I've always understood cover specialist consultation and surgery. My general physician, on examining my injured knee in July, 2006, advised me that, although I required immediate surgery, I could expect an eighteen month waiting period. This to me was nonsense. It would mean at least eighteen more months of hobbling around on crutches. He advised that the only alternative was private clinic surgery. After days of agonizing over the cost, I chose to forge ahead, and use my credit card to pay for it. Since the surgery I am back to normal, and have returned to the various sports I was active in prior to the injury. The problem is, however, that even though I have been paying my medical health premiums for decades, all efforts at recovering at least part of the surgery costs for this operation have failed.

With all due respect to Mr. Macatee, why should the specialist have to reimburse me for the pre-operative consultation and the actual surgery itself? He did not double dip by charging both myself and MSP, as far as I know. He performed an excellent service, which I paid for myself, even though I am supposed to be covered by health insurance. What I see as reasonable reimbursement are the following:

| | |
|----------------------|-------|
| Medical consultation | \$530 |
| Surgeons fee | \$500 |
| Anesthetic fee | \$200 |
| Assistant fee | \$150 |

11/05/2007 17:34 [REDACTED]

PAGE 03/07

-2-

Total \$1380

You will notice that I did not include any administration or facility expenses since I have no idea what a regular hospital would have charged for these, but realistically I would expect such charges would raise my legitimate claim against MSP to in excess of \$2,400 should the facts be known. In any event, although this represents a small part of the \$3,600, it's the very least MSP should reimburse me for. Since I have so far met with no success, and mostly silence and the occasional excuse from those at MSP, I am asking for your personal intervention in taking the moral and ethical high ground by seeking the partial reimbursement on my behalf.

So that you are well informed of the extensive efforts I have gone to in this matter I am attaching copies of previous correspondence. I look forward to hearing from you in terms of progress made.

Yours truly,
[REDACTED]

[REDACTED]

cc Gordon Macatee, Deputy Minister of Health (F: 250-952-1909)
Gordon Hogg, MLA (F: 604-542-3933)
Phyllis Chuly, Executive Director, Medical Services Branch (F: 250-952-3133)

attach.

This is Exhibit 35
 referred to in the Affidavit
 of BOB DE FAYE
 sworn before me this 23 day
 of JULY, 2009
 A Commissioner for taking Affidavits
 within British Columbia



RUSH & TRACE

January 8, 2008

704604

Dr. Michael Gilbert
 Allan McGavin Sports Medicine Centre
 3055 Westbrook Mall
 Vancouver BC V6T 1Z3

Dear Dr. Gilbert:

The Medical Services Branch has received information indicating you provided insured services to a Medical Services Plan (MSP) beneficiary, and that the beneficiary was charged in relation to these services. The details are as follows:

Beneficiary: [REDACTED]
 PHN: [REDACTED]
 Procedure: Consultation and Knee Surgery
 Date of Service: August 15 and 22, 2006
 Amount Paid by Beneficiary: \$530 and \$3068

Operating under the authority of the *Medicare Protection Act* (the *Act*), and the direction of the Medical Services Commission, MSP pays for insured medical services (benefits) provided to residents of British Columbia.

The *Act* establishes rules regarding billing for services provided by physicians who are enrolled with MSP. Specifically, section 17 of the *Act*, expressly prohibits a person from charging a beneficiary [or a beneficiary's representative] for a benefit or for materials, consultations, procedures, the use of an office, clinic or other place or for any other matters that relate to the rendering of a benefit unless the charges are specifically authorized under the *Act*, regulations or by the Commission.

There are a range of options available to the Commission in the event of a contravention of section 17. The *Act* allows the Commission to assess and withhold payment for claims submitted by practitioners in cases of non-compliance. The Commission may also cancel a practitioner's enrolment for cause (which includes unlawful extra billing) for a period of time if the Commission determines that section 17 has been contravened.

- 2 -

Also, you should be aware that new powers under the *Act* have recently been proclaimed which, among other things, allow the Commission to apply to the Supreme Court for an injunction restraining a person from contravening section 17.

In view of the fact that the services received by [REDACTED] on August 16 and 22, 2006, appear to have been benefits, it seems that [REDACTED] should not have been charged a fee for those services or for any matter relating to the services.

In light of this information, I ask that you please review the details of the services you provided to [REDACTED] as well as any related charges for these services, and ensure that any charges not permitted under the *Act* are refunded to the payer within 30 days of receipt of this letter. If this does not occur, this matter will be referred to the Medical Services Commission for their review and possible action.

Thank you in advance for your cooperation in this matter.

Sincerely,

ORIGINAL SIGNED BY

Phyllis Chuly
Executive Director
Medical Services Branch

[REDACTED]

[REDACTED]

95
This is Exhibit 36
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 23 day
of JULY, 2009

A Commissioner for taking Affidavits
within British Columbia



The Best Place on Earth

RUSH & TRACE

January 8, 2008

704604

Dr. Brian Day
Medical Director
Specialist Referral Clinic
2836 Ash St
Vancouver BC V5Z 3C6

Dear Dr. Day:

The Medical Services Branch has received information indicating insured services were provided at your clinic to a MSP beneficiary, and that the beneficiary was charged in relation to these services. The details are as follows:

Beneficiary: [REDACTED]
PHN: [REDACTED]
Procedure: Consultation and Knee Surgery
Date of Service: August 15 and 22, 2006
Amount Paid by Beneficiary: \$530 and \$3068

Operating under the authority of the *Medicare Protection Act* (the Act) and the direction of the Medical Services Commission (MSC), MSP pays for insured medical services (benefits) provided to residents of British Columbia.

The Act establishes rules regarding billing for services provided by physicians who are enrolled with MSP. Specifically, section 17 of the Act, expressly prohibits a person from charging a beneficiary (or a beneficiary's representative) for a benefit or for materials, consultations, procedures, the use of an office, clinic, or other place, or for any other matters that relate to the rendering of a benefit, unless the charges are specifically authorized under the Act regulations or by the Commission.

There are a range of options available to the MSC in the event of a contravention of section 17. Some of these powers pertain only to physicians. However, the Lieutenant Governor in Council has recently proclaimed in effect, new powers under the Act which allow the Commission to audit the business practices of persons who carry on a business, and who the Commission believes have contravened the prohibition on extra billing. Additionally, the Commission may apply to the Supreme Court for an injunction restraining a person from contravening section 17.

...2

- 2 -

In view of the fact that the services received by [REDACTED] on August 15 and 22, 2006, appear to have been benefits, it seems that [REDACTED] should not have been charged a fee for those services or for any matter relating to the service.

In light of this information, I ask that you review the details of the services provided to [REDACTED] as well as the related charges for these services, and ensure that any charges not permitted under the *Act* are refunded to the payer within 30 days of receipt of this letter. If this does not occur, this matter will be referred to the MSC for their review and possible action.

Thank you in advance for your cooperation in this matter.

Sincerely,

ORIGINAL SIGNED BY

Phyllis Chuly
Executive Director
Medical Services Division

[REDACTED]

[REDACTED]



January 14, 2008

This is Exhibit 37
 referred to in the Affidavit
 of BOB DE FAYE
 sworn before me this 23 day
 of JULY, 2009

704604

A Commissioner for taking Affidavits
 within British Columbia

Dear [REDACTED]

The Honourable George Abbott, Minister of Health, has asked me to thank you for your letter of November 5, 2007, and to reply on his behalf. I apologize for the delay in my response to that letter, and regret the difficulties you have experienced in communicating with the Medical Services Plan. By way of explanation, I can only say that the Medical Services Plan receives a high volume of correspondence and on occasion we do not meet our goal of responding to all correspondence in a timely fashion.

As indicated to you by Gordon Macatee, Deputy Minister of Health, in his letter to you of May 2, 2007, it appears that the surgical services you received on August 22, 2006, at the Cambie Surgery Centre were benefits under the Medical Services Plan. Accordingly, pursuant to the *Medicare Protection Act*, you should not have been charged in relation to them.

The Medical Services Commission is the entity charged with the responsibility of administering the *Medicare Protection Act*. The Commission is concerned about reports, such as yours, of unauthorized fees for medically necessary services.

The documentation you have provided is of assistance to us in reviewing the situation of the unauthorized charges you paid to the Cambie Surgery Centre. The Medical Services Branch has recently contacted the physician and the Cambie Surgery Centre with a request that they review the details of the services provided to you and that they refund to you any charges which are not permitted under the Act. I infer from your letter that you have not received any such refund from the Centre. Accordingly, this matter will be referred to the Medical Services Commission for their further review and possible action regarding the clinic.

/2

98

01/19/2008 12:27

PAGE 05/05

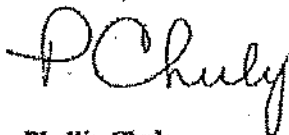
- 2 -

Your letter requests that the Medical Services Plan reimburse you for the surgical costs you incurred. There is no authority in the Act which would permit the Plan to do this. You may be interested to know that the Medical Services Plan did in fact pay the surgeon's professional fee and the anaesthesia fee for your surgery as both Dr. Gilbert and the attending anaesthetist billed and were paid by the Medical Services Plan for your knee surgery.

I regret that we are unable to resolve this situation to your full satisfaction. However, please be assured that the Medical Services Branch is concerned about all reports of fees for or in relation to medically necessary services which contravene the *Medicare Protection Act* and we do appreciate you bringing this matter to our attention.

I hope you have fully recovered from your injury and that you have been able to resume your active lifestyle.

Sincerely,



Phyllis Chuly
Executive Director
Medical Services Branch



SPECIALIST
REFERRAL
CLINIC

This is Exhibit 38
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 23 day
of JULY 2009
A Commissioner for taking Affidavits
within British Columbia

January 11, 2008

Phyllis Chuly
Executive Director
Medical Services Division
3-1, 1515 Blanshard Street
Victoria, BC
V8W 3C8

Dear Ms. Chuly:

Re: [REDACTED]

Further to your letter of January 8, 2008, [REDACTED] was seen for the preparation of an Independent Medical Assessment. With respect to the \$530 fee, this was an Independent assessment that bore no relation to any MSP Insured activity.

[REDACTED] was fully aware of the fact that [REDACTED] was seeking an Independent medical assessment for [REDACTED] own personal use and benefit, and that this was not an Insured service under the Medical Services Plan. [REDACTED] signed a declaration to that effect.

Our clinic does not offer services available under the Medicare Protection Act, and all of our files are confidential (3rd party) reports, medico-legal opinions, worker's compensation and RCMP assessments.

With respect to the surgical procedure, again, this was for an uninsured service, as described in the consent form, which [REDACTED] signed. In the Chaoulli decision of the Supreme Court of Canada, it was determined that individuals have a constitutional right to bypass medically unacceptable wait lists.

Our legal advice is that this ruling supersedes the authority of the sections of the Medicare Protection Act to which you refer.

[REDACTED] simply exercised [REDACTED] constitutional right as guaranteed by the Supreme Court of Canada. It is clear from the consent form that [REDACTED] was fully aware [REDACTED] was doing so.

Yours truly,

Brian Day, MB, MSc, MRCP, FRCS (Eng. & C)
Medical Director
Specialist Referral Clinic

This is Exhibit 39
 referred to in the Affidavit
 of BOB DE FAYE
 sworn before me this 23 day
 of July, 2009
 A Commissioner for taking Affidavits
 within British Columbia

SPECIALIST REFERRAL CLINIC

City Square Mall
 #121 - 555 W. 12th Ave
 Vancouver, BC V5Z 3X7
www.specialistclinic.ca

phone 604.737.7464
 fax 604.637.0941
 toll free 1.866.737.7460

Patient Consent to Assessment by Specialist

- I understand that by attending the Specialist Referral Clinic (SRC) I am requesting an independent assessment by the SRC physician, which is for my own personal use and benefit.
- I accept fully that this is not an insured service under the Medical Services Plan of British Columbia (MSP).
- I further understand that there will be no reimbursement by MSP or any government agency for this service.
- A full report will be provided to the patient and if desired copies will be provided or sent to any designated third party, including any physician.

Patient Name: _____

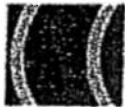
Signature _____

Witness Name: _____

Signature _____

Date: AUG. 15, 2006

How did you hear about us? _____



CAMBIE
SURGERY
CENTRE

CAMBIE SURGERY CENTRE
2836 Ash Street, Vancouver, BC V5Z 3C6
Phone: (604) 874-1349 FAX: (604) 874-1649

This is Exhibit 40
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 23 day
of JULY, 2009
A Commissioner for taking Affidavits
within British Columbia

Patient Consent to Surgical Treatment at Cambie Surgery Centre

- I understand that by undergoing surgery at the Cambie Surgery Centre I am paying privately for operating theatre costs.
- I accept fully that this is not an insured service under the Medical Services Plan of British Columbia (MSP) and because I am seeking treatment in a timeline that is shorter than the government standard that this represents a service that is not considered medically necessary.
- I understand that there is no entitlement to reimbursement by MSP or any government agency for this service, and that I will not seek government funding for these costs.
- I undertake to not seek re-imburement from the MSP of BC or any other BC Government agency and I waive any entitlement in that regard.

Patient Name: _____

Signature: _____

Witness Name: _____

Signature: _____

Date: _____

01/19/2008 12:27

The Ministry of Health
Medical Services Branch,
Medical Services Division,
3-1, 1515 Blanshard Street,
Victoria, B.C.
V8W 3C8

COPY

102
This is Exhibit 41
referred to in the Affidavit
of BDB DE FAYE
sworn before me this 23 day
of JULY 2009
A Commissioner for taking Affidavits
within British Columbia

January 19, 2008

Residence:
Fax:
E-Mail:

Attention: Phyllis Chuly, Executive Director

FAX TO: (250) 952-3133
FAX FROM:



Dear Ms. Chuly,

Subject: Followup to Your Letter Dated January 14, 2008 Regarding Lack of Action on Partial Reimbursement For August, 2006 Orthopaedic Knee Surgery Care Card #9042 705 958

I appreciate your responding to my latest letter to the Ministry dated November 5, 2007. My efforts to realize at least some reimbursement towards the \$3,600 I paid for knee surgery in August, 2006 so far have not been very successful. However your comments with regards MSP having also been billed by the specialist and the anaesthetist surprised me, since the detailed \$3,600 invoice I received from the *Cambie Surgical Clinic* included, amongst other items the following details:

| | |
|---------------------------------|-------|
| Medical specialist consultation | \$530 |
| Surgeons fee | \$500 |
| Anesthetic fee | \$200 |
| Assistant fee | \$150 |

If this is true, then it definitely does concern me. However I am at a loss to explain why MSP staff, upon being presented with an anaesthesia and orthopedic surgery billing related to myself, by a private clinic, would not have recognized the fact that the surgery was carried out at the private clinic, and fully paid for by myself. Any reasonable person would have immediately flagged such a matter for follow-up, would you not think? In any event, the explanation you have provided does not ease the financial burden I personally have had to carry because I chose to bypass the unreasonably long wait times for surgery here in the Province. I seem to be caught in the middle of a mess that is not of my doing. On the one hand we have a medical system that is, at least as far as surgery is concerned, broken, and failing the taxpayer, with waiting times for surgery far longer than other countries of the G-7, on the other hand we have privatized medical treatment facilities that offer excellent surgical treatment, yet where the taxpayer must assume the entire cost, without any help whatsoever from a government that mandates "health insurance" premiums be paid.

I reiterate that the choice facing me in July, 2006 was either:

a) to remain on crutches for 18 months - my physician advised that this was the wait time - before I could get

01/19/2008 12:27 [REDACTED]

PAGE 83/85

-2-

in for even a first consultation with the orthopedic specialist, or
b) receive reasonably expeditious surgery through a private clinic.

I doubt MSP or the Ministry of Health appreciates that by choosing the latter I was able to return to my active lifestyle within a few weeks of the August, 2006 surgery, and in the long run very likely saved the health system thousands of dollars by not requiring further health related services that would likely have been necessary had I been confined to crutches for 2 years. Having paid - and continue to pay - monthly health insurance premiums for close to four decades, I am left to wonder why I am still waiting for at least partial reimbursement for medical treatment I paid in full for, more than 18 months after receiving it, irregardless of where they were performed in our Province.

It would not be surprising for us to read, in the not so distant future, that a class-action has been commenced by the hundreds of thousands of patients within the Province who have been faced with the same dilemma as myself. I am not saddling the current government with all the blame, as this crisis has been brewing for decades, not just the past few years. However common decency would suggest that at least partial reimbursement, based on the medical system's standard fee structure, be returned to those who have assumed the entire cost of the surgery themselves.

I look forward to a further and more positive response from MSP and hopefully your Ministry in the near future. Retirement is supposed to be an enjoyable period in our lives after my years of [REDACTED] but with expenses of this nature, a lot of the fun is taken out of it..

Yours truly,



George Malby

cc MSP, Benefits Services (F: 250-405-3593)
Gordon Macatee, Deputy Minister of Health (F: 250-952-1909) ✓
Gordon Hogg, MLA (F: 604-542-3933)
Adrian Dix, Opposition Health Critic (F: 250 387-4680)

attach.

MOH MEDICAL SERVICE

This is Exhibit 42
 referred to in the Affidavit
 of BOB DE FAYE
 sworn before me this 23 day
 of JULY, 2009

03:20:28 p.m.

02-08-2008

2/5



January 3, 2008

A Commissioner for taking Affidavits
 within British Columbia

To whom it may concern:

My name is [REDACTED], I am a MSP customer and I have been having neurological type problems since mid September 2007. I have seen doctor after doctor and have been referred more than once to a Dr. Amil Ilyas in Prince George, B.C. The types of symptoms I have been having, required testing such as an MRI and a consultation with a neurologist, which I could not get through Northern Health in a timely fashion. My symptoms were worsening and I felt I had no other choice but to go private. Within two days of talking with the people from Canada Diagnostic Centers I flew down to Vancouver B.C. (I live in [REDACTED] B.C.) and had an MRI done. Five days later I flew back down to Vancouver and met with a neurologist through a private clinic. It was that simple.

The MRI I had preformed was of my head and cost me \$875.00. The consultation with the neurologist to discuss results and further testing cost me another \$750.00.

I was originally referred to a neurologist in early November and again in early December, as well as numerous phone calls which did not get me any further ahead. On December 28th I finally received a phone call from Dr. Amil Ilyas's office and the earliest I can get in to see him is February 28th, 2008. It's unfortunate that people cannot receive the help they so deserve when they really need it.

So, I am asking if there is any way possible that I can be reimbursed fully or even partially for my costs. \$875 for the MRI and \$750 for the consultation with Dr. Teal in Vancouver B.C.

Thank you for taking the time to read my letter and consider my request. Enclosed are receipts of the MRI and the consultation fee.

Sincerely, [REDACTED]

JAN 09 2008



**SPECIALIST
REFERRAL
CLINIC**

City Square Mall
#121 - 555 W 12th Ave.
Vancouver, BC V5Z 3X7

| Date | Invoice # |
|------------|-----------|
| 19/12/2007 | 20701 |

PAID

| |
|------------|
| Bill To |
| [REDACTED] |

| Terms | | Appointment ... | Doctors Name | |
|---|--------------|--------------------------|--------------|--|
| Due on Receipt | | 19/12/2007 | Dr. P. Teal | |
| Description | | Rate | Amount | |
| Independent Medical Assessment for Personal Use | | 750.00 | 750.00 | |
| Phone # | Fax # | E-mail | GST | |
| 604 737-7464 | 604 637-0941 | info@specialistclinic.ca | 0.00 | |
| Total | | | \$750.00 | |
| Balance Due | | | 50.00 | |

Thank you for your business.

SPECIALIST REFERRAL
CLINIC
555 WEST 12TH AVENUE
VANCOUVER BC

CARD *****
CARD TYPE OTSA
DATE 2007/12/19
TIME 05:47 14:58:42
RECEIPT NUMBER
006626185-001-304-012-0

PURCHASE
TOTAL-CAD

\$750.00

SPECIALIST REFERRAL
CLINIC
A0000000031010
0000008000
ED0475C1B3DC7108
2947ECA12DEFB89A

APPROVED

AUTH# 045134
THANK YOU

01-027

CARDHOLDER COPY



This is Exhibit 43
 referred to in the Affidavit
 of BOB DE FAYE
 sworn before me this 23 day
 of JULY, 2009

A Commissioner for taking Affidavits
 within British Columbia

April 30, 2008

723305

Dr. Philip Teal
 8289 - 2775 Laurel St
 Vancouver BC V5Z 1M9

Dear Dr. Teal:

The Medical Services Branch has received information indicating you provided insured services to a Medical Services Plan (MSP) beneficiary, and that the beneficiary was charged in relation to these services. The details are as follows:

Beneficiary: [REDACTED]
PHN: [REDACTED]
Procedure: Consultation
Date of Service: December 19, 2007
Amount Paid by Beneficiary: \$750

Operating under the authority of the *Medicare Protection Act* (the Act), and the direction of the Medical Services Commission, MSP pays for insured medical services (benefits) provided to residents of British Columbia.

The Act establishes rules regarding billing for services provided by physicians who are enrolled with MSP. Specifically, section 17 of the Act, expressly prohibits a person from charging a beneficiary [or a beneficiary's representative] for a benefit or for materials, consultations, procedures, the use of an office, clinic or other place or for any other matters that relate to the rendering of a benefit unless the charges are specifically authorized under the Act, regulations or by the Commission.

There are a range of options available to the Commission in the event of a contravention of section 17. The Act allows the Commission to assess and withhold payment for claims submitted by practitioners in cases of non-compliance. The Commission may also cancel a practitioner's enrolment for cause (which includes unlawful extra billing) for a period of time if the Commission determines that section 17 has been contravened.

...2

- 2 -

Also, you should be aware that new powers under the Act have recently been proclaimed which, among other things, allow the Commission to apply to the Supreme Court for an injunction restraining a person from contravening section 17.

In view of the fact that the services received by [REDACTED] on December 19, 2007, appear to have been benefits, it seems that [REDACTED] should not have been charged a fee for those services or for any matter relating to the services.

In light of this information, I ask that you please review the details of the services you provided to [REDACTED], as well as any related charges for these services, and ensure that any charges not permitted under the Act are refunded to the payer within 30 days of receipt of this letter. If this does not occur, this matter will be referred to the Medical Services Commission for their review and possible action.

Thank you in advance for your cooperation in this matter.

Sincerely,

ORIGINAL SIGNED BY

Phyllis Chuly
Executive Director
Medical Services Branch

Jane C. Chuly
for

[REDACTED]

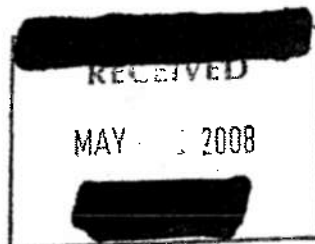
[REDACTED]



This is Exhibit 44
 referred to in the Affidavit
 of BORDE FAYE
 sworn before me this 23 day
 of JULY, 2009
 A Commissioner for taking Affidavits
 within British Columbia

April 30, 2008

Dr. Brian Day
 Medical Director
 Specialist Referral Clinic
 2836 Ash St
 Vancouver BC V5Z 3C6



723305

Dear Dr. Day:

The Medical Services Branch has received information indicating insured services were provided at your clinic to a Medical Services Plan (MSP) beneficiary, and that the beneficiary was charged in relation to these services. The details are as follows:

Beneficiary: [REDACTED]
PHN: [REDACTED]
Procedure: Consultation
Date of Service: December 19, 2007
Amount Paid by Beneficiary: \$750

Operating under the authority of the *Medicare Protection Act* (the Act) and the direction of the Medical Services Commission (MSC), MSP pays for insured medical services (benefits) provided to residents of British Columbia.

The Act establishes rules regarding billing for services provided by physicians who are enrolled with MSP. Specifically, section 17 of the Act, expressly prohibits a person from charging a beneficiary (or a beneficiary's representative) for a benefit or for materials, consultations, procedures, the use of an office, clinic, or other place, or for any other matters that relate to the rendering of a benefit, unless the charges are specifically authorized under the Act, regulations or by the Commission.

...2

- 2 -

There are a range of options available to the MSC in the event of a contravention of section 17. Some of these powers pertain only to physicians. However, the Lieutenant Governor in Council has recently proclaimed in effect, new powers under the Act which allow the MSC to audit the business practices of persons who carry on a business, and who the MSC believes have contravened the prohibition on extra billing. Additionally, the MSC may apply to the Supreme Court for an injunction restraining a person from contravening section 17.

In view of the fact that the services received by [REDACTED] on December 19, 2007, appear to have been benefits, it seems that [REDACTED] should not have been charged a fee for those services or for any matter relating to the service.

In light of this information, I ask that you review the details of the services provided to [REDACTED] as well as the related charges for these services, and ensure that any charges not permitted under the Act are refunded to the payer within 30 days of receipt of this letter. If this does not occur, this matter will be referred to the MSC for their review and possible action.

Thank you in advance for your cooperation in this matter.

Sincerely,

Jane Crickmore

ORIGINAL SIGNED BY

for:

Phyllis Chuly
Executive Director
Medical Services Branch

[REDACTED]

[REDACTED]



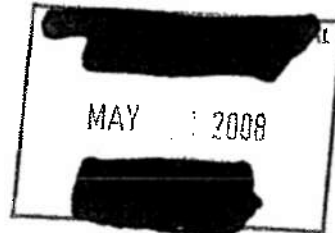
111

This is Exhibit 45
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 23 day
of JULY, 2009
A Commissioner for taking Affidavits
within British Columbia

April 30, 2008

723305

[REDACTED]



Dear [REDACTED]

Thank you for your letter of January 3, 2008, concerning charges you paid in return for services you received from Dr. Teal in December 2007.

In reading your report of your experience in receiving timely care for your symptoms I can advise that often diagnoses are difficult to determine quickly. With regard to the charge for the MRI, I regret to advise these are only benefits under the Hospital Insurance Act when they are performed in a public facility.

Operating under the authority of the *Medicare Protection Act* (the *Act*), and the direction of the Medical Services Commission, the Medical Services Plan (MSP) pays for insured medical services (benefits) provided to residents of British Columbia. The *Act* establishes rules regarding billing for services provided by physicians who are enrolled with MSP. In general, patients (or their representatives) must not be charged for benefits. The *Act* also prohibits anyone from charging patients for "*materials, consultations, procedures, use of an office, clinic, or other place, or for any other matters that relate to the rendering of a benefit*" unless specifically permitted by the Medical Services Commission.

The Government of British Columbia is committed to upholding the principles of the *Medicare Protection Act* and to our publicly funded health care system, in which access to medically necessary services is based on a patient's clinical need rather than his or her ability to pay.

.../2

- 2 -

Based on the information you have provided, it appears the services you received on December 19, 2007, were MSP benefits and you should not have been charged in relation to them. In light of this, we will send a request to the physician for a refund to you of any inappropriate charges. We will contact you within the next 45 days to determine if you have received your refund.

Sincerely,

ORIGINAL SIGNED BY

Phyllis Chuly
Executive Director
Medical Services Branch

Stephane Power
for

[REDACTED]

[REDACTED]



**SPECIALIST
REFERRAL
CLINIC**

May 5, 2008

Phyllis Chuly
Executive Director
Medical Services Division
3-1, 1515 Blanshard Street
Victoria, BC
V8W 3C8

This is Exhibit 46
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 23 day
of JULY, 2009

A Commissioner for Taking Affidavits
within British Columbia

Dear Ms. Chuly:

Re: [REDACTED]

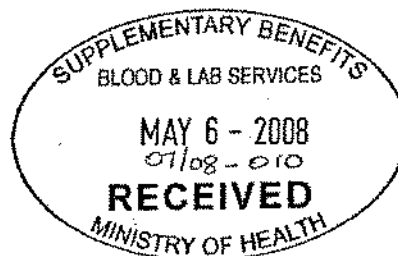
Further to your letter of April 30, 2008, [REDACTED] was seen for the preparation of an Independent Medical Assessment. With respect to the \$750 fee, this was an independent assessment that bore no relation to any MSP insured activity.

[REDACTED] was fully aware of the fact that [REDACTED] was seeking an independent medical assessment for [REDACTED] own personal use and benefit, and that this was not an insured service under the Medical Services Plan. [REDACTED] signed a declaration to that effect. Our clinic does not offer services available under the Medicare Protection Act, and all of our files are confidential (3rd party) reports, medico-legal opinions, worker's compensation and RCMP assessments.

Independent reports may be used for many non-MSP insured purposes the individual seeking them requires (legal, driver's licence, disability or life insurance, pilot's physical, executive physical etc.).

Yours truly,

Brian Day, MB, MSc, MRCP, FRCS (Eng. & C)
Medical Director
Specialist Referral Clinic



This is Exhibit 47
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 23 day
of JULY, 2009

A Commissioner for taking Affidavits
within British Columbia

SPECIALIST REFERRAL CLINIC

City Square Mall
#121 - 555 W. 12th Ave
Vancouver, BC V5Z 3X7
www.specialistclinic.ca

phone 604.737.7464
fax 604.637.0941
toll free 1.866.737.7460

Patient Consent to Assessment by Specialist

- I understand that by attending the Specialist Referral Clinic (SRC) I am requesting an independent assessment by the SRC physician, which is for my own personal use and benefit.
- I accept fully that this is not an insured service under the Medical Services Plan of British Columbia (MSP) and that I will not seek reimbursement.
- I further understand that there will be no reimbursement by MSP or any government agency for this service.
- A full report will be provided to the patient and if desired copies will be provided or sent to any designated third party, including any physician.

Patient Name: [REDACTED] Signature: [REDACTED]

Witness Name: [REDACTED] Signature: [REDACTED]

Date: DEC. 19, 2007

How did you hear about us? AT PLACE OF WORK



The Best Place on Earth

This is Exhibit 48
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 23 day
of JULY, 2009
A Commissioner for taking Affidavits
within British Columbia

June 17, 2008

[REDACTED]

Dear [REDACTED]

I am following up on my letter to you dated April 30, 2008, regarding charges you paid in relation to services you received from Dr. Teal on December 19, 2007.

We sent a letter to the physician/clinic requesting a refund to you of the fees you paid. Would you please let us know if you have received your refund by providing the following information and returning this letter to us?

1. Did you receive a refund?

Yes _____

No ☒

I have received no information.

2. If so, how much did you receive?

\$ 0

If responding by mail, please return this letter to my attention at:

Medical Services Branch
Ministry of Health
3-1, 1515 Blanshard Street
Victoria BC V8W 3C8

If you would rather respond by email, please direct responses to questions 1 and 2 to:
MEDSERVE@gov.bc.ca.

If you have not received the refund, we will refer the matter to the Medical Services Commission for review and possible action. Thank you for your attention to this letter.

Sincerely,

P. Chuly

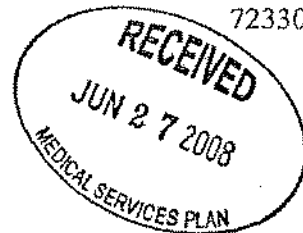
Phyllis Chuly
Executive Director
Medical Services Branch

Ministry of Health

Medical Services Branch

Medical Services Division

3-1, 1515 Blanshard Street
Victoria BC V8W 3C8
Telephone: 250 952-1706
Facsimile: 250 952-3133



115

06/25/2007 MON 12:05



Tel: Day
Eve:
E mail

June 25, 2007,

To: Medical Services plan of BC
Supervisor of Benefits
By Fax 250-405-3593

Re:

This is Exhibit 49
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 23 day
of JULY 2009

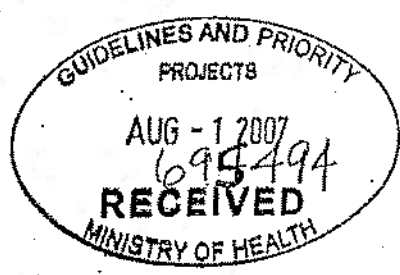
A Commissioner for taking Affidavits
within British Columbia

I am writing to you in regards to surgery my [redacted]
My [redacted] was injured four years ago when [redacted] was sixteen years old. [redacted] was eventually diagnosed with a labral tear. We waited along time for the diagnoses. Once diagnosed [redacted] went to see [redacted] family doctor and two specialists. It became clear that only one surgeon could perform [redacted] operation and also help in the diagnoses. Dr. Brian Day. [redacted] had experienced depression, constant pain that limited [redacted] daily activities, [redacted] even lost [redacted] place on the University of Victoria's [redacted] team. We waited and waited for a Doctor in the public sector to give [redacted] an appointment and did not have any luck. The specialist we say in North Vancouver Dr. Gaggoo told us that Brian was the surgeon to do the operation. He did not know of anyone else in BC. After four years we had to have something done so we asked Dr. Day to do the surgery. He did the operation on April 12, 2007. My [redacted] is slowly recovering.

We had to pay \$7974 for the surgery and more for MRI's.
I am asking MSP to help us. I have recently got a job and am now paying premiums but our income has been so low. I am also [redacted] sole a parent and am a widow.
[redacted] will be attending the University of Victoria in the fall so I hope it is possible to reimburse [redacted].
Please let me know if you can help us pay the bill enclosed.

Sincerely,

Account

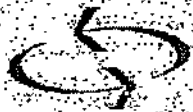


JUN 26 2007

117

06/25/2007 MON 12:05 FAX [REDACTED]

002/002



SPECIALIST
REFERRAL
CLINIC

City Square Mall
#121 - 555 W 12th Ave.
Vancouver, BC V5Z 3X7

| Date | Invoice # |
|-----------|-----------|
| 4/12/2007 | 15450 |

PAID

| |
|------------|
| Bill To |
| [REDACTED] |

| Terms | Appointment ... | Doctors Name |
|----------------|-----------------|---------------|
| Due on Receipt | 4/12/2007 | Dr. Brian Day |

| Description | Rate | Amount |
|----------------------------|-----------|-----------|
| Hip Arthroscopy | 7,550.00 | 7,550.00 |
| Administration Fee Surgery | 400.00 | 400.00 |
| Prepayment for Surgery | -7,974.00 | -7,974.00 |
| #121 - 555 W 12th Ave | | |
| Business Number: 603199311 | | |

| | | | | |
|----------------------------|--------------|--------------------------|-------------|--------|
| Phone # | Fax # | E-mail | GST | 24.00 |
| Hip Arthroscopy | 604 637-0941 | info@specialistclinic.ca | Total | \$0.00 |
| Administration Fee | | | Balance Due | \$0.00 |
| Prepayment for Surgery | | | | |
| #121 - 555 W 12th Ave | | | | |
| Business Number: 603199311 | | | | |

Thank you for your business.

87/06/2887 12:57

PAGE 01

This is Exhibit 50
 referred to in the Affidavit
 of BOB DE FAYE
 sworn before me this 23 day
 of JULY, 2009

A Commissioner for taking Affidavits
 within British Columbia

July 1, 2007

To: Medical Services plan of BC
 Supervisor of Benefits
 By Fax 250-405-3593

Re: [REDACTED]

I am writing to you in regards to surgery I had on April 12th 2007.

I was injured five years ago when I was sixteen years old. After over a year of test I was eventually diagnosed with a labral tear. It became clear that only one surgeon could perform the operation and also help in the diagnoses. Dr. Brian Day. I experienced severe depression, constant pain, weight gain of 30lbs; I was unable to keep active and lost my place on the University of Victoria's rowing team. We waited and waited for a Doctor in the public sector to give me an appointment and did not have any luck. The specialist in North Vancouver Dr. Baggoo told us that Brian was the surgeon most experienced in this newer type of hip surgery. He did not know of anyone else in BC. After five years I had to have something done so I asked Dr. Day to do the surgery. I am very slowly getting better, and can now look forward to the quality of life expected for someone my age very soon.

My mother and I had to pay \$7974 for the surgery and more for MRI's. I am asking MSP to help us. I am a full time student [REDACTED] I live with my mother [REDACTED] and have not been able to keep a job so far this summer as I am still recovering from surgery.

Please let me know if you can help us pay the bill, my mother [REDACTED] has sent a similar fax and enclosed the bill for the surgery.

Account # [REDACTED]



Credit Union Central of British Columbia
1441 Creekside Drive
Vancouver, British Columbia
Canada V6J 4S7

This is Exhibit 51
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 23 day
of JULY, 2009
A Commissioner for taking Affidavits
within British Columbia

06/18/09

Account: [REDACTED]

Name: [REDACTED]

Address: [REDACTED]

The image shown below represents an official copy of the original document as processed by our institution

BRITISH COLUMBIA Medical Services Plan of British Columbia MGP ACCOUNT

06522578

CREDIT UNION CENTRAL OF BRITISH COLUMBIA
1441 CREEKSIDE DRIVE
VANCOUVER BC V6J 4S7

31014705801797

DATE 30070515

PAY FIVE HUNDRED FOUR DOLLARS 44CENTS

TO [REDACTED] 26583

Alvin [Signature]

[REDACTED]

05/23/07

504.44

CONTROL # 4364942

Endorsement - Signature or Stamp
Endorsement - Signature or Stamp

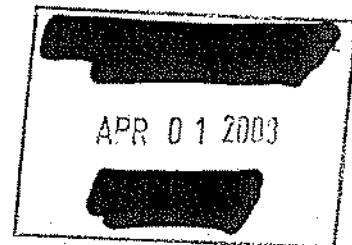
4364942 4364942 05000-010-2100978

CIBC
UNIVERSAL PROCESSING FOR
12/23/07

BACKENDOS

pay to Dr. Brown Inc.
Signal Post on file

| CAS Payment Details | | | | | |
|--|---------------------------------|-------------------|-------------|-------------------|------------|
| Payment Details | | | | | |
| Payment # | 00006522670 | Date | 15-MAY-2007 | Amount | 504.44 |
| Supplier | ZZZ-RS MEDICAL SERVICES PLAN CI | Special Handling | 11 | Paygroup | MSP CHO |
| Payee | [REDACTED] | EFT Advice | [REDACTED] | Revised Type | [REDACTED] |
| | [REDACTED] | Ministry Id | HE | Source | GGI |
| Address | 2836 ASH ST. | CGI Feeder Number | 3190 | | |
| | VANCOUVER BC V5Z 3G5 | CGI Reference | 30004 | | |
| | [REDACTED] | Void Date | [REDACTED] | | |
| City | [REDACTED] | Prov | [REDACTED] | Original Pay # | [REDACTED] |
| Country | [REDACTED] | Postal Code | [REDACTED] | Replacement Pay # | [REDACTED] |
| Payment Comments | | | | | |
| [REDACTED] 0000466 [REDACTED] | | | | | |
| DAY BRIAN ORTHOPAEDIC SURGERY 2007-05-15 | | | | | |
| 3/2007-04-12 11500 504.44 11500 504.44 | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| TOTAL \$504.44 | | | | | |
| | | | | | |



March 27, 2008

This is Exhibit 52
 referred to in the Affidavit
 of BOB DE FAYE
 sworn before me this 23 day
 of JULY, 2009

695494

Dr. Marion Wachsmuth
 4638 Marine Dr NW
 Vancouver BC V6R 1B9

A Commissioner for taking Affidavits
 within British Columbia

Dear Dr. Wachsmuth:

The Medical Services Branch has received information indicating you provided insured services to a Medical Services Plan (MSP) beneficiary, and that the beneficiary was charged in relation to these services. The details are as follows:

Beneficiary: [REDACTED]

PHN: [REDACTED]

Procedure: Hip Arthroscopy

Date of Service: April 12, 2007

Amount Paid by Beneficiary: \$7,974

SEP 24 2007

Operating under the authority of the *Medicare Protection Act* (the Act), and the direction of the Medical Services Commission, MSP pays for insured medical services (benefits) provided to residents of British Columbia.

The Act establishes rules regarding billing for services provided by physicians who are enrolled with MSP. Specifically, section 17 of the Act, expressly prohibits a person from charging a beneficiary [or a beneficiary's representative] for a benefit or for materials, consultations, procedures, the use of an office, clinic or other place or for any other matters that relate to the rendering of a benefit unless the charges are specifically authorized under the Act, regulations or by the Commission.

There are a range of options available to the Commission in the event of a contravention of section 17. The Act allows the Commission to assess and withhold payment for claims submitted by practitioners in cases of non-compliance. The Commission may also cancel a practitioner's enrolment for cause (which includes unlawful extra billing) for a period of time if the Commission determines that section 17 has been contravened.

...2

- 2 -

Also, you should be aware that new powers under the Act have recently been proclaimed which, among other things, allow the Commission to apply to the Supreme Court for an injunction restraining a person from contravening section 17.

In view of the fact that the services received by [REDACTED] on April 12, 2007, appear to have been benefits, it seems that [REDACTED] should not have been charged a fee for those services or for any matter relating to the services.

In light of this information, I ask that you please review the details of the services you provided to [REDACTED], as well as any related charges for these services, and ensure that any charges not permitted under the Act are refunded to the payer within 30 days of receipt of this letter. If this does not occur, this matter will be referred to the Medical Services Commission for their review and possible action.

Thank you in advance for your cooperation in this matter.

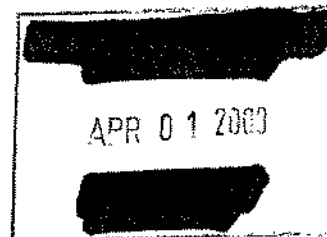
Sincerely,

ORIGINAL SIGNED BY

Phyllis Chuly
Executive Director
Medical Services Branch

[REDACTED]

[REDACTED]



March 27, 2008

Dr. William Penz
30 - 3088 Francis Rd
Richmond BC V7C 5V9

This is Exhibit 53
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 23 day
of JULY, 2009

695494

A Commissioner for taking Affidavits
within British Columbia

Dear Dr. Penz:

The Medical Services Branch has received information indicating you provided insured services to a Medical Services Plan (MSP) beneficiary, and that the beneficiary was charged in relation to these services. The details are as follows:

Beneficiary: [REDACTED]
PHN: [REDACTED]
Procedure: Hip Arthroscopy
Date of Service: April 12, 2007
Amount Paid by Beneficiary: \$7,974

Operating under the authority of the *Medicare Protection Act* (the Act), and the direction of the Medical Services Commission, MSP pays for insured medical services (benefits) provided to residents of British Columbia.

The Act establishes rules regarding billing for services provided by physicians who are enrolled with MSP. Specifically, section 17 of the Act, expressly prohibits a person from charging a beneficiary [or a beneficiary's representative] for a benefit or for materials, consultations, procedures, the use of an office, clinic or other place or for any other matters that relate to the rendering of a benefit unless the charges are specifically authorized under the Act, regulations or by the Commission.

There are a range of options available to the Commission in the event of a contravention of section 17. The Act allows the Commission to assess and withhold payment for claims submitted by practitioners in cases of non-compliance. The Commission may also cancel a practitioner's enrolment for cause (which includes unlawful extra billing) for a period of time if the Commission determines that section 17 has been contravened.

...2

- 2 -

Also, you should be aware that new powers under the Act have recently been proclaimed which, among other things, allow the Commission to apply to the Supreme Court for an injunction restraining a person from contravening section 17.

In view of the fact that the services received by [REDACTED] on April 12, 2007, appear to have been benefits, it seems that [REDACTED] should not have been charged a fee for those services or for any matter relating to the services.

In light of this information, I ask that you please review the details of the services you provided to [REDACTED] as well as any related charges for these services, and ensure that any charges not permitted under the Act are refunded to the payer within 30 days of receipt of this letter. If this does not occur, this matter will be referred to the Medical Services Commission for their review and possible action.

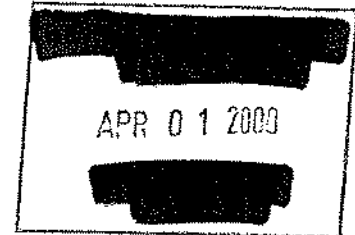
Thank you in advance for your cooperation in this matter.

Sincerely,

ORIGINAL SIGNED BY

Phyllis Chuly
Executive Director
Medical Services Branch

[REDACTED]
[REDACTED]



March 27, 2008

Dr. Brian Day
Medical Director
Specialist Referral Clinic
2836 Ash St
Vancouver BC V5Z 3C6

This is Exhibit 54
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 23 day
of JULY, 2009
A Commissioner for taking Affidavits
within British Columbia

695494

Dear Dr. Day:

The Medical Services Branch has received information indicating insured services were provided at your clinic to a Medical Services Plan (MSP) beneficiary, and that the beneficiary was charged, in relation to these services. The details are as follows:

Beneficiary: [REDACTED]
PHN: [REDACTED]
Procedure: Hip Arthroscopy
Date of Service: April 12, 2007
Amount Paid by Beneficiary: \$7,974

Operating under the authority of the *Medicare Protection Act* (the Act) and the direction of the Medical Services Commission (MSC), MSP pays for insured medical services (benefits) provided to residents of British Columbia.

The Act establishes rules regarding billing for services provided by physicians who are enrolled with MSP. Specifically, section 17 of the Act, expressly prohibits a person from charging a beneficiary (or a beneficiary's representative) for a benefit or for materials, consultations, procedures, the use of an office, clinic, or other place, or for any other matters that relate to the rendering of a benefit, unless the charges are specifically authorized under the Act regulations or by the Commission.

There are a range of options available to the MSC in the event of a contravention of section 17. Some of these powers pertain only to physicians. However, the Lieutenant Governor in Council has recently proclaimed in effect, new powers under the Act which allow the MSC to audit the business practices of persons who carry on a business, and who the MSC believes have contravened the prohibition on extra billing. Additionally, the MSC may apply to the Supreme Court for an injunction restraining a person from contravening section 17.

...2

- 2 -

In view of the fact that the services received by [REDACTED] on April 12, 2007, appear to have been benefits, it seems that [REDACTED] should not have been charged a fee for those services or for any matter relating to the service.

In light of this information, I ask that you review the details of the services provided to [REDACTED] as well as the related charges for these services, and ensure that any charges not permitted under the Act are refunded to the payer within 30 days of receipt of this letter. If this does not occur, this matter will be referred to the MSC for their review and possible action.

Thank you in advance for your cooperation in this matter.

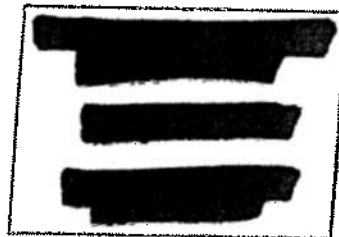
Sincerely,

ORIGINAL SIGNED BY

Phyllis Chuly
Executive Director
Medical Services Branch

[REDACTED]

[REDACTED]



March 27, 2008

This is Exhibit 55
 referred to in the Affidavit
 of BOB DE FAYE
 sworn before me this 23 day
 of JULY, 2009

695494

A Commissioner for taking Affidavits
 within British Columbia

Dear [REDACTED]

This is in response to your letter of June 25, 2007, to Health Insurance BC concerning charges you paid in return for services you received from Dr. Brian Day in April 2007. I apologize for the delay in this response.

Operating under the authority of the *Medicare Protection Act* (the Act), and the direction of the Medical Services Commission, the Medical Services Plan (MSP) pays for insured medical services (benefits) provided to residents of British Columbia. The Act establishes rules regarding billing for services provided by physicians who are enrolled with MSP. In general, patients (or their representatives) must not be charged for benefits. The Act also prohibits anyone from charging patients for "*materials, consultations, procedures, use of an office, clinic, or other place, or for any other matters that relate to the rendering of a benefit*" unless specifically permitted by the Medical Services Commission.

The Government of British Columbia is committed to upholding the principles of the *Medicare Protection Act* and to our publicly funded health care system, in which access to medically necessary services is based on a patient's clinical need rather than his or her ability to pay.

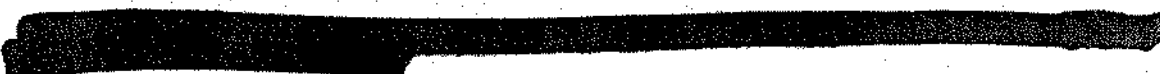

...2

- 2 -

Based on the information you have provided, it appears the services you received on April 12, 2007, were MSP benefits and you should not have been charged in relation to them. In light of this, we will send a request to the physician for a refund to you of any inappropriate charges. We will contact you within the next 45 days to determine if you have received your refund.

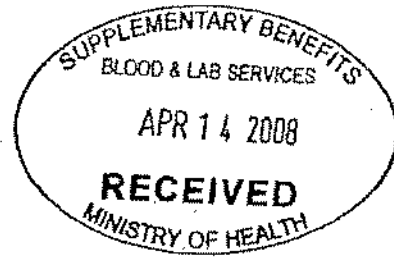
Sincerely,

Phyllis Chuly
Executive Director
Medical Services Branch





SPECIALIST
REFERRAL
CLINIC



April 7, 2008

Phyllis Chuly
Executive Director
Medical Services Division
3-1, 1515 Blanshard Street
Victoria, BC
V8W 3C8

Dear Ms. Chuly:

Re:

PHN: [REDACTED]

This is Exhibit 56
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 23 day
of JULY, 2009
A Commissioner for taking Affidavits
within British Columbia

Further to your letter of March 27, 2008, [REDACTED] underwent on April 12, 2007 a surgical procedure, which was an uninsured service, as described in the consent form, which [REDACTED] signed. In the Chaoulli decision of the Supreme Court of Canada, it was determined that individuals have a constitutional right to bypass medically unacceptable wait lists. [REDACTED] simply exercised [REDACTED] constitutional right as guaranteed by the Supreme Court of Canada. It is clear from the consent form that [REDACTED] was fully aware [REDACTED] was doing so.

Our legal advice is that the Chaoulli decision of the Supreme Court of Canada supersedes the authority of the sections of the Medicare Protection Act to which you refer. I would add that no surgeon, assistant, or anesthesiologist bills privately, or "extrabills," for their component of the service. Please note therefore, that in the case of [REDACTED] the surgeon, and others involved in [REDACTED] care, were not involved in any "extra billing", and had no financial dealings with the patient whatsoever.

Yours truly,

Brian Day, MB, MSc, MRCP, FRCS (Eng. & C)
Medical Director
Specialist Referral Clinic

01/19/2007 11:43

PAGE 01/05

CAMBIE
SURGERY
CENTRE

CAMBIE SURGERY CENTRE
2836 Ash Street, Vancouver, BC V5Z 3C6
Phone: (604) 874-1349 FAX: (604) 874-1549

Patient Consent to Surgical Treatment at Cambie Surgery Centre

- I understand that by undergoing surgery at the Cambie Surgery Centre I am paying privately for operating theatre costs.
- I accept fully that this is not an insured service under the Medical Services Plan of British Columbia (MSP) and because I am seeking treatment in a timeline that is shorter than the government standard that this represents a service that is not considered medically necessary.
- I understand that there is no entitlement to reimbursement by MSP or any government agency for this service, and that I will not seek government funding for these costs.
- I undertake to not seek re-imbursement from the MSP of BC or any other BC Government agency and I waive any entitlement in that regard.

Patient Name: [REDACTED]

Signature: [REDACTED]

Witness Name: [REDACTED]

Signature: [REDACTED]

Date: 04/11/07



The Best Place on Earth

FILE COPY

May 22, 2008

695494

Dear [REDACTED]

I am following up on my letter to you dated March 27, 2008, regarding charges you paid in relation to services you received from Dr. Brian Day on April 12, 2007.

We sent a letter to the physician/clinic requesting a refund to you of the fees you paid. Could you please let us know if you have received your refund by providing the following information and returning this letter to us?

1. Did you receive a refund?
Yes _____ No _____
2. If so, how much did you receive?
\$ _____

This is Exhibit 57
referred to in the Affidavit
of BOB DE FAYE
Sworn before me this 23 day
of JULY, 2009
A Commissioner for taking Affidavits
within British Columbia

If responding by mail, please return this letter to my attention at:

Medical Services Branch
Ministry of Health
3-1, 1515 Blanshard Street
Victoria BC V8W 3C8

If you would rather respond by email, please direct responses to questions 1 and 2 to:
MEDSERVE@gov.bc.ca

If you have not received the refund, we will refer the matter to the Medical Services Commission for review and possible action. Thank you for your attention to this letter.

Sincerely,

Phyllis Chuly
Executive Director
Medical Services Branch

This is Exhibit 58
 referred to in the Affidavit
 of BOB DE FAVE
 sworn before me this 23 day
 of JULY, 2009

A Commissioner for taking Affidavits
 within British Columbia



120000179587

Dec 21/06

Dear Sir:

following up on my phone call to you re:
 Medical Services of B.C. to-day.

I injured my right leg on Sept 12, 2005
 and enclosed is a list of all the tests I had,
 to find out the type of injury. With almost
 constant pain for a year I couldn't stand
 it any longer so I had to MRI which came
 up with torn cartilage. I am scheduled
 for surgery thru my medical services by
 an orthopaedic surgeon, Mr Peter O'Brien.
 This will take place at VGH on Jan 12th/07.

As I am on the low income bracket this
 was a financial burden.

I ~~hope~~ ^{want} to be reimbursed for the cost
 to me of \$1405.00

Thank You

Sincerely



**SPECIALIST
REFERRAL
CLINIC**

PAID

| Date | Invoice # |
|----------|-----------|
| 9/5/2006 | 12318 |

City Square Mall
#121 - 555 W 12th Ave.
Vancouver, BC V5Z 3X7

| |
|------------|
| Bill To |
| [REDACTED] |

| | | | Terms | Appointment ... | Doctors Name |
|----------------------------|--------------|--------------------------|----------------------|-----------------|---------------|
| | | | Due on Receipt | 9/5/2006 | Dr. M Gilbert |
| Description | | | Rate | | Amount |
| Consultation/Assessment | | | 500.00 | | 500.00T |
| Business Number: 863199311 | | | | | |
| Phone # | Fax # | E-mail | GST 30.00 | | |
| 604 737-7464 | 604 637-0941 | info@specialistclinic.ca | Total \$530.00 | | |
| | | | Balance Due \$530.00 | | |

Thank you for your business.

MRI REPORT

Patient Name

[REDACTED]

File Number

[REDACTED]

Claim Number

Date of Birth

[REDACTED]

Date of Exam

September 7, 2006

Date Reported

September 8, 2006

Referring Physician

Gilbart, M

Additional Copies

Horner, Richard H.
Patient

MRI OF THE RIGHT KNEE

History:

Lateral joint line pain and tenderness, along with tenderness in the region of the proximal tib-fib joint. To rule out a lateral meniscal tear.

Technique:

Sagittal T1. Sagittal and coronal MPGR. Coronal FSE T2 fat sat. Axial FSE PD fat sat. Oblique sagittal FSE T2.

Findings:

There is a small tear involving the free edge of the lateral meniscus at the junction of the body and posterior horn.

The medial meniscus, cruciate ligaments, and collateral ligaments are intact.

There is no joint effusion, bone marrow edema, osteochondral lesion, or loose body. No abnormality is appreciated involving the proximal tibiofibular joint.

Contained cystic fluid in the region of the PCL presumably represents an incidental ganglion.

The extensor mechanism is unremarkable

8/16/2006 2:49 PM FROM: Fax Canada Diagnostic Centers TO: [REDACTED] PAGE: 003 OF 003

n:

Small lateral meniscal tear.



Gordon Andrews, MD. FRCPC

This is Exhibit 59
 referred to in the Affidavit
 of BOB DE FAYE
 sworn before me this 23 day
 of JULY, 2009

A Commissioner for taking Affidavits
 within British Columbia



BRITISH
COLUMBIA

The Best Place on Earth

RUSH & TRACE

July 11, 2007

691684

CONFIDENTIAL

Dr. M. Gilbert
 Allan McGavin Sports Medicine Clinic
 3055 Wesbrook Mall
 Vancouver BC V6T 1Z3

Dear Dr. Gilbert:

The Medical Services Branch has received information indicating you provided insured services to a Medical Services Plan (MSP) beneficiary, and that the beneficiary was charged in relation to these services. The details are as follows:

Beneficiary: [REDACTED]
 PHN: [REDACTED]
 Procedure: Consultation
 Date of Service: September 5, 2006
 Amount Paid by Beneficiary: \$530

Operating under the authority of the *Medicare Protection Act* (the *Act*), and the direction of the Medical Services Commission, MSP pays for insured medical services (benefits) provided to residents of British Columbia.

The *Act* establishes rules regarding billing for services provided by physicians who are enrolled with MSP. Specifically, section 17 of the *Act*, expressly prohibits a person from charging a beneficiary [or a beneficiary's representative] for a benefit or for materials, consultations, procedures, the use of an office, clinic or other place or for any other matters that relate to the rendering of a benefit unless the charges are specifically authorized under the *Act*, regulations or by the Commission.

There are a range of options available to the Commission in the event of a contravention of section 17. The *Act* allows the Commission to assess and withhold payment for claims submitted by practitioners in cases of non-compliance. The Commission may also cancel a practitioner's enrolment for cause (which includes unlawful extra billing) for a period of time if the Commission determines that section 17 has been contravened.

- 2 -

Also, you should be aware that new powers under the *Act* have recently been proclaimed which, among other things, allow the Commission to apply to the Supreme Court for an injunction restraining a person from contravening section 17.

In view of the fact that the services received by [REDACTED] on September 5, 2006, appear to have been benefits, it seems that [REDACTED] could not have been charged a fee for those services or for any matter relating to the services.

In light of this information, I ask that you please review the details of the services you provided to [REDACTED] as well as any related charges for these services, and ensure that any charges not permitted under the *Act* are refunded to the payer within 30 days of receipt of this letter. If this does not occur, this matter will be referred to the Medical Services Commission for their review and possible action.

Thank you in advance for your cooperation in this matter.

Sincerely,

ORIGINAL SIGNED BY

Phyllis Chuly
Executive Director
Medical Services Branch

[REDACTED]

[REDACTED]

This is Exhibit 60
 referred to in the Affidavit
 of BOB DE FAYE
 sworn before me this 23 day
 of JULY, 2009

A Commissioner for taking Affidavits
 within British Columbia



BRITISH
COLUMBIA

The Best Place on Earth

RUSH & TRACE

July 11, 2007

691684

Dr. Brian Day
 Specialist Referral Clinic
 Suite 121, West 12th Ave.
 Vancouver BC V5Z 3X7

Dear Dr. Day:

The Medical Services Plan (MSP) has received information indicating insured services were provided at your clinic to a MSP beneficiary, and that the beneficiary was charged in relation to these services. The details are as follows:

Beneficiary: [REDACTED]
 PHN: [REDACTED]
 Procedure: Consultation
 Date of Service: September 5, 2006
 Amount Paid by Beneficiary: \$530

[REDACTED]

Operating under the authority of the *Medicare Protection Act* (the *Act*) and the direction of the Medical Services Commission (MSC), MSP pays for insured medical services (benefits) provided to residents of British Columbia.

The *Act* establishes rules regarding billing for services provided by physicians who are enrolled with MSP. Specifically, section 17 of the *Act*, expressly prohibits a person from charging a beneficiary (or a beneficiary's representative) for a benefit or for materials, consultations, procedures, the use of an office, clinic, or other place, or for any other matters that relate to the rendering of a benefit, unless the charges are specifically authorized under the *Act* regulations or by the Commission.

...2

- 2 -

There are a range of options available to the Commission in the event of a contravention of section 17. Some of these powers pertain only to physicians. However, the Lieutenant Governor in Council has recently proclaimed in effect, new powers under the *Act* which allow the Commission to audit the business practices of persons who carry on a business, and who the Commission believes have contravened the prohibition on extra billing. Additionally, the Commission may apply to the Supreme Court for an injunction restraining a person from contravening section 17.

In view of the fact that the services received by [REDACTED] on September 5, 2006, were benefits, it seems that [REDACTED] should not have been charged a fee for those services or for any matter relating to the service.

In light of this information, I ask that you review the details of the services provided to [REDACTED] as well as the related charges for these services, and ensure that any charges not permitted under the *Act* are refunded to the payer within 30 days of receipt of this letter. If this does not occur, this matter will be referred to the MSC for their review and possible action.

Thank you in advance for your cooperation in this matter.

Sincerely,

ORIGINAL SIGNED BY

Phyllis Chuly
Executive Director
Medical Services Division

[REDACTED]

[REDACTED]

This is Exhibit 61
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 23 day
of JULY, 2007

A Commissioner for taking Affidavits
within British Columbia



July 11, 2007

691684

[Redacted address block]

Dear [Redacted name],

Thank you for your letter of December 21, 2006, concerning charges you paid in return for services you received from Dr. Gilbert in September 2006. I apologize for the lengthy delay in responding.

Operating under the authority of the *Medicare Protection Act* (the *Act*), and the direction of the Medical Services Commission, the Medical Services Plan (MSP) pays for insured medical services (benefits) provided to residents of British Columbia. The *Act* establishes rules regarding billing for services provided by physicians who are enrolled with MSP. In general, patients (or their representatives) must not be charged for benefits. The *Act* also prohibits anyone from charging patients for "materials, consultations, procedures, use of an office, clinic, or other place, or for any other matters that relate to the rendering of a benefit" unless specifically permitted by the Medical Services Commission.

The Government of British Columbia is committed to upholding the principles of the *Medicare Protection Act* and to our publicly funded health care system, in which access to medically necessary services is based on a patient's clinical need rather than his or her ability to pay.

Based on the information you have provided, it appears the services you received on September 5, 2006, were MSP benefits and you should not have been charged in relation to them. In light of this, we will send a request to the physician for a refund to you of any inappropriate charges. We will contact you within the next 45 days to determine if you have received your refund.

Sincerely,

Phyllis Chuly
Executive Director
Medical Services Branch

Ministry of Health

Medical Services Branch

Medical Services Division

3-1, 1515 Blanshard Street
Victoria BC V8W 3C8
Telephone: 250 952-1706
Facsimile: 250 952-3133

[REDACTED]

[REDACTED]



SPECIALIST
REFERRAL
CLINIC

July 12, 2007

Phyllis Chuly
Executive Director
Medical Services Division
3-1, 1515 Blanshard Street
Victoria, BC
V8W 3C8

This is Exhibit 62
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 15 day
of JULY, 2007

A Commissioner for taking Affidavits
within British Columbia

Dear Ms. Chuly:

Re:

PHN [REDACTED]

Further to your letter of July 11, 2007, [REDACTED] was seen for the preparation of an Independent Medical Examination.

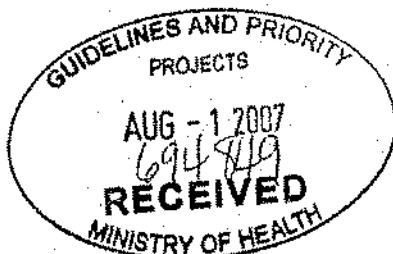
The Independent assessment bore no relation to any MSP insured activity.

[REDACTED] was fully aware of the fact that [REDACTED] was seeking an independent assessment for [REDACTED] own personal use and benefit, and that this was not an insured service under the Medical Services Plan. [REDACTED] signed a declaration to that effect.

Our clinic does not offer services available under the Medicare Protection Act, and all of our files are confidential (3rd party) reports, medico-legal opinions, worker's compensation and RCMP assessments. You have no authority to review such materials.

Sincerely,

Brian Day, MB, MSc, MRCP, FRCS (Eng. & C)
Medical Director
Specialist Referral Clinic



Hi Marilyn,
 63 for Thank-you
 the phone, you
 is receipt to be
 refunded S.A.P. as we
 have to go right back
 to Vancouver if not
 for the specialist
 referral my [redacted]
 would have lost [redacted]
 toes. We got sent from
 Dr. Younger to St. Pauls
 for MRI + sent to a
 vascular surgeon. [redacted]
 needs emerg. bypass
 surg. groin to knee,

with our great
 medical system,
 wouldn't get care for
 [redacted] except by the
 private clinic, without
 it my [redacted] without
 lose [redacted] would
 we never would have
 known about the lot
 till it killed [redacted]
 we just [redacted]
 from lack of proper
 care, what in God's
 name are we paying
 for extended medical?
 Sorry for venting,
 but we can't get any
 care in the north
 island, [redacted] →



PLEASE PASS ON THE
SERIOUS PROBLEM OF
LACK OF ACCESS + EXPAN.
FOR PEOPLE ON THE N.
ISLAND, IF YOU CAN +
ANYONE WHO CARES.

8/16/06

Anne

please return
Helen Kelly?

Thank

Patricia



145




**SPECIALIST
REFERRAL
CLINIC**

PAID

City Square Mall
#121 - 555 W 12th Ave.
Vancouver, BC V5Z 3X7

| Date | Invoice # |
|-----------|-----------|
| 5/18/2006 | 10947 |

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| Bill To |
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|----------------------------|--|----------------|-----------------|----------------------|
| | | Terms | Appointment ... | Doctors Name |
| | | Due on Receipt | 5/18/2006 | Dr. Alastair Younger |
| Description | | Rate | | Amount |
| Consultation/Assessment | | 500.00 | | 500.00T |
| Business Number: 863199311 | | | | |
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Thank you for your business.

DOB: 
H.N: 
Ph: 



RUSH & TRACE

June 26, 2007

663489

CONFIDENTIAL

Dr. Alistair Younger
560 - 114 Burrard St.
Vancouver BC V6Z 2A5

This is Exhibit 64
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 23 day
of JULY, 2009

A Commissioner for taking Affidavits
within British Columbia

Dear Dr. Younger:

The Medical Services Branch has received information indicating you provided an insured service to a Medical Services Plan (MSP) beneficiary, and that the beneficiary was charged in relation to this service. The details are as follows:

Beneficiary: [REDACTED]
PHN: [REDACTED]
Procedure: Consultation
Date of Service: May 18, 2006
Amount Paid by Beneficiary: \$535

Operating under the authority of the *Medicare Protection Act* (the *Act*), and the direction of the Medical Services Commission, MSP pays for insured medical services (benefits) provided to residents of British Columbia.

The *Act* establishes rules regarding billing for services provided by physicians who are enrolled with MSP. Specifically, section 17 of the *Act*, expressly prohibits a person from charging a beneficiary [or a beneficiary's representative] for a benefit or for materials, consultations, procedures, the use of an office, clinic or other place or for any other matters that relate to the rendering of a benefit unless the charges are specifically authorized under the *Act*, regulations or by the Commission.

There are a range of options available to the Commission in the event of a contravention of section 17. The *Act* allows the Commission to assess and withhold payment for claims submitted by practitioners in cases of non-compliance. The Commission may also cancel a practitioner's enrolment for cause (which includes unlawful extra billing) for a period of time if the Commission determines that section 17 has been contravened.

...2

Also, you should be aware that new powers under the *Act* have recently been proclaimed which, among other things, allow the Commission to apply to the Supreme Court for an injunction restraining a person from contravening section 17.

In view of the fact that the service received by [REDACTED] on May 18, 2006, is a benefit, it seems that [REDACTED] should not have been charged a fee for this service or for any matter relating to the service.

In light of this information, I ask that you please review the details of the services you provided to [REDACTED] as well as any related charges for these services, and ensure that any charges not permitted under the *Act* are refunded to the payer within 30 days of receipt of this letter. If this does not occur, this matter will be referred to the Medical Services Commission for their review and possible action.

Thank you in advance for your cooperation in this matter.

Sincerely,

ORIGINAL SIGNED BY

Phyllis Chuly
Executive Director
Medical Services Branch

[REDACTED]
[REDACTED]



RUSH & TRACE

June 26, 2007

Dr. Brian Day
Specialist Referral Clinic
Suite 121, West 12th Ave.
Vancouver BC V5Z 3X7

This is Exhibit 65
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 23 day
of JULY, 2009
A Commissioner for taking Affidavits
within British Columbia

663489

Dear Dr. Day:

The Medical Services Plan (MSP) has received information indicating insured services were provided at your clinic to a MSP beneficiary, and that the beneficiary was charged in relation to these services. The details are as follows:

Beneficiary: [REDACTED]
PHN: [REDACTED]
Procedure: Consultation
Date of Service: May 18, 2006
Amount Paid by Beneficiary: \$535

Operating under the authority of the *Medicare Protection Act* (the *Act*) and the direction of the Medical Services Commission (MSC), MSP pays for insured medical services (benefits) provided to residents of British Columbia.

The *Act* establishes rules regarding billing for services provided by physicians who are enrolled with MSP. Specifically, section 17 of the *Act*, expressly prohibits a person from charging a beneficiary (or a beneficiary's representative) for a benefit or for materials, consultations, procedures, the use of an office, clinic, or other place, or for any other matters that relate to the rendering of a benefit, unless the charges are specifically authorized under the *Act* regulations or by the Commission.

..2

- 2 -

There are a range of options available to the Commission in the event of a contravention of section 17. Some of these powers pertain only to physicians. However, the Lieutenant Governor in Council has recently proclaimed in effect, new powers under the *Act* which allow the Commission to audit the business practices of persons who carry on a business, and who the Commission believes have contravened the prohibition on extra billing. Additionally, the Commission may apply to the Supreme Court for an injunction restraining a person from contravening section 17.

In view of the fact that the services received by [REDACTED] on May 18, 2006, were benefits, it seems that [REDACTED] should not have been charged a fee for those services or for any matter relating to the service.

In light of this information, I ask that you review the details of the services provided to [REDACTED], as well as the related charges for these services, and ensure that any charges not permitted under the *Act* are refunded to the payer within 30 days of receipt of this letter. If this does not occur, this matter will be referred to the MSC for their review and possible action.

Thank you in advance for your cooperation in this matter.

Sincerely,

ORIGINAL SIGNED BY

Phyllis Chuly
Executive Director
Medical Services Division

[REDACTED]

[REDACTED]



August 21 2007

Follow Up by
MSB via
telephone - left
message.

June 26, 2007

[REDACTED]

This is Exhibit 66
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 23 day
of JULY, 2007

663489

A Commissioner for taking Affidavits
within British Columbia

Dear [REDACTED]

This is in response to [REDACTED] letter to Health Insurance BC concerning charges paid in return for services you received at the Specialist Referral Clinic in May of 2006. I sincerely apologize for the significant delay in this response.

Operating under the authority of the *Medicare Protection Act* (the *Act*), and the direction of the Medical Services Commission, the Medical Services Plan (MSP) pays for insured medical services (benefits) provided to residents of British Columbia. The *Act* establishes rules regarding billing for services provided by physicians who are enrolled with MSP. In general, patients (or their representatives) must not be charged for benefits. The *Act* also prohibits anyone from charging patients for "materials, consultations, procedures, use of an office, clinic, or other place, or for any other matters that relate to the rendering of a benefit" unless specifically permitted by the Medical Services Commission.

The Government of British Columbia is committed to upholding the principles of the *Medicare Protection Act* and to our publicly funded health care system, in which access to medically necessary services is based on a patient's clinical need rather than his or her ability to pay.

Based on the information you have provided, it appears the service you received on May 18, 2006, was an MSP benefit and you should not have been charged in relation to it. In light of this, we will send a request to the physician for a refund to you of any inappropriate charges. We will contact you within the next 45 days to determine if you have received your refund.

...2

- 2 -

In regards to issues with access to health care your family has experienced, I would encourage you to participate in the Conversation on Health. The province is seeking citizen input on approaches needed to improve our health care system. Plans for the future of the health care system in BC will be based on input received during this initiative. Details are available at www.bcconversationonhealth.ca or by calling toll free: 1-866-884-2055.



In case you are not aware, residents who are required to travel for medical care, the Travel Assistance Program (TAP) helps alleviate some of the transportation costs for eligible BC residents who must travel within the province for non-emergency medical specialist services not available in their own community. TAP claim forms are available from your GP or family physician at the time a referral to a specialist out of your community is made. Further information is available at: http://www.health.gov.bc.ca/msp/mtapp/tap_patient.html In addition, a transportation service for residents of Vancouver Island for non-emergency medical appointments on the Island, is available through your health authority's *Health Connections* program: <http://www.wheelsforwellness.com/index.htm>

Thank you for bringing this matter to our attention.

Sincerely,

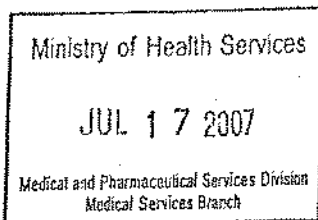
ORIGINAL SIGNED BY

Phyllis Chuly
Executive Director
Medical Services Branch





SPECIALIST
REFERRAL
CLINIC



July 9, 2007

Phyllis Chuly
Executive Director
Medical Services Division
3-1, 1515 Blanshard Street
Victoria, BC
V8W 3C8

Dear Ms. Chuly:

Re:

PHN: [REDACTED]

Further to your letter of June 26, 2007, [REDACTED] was seen for the preparation of an Independent Medical Examination.

The independent assessment bore no relation to any MSP insured activity.

It appears that the Independent Medical Examination was being sought in an effort to reopen an old Worker's Compensation claim.

Our clinic does not offer services available under the Medicare Protection Act, and all of our files are confidential (3rd party) reports, medico-legal opinions, worker's compensation and RCMP assessments. You have no authority to review such materials.

Sincerely,

Brian Day, MB, MSc, MRCP, FRCS (Eng. & C)
Medical Director
Specialist Referral Clinic

This is Exhibit 67
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 23 day
of JULY 2009
A Commissioner for taking Affidavits
within British Columbia

This is Exhibit 68
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 23 day
of JULY, 2009

A Commissioner for taking Affidavits
within British Columbia



Personal Health Number
[REDACTED]

Dear Sir or Madame,

In May 2005, I injured my right shoulder. I consulted my family doctor, (Dr. E. Jolly) who referred me to a physiotherapist. After five months of therapy I still could not raise my arm., so I consulted a second Physiotherapist, who recommended an X-Ray and an ultra sound. It was discovered there were full thickness tears in three tendons, possibly in four. My family doctor referred me to an orthopaedic specialist. There was a 5 month wait for an appointment plus an equal time for an operation both locally and in Vancouver.

My [REDACTED] suffers from Parkinsons disease and I am [REDACTED] only care giver. Facing at least a year's wait, I consulted Dr. Robert H. Hawkins at the Specialist Referral Clinic. I have enclosed his bill. I understand that M.S.A. will pay a portion of the bill. I hereby request such payment. My home phone number is [REDACTED]

Thank You.

Yours Truly
[REDACTED]
[REDACTED]

154

**SPECIALIST
REFERRAL
CLINIC**

PAID

City Square Mall
#121 - 555 W 12th Ave.
Vancouver, BC V5Z 3X7

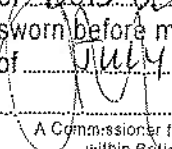
| Date | Invoice # |
|----------|-----------|
| 8/2/2006 | 11931 |

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|------------|
| Bill To |
| [REDACTED] |



| Terms | Appointment ... | Doctors Name |
|----------------|-----------------|---------------|
| Due on Receipt | 8/2/2006 | Dr. R Hawkins |

| Description | | Rate | Amount |
|----------------------------|--------------|--------------------------|----------|
| Consultation/Assessment | | 500.00 | 500.00 |
| Business Number: 863199311 | | | |
| Phone # | Fax # | E-mail | GST |
| 604 737-7464 | 604 637-0941 | info@specialistclinic.ca | 30.00 |
| Total | | | \$530.00 |
| Balance Due | | | \$530.00 |

Thank you for your business.

This is Exhibit 69
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 23 day
of JULY, 2009

A Commissioner for taking Affidavits
within British Columbia




APR 23 2008



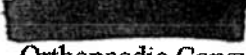
April 22, 2008

722492

Dr. Robert Hawkins
Regent Medical Building
550 - 2184 Broadway
Vancouver BC V6K 2E1

Dear Dr. Hawkins:

The Medical Services Branch has received information indicating you provided insured services to a Medical Services Plan (MSP) beneficiary, and that the beneficiary was charged in relation to these services. The details are as follows:

Beneficiary: 
PHN: 
Procedure: Orthopaedic Consultation
Date of Service: February 8, 2006
Amount Paid by Beneficiary: \$530

Operating under the authority of the *Medicare Protection Act* (the Act), and the direction of the Medical Services Commission, MSP pays for insured medical services (benefits) provided to residents of British Columbia.

The Act establishes rules regarding billing for services provided by physicians who are enrolled with MSP. Specifically, section 17 of the Act, expressly prohibits a person from charging a beneficiary [or a beneficiary's representative] for a benefit or for materials, consultations, procedures, the use of an office, clinic or other place or for any other matters that relate to the rendering of a benefit unless the charges are specifically authorized under the Act, regulations or by the Commission.

There are a range of options available to the Commission in the event of a contravention of section 17. The Act allows the Commission to assess and withhold payment for claims submitted by practitioners in cases of non-compliance. The Commission may also cancel a practitioner's enrolment for cause (which includes unlawful extra billing) for a period of time if the Commission determines that section 17 has been contravened.

.../2

- 2 -

Also, you should be aware that new powers under the *Act* have recently been proclaimed which, among other things, allow the Commission to apply to the Supreme Court for an injunction restraining a person from contravening section 17.

In view of the fact that the services received by [REDACTED] on February 8, 2008, appear to have been benefits, it seems that [REDACTED] should not have been charged a fee for those services or for any matter relating to the services.

In light of this information, I ask that you please review the details of the services you provided to [REDACTED] as well as any related charges for these services, and ensure that any charges not permitted under the Act are refunded to the payer within 30 days of receipt of this letter. If this does not occur, this matter will be referred to the Medical Services Commission for their review and possible action.

Thank you in advance for your cooperation in this matter.

Sincerely,

ORIGINAL SIGNED BY:

Phyllis Chuly
Executive Director
Medical Services Branch

[REDACTED]

[REDACTED]



BRITISH
COLUMBIA

The Best Place on Earth

APR 23 2008

April 22, 2008

722492

Dr. Brian Day
Medical Director
Specialist Referral Clinic
2836 Ash St
Vancouver BC V5Z 3C6

This is Exhibit 70
referred to in the Affidavit
of BOB DE RAYE
sworn before me this 23 day
of JULY, 2008

A Commissioner for taking Affidavits
within British Columbia

Dear Dr. Day:

The Medical Services Branch has received information indicating insured services were provided at your clinic to a Medical Services Plan (MSP) beneficiary, and that the beneficiary was charged in relation to these services. The details are as follows:

Beneficiary: [REDACTED]
PHN: [REDACTED]
Procedure: Orthopaedic Consultation
Date of Service: February 8, 2006
Amount Paid by Beneficiary: \$530

Operating under the authority of the *Medicare Protection Act* (the Act) and the direction of the Medical Services Commission (MSC), MSP pays for insured medical services (benefits) provided to residents of British Columbia.

The Act establishes rules regarding billing for services provided by physicians who are enrolled with MSP. Specifically, section 17 of the Act, expressly prohibits a person from charging a beneficiary (or a beneficiary's representative) for a benefit or for materials, consultations, procedures, the use of an office, clinic, or other place, or for any other matters that relate to the rendering of a benefit, unless the charges are specifically authorized under the Act regulations or by the Commission.

There are a range of options available to the Commission in the event of a contravention of section 17. Some of these powers pertain only to physicians. However, the Lieutenant Governor in Council has recently proclaimed in effect, new powers under the Act which allow the Commission to audit the business practices of persons who carry on a business, and who the Commission believes have contravened the prohibition on extra billing. Additionally, the Commission may apply to the Supreme Court for an injunction restraining a person from contravening section 17.

...2

Ministry of Health

Medical Services Branch

Medical Services Division

3-1, 1515 Blanshard Street
Victoria BC V8W 3C8
Telephone: 250 952-1706
Facsimile: 250 952-3133

- 2 -

In view of the fact that the services received by [REDACTED] on February 8, 2006, appear to have been benefits, it seems that [REDACTED] should not have been charged a fee for those services or for any matter relating to the service.

In light of this information, I ask that you review the details of the services provided to [REDACTED] as well as the related charges for these services, and ensure that any charges not permitted under the Act are refunded to the payer within 30 days of receipt of this letter. If this does not occur, this matter will be referred to the Medical Services Commission for their review and possible action.

Thank you in advance for your cooperation in this matter.

Sincerely,

ORIGINAL SIGNED BY:

Phyllis Chuly
Executive Director
Medical Services Branch

[REDACTED]

[REDACTED]

159



April 22, 2008

This is Exhibit 71
referred to in the Affidavit
of BOB DE PAVE
sworn before me this 23 day
of JULY, 2009

722492

A Commissioner for taking Affidavits
within British Columbia

[REDACTED]

This is in response to your letter to Health Insurance BC concerning charges you paid in return for services you received from Dr. Robert Hawkins in February 2006.

I was sorry to read of the situation you faced with your shoulder and hope you have experienced relief and regained your mobility. I also appreciate your situation being the caregiver to your husband.

Operating under the authority of the *Medicare Protection Act* (the *Act*), and the direction of the Medical Services Commission, the Medical Services Plan (MSP) pays for insured medical services (benefits) provided to residents of British Columbia. The *Act* establishes rules regarding billing for services provided by physicians who are enrolled with MSP. In general, patients (or their representatives) must not be charged for benefits. The *Act* also prohibits anyone from charging patients for "*materials, consultations, procedures, use of an office, clinic, or other place, or for any other matters that relate to the rendering of a benefit*" unless specifically permitted by the Medical Services Commission.

The Government of British Columbia is committed to upholding the principles of the *Medicare Protection Act* and to our publicly funded health care system, in which access to medically necessary services is based on a patient's clinical need rather than his or her ability to pay.

.../2



- 2 -

Based on the information you have provided, it appears the services you received on February 8, 2006, were MSP benefits and you should not have been charged in relation to them. In light of this, we will send a request to the physician for a refund to you of any inappropriate charges. We will contact you within the next 45 days to determine if you have received your refund.

Sincerely,

ORIGINAL SIGNED BY:

Phyllis Chuly
Executive Director
Medical Services Branch



From: [REDACTED]
Subject: [REDACTED]
Date: June 24, 2008 12:33:39 PM PDT (CA)



June 24, 2008.

Phyllis Chuly
Medical Services Division
Victoria B.C.

Dear Ms. Chuly

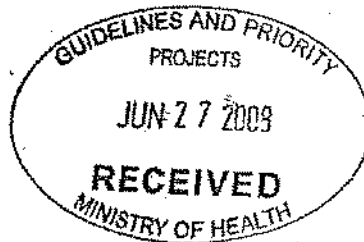
I recently received a copy of the consent form I signed at The Specialists Referral Clinic. I didn't read the third sentence carefully enough. I willingly paid the full amount, with no intention of applying for any reimbursement from the Provincial Plan.

Later on I discovered that many provinces refund the amount that the doctor's fee would be. I realize now that B.C. does not offer any refund.

I am sorry for any inconvenience I have caused.

Yours truly,

[REDACTED]



This is Exhibit 72
referred to in the Affidavit
of BOB DE PAYE
sworn before me this 23 day
of JULY, 2009

[Signature]

A Commissioner for taking Affidavits
within British Columbia

SPECIALIST REFERRAL CLINIC

City Square Mall
#121 - 555 W. 12th Ave
Vancouver, BC V5Z 3X7
www.specialistclinic.ca

phone 604.737.7464
fax 604.637.0941
toll free 1.866.737.7460

Patient Consent to Assessment by Specialist

- I understand that by attending the Specialist Referral Clinic (SRC) I am requesting an independent assessment by the SRC physician, which is for my own personal use and benefit.
- I accept fully that this is not an insured service under the Medical Services Plan of British Columbia (MSP).
- I further understand that there will be no reimbursement by MSP or any government agency for this service.
- A full report will be provided to the patient and if desired copies will be provided or sent to any designated third party, including any physician.

Patient Name: _____

Signature: _____

Witness Name: _____

Signature: _____

Date: _____

Aug. 2 - 06

How did you hear about us?

Maclean's Magazine



This is Exhibit 73
 referred to in the Affidavit
 of BOB DE FAYE
 sworn before me this 23 day
 of JULY, 2009
 Commissioner for taking Affidavits
 within British Columbia

June 16, 2008

722492

[Redacted]

Dear [Redacted]

I am following up on my letter to you dated April 22, 2008, regarding charges you paid in relation to services you received from Dr. Robert Hawkins on February 8, 2006.

We sent a letter to the physician/clinic requesting a refund to you of the fees you paid. Could you please let us know if you have received your refund by providing the following information and returning this letter to us?

1. Did you receive a refund?
 Yes _____ No ✓
2. If so, how much did you receive?
 \$ _____

If responding by mail, please return this letter to my attention at:

Medical Services Branch
 Ministry of Health
 3-1, 1515 Blanshard Street
 Victoria BC V8W 3C8

If you would rather respond by email, please direct responses to questions 1 and 2 to:
MEDSERVE@gov.bc.ca

If you have not received the refund, we will refer the matter to the Medical Services Commission for review and possible action. Thank you for your attention to this letter.

Sincerely,

Phyllis Chuly

Phyllis Chuly
 Executive Director
 Medical Services Branch

Ministry of Health

Medical Services Branch

Medical Services Division

3-1, 1515 Blanshard Street
 Victoria BC V8W 3C8
 Telephone: 250 952-1706
 Facsimile: 250 952-3133

August 14, 2007

CMA chief defends letting patients jump queue

BY ROD MICKLEBURGH

VANCOUVER -- The incoming president of the Canadian Medical Association says he allows patients at his private clinic to avoid long surgical waiting lists by paying cash and having their operations right away.

"If someone is in pain and needs surgery and is on a nine-month waiting list, do I think they should be able to bypass that queue? Absolutely yes," Brian Day said yesterday. "They can pay direct."

Such a policy would seem to violate the Canada Health Act, which prohibits patients from paying for medically necessary services.

But Dr. Day said the landmark 2005 Supreme Court of Canada decision known as the Chaoulli case has changed the ground rules for medicare.

According to the Supreme Court, patients in Quebec unable to receive timely access to various operations may buy private health insurance to cover procedures from the private sector.

Dr. Day said only a small percentage of patients pay cash to be treated at his highly successful Cambie Surgery Centre in Vancouver.

He agreed, however, that his policy of letting patients pay amounts to a form of two-tier health care. "But I don't think it's a good thing. I'd like to eliminate two-tier health care."

In fact, if strategies that he advocates to reduce waiting lists - introducing more competition - succeed, private clinics such as his may lose business, Dr. Day said.

"My mission is somewhat self-destructive to private health care. I don't want wait lists. I don't want anyone on them."

Still, the policy at Dr. Day's own clinic is indicative of the controversy that is likely to ensue when he begins his one-year tenure as the elected head of the usually staid CMA next week.

"It's obviously up to him, but I find it disappointing that he is allowing patients to jump the queue," said Danielle Martin of Canadian Doctors for Medicare.

This is Exhibit 74
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 23 day
of JULY, 2009
A Commissioner for taking Affidavits
within British Columbia

Dr. Day, a top-flight surgeon, is also an outspoken advocate of user fees for the well off, more private-sector involvement in health care and forcing hospitals to compete for patients.

In an interview, Dr. Day vowed not to sheathe his verbal sword despite his new role as spokesman for the country's 65,000 physicians.

"I'm not going to stop talking. Is the public going to hear from me? They sure are," he said.

"But I'm hoping I just won't be talking about change. I want to influence change. ..."

Dr. Martin said she agrees with Dr. Day that medicare has problems that need to be fixed, but having more physicians opting for the private sector would make matters even worse.

One of Dr. Day's main goals, he said, is to improve conditions for the "working poor" who don't have private health insurance by making those who can afford it pay.

A universal pharmacare program would end the current situation in which poorer Canadians without insurance have to pay the full cost of prescription drugs, while those with drug plans pay very little, Dr. Day said.



**SPECIALIST
REFERRAL
CLINIC**



GETTING
THE ANSWERS
YOU NEED



CORPORATE PROGRAMS
BOOK AN APPOINTMENT
RETURN TO WORK
ACUTE BACK PROGRAM
HEALTH+ PROGRAM
EXPEDITED INJURED
WORKERS CLINIC - WCB

This is Exhibit 75
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 23 day
of JULY, 2009
A Commissioner for taking Affidavits
within British Columbia

CONTACT INFORMATION
Specialist Referral Clinic
Suite 121
555 West 12th Ave.
Vancouver, BC
Canada, V5Z 3X7

Toll Free: 1-866-737-7460
Phone: 604-737-7464

Return^{TO} Work

WE CAN SAVE YOU MONEY. RETURN TO WORK IS A CORPORATE PROGRAM THAT PUTS PROFITS BACK INTO YOUR BOTTOM LINE.



If your executives or key employees are waiting for a specialist appointment, your business could suffer. The Specialist Referral Clinic is Canada's leader in private health care services. Our return to work program gives your injured employees rapid access to world class specialists, MRI's, CT's and advanced surgical techniques.

Send your employees to Canada's most advanced and professional Return To Work program.

- Appointments with specialists recognized for their expertise within 1-2 weeks.
- Reports completed within 3 business days. Quality reporting takes the guesswork out of your Return to Work plan.
- MRI's and CT's booked same day or within 1-2 days at Canada's premiere diagnostic Centre. Conveniently located in the same building, specialists can speak directly with the radiologists.
- Our comprehensive spine program is the only one of its kind in Canada. With four specialists of the spine we can reduce absenteeism due to back injuries.

QUICK ACCESS TO CANADA'S MOST ADVANCED SURGICAL CENTRE.

At the SRC we can expedite all approved surgeries at Canada's most advanced surgical centre - the Cambie Surgery Centre (CSC). Equipped with the best technology, the CSC allows surgeons to utilize minimally invasive surgical techniques and technology not available in other facilities. Ultimately this results in faster recovery.

At the Cambie Surgery Centre your employees can experience premiere healthcare where their needs come first.

©2007 Specialist Referral Clinic, SRC, All rights reserved.

This website is intended for Canadian audiences only.

CAMBIE

SURGERY CENTRE

This is Exhibit 76
 referred to in the Affidavit
 of BOB DE PAYS
 sworn before me this 23 day
 of July, 2009
 A Commissioner for taking Affidavits
 within British Columbia

| | | | | | | |
|------|------------|--------------|----------|------------|------|---------|
| Home | Our Centre | Patient Care | Surgeons | Technology | News | Contact |
|------|------------|--------------|----------|------------|------|---------|

Approved Procedures

- SURGEONS
- PROCEDURES

SURGICAL PROCEDURES CURRENTLY AVAILABLE

Procedures authorized by the Committee on Non-Hospital Medical Surgical Facilities to be performed at Cambie Surgery Centre approved by the Committee - June 2004

ANAESTHESIOLOGY

- General Anaesthesia
- Intra-venous
- Inhalation
- Nerve blocks - pain control
- Peripheral nerve block
- Regional
- Spinal
- Steroid injection

DENTISTRY

- General (carries, repair, crown)
- Minor oral surgery
- Multiple root
- Restorative dentistry
- Root resection
- Single root

EYE SURGERY

- Blepharoplasty
- Cataract surgery, including lens implantation
- Phakic Lens Implant
- IOL
- Lens Exchange

GYNECOLOGY

- Burch procedure
- Dilatation and curettage
- Endometrial resection or balloon therapy ablation
- Hysteroscopic procedures including:
 - Myoma resection
 - Endometrial ablation
 - Septum incision
 - Adhesiolysis
- Operative Laparoscopy including:
 - Salpingo-ovariolysis
 - Salpingectomy
 - Oophorectomy
 - Ovarian cystectomy
- Reversal of sterilization using operating microscope
- Tubal ligation & laparoscopy

ORAL & MAXILLOFACIAL SURGERY

- Abscess/sequestrectomy
- Bone grafting
- Excision cysts and tumors
- Extraction, transplantation, re-

- Corneal surgery
- Dacryocystorhinostomy
- Entropion, ectropion, eversion
- Lid: excision, biopsy or reconstruction
- Lid surgical reconstruction
- Ptosis repairs

FACIAL AND PLASTIC SURGERY

- Abdominoplasty
- Blepharoplasty
- Buttock lift, thigh lift
- Calf implant
- Cosmetic laser surgery (CO2 Coherent Laser) - [Certificate of training and reference letter required by the College before approval is granted]
- Dermabrasion
- Dupuytren's contracture repair/excision
- Face lift and forehead lift surgery
- Facial chemosurgery
- Facial implant insertion
- Fat injection
- Hair transplantation
- Implant revision and removal
- Injectable soft tissue augmentation
- Liposuction
- Malar implants, repositioning osteotomy
- Mastopexy, nipple reconstruction
- Mentoplasty (including chin implantation and horizontal osteotomy)
- Otoplasty
- Removal of skin tumors and primary reconstructions
- Repair of facial fractures
- Repair of facial lacerations
- Rhinoplasty and septoplasty
- Skin and Subcutaneous Tissue
 - Suture Lacerations

- implantation
- Fistula repair
- Implant reconstruction
- Maxillary sinus surgery
- Reconstruction bone and soft tissue surgery
- Sinus surgery

ORTHOPAEDIC SURGERY

- Arthroscopic, arthrotomy/endoscopic surgery of all amenable joints
- Bone grafting non-union of fractures and pseudoarthrosis
- Miscellaneous neurolysis and nerve repair or graft
- Osteotomy closed and osteotomy open (excluding open osteotomy or major bones - ie: femur, tibia, pelvis, etc)
- Tendon repairs and reconstructions
- Knee
 - Arthroscopic surgery, including meniscal surgery, synovectomy
 - Oxford Knee Replacement
 - Reconstruction/Repair of Ligaments
- Shoulder
 - Acromioplasty
 - Arthroplasty
 - Arthroscopy /Sub Acromial Decompression
 - Bankart/Rotator Cuff Repair
 - Biceps Tenodesis or Repair
 - Capsular Shrinkage
 - Excision of Distal Head of Clavicle
 - Fixation Osteochondral Fracture
 - Fusion
 - Ligament/Labral Repair
 - Removal of Hardware
 - Shoulder Stabilization
- Hand

- Excision/biopsy lesions (nevi, skin, cancers, etc)
- I & D
- Breasts
 - Augmentation
 - Excision of benign cyst or tumor
 - I & D of abscess
 - Reduction mammoplasty
 - Subcutaneous mastectomy

GENERAL AND MISCELLANEOUS

- Arterial puncture
- Biopsy, gland, muscle, or superficial tissue
- Biopsy, synovium
- Lymph nodes, superficial biopsy and I & D
- Abscesses, superficial - including breast, I & D
- Burns, localized treatment
- Removal of foreign bodies
- Excision of superficial scars, cysts or tumors
- Cervical sympathectomy

GENERAL SURGERY

- Biopsy
- Breast biopsy
- Endoscopic polyp resection
- Excision of pilonidal cyst or sinus
- Excision and repair by skin graft
- Excision of breast cyst or tumor
- Laparoscopic cholecystectomy
- Mastectomy
- Skin laceration - repair
- 1st rib resection
- Lymph Nodes - Axillary dissection
- Abdominal - General
 - Drainage of perineal abscess
 - Biopsy or excision

- Arthroplasty
- Arthroplasty finger, thumb, carpus and wrist
- Ganglion excision
- Internal fixation of fractures
- NEW : Needle Aponeurotomy
- Neurolysis
- Palmar fasciotomy and fasciectomy
- Repair boutonniere deformity
- Repair of digital nerves
- Repair of tendons: flexor, extensor
- Skin graft
- Synovectomy
- Tendon transplants
- Tenodesis, tenolysis and tendon transfers and grafts
- Treatment of infection
- Spine
 - Two level and single level lumbar discectomies
 - Two level and single level lumbar laminectomies for spinal stenosis
 - Two level and single level anterior discectomies
- Foot
 - Foot & Ankle Fusion
 - Ankle Ligament Repair
 - Gastrocnemius Repair
 - Achilles Repair
 - Calcaneal Osteotomy
 - Ankle Arthroscopy
 - Ankle Arthroplasty
 - Tibial Tendon Augmentation
 - Fixation Osteochondral Fracture
 - Removal of Hardware

OTOLARYNGOLOGY HEAD & NECK SURGERY

- Excision of lesions of oral cavity
- Laser endoscopic removal of

- Hernia repair
- Hemorrhoidectomy
- Fissurectomy
- Lateral Sphincterotomy
- Fistulotomy
- Lesions
- Minor facial fractures repair
- Myringotomy
- Otoplasty
- Reconstruction surgery of facial bones
- Rhinoplasty
- Salivary glands and ducts
- Submucous resection of septum or turbinates
- Tracheostomy (emergency)
- Tympanoplasty
- Uvuloplasty

UROLOGY

- Penoplasty, penile vein ligation
- Vasectomy and vasectomy reversal

VASCULAR SURGERY

- Varicose vein injection
- Varicose vein surgery
- Fasciotomy for Compartment Syndrome
- Insertion Vascular Access Device

172

84/87/2009 14:47

PAGE 02



Ministry of Health
Medical Services Plan

Service Verification Group
Ministry of Health
Victoria, B.C. V8W 3C8
Phone Toll Free
1-800-742-3664

COPY

SURVEY ONLY, DO NOT PAY

S09-0006

000460

MARCH 31, 2009

PHN #

Dear

The Medical Services Plan (MSP) provides coverage to eligible British Columbia residents by paying for the services provided by medical and health care practitioners in accordance with the provisions of the *Medicare Protection Act and Regulations*.

You have been selected through a random process to participate in this service verification survey. We request your assistance in reviewing the service(s) listed below that MSP has paid on your behalf to ensure they have been recorded and billed correctly.

Please note this does not imply any wrongdoing by you or your practitioner.

Please mark the appropriate box to indicate whether the date(s) and service(s) are correct or not correct. If any of the information is not correct, please add additional details on the back of this letter. See over for a description of the service if applicable.

Practitioner: DR RAMESH LAL SAHJPAUL, NEUROSURGERY

| <u>Date of Service</u> | <u>Service</u> | <u>Correct</u> | <u>Not Correct</u> |
|------------------------|--------------------|--------------------------|--------------------------|
| OCT 29, 2008 | SURGICAL PROCEDURE | <input type="checkbox"/> | <input type="checkbox"/> |

Please return this letter in the enclosed pre-stamped envelope. For more information about this survey call 1-800-742-3664 toll free from anywhere in BC.

Thank you for your cooperation.

Sincerely

Leslie Halston
Administrator, Service Verification Group

SIGNATURE

RELATIONSHIP TO ADDRESSEE (parent, spouse, caregiver, etc.)

This is Exhibit 77
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 25 day
of JULY, 2009

Commissioner for taking Affidavits
within British Columbia

MEMORANDUM

COPY

TO: MINISTRY OF HEALTH
SERVICE VERIFICATION GROUP

VIA FAX - 250 - 356-2386

FROM: [REDACTED]
Phone: [REDACTED] Fax: [REDACTED]

SUBJECT: [REDACTED] - SURGERY

DATE: PHN # [REDACTED]

APRIL 7/09

This is Exhibit 78
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 23 day
of JULY, 2009
A Commissioner for taking Affidavits
within British Columbia

MESSAGE:

As per our conversation please
find the following:

- 1 Ministry Survey letter - March 31/09
- 2 My letter of today
3. Specialist Referral Clinic

Invoice # 24799 - mailed paid
" # 25289 - " " "

4 Invoice from Canada Diagnostic
Centre - 2008 1027-17 - which
I paid.

Apparently none of this qualified for my
ministry of health plan. However it appears
that the doctor is caught with his hand
in the candy dish. Regards. [REDACTED]

174

04/07/2009 14:47 [REDACTED] [REDACTED]

PAGE 83

COPY

[REDACTED]
Box [REDACTED]

April 7, 2009

Ministry of Health
Service Verification Group
Victoria, BC V8W 3C8

Attention: Leslie Halston : *FAY 250 356 2386*

Dear Sir/Madam:

Re: PHN [REDACTED]

Surgery - October 29, 2008

Dr. R. Sahjpaul, Neurosurgery

What a surprise to receive your query re the surgery I had on October 29, 2008.

I cannot understand why a claim was submitted. This surgery was done through the Specialist Referral Clinic and I paid over \$9,000 for my MRI, private consultation and surgery. I also signed documentation stating that none of these costs would be covered by the BC Medical Services Plan.

I believe that this is a fraudulent claim and I will be seeking legal assistance to recover all off my costs from Dr. Sahjpaul. Should you need any receipts or other documentation I would be more than willing to submit copies to you.

I would appreciate receiving copies of any documentation that you can forward or we will have our Lawyer request them. Your comments would be most appreciated.

Yours truly,
[REDACTED]

175

04/07/2009 14:47

PAGE 04



SPECIALIST
REFERRAL
CLINIC

City Square Mall
#121 - 555 W 12th Ave.
Vancouver, BC V5Z 3X7

| Date | Invoice # |
|------------|-----------|
| 19/09/2008 | 24799 |

PAID

COPY

| |
|------------|
| Bill To |
| [Redacted] |

| Terms | | Appointment ... | Doctors Name |
|---|--------------|--------------------------|----------------|
| Due on Receipt | | 19/09/2008 | Dr R. Sahjpaal |
| Description | | Rate | Amount |
| Independent Medical Assessment for Personal Use | | 750.00 | 750.00 |
| Phone # | Fax # | E-mail | GST |
| 604 737-7464 | 604 637-0941 | info@specialistclinic.ca | 0.00 |
| Total | | | \$750.00 |
| Balance Due | | | \$0.00 |

Thank you for your business.

176

84/87/2889 14:47

PAGE 05



**SPECIALIST
REFERRAL
CLINIC**

City Square Mall
#121 - 555 W 12th Ave.
Vancouver, BC V5Z 3X7

| Date | Invoice # |
|------------|-----------|
| 10/28/2008 | 25289 |

PAID

COPY

Bill To

[Redacted]

| Terms | | Appointment ... | Doctors Name | |
|------------------------|--------------|--------------------------|------------------|--|
| Due on Receipt | | 10/29/2008 | Dr. R. Sahjpaul | |
| Description | | Rate | Amount | |
| Prepayment for Surgery | | 7,520.00 | 7,520.00 | |
| Overnight stays at CSC | | 1,050.00 | 1,050.00 | |
| Phone # | Fax # | E-mail | GST 0.00 | |
| 604 737-7464 | 604 637-0941 | info@specialistclinic.ca | Total \$8,570.00 | |
| Balance Due | | | \$0.00 | |

Thank you for your business.



SPECIALIST
REFERRAL
CLINIC

This is Exhibit 79
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 23 day
of JULY, 2009
A Commissioner for taking Affidavits
within British Columbia

September 19, 2008

[REDACTED]

Dear [REDACTED]

I met with you on September 19, 2008 at the Specialist Referral Clinic for the purposes of an Independent Medical Assessment.

The enclosed report documents my findings and recommendations.

Thank you for the opportunity of being involved in your care.

Sincerely,

R. Sahjpal, MD, FRCSC
Neurosurgery
RS/er

Enclosure



SPECIALIST
REFERRAL
CLINIC

This is Exhibit 80
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 23 day
of JULY, 2009

2a

A Commissioner for taking Affidavits
within British Columbia

Independent Medical Assessment for [REDACTED] on September 19, 2008

[REDACTED] was seen at the Specialist Referral Clinic today. [REDACTED] was accompanied by [REDACTED]. [REDACTED] is a 70-year-old [REDACTED] who is still working. Two years ago, [REDACTED] noticed onset of discomfort in the right buttock radiating down the anterior thigh and anterior leg associated with dancing and then progressively noticeable when [REDACTED] was walking. [REDACTED] would obtain relief by sitting down. Symptoms became progressively worse to the point that [REDACTED] now has a steady numbness and tingling in the right anterior thigh along with worsening of this symptom when [REDACTED] stands. [REDACTED] has constant numbness and a wet feeling in [REDACTED] right medial leg and foot. [REDACTED] has also noticed some weakness in [REDACTED] right leg when going down stairs. [REDACTED] denies any left leg symptoms or bowel or bladder difficulties.

Past Medical History: Hypertension, borderline diabetes diet controlled. A farm accident 30 years ago resulted in bilateral arm fractures requiring surgery with metal plates. Right inguinal hernia recently diagnosed with planned surgery.

Medications: Adalat, a diuretic and another anti-hypertensive.
Allergies: Tylenol 3 causes vomiting.

Physical Examination: [REDACTED] is a healthy appearing [REDACTED]. [REDACTED] was cooperative throughout the examination. External examination of [REDACTED] spine is normal. Neurologically [REDACTED] examination reveals wasting of the right quadriceps muscle, weakness in right knee extension and right ankle eversion. [REDACTED] has reduced sensation in the right L4 distribution, reduction in the right knee jerk.

Investigations: MRI lumbar spine July 4, 2008, Medical Imaging Consultants, Edmonton — The scout images are not readily available, but there appears to be a right L4 – 5 extraforaminal disc herniation compressing the right L4 nerve root. Interestingly, the radiology report does not indicate this.

Summary: [REDACTED] has a clear cut right L4 nerve root syndrome with subjective symptoms and objective deficits. The MRI scan is not quite ideal as it does not label the images left to right on the sagittal sequences. The axial images certainly suggest a right L4 nerve root compression from an extraforaminal disc. Certainly, a repeat MRI scan would not be unreasonable.

Assuming that the MRI scan will confirm my impression, I have discussed the treatment options. [REDACTED] is interested in surgery and I certainly agree surgery is a very good treatment for [REDACTED] situation. The risks of surgery, including but not limited to infection, nerve root injury, CSF leak, chronic pain syndrome, and general medical and anesthetic complications have been explained. [REDACTED] is aware that the weakness will persist as will some degree of sensory deficit, however, I suspect [REDACTED] stands a very good chance of improvement in the degree of pain and then with therapy [REDACTED] can begin to strengthen [REDACTED] leg.

Page 2

RE: [REDACTED]

[REDACTED] understands and [REDACTED] is eager to proceed and I will make the necessary arrangements for follow-up MRI scan and plan for right L4 - 5 extraforaminal microdiscectomy.

R. Sahjpaul, MD, FRCSC

Neurosurgery

Dictated but not read

RS/er

cc: Dr. R. Moody
Cambie Surgery Centre

46

CAMBIE SURGERY CENTRE

OPERATIVE REPORT

DATE OF OPERATION: October 29, 2008

PATIENT NAME: [REDACTED]

PREOPERATIVE DIAGNOSIS: Right L4-5 foramina/extracranial disk herniation.

POSTOPERATIVE DIAGNOSIS: Right L4-5 foramina/extracranial disk herniation.

NAME OF OPERATION: Right L4-5 Intra and extracranial microdiscectomy.

SURGEON: Dr. Ramesh Sahjpau

ASSISTANT: Dr. Samaroo

ANAESTHETIST: Dr. W. Fenz

ANAESTHETIC: General.

This is Exhibit 81
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 23 day
of JULY, 2009

A Commissioner for taking Affidavits
within British Columbia

Operative Findings:

Initially a right-sided extracranial exposure was undertaken. The L4 nerve root was identified and was not under any pressure in the far extracranial space. I followed the nerve root as far as proximally as I could, but I was not able to confidently identify a disk herniation. Then, an intraspinal decompression was performed, extending the laminotomy rostrally along the L4 hemi lamina to identify both the L4 and L5 nerve roots. A lateral disk herniation was identified and this was removed via an intraspinal standard exposure. I was then able to decompress the L4 nerve root.

Clinical Note:

This [REDACTED] was admitted for surgery after a full discussion of the therapeutic options available to [REDACTED]. The risks and benefits had been explained.

Operative Note:

Under general intubational anesthetic, the patient was positioned prone on the Wilson frame and pressure points protected. The lumbar area was prepared and draped in sterile fashion. An initial localizing x-ray was obtained. A right paramedian incision was made at the L4-5 level. Dissection proceeded down to the right L4-5 transverse processes. The intertransverse ligament was removed and the L4 nerve root identified. Operative findings are described above.

Once the procedure was completed, the wound was irrigated thoroughly and closed over a Hemovac drain with absorbable sutures followed by Steri-Strips. A dressing was applied, anesthesia reversed, and the patient was transferred to the Recovery Room in stable condition.

181

APR/07/2009/TUE 10:05 AM Specialist Ref Clin

FAX No. 604-637-0941

P.004

(4e)

CAMBIE SURGERY CENTRE - OPERATIVE REPORT
DATE OF OPERATION: October 29, 2008
PATIENT NAME: [REDACTED]

Page 2

Instrument, needle, and sponge counts were correct and estimated blood loss was 100 cc.

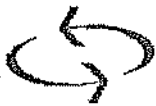
Cambie Surgeries Corporation

Ramesh Sahjpaul, MD, FRCSC
Dictated but not read
RS/cg

cc: Dr. Ramesh Sahjpaul
Dr. R. Moody
Specialist Referral Clinic
CSC

d: October 29, 2008
t: October 29, 2008

182



SPECIALIST
REFERRAL
CLINIC

This is Exhibit 82
referred to in the Affidavit
of Bob DE FAYE
sworn before me this 23 day
of JULY, 2009
A Commissioner for taking Affidavits
within British Columbia

(1)

SPECIALIST REFERRAL CLINIC

Patient Consent to Assessment by Specialist

PLEASE READ CAREFULLY BEFORE SIGNING

- I understand that by attending the Specialist Referral Clinic (SRC) I am requesting an independent assessment by the SRC physician, which is for my own personal use and benefit.
- I accept fully that this is not an insured service under the Medical Services Plan of British Columbia (MSP).
- I further understand that there will be no reimbursement by MSP or any government agency for this service.
- I understand not to seek any such reimbursement
- A full report will be provided to the patient and if desired copies will be provided or sent to any designated third party, including physician.

Patient Name: [REDACTED]

Signature: [REDACTED]

Witness Name: [REDACTED]

Signature: [REDACTED]

Date: Sept 19 / 08

City Square Mall, #121, 555 West 12th Avenue Vancouver, B.C. V5Z 3X7
Phone: 604-737-7484
Fax: 604-637-0941

8750 surgery
800 MIR
750 splunk

Oct 15/08

Plaza 500 Hotel

follow up
6 weeks later

Stay until

Saturday morning

Return Tuesday - October 28

183

This is Exhibit 83
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 23 day
of JULY, 2009
A Commissioner for taking Affidavits
within British Columbia



June 8, 2009

785141

[REDACTED]

Dear [REDACTED]

I have been forwarded a copy of your letter dated April 7, 2009, addressed to the Service Verification Group concerning charges you paid in return for services you received from Dr. Sahipaul in September and October 2008. I very much appreciate your ongoing cooperation and offer to forward any further documentation that you may have given in relation to these services.

Operating under the authority of the *Medicare Protection Act* (the Act), and the direction of the Medical Services Commission, the Medical Services Plan (MSP) pays for insured medical services (benefits) provided to residents of British Columbia. The Act establishes rules regarding billing for services provided by physicians who are enrolled with MSP. In general, patients (or their representatives) must not be charged for benefits. The Act also prohibits anyone from charging patients for "*materials, consultations, procedures, use of an office, clinic, or other place, or for any other matters that relate to the rendering of a benefit*" unless specifically permitted by the Medical Services Commission.

Based on the information you have provided, it appears the services you received on September 19 and October 29, 2009, were MSP benefits and you should not have been charged in relation to them. In light of this, I will send a request to the physician for a refund to you of any inappropriate charges. I will then contact you after 45 days to determine if you have received your refund.

Please note that MRI scans are considered a provincial health insurance benefit only when performed at a public hospital or through a formal contract between a health authority and a private provider.

.../2

- 2 -

The Government of British Columbia is committed to upholding the principles of the *Medicare Protection Act* and to our publicly funded health care system, in which access to medically necessary services is based on a patient's clinical need rather than his or her ability to pay.

Sincerely,



Phyllis Chuly
Executive Director
Medical Services Branch



This is Exhibit 84
referred to in the Affidavit
of BDB DEPAVE
sworn before me this 23 day
of JULY, 2009
A Commissioner for taking Affidavits
within British Columbia

June 8, 2009

785141

Dr. Ramesh Sahjpaul
405 - 125 13th St E
North Vancouver BC V7L 2L3

Dear Dr. Sahjpaul:

The Medical Services Branch has received information indicating you provided insured services to a Medical Services Plan (MSP) beneficiary, and that the beneficiary was charged in relation to these services. The details are as follows:

Beneficiary: [REDACTED]
PHN: [REDACTED]
Procedure: Consultation and Laminectomy
Date of Service: September 19, and October 29, 2008
Amount Paid by Beneficiary: \$750 and \$8570

Operating under the authority of the *Medicare Protection Act* (the Act), and the direction of the Medical Services Commission, MSP pays for insured medical services (benefits) provided to residents of British Columbia.

The Act establishes rules regarding billing for services provided by physicians who are enrolled with MSP. Specifically, section 17 of the Act, expressly prohibits a person from charging a beneficiary [or a beneficiary's representative] for a benefit or for materials, consultations, procedures, the use of an office, clinic or other place or for any other matters that relate to the rendering of a benefit unless the charges are specifically authorized under the Act, regulations or by the Commission.

There are a range of options available to the Commission in the event of a contravention of section 17. The Act allows the Commission to assess and withhold payment for claims submitted by practitioners in cases of non-compliance. The Commission may also cancel a practitioner's enrolment for cause (which includes unlawful extra billing) for a period of time if the Commission determines that section 17 has been contravened.

...2

- 2 -

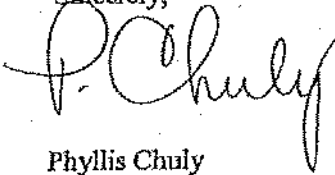
Also, you should be aware that new powers under the Act have recently been proclaimed which, among other things, allow the Commission to apply to the Supreme Court for an injunction restraining a person from contravening section 17.

In view of the fact that the services received by [REDACTED] on September 19 and October 29, 2008, were benefits, it seems that [REDACTED] should not have been charged a fee for those services or for any matter relating to the services.

In light of this information, I ask that you please review the details of the services you provided to [REDACTED] as well as any related charges for these services, and ensure that any charges not permitted under the Act are refunded to the payer within 30 days of receipt of this letter. If this does not occur, this matter will be referred to the Medical Services Commission for their review and possible action.

Thank you in advance for your cooperation in this matter.

Sincerely,



Phyllis Chuly
Executive Director
Medical Services Branch

This is Exhibit 85
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 23 day
of JULY, 2009
Commissioner for taking Affidavits
within British Columbia



June 8, 2009

785141

Dr. William Penz
30 - 3088 Francis Rd
Richmond BC V7C 5V9

Dear Dr. Penz:

The Medical Services Branch has received information indicating you provided insured services to a Medical Services Plan (MSP) beneficiary, and that the beneficiary was charged in relation to these services. The details are as follows:

Beneficiary: [REDACTED]
PHN: [REDACTED]
Procedure: Consultation and Laminectomy
Date of Service: September 19, and October 29, 2008
Amount Paid by Beneficiary: \$750 and \$8570

Operating under the authority of the *Medicare Protection Act* (the Act), and the direction of the Medical Services Commission, MSP pays for insured medical services (benefits) provided to residents of British Columbia.

The Act establishes rules regarding billing for services provided by physicians who are enrolled with MSP. Specifically, section 17 of the Act, expressly prohibits a person from charging a beneficiary [or a beneficiary's representative] for a benefit or for materials, consultations, procedures, the use of an office, clinic or other place or for any other matters that relate to the rendering of a benefit unless the charges are specifically authorized under the Act, regulations or by the Commission.

There are a range of options available to the Commission in the event of a contravention of section 17. The Act allows the Commission to assess and withhold payment for claims submitted by practitioners in cases of non-compliance. The Commission may also cancel a practitioner's enrolment for cause (which includes unlawful extra billing) for a period of time if the Commission determines that section 17 has been contravened.

- 2 -

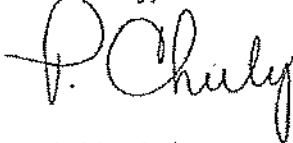
Also, you should be aware that new powers under the Act have recently been proclaimed which, among other things, allow the Commission to apply to the Supreme Court for an injunction restraining a person from contravening section 17.

In view of the fact that the services received by [REDACTED] on September 19 and October 29, 2008, were benefits, it seems that [REDACTED] should not have been charged a fee for those services or for any matter relating to the services.

In light of this information, I ask that you please review the details of the services you provided to [REDACTED] as well as any related charges for these services, and ensure that any charges not permitted under the Act are refunded to the payer within 30 days of receipt of this letter. If this does not occur, this matter will be referred to the Medical Services Commission for their review and possible action.

Thank you in advance for your cooperation in this matter.

Sincerely,



Phyllis Chuly
Executive Director
Medical Services Branch

189

This is Exhibit 86
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 23 day
of JULY, 2009

A Commissioner for taking Affidavits
within British Columbia



June 8, 2009

785141

Dr. Brian Day
Medical Director
Specialist Referral Clinic
2836 Ash St
Vancouver BC V5Z 3C6

Dear Dr. Day:

The Medical Services Branch has received information indicating insured services were provided at your clinic to a Medical Services Plan (MSP) beneficiary, and that the beneficiary was charged in relation to these services. The details are as follows:

Beneficiary: [REDACTED]
PHN: [REDACTED]
Procedure: Consultation and Laminectomy
Date of Service: September 19, and October 29, 2008
Amount Paid by Beneficiary: \$750 and \$8570

Operating under the authority of the *Medicare Protection Act* (the Act) and the direction of the Medical Services Commission (MSC), MSP pays for insured medical services (benefits) provided to residents of British Columbia.

The Act establishes rules regarding billing for services provided by physicians who are enrolled with MSP. Specifically, section 17 of the Act, expressly prohibits a person from charging a beneficiary (or a beneficiary's representative) for a benefit or for materials, consultations, procedures, the use of an office, clinic, or other place, or for any other matters that relate to the rendering of a benefit, unless the charges are specifically authorized under the Act, regulations or by the Commission.

There are a range of options available to the Commission in the event of a contravention of section 17. Some of these powers pertain only to physicians. However, the Lieutenant Governor in Council has recently proclaimed in effect, new powers under the Act which allow the Commission to audit the business practices of persons who carry on a business, and who the Commission believes have contravened the prohibition on extra billing. Additionally, the Commission may apply to the Supreme Court for an injunction restraining a person from contravening section 17.

...2

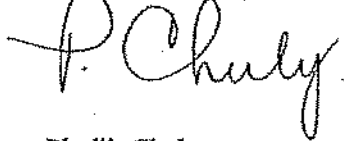
- 2 -

In view of the fact that the services received by [REDACTED] on September 19, and October 29, 2008 were benefits, it seems that [REDACTED] should not have been charged a fee for those services or for any matter relating to the service.

In light of this information, I ask that you review the details of the services provided to [REDACTED] as well as the related charges for these services, and ensure that any charges not permitted under the Act are refunded to the payer within 30 days of receipt of this letter. If this does not occur, this matter will be referred to the Medical Services Commission for their review and possible action.

Thank you in advance for your cooperation in this matter.

Sincerely,



Phyllis Chuly
Executive Director
Medical Services Branch

CAMBIE

SURGERY CENTRE

This is Exhibit 87
referred to in the Affidavit
of BDB DE FAYE
sworn before me this 23 day
of July, 2009

A Commissioner for taking Affidavits
within British Columbia

June 16, 2009

Phyllis Chuly
Executive Director
Medical Services Branch
3-1, 1515 Blanshard Street
Victoria, BC V8W 3C8



Dear Ms. Chuly:

Re: [REDACTED]
PHN: [REDACTED]

Further to your letter of June 8, 2009, [REDACTED] was seen for the preparation of an Independent Medical Assessment. With respect to the \$750 fee, this was an independent assessment that bore no relation to any MSP insured activity.

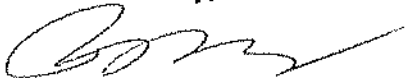
[REDACTED] was fully aware of the fact that [REDACTED] was seeking an independent medical assessment for [REDACTED] own personal use and benefit, and that this was not an insured service under the Medical Services Plan. [REDACTED] signed a declaration to that effect. Our clinic does not offer services available under the Medicare Protection Act, and all of our files are confidential (3rd party) reports, medico-legal opinions, worker's compensation and RCMP assessments.

Independent reports may be used for many non MSP insured purposes the individual seeking them requires (legal, driver's license, disability or life insurance, pilot's physical, executive physical etc.).

With respect to the surgical procedure, this was for an uninsured service, as described in the consent form, which [REDACTED] signed. In the Chaoulli decision of the Supreme Court of Canada, it was determined that individuals have a constitutional right to bypass medically unacceptable wait lists. [REDACTED] simply exercised [REDACTED] constitutional right as guaranteed by the Supreme Court of Canada. It is clear from the consent form that [REDACTED] was fully aware [REDACTED] was doing so.

Our legal advice is that the Chaoulli decision of the Supreme Court of Canada supersedes the authority of the sections of the Medicare Protection Act to which you refer. I would add that no surgeon, assistant, or anesthesiologist bills privately, or "extrabills," for their component of the service. Please note therefore, that in the case of [REDACTED], Dr. William Penz, and others involved in his care, were not involved in any "extra billing", and had no financial dealings with the patient whatsoever.

Yours truly,



Brian Day, MB, MSc, MRCP, FRCS (Eng. & C)
Medical Director
Cambie Surgery Centre

CAMBIE

SURGERY CENTRE

This is Exhibit 88
referred to in the Affidavit
of BOB DE FOYE
sworn before me this 23 day
of JULY, 2009
A Commissioner for taking Affidavits
within British Columbia

July 8, 2009

Phyllis Chuly
Executive Director
Medical Services Branch
3-1, 1515 Blanshard Street
Victoria, BC V8W 3C8



Dear Ms. Chuly:

Re:

PHN: [REDACTED]

Further to your letter of June 8, 2009, [REDACTED] was seen for the preparation of an Independent Medical Assessment. With respect to the \$750 fee, this was an independent assessment that bore no relation to any MSP insured activity.

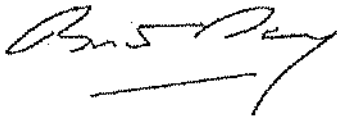
[REDACTED] was fully aware of the fact that [REDACTED] was seeking an independent medical assessment for [REDACTED] own personal use and benefit, and that this was not an insured service under the Medical Services Plan. [REDACTED] signed a declaration to that effect. Our clinic does not offer services available under the Medicare Protection Act, and all of our files are confidential (3rd party) reports, medico-legal opinions, worker's compensation and RCMP assessments.

Independent reports may be used for many non MSP insured purposes the individual seeking them requires (legal, driver's license, disability or life insurance, pilot's physical, executive physical etc.).

With respect to the surgical procedure, this was for an uninsured service, as described in the consent form, which [REDACTED] signed. In the Chaoulli decision of the Supreme Court of Canada, it was determined that individuals have a constitutional right to bypass medically unacceptable wait lists. [REDACTED] simply exercised [REDACTED] constitutional right as guaranteed by the Supreme Court of Canada. It is clear from the consent form that [REDACTED] was fully aware [REDACTED] was doing so.

Our legal advice is that the Chaoulli decision of the Supreme Court of Canada supersedes the authority of the sections of the Medicare Protection Act to which you refer. I would add that no surgeon, assistant, or anesthesiologist bills privately, or "extrabills," for their component of the service. Please note therefore, that in the case of [REDACTED] Dr. Ramesh Sahjpaul and others involved in his care, were not involved in any "extra billing", and had no financial dealings with the patient whatsoever.

Yours truly,



Brian Day, MB, MSc, MRCP, FRCS (Eng. & C)
Medical Director
Cambie Surgery Centre

This is Exhibit 89
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 23 day
of JULY, 2009

A Commissioner for taking Affidavits
within British Columbia

March 27, 2009

BC Minister of Health, Hon. George Abbott
PO Box 9050
STN PROV GOVT
V8W 9E2

| | | | |
|--------------------------------|--------------------------------|--|--|
| MSD | | MINISTER'S OFFICE HEALTH | |
| # 778584 | | | |
| DRAFT <input type="checkbox"/> | REPLY <input type="checkbox"/> | APR 08 2009 | |
| FYI <input type="checkbox"/> | | <input checked="" type="checkbox"/> REPLY DIRECT | |
| REMARKS | | <input type="checkbox"/> FILE | |
| <input type="checkbox"/> AA | <input type="checkbox"/> MA | <input type="checkbox"/> SA | |
| <input type="checkbox"/> EA | <input type="checkbox"/> CCU | <input type="checkbox"/> DM | |

Re: Expedited Surgery at Private Clinic

Dear Minister Abbott;

I am writing to advise you of a recent expedited surgery my 15 year-old [REDACTED]
[REDACTED] had to undergo in order to repair a badly damaged knee.

As the attached assessment states, [REDACTED] injured [REDACTED] knee at [REDACTED]
[REDACTED] Fastpitch Tournament in [REDACTED] July 13th. [REDACTED] was
unable to walk and taken off the field on a stretcher to the on-site first-aid facility. Here
[REDACTED] was assessed by medical personnel and advised that the injury was serious and [REDACTED]
should [REDACTED] physician or go to emergency at Peace Arch Hospital. We chose to go to
Peace Arch as [REDACTED] does not have a family doctor. After waiting a couple of hours,
until about mid-night, we decided to leave the hospital without seeing a doctor.

After discussions with various people, some in the medical profession and some parents
of other athletes, we understood that waits for MRI's could be months, and surgery
several months longer, in fact we were aware of other athletes that had less serious
injury who were waiting 6 to 9 months for this type of care - we could not wait, our
[REDACTED] was in pain and had no ability to move [REDACTED] right leg/knee, [REDACTED] was immobile
without the assistance of crutches. Fearing for [REDACTED] future mobility, and a potential end
to [REDACTED] promising athletic scholarship opportunities, my wife took [REDACTED] to False Creek
Urgent Care Centre where [REDACTED] underwent an MRI and consulted with a physician. We
left there with MRI images and an assessment of severe meniscus damage with possible
ACL damage as well; plus paid a fee of \$1525.00 to cover these services. We were
desperate.

A parent on [REDACTED] team is a practicing Physiotherapist and attempted to gain access to UBC Sports Medicine through an acquaintance in order to try to expedite surgery, with no luck. Waiting lists on the BC Medical site indicated a six-week to six-month wait for various surgeons; False Creek called and said they could do the surgery within a few days. We were quoted a fee for surgical services and subsequently contacted Cambie Surgery Centre through the Specialist Referral Clinic to look for an option. After visiting and consulting with a surgeon they quoted a similar fee for services, \$ 4500.00 for the meniscus and another \$2700.00 if during surgery it was discovered that the ACL required reconstruction. Upon leaving Cambie we paid another service fee of \$500.00. Of course we were not happy about having to spend thousands of dollars, but without a family doctor to act as an advocate on [REDACTED] behalf we felt we had no choice, we had been advised that the sooner the knee was operated on the better chance of recovery, or there could be serious long-term damage. After doing some quick on-line research we felt more comfortable with the surgeon at Cambie and booked surgery for August 5th.

As the attached assessment letters indicate, [REDACTED] did require significant repair to the meniscus as well as an ACL reconstruction with hamstring auto graft, along with a 6 to 9 month recovery period including extensive physiotherapy during that time. We paid the invoice for \$7215.00, and were now out-of-pocket to the sum of \$9,240.00 for what really was emergency surgery on a fifteen year-old resident of British Columbia. In addition we have spent close to \$3000.00 on physician prescribed rehabilitation therapy with a physiotherapist - therapy that was absolutely necessary in order to heal correctly and to avoid future life altering mobility issues - something I still have a hard time understanding why this is not covered under the BC Medical system; the physiotherapy isn't optional it is as important as the surgery itself! I have a Health Spending Account at my place of work that covered a total of \$1000.00 of my \$12,000.00 out-of-pocket costs, in a Province and Country that espouses the wonders and benefits of "no fee" universal health care.

Honourable Minister, I am asking for you to consider covering [REDACTED] medical expenses as necessary under the Canada Health Act and Provincial Health Act, and to follow through on the Liberal governments promise to vigorously defend the laws which prevent B.C. patients from paying for expedited surgery in private clinics and to ensure the Medicare Protection Act is up-held. Being born and raised in British Columbia and with three teenagers entering post-secondary education, my wife and I can ill afford to pay these medical bills, but we felt we were left with no options in order to ensure the long term health of [REDACTED] I anxiously await your positive response.

Sincerely yours,



197



**SPECIALIST
REFERRAL
CLINIC**

City Square Mall
#121 - 555 W 12th Ave.
Vancouver, BC V5Z 3X7

| Date | Invoice # |
|------------|-----------|
| 28/07/2008 | 24007 |

PAID

| |
|------------|
| Bill To |
| [REDACTED] |

| Terms | | | Appointment ... | Doctors Name |
|---|--------------|--------------------------|-----------------|----------------|
| Due on Receipt | | | 28/07/2008 | Dr. M. Gilbert |
| Description | | | Rate | Amount |
| Independent Medical Assessment for Personal Use | | | 500.00 | 500.00 |
| Phone # | Fax # | E-mail | GST 0.00 | |
| 604 737-7464 | 604 637-0941 | info@specialistclinic.ca | Total | \$500.00 |
| | | | Balance Due | \$0.00 |

Thank you for your business.



**SPECIALIST
REFERRAL
CLINIC**

City Square Mall
#121 - 555 W 12th Ave.
Vancouver, BC V5Z 3X7

| Date | Invoice # |
|------------|-----------|
| 30/07/2008 | 24049 |

PAID

Bill To

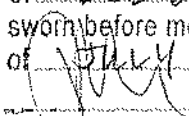


| Terms | | | Appointment ... | Doctors Name |
|------------------------|--------------|--------------------------|-----------------|----------------|
| Due on Receipt | | | 05/08/2008 | Dr. M. Giffart |
| Description | | | Rate | Amount |
| Prepayment for Surgery | | | 7,215.00 | 7,215.00 |
| Phone # | Fax # | E-mail | GST 0.00 | |
| 604 737-7464 | 604 637-0941 | info@specialistclinic.ca | Total | \$7,215.00 |
| | | | Balance Due | \$0.00 |

Thank you for your business.



SPECIALIST
REFERRAL
CLINIC

This is Exhibit 90
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 23 day
of JULY, 2009

A Commissioner for taking Affidavits
within British Columbia

July 28, 2008

[REDACTED]

Dear [REDACTED]

I met with you on July 28, 2008 at the Specialist Referral Clinic for the purposes of an Independent Medical Assessment.

The enclosed report documents my findings and recommendations.

Thank you for the opportunity of being involved in your care.

Sincerely,

Michael Gilbert, MD, MEd., FRCS(C)
Assistant Professor, Department of Orthopaedic Surgery
University of British Columbia
MG/er

Enclosure



SPECIALIST
REFERRAL
CLINIC

Independent Medical Assessment for [REDACTED] on July 28, 2008

I reviewed [REDACTED] for an Independent Medical Assessment today regarding [REDACTED] right knee. [REDACTED] presented with [REDACTED] mother to the clinic today.

[REDACTED] is a 15-year-old [REDACTED] who is a competitive [REDACTED] player. [REDACTED] has aspirations and plans to perform at the collegiate level in the United States and hopes to play US College [REDACTED] on scholarship.

[REDACTED] plays [REDACTED]. Approximately two weeks ago, [REDACTED] was playing [REDACTED] and [REDACTED] felt a locking episode occur to [REDACTED] right knee. [REDACTED] felt a twisting occur while [REDACTED] had [REDACTED] right knee flexed. [REDACTED] was unable to fully straighten [REDACTED] right knee. [REDACTED] has associated pain.

[REDACTED] has had three episodes in which when [REDACTED] [REDACTED] has had locking of [REDACTED] right knee. In each case, [REDACTED] knee locks in approximately 90° of flexion and [REDACTED] is unable to straighten. [REDACTED] has associated clicking in the knee and has had associated swelling.

[REDACTED] first episode occurred in approximately March, 2008.

[REDACTED] was planning to attend a US College [REDACTED] in late October, 2008.

[REDACTED] has not had any physiotherapy on [REDACTED] right knee. [REDACTED] denied any preexisting history of right knee symptoms except for one twinge which occurred to [REDACTED] right knee with a potential mild locking episode when [REDACTED] was age 11. [REDACTED] has had MRIs and x-rays performed at False Creek.

Past Medical History: Unremarkable for any cardiac or pulmonary problems. No history of diabetes, hypertension or hypercholesterolemia. No previous surgical history.

Medications: None.

Allergies: None.

Physical Examination: On physical examination, [REDACTED] has a normal standing limb alignment. [REDACTED] is unable to fully straighten [REDACTED] right knee and is ambulating with two crutches. Range of motion of [REDACTED] right knee is 15° to 125°. With forced extension [REDACTED] can extend to -8° of extension. [REDACTED] has mild quadriceps muscle atrophy. [REDACTED] has a mild to moderate right knee effusion. No patellofemoral, medial or lateral facet tenderness. Negative patellofemoral crepitus. [REDACTED] right knee has negative Lachman, negative anterior and posterior drawer. I was unable to perform pivot shift test. [REDACTED] right knee is stable to varus and valgus stress testing with a stable LCL and MCL.

Page 2

RE: [REDACTED]

[REDACTED] has had an MRI performed at False Creek, as well as x-rays. Neither of these were available for me to review today. According to the history provided by [REDACTED] and [REDACTED] mother, [REDACTED] has a displaced bucket handle lateral meniscal tear, as well as an ACL strain.

Assessment and Plan: [REDACTED] has signs and symptoms consistent with a locked right knee. [REDACTED] has a displaced bucket handle tear of the lateral meniscus. This is flipped in the intercondylar notch. [REDACTED] requires arthroscopy and meniscal surgery for this with possible repair.

At the same time, I would evaluate [REDACTED] ACL, to determine whether or not this is, in fact, lax also. If in fact [REDACTED] ACL was found to be lax, [REDACTED] may also be a candidate for an ACL reconstruction with hamstring autograft at the same operative setting. We discussed all nonoperative and operative treatment options. We will make the appropriate arrangements for this surgery in the near future.

Michael Gilbert, MD, M.Ed., FRCS(C)
Assistant Professor, Department of Orthopaedic Surgery
University of British Columbia
Dictated but not read
MG/er

cc: Cambie Surgery Centre



SPECIALIST
REFERRAL
CLINIC

This is Exhibit 91
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 23 day
of July, 2009
A Commissioner for taking Affidavits
within British Columbia

Post-Operative Assessment for [REDACTED] on August 11, 2008

I reviewed [REDACTED] for a postoperative follow-up today regarding [REDACTED] right knee. [REDACTED] underwent a right knee ACL reconstruction as well as a lateral meniscal tear.

Unfortunately, [REDACTED] was told by the nurse postoperative day 3 [REDACTED] could discontinue the use of [REDACTED] crutches. [REDACTED] has therefore been performing some ambulation on [REDACTED] right knee without crutches.

I specifically met with the family following surgery and instructed for [REDACTED] to remain toe touch weightbearing. It is important for [REDACTED] at this point in time to remain toe touch weightbearing on the right knee and I have reinforced this to them today in order to allow [REDACTED] lateral meniscal tear to heal.

Physical Examination: [REDACTED] has incisions which are clean, dry and well healed. Range of motion of the right knee is 4° to 90°. [REDACTED] has negative Lachman, negative anterior and posterior drawer. [REDACTED] has a moderate right knee effusion.

Assessment and Plan: I have given [REDACTED] and [REDACTED] another today instructions regarding postoperative physiotherapy. I will review [REDACTED] again at the three month mark postoperatively. [REDACTED] should remain toe touch weight bearing on the knee until five weeks postoperatively, progressing with partial weightbearing. [REDACTED] can discontinue the use of [REDACTED] crutches six weeks postoperatively.

I will plan to review [REDACTED] at three months postoperatively.

Michael Gilbert, MD, MEd., FRCS(C)
Assistant Professor, Department of Orthopaedic Surgery
University of British Columbia
Dictated but not read
MG/er



SPECIALIST
REFERRAL
CLINIC

Follow Up Assessment for [REDACTED] on February 9, 2009

I reviewed [REDACTED] MR arthrogram of the right knee today. This was performed January 15, 2009. I also had a telephone conversation with [REDACTED] mother, and spoke with [REDACTED] physiotherapist, [REDACTED]

[REDACTED] stated that [REDACTED] is lacking terminal 3 – 4° of extension, but is able to regain this full extension with physiotherapy. [REDACTED] only has flexion to approximately 120° however. [REDACTED] is limited by pain in this position.

I have instructed [REDACTED]'s mom to book a follow-up appointment for me to reassess [REDACTED] in the near future. I will plan to do so and to give a final impression as to whether [REDACTED] requires an arthroscopic debridement and manipulation under anesthesia. My general feeling at this point in time, however, is that this will likely be required given [REDACTED] current symptomatology.

Michael Gilbert, MD, M.Ed., FRCS(C)
Assistant Professor, Department of Orthopaedic Surgery
University of British Columbia
Dictated but not read
MG/er



SPECIALIST
REFERRAL
CLINIC

Follow Up Assessment for [REDACTED] on February 13, 2009

I reviewed [REDACTED] for repeat clinical assessment today regarding [REDACTED] right knee. [REDACTED] is now approximately six months following [REDACTED] right knee ACL reconstruction, lateral meniscal repair. [REDACTED] is having some ongoing stiffness in [REDACTED] right knee.

[REDACTED] suffered an injury approximately the 2½ month mark postoperatively. An MRI was performed which revealed evidence of a very small vertical defect within the body of the lateral meniscus with no evidence of a lateral meniscal re-tear. There were post surgical changes in Hoffa's fat pad. Clinical correlation to exclude the possibility of arthrofibrosis is useful. The ACL graft is otherwise intact.

Physical Examination: [REDACTED] has a range of motion of the right knee of approximately 6° to 115°. [REDACTED] has negative Lachman and negative anterior and posterior drawer. Negative pivot shift test.

Assessment/Plan: Overall [REDACTED] has a persistently stiff left knee now six months following [REDACTED] ACL reconstruction. [REDACTED] requires an aggressive debridement of the knee, liberation, and manipulation under anesthesia. I have discussed this with [REDACTED] and [REDACTED] mother today. We will make the appropriate arrangements for this surgery in the near future.

Michael Gilbert, MD, MEd, FRCS(C)
Assistant Professor, Department of Orthopaedic Surgery
University of British Columbia
Dictated but not read
MG/er



The Best Place on Earth

This is Exhibit 92
 referred to in the Affidavit
 of BOB DE FAYE
 sworn before me this 23 day
 of JULY, 2009
 A Commissioner for taking Affidavits
 within British Columbia

April 28, 2009

778584

Dr. Michael Gilbert
 UBC Hospital
 2nd Floor, Unit 2
 Vancouver BC V6T 2B5

Dear Dr. Gilbert:

The Medical Services Branch has received information indicating you provided insured services to a Medical Services Plan (MSP) beneficiary, and that the beneficiary was charged in relation to these services. The details are as follows:

Beneficiary: [REDACTED]
 PHN: [REDACTED]
 Procedure: Consultation and Knee Surgery
 Date of Service: July 28 and August 5, 2008
 Amount Paid by Beneficiary: \$500 and 7215

Operating under the authority of the *Medicare Protection Act* (the Act), and the direction of the Medical Services Commission, MSP pays for insured medical services (benefits) provided to residents of British Columbia.

The Act establishes rules regarding billing for services provided by physicians who are enrolled with MSP. Specifically, section 17 of the Act, expressly prohibits a person from charging a beneficiary [or a beneficiary's representative] for a benefit or for materials, consultations, procedures, the use of an office, clinic or other place or for any other matters that relate to the rendering of a benefit unless the charges are specifically authorized under the Act, regulations or by the Commission.

There are a range of options available to the Commission in the event of a contravention of section 17. The Act allows the Commission to assess and withhold payment for claims submitted by practitioners in cases of non-compliance. The Commission may also cancel a practitioner's enrolment for cause (which includes unlawful extra billing) for a period of time if the Commission determines that section 17 has been contravened.

...2

- 2 -

Also, you should be aware that new powers under the Act have recently been proclaimed which, among other things, allow the Commission to apply to the Supreme Court for an injunction restraining a person from contravening section 17.

In view of the fact that the services received by [REDACTED] on July 28 and August 5, 2008 were benefits, it seems that [REDACTED] should not have been charged a fee for those services or for any matter relating to the services.

In light of this information, I ask that you please review the details of the services you provided to [REDACTED] as well as any related charges for these services, and ensure that any charges not permitted under the Act are refunded to the payer within 30 days of receipt of this letter. If this does not occur, this matter will be referred to the Medical Services Commission for their review and possible action.

Thank you in advance for your cooperation in this matter.

Sincerely,

Phyllis Chuly
Executive Director
Medical Services Branch

[REDACTED]

[REDACTED]



This is Exhibit 93
 referred to in the Affidavit
 of BOB DE FAYE
 sworn before me this 23 day
 of July, 2009
 A Commissioner for taking Affidavits
 within British Columbia

April 28, 2009

778584

Dr. Anne-Marie Bedard
 3415 - 910 10th Ave W
 Vancouver BC V5Z 1M9

Dear Dr. Bedard:

The Medical Services Branch has received information indicating you provided insured services to a Medical Services Plan (MSP) beneficiary, and that the beneficiary was charged in relation to these services. The details are as follows:

Beneficiary: [REDACTED]
 PHN: [REDACTED]
 Procedure: Consultation and Knee Surgery
 Date of Service: July 28 and August 5, 2008
 Amount Paid by Beneficiary: \$500 and 7215

Operating under the authority of the *Medicare Protection Act* (the Act), and the direction of the Medical Services Commission, MSP pays for insured medical services (benefits) provided to residents of British Columbia.

The Act establishes rules regarding billing for services provided by physicians who are enrolled with MSP. Specifically, section 17 of the Act, expressly prohibits a person from charging a beneficiary [or a beneficiary's representative] for a benefit or for materials, consultations, procedures, the use of an office, clinic or other place or for any other matters that relate to the rendering of a benefit unless the charges are specifically authorized under the Act, regulations or by the Commission.

There are a range of options available to the Commission in the event of a contravention of section 17. The Act allows the Commission to assess and withhold payment for claims submitted by practitioners in cases of non-compliance. The Commission may also cancel a practitioner's enrolment for cause (which includes unlawful extra billing) for a period of time if the Commission determines that section 17 has been contravened.

...2

- 2 -

Also, you should be aware that new powers under the Act have recently been proclaimed which, among other things, allow the Commission to apply to the Supreme Court for an injunction restraining a person from contravening section 17.

In view of the fact that the services received by [REDACTED] on July 28 and August 5, 2008 were benefits, it seems that [REDACTED] should not have been charged a fee for those services or for any matter relating to the services.

In light of this information, I ask that you please review the details of the services you provided to [REDACTED] as well as any related charges for these services, and ensure that any charges not permitted under the Act are refunded to the payer within 30 days of receipt of this letter. If this does not occur, this matter will be referred to the Medical Services Commission for their review and possible action.

Thank you in advance for your cooperation in this matter.

Sincerely,

Phyllis Chuly
Executive Director
Medical Services Branch

[REDACTED]

[REDACTED]



April 28, 2009

778584

Dr. Kurt Samer
310 – 2055 Yukon St
Vancouver BC V5Y 4B7

Dear Dr. Samer:

The Medical Services Branch has received information indicating you provided insured services to a Medical Services Plan (MSP) beneficiary, and that the beneficiary was charged in relation to these services. The details are as follows:

Beneficiary: [REDACTED]
PHN: [REDACTED]
Procedure: Consultation and Knee Surgery
Date of Service: July 28 and August 5, 2008
Amount Paid by Beneficiary: \$500 and 7215

Operating under the authority of the *Medicare Protection Act* (the Act), and the direction of the Medical Services Commission, MSP pays for insured medical services (benefits) provided to residents of British Columbia.

The Act establishes rules regarding billing for services provided by physicians who are enrolled with MSP. Specifically, section 17 of the Act, expressly prohibits a person from charging a beneficiary [or a beneficiary's representative] for a benefit or for materials, consultations, procedures, the use of an office, clinic or other place or for any other matters that relate to the rendering of a benefit unless the charges are specifically authorized under the Act, regulations or by the Commission.

There are a range of options available to the Commission in the event of a contravention of section 17. The Act allows the Commission to assess and withhold payment for claims submitted by practitioners in cases of non-compliance. The Commission may also cancel a practitioner's enrolment for cause (which includes unlawful extra billing) for a period of time if the Commission determines that section 17 has been contravened.

...2

- 2 -

Also, you should be aware that new powers under the Act have recently been proclaimed which, among other things, allow the Commission to apply to the Supreme Court for an injunction restraining a person from contravening section 17.

In view of the fact that the services received by [REDACTED] on July 28 and August 5, 2008 were benefits, it seems that [REDACTED] should not have been charged a fee for those services or for any matter relating to the services.

In light of this information, I ask that you please review the details of the services you provided to [REDACTED], as well as any related charges for these services, and ensure that any charges not permitted under the Act are refunded to the payer within 30 days of receipt of this letter. If this does not occur, this matter will be referred to the Medical Services Commission for their review and possible action.

Thank you in advance for your cooperation in this matter.

Sincerely,

Phyllis Chuly
Executive Director
Medical Services Branch

[REDACTED]

[REDACTED]



This is Exhibit 94
 referred to in the Affidavit
 of BOB DE FAYE
 sworn before me this 23 day
 of JULY, 2009
 A Commissioner for taking Affidavits
 within British Columbia

April 28, 2009

778584

Dr. Brian Day
 Medical Director
 Specialist Referral Clinic
 2836 Ash St
 Vancouver BC V5Z 3C6

Dear Dr. Day:

The Medical Services Branch has received information indicating insured services were provided at your clinic to a Medical Services Plan (MSP) beneficiary, and that the beneficiary was charged in relation to these services. The details are as follows:

Beneficiary: [REDACTED]
 PHN: [REDACTED]
 Procedure: Consultation and Knee Surgery
 Date of Service: July 28 and August 5, 2008
 Amount Paid by Beneficiary: \$500 and 7215

Operating under the authority of the *Medicare Protection Act* (the Act) and the direction of the Medical Services Commission (MSC), MSP pays for insured medical services (benefits) provided to residents of British Columbia.

The Act establishes rules regarding billing for services provided by physicians who are enrolled with MSP. Specifically, section 17 of the Act, expressly prohibits a person from charging a beneficiary (or a beneficiary's representative) for a benefit or for materials, consultations, procedures, the use of an office, clinic, or other place, or for any other matters that relate to the rendering of a benefit, unless the charges are specifically authorized under the Act, regulations or by the Commission.

There are a range of options available to the Commission in the event of a contravention of section 17. Some of these powers pertain only to physicians. However, the Lieutenant Governor in Council has recently proclaimed in effect, new powers under the Act which allow the MSC to audit the business practices of persons who carry on a business, and who the MSC believes have contravened the prohibition on extra billing. Additionally, the MSC may apply to the Supreme Court for an injunction restraining a person from contravening section 17.

...2

- 2 -

In view of the fact that the services received by [REDACTED] on July 28 and August 5, 2008, were benefits, it seems that [REDACTED] should not have been charged a fee for those services or for any matter relating to the service.

In light of this information, I ask that you review the details of the services provided to [REDACTED] as well as the related charges for these services, and ensure that any charges not permitted under the Act are refunded to the payer within 30 days of receipt of this letter. If this does not occur, this matter will be referred to the Medical Services Commission for their review and possible action.

Thank you in advance for your cooperation in this matter.

Sincerely,

Phyllis Chuly
Executive Director
Medical Services Branch

[REDACTED]

[REDACTED]

Medical Services Branch, HLTH:EX

From: Medical Services Branch, HLTH:EX
 Sent: Thursday, April 23, 2009 1:06 PM
 To: [REDACTED]
 Subject: Ministry of Health Services Response to [REDACTED]

April 23, 2009

778584

This is Exhibit 95
 referred to in the Affidavit
 of BOB DE FAYE
 sworn before me this 23 day
 of JULY, 2009
 A Commissioner for taking Affidavits
 within British Columbia

VIA EMAIL: [REDACTED]

Dear [REDACTED]

Thank you for your letter of March 27, 2009, addressed to the Honourable George Abbott, Minister of Health Services, concerning charges you paid in return for services you received in July and August 2008.

I hope your [REDACTED] has recuperated from [REDACTED] injury and subsequent surgery and will be able to return to playing [REDACTED] this season.

In case you are not aware, the College of Physicians and Surgeons of British Columbia's website contains an area to search for physicians accepting patients in your area (<https://www.cpsbc.ca/node/216>). I would encourage you to attempt to find a primary care physician for you and your family.

Operating under the authority of the *Medicare Protection Act* (the Act), and the direction of the Medical Services Commission, the Medical Services Plan (MSP) pays for insured medical services (benefits) provided to residents of British Columbia. The Act establishes rules regarding billing for services provided by physicians who are enrolled with MSP. In general, patients (or their representatives) must not be charged for benefits. The Act also prohibits anyone from charging patients, for "materials, consultations, procedures, use of an office, clinic, or other place, or for any other matters that relate to the rendering of a benefit" unless specifically permitted by the Medical Services Commission.

Based on the information you have provided, it appears the services your [REDACTED] received on July 28 and August 5, 2008, from Dr. Michael Gilbert were MSP benefits and you should not have been charged in relation to them. You will be interested to know that the Medical Services Plan of BC did in fact pay for [REDACTED] surgical procedure as billed by the physicians involved in [REDACTED] care at the Cambie Surgery Centre on August 5, 2008. I will send a request to the physician for a refund to you of any inappropriate charges. I will then contact you after 45 days to determine if you have received your refund.

Upon review of records related to medical billing for [REDACTED] it was noted a second knee surgery was performed by Dr. Gilbert on February 18, 2009. Would you please advise me if you paid privately for this surgery and provide a copy of any invoices or documentation received. You may email this information to medserve@gov.bc.ca

In case you are not fully aware, services provided by the False Creek Urgent Care Centre are not benefits of the Medical Services Plan as the physicians providing the services at this facility are not enrolled with the Medical Services Plan.

The Government of British Columbia is committed to upholding the principles of the *Medicare Protection Act* and to our publicly funded health care system, in which access to medically necessary services is based on a patient's clinical need rather than his or her ability to pay.

Sincerely,

Phyllis Chuly
Executive Director
Medical Services Branch
Medical Services Division
BC Ministry of Health Services

250.952.1706 phone
250.952.3133 fax
medserve@gov.bc.ca



Think about the environment before printing.

This e-mail is intended solely for the person or entity to which it is addressed and may contain confidential information. If this email was received in error, please contact the sender immediately and delete the material from any computer.



This is Exhibit 96
 referred to in the Affidavit
 of BOB DE FAYE
 sworn before me this 23 day
 of JULY, 2009
 A Commissioner for taking Affidavits
 within British Columbia

VIA COURIER - POD

PERSONAL AND CONFIDENTIAL

September 10, 2008

File: 40920-25/CSC

Dr. Brian Day
 President
 Cambie Surgeries Corporation
 2836 Ash Street
 Vancouver BC V5Z 3C6

Dear Dr. Day:

This letter is to inform you that the Medical Services Commission (MSC), through its Audit and Inspection Committee (AIC), has authorized an on-site audit of the billing and business practices of Cambie Surgeries Corporation (Cambie Surgery Centre). The AIC has requested that the Billing Integrity Program of the Ministry of Health Services arrange for this inspection to be carried out. The Billing Integrity Program will be in contact with you in the near future.

The MSC, in accordance with section 36(2) of the *Medicare Protection Act*, Part 7, Audit and Inspection, is authorized to conduct audits of:

the billing or business practices of persons who own, manage, control or carry on a business for profit or gain and, in the course of the business, direct, authorize, cause, allow, assent to, assist in, acquiesce in or participate in the rendering of a benefit to beneficiaries by practitioners, and...

the billing or business practices of persons who own, manage, control or carry on a business for profit or gain and who the commission on reasonable grounds believes

(i) in the course of the business, direct, authorize, cause, allow, assent to, assist in, acquiesce in or participate in the rendering of a benefit to beneficiaries by practitioners,
or

(ii) have contravened section 17, 18, 18.1 or 19.

The AIC is a committee with representation from the British Columbia Medical Association, the College of Physicians and Surgeons of British Columbia, the Public and the Government.

... 2

- 2 -

Physicians associated with the Cambie Surgery Centre will be notified by the AIC under separate cover of the intent to audit as set forth herein. In the notification, they will be informed that in the course of this audit medical records relating to services which they have performed for patients of the Cambie Surgery Centre may be reviewed and copied as audit evidence.

Please be advised that the British Columbia Medical Association can provide you with more information and support. You may wish to contact Juanita Grant, Manager of Professional Relations at (604) 638-2829. You may also wish to contact the Canadian Medical Protection Association.

Thank you for your anticipated cooperation.

Sincerely,



Robin Hutchinson, MDCM, FRCP, FRCPC
Chair
Audit and Inspection Committee

pc: Dr. Wendy Amirault, Chair
Patterns of Practice Committee
British Columbia Medical Association

Dr. Dan MacCarthy
Director of Professional Relations

David Anderson, Director
Audit and Investigations Branch

Dr. M. VanAndel, Registrar
College of Physicians and Surgeons



217



This is Exhibit 97
 referred to in the Affidavit
 of BOB DE FAYE
 sworn before me this 23 day
 of July, 2009
 A Commissioner for taking Affidavits
 within British Columbia

VIA COURIER - POD

PERSONAL AND CONFIDENTIAL

September 12, 2008

File: 40920-25/SRC

Dr. Brian Day
 President
 Specialist Referral Clinic (Vancouver) Inc.
 121 - 555 West 12th Avenue
 Vancouver BC V5Z 3X7

Dear Dr. Day:

This letter is to inform you that the Medical Services Commission (MSC), through its Audit and Inspection Committee (AIC), has authorized an on-site audit of the billing and business practices of Specialist Referral Clinic (Vancouver) Inc. (Specialist Referral Clinic). The AIC has requested that the Billing Integrity Program of the Ministry of Health Services arrange for this inspection to be carried out. The Billing Integrity Program will be in contact with you in the near future.

The MSC, in accordance with section 36(2) of the *Medicare Protection Act*, Part 7, Audit and Inspection, is authorized to conduct audits of:

the billing or business practices of persons who own, manage, control or carry on a business for profit or gain and, in the course of the business, direct, authorize, cause, allow, assent to, assist in, acquiesce in or participate in the rendering of a benefit to beneficiaries by practitioners, and...

the billing or business practices of persons who own, manage, control or carry on a business for profit or gain and who the commission on reasonable grounds believes

(i) in the course of the business, direct, authorize, cause, allow, assent to, assist in, acquiesce in or participate in the rendering of a benefit to beneficiaries by practitioners, or

(ii) have contravened section 17, 18, 18.1 or 19.

The AIC is a committee with representation from the British Columbia Medical Association, the College of Physicians and Surgeons of British Columbia, the Public and the Government.

...2

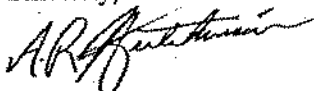
- 2 -

Physicians associated with the Specialist Referral Clinic will be notified by the AIC under separate cover of the intent to audit as set forth herein. In the notification, they will be informed that in the course of this audit medical records relating to services which they have performed for patients of the Specialist Referral Clinic may be reviewed and copied as audit evidence.

Please be advised that the British Columbia Medical Association can provide you with more information and support. You may wish to contact Juanita Grant, Manager of Professional Relations at (604) 638-2829. You may also wish to contact the Canadian Medical Protection Association.

Thank you for your anticipated cooperation.

Sincerely,



Robin Hutchinson, MDCM, FRCP, FRCPC
Chair
Audit and Inspection Committee

pc: Dr. Wendy Amirault, Chair
Patterns of Practice Committee
British Columbia Medical Association

David Anderson, Director
Audit and Investigations Branch

Dr. Dan MacCarthy
Director of Professional Relations

Dr. M. VanAndel, Registrar
College of Physicians and Surgeons





This is Exhibit 98
referred to in the Affidavit
of ABD DE FAYE
sworn before me this 23 day
of JULY, 2009
A Commissioner for taking Affidavits
within British Columbia

VIA COURIER - POD

PERSONAL AND CONFIDENTIAL

September 15, 2008

File: [REDACTED]

Dr. [REDACTED]

Dear Dr. [REDACTED]

This letter is to inform you that the Medical Services Commission (MSC), through its Audit and Inspection Committee (AIC), has authorized an on-site audit of the billing and business practices of Cambie Surgeries Corporation (Cambie Surgery Centre). The AIC has requested that the Billing Integrity Program of the Ministry of Health Services arrange for this inspection to be carried out. The Billing Integrity Program will be in contact with you in the near future.

The MSC, in accordance with section 36 (2) of the *Medicare Protection Act*, Part 7, Audit and Inspection, is authorized to conduct audits of:

the billing or business practices of persons who own, manage, control or carry on a business for profit or gain and, in the course of the business, direct, authorize, cause, allow, assent to, assist in, acquiesce in or participate in the rendering of a benefit to beneficiaries by practitioners, and...

the billing or business practices of persons who own, manage, control or carry on a business for profit or gain and who the commission on reasonable grounds believes

(i) in the course of the business, direct, authorize, cause, allow, assent to, assist in, acquiesce in or participate in the rendering of a benefit to beneficiaries by practitioners,
or

(ii) have contravened section 17, 18, 18.1 or 19.

The AIC is a committee with representation from the British Columbia Medical Association, the College of Physicians and Surgeons of British Columbia, the Public and the Government.

... 2

- 2 -

During the audit of the Cambie Surgery Centre it is possible that medical records relating to services which you have performed for patients at the Cambie Surgery Centre may be reviewed and copied as audit evidence.

Please be advised that the British Columbia Medical Association can provide you with more information and support. You may wish to contact Juanita Grant, Manager of Professional Relations at (604) 638-2829. You may also wish to contact the Canadian Medical Protection Association.

Thank you for your anticipated cooperation.

Sincerely,




Robin Hutchinson, MDCM, FRCP, FRCPC
Chair
Audit and Inspection Committee

pc: Dr. Wendy Amirault, Chair
Patterns of Practice Committee
British Columbia Medical Association

Dr. Dan MacCarthy
Director of Professional Relations

David Anderson, Director
Audit and Investigations Branch

Dr. M. VanAndel, Registrar
College of Physicians and Surgeons





This is Exhibit 99
 referred to in the Affidavit
 of BOB DE FAYE
 sworn before me this 23 day
 of JULY, 2009
 A Commissioner for taking Affidavits
 within British Columbia

February 2, 2009

VIA FAX: (604) 669-9385

Mr. William Clark
 Harper Grey LLP
 3200 - 650 West Georgia Street
 P.O. Box 11504
 Vancouver BC V6B 4P7

Attention: William Clark

Dear Sirs/Mesdames:

Re: Audit of Specialist Referral Clinic (Vancouver) Inc.

This is further to Mr. Glegg's letter dated December 16, 2009, and his telephone conversation with Dr. Day on January 20, 2009. Dr. Day informed Mr. Glegg that he expected his lawyers to challenge parts of the *Medicare Protection Act* which authorize the audit. The Commission assumes that Dr. Day was speaking for Specialist Referral Clinic (Vancouver) Inc. and Cambie Surgeries Corporation.

In light of the legal challenge brought on by Cambie Surgeries Corporation and others, on January 28, 2009, the Medical Services Commission interprets Dr. Day's telephone conversation with Mr. Glegg as a refusal by Specialist Referral Clinic (Vancouver) Inc. to permit the Commission's inspectors to enter its premises and inspect its records or the records of a practitioner, as authorised by section 36(5) of the Act, or to otherwise cooperate with the inspectors in the lawful performance of their duties. Your client's refusal makes it impossible for the Commission to continue with the audit without the assistance of the Courts. The Commission will be proceeding on that basis unless you inform us otherwise.

Yours truly,

Robert Musto
 Barrister and Solicitor

RJM/md

Ministry of
 Attorney General

Legal Services Branch
 Health and Social Services

Mailing Address:
 PO BOX 9280 STN PROV GOVT
 Victoria BC V8W 9J7

Location:
 1001 Douglas Street
 Victoria BC

Telephone: 250 356-8419
 Facsimile: 250 356-8992

This is Exhibit 100
 referred to in the Affidavit
 of B.B. DE FAYE
 sworn before me this 22 day
 of JULY, 2009

A Commissioner for taking Affidavits
 within British Columbia



COPY

March 11, 2009

Via Fax 604 631-3232

Via fax 604 669-9385

FASKEN MARTINEAU DuMOULIN LLP
 Barristers and Solicitors
 2900 - 550 Burrard Street
 Vancouver, B.C. V6C 0A8

HARPEY GREY LLP
 Barristers and Solicitors
 3200 - 650 West Georgia Street
 Vancouver, B.C. V6B 4P7

Attention: W. Stanley Martin

Attention: William S. Clark

Dear Sirs/Madams:

Re: **Canadian Independent Medical Clinics
 Association, Cambie Surgeries Corporation et al.
 v. Medical Services Commission et al.
 SCBC Vancouver Registry Action No. S090663**

We note that media reports are quoting Dr. Brian Day, speaking on behalf of your respective clients, Cambie Surgery Centre and Specialist Referral Clinic (the "Clinics"), as denying that the Clinics have refused entry to the Medical Services Commission's auditors. We would appreciate your clarification as to whether this is in fact the Clinics' position. If entry has not been refused and will not be refused we would like to arrange an early time for the auditors to proceed with the audits.

We look forward to your early response.

Yours truly,

Original Signed By
GEORGE H. COPLEY

GEORGE H. COPLEY, Q.C.
 Barrister and Solicitor

GHC:sf

Ministry of
 Attorney General

Legal Services Branch
 Constitutional &
 Administrative Law

Mailing Address:
 PO BOX 9280 STN PROV GOVT
 Victoria BC V8W 9J7

Location:
 1001 Douglas Street
 Victoria BC

Telephone: 250 358-8875
 Facsimile: 250 356-9154



This is Exhibit 101
 referred to in the Affidavit
 of BOB DE FAYE
 sworn before me this 23 day
 of JULY, 2009
 A Commissioner for taking Affidavits
 within British Columbia

March 20, 2009

FASKEN MARTINEAU DuMOULIN LLP
 Barristers and Solicitors
 2900 – 550 Burrard Street
 Vancouver, B.C. V6C 0A8

Via Fax 604 631-3232

Attention: D. Geoffrey Cowper, Q.C.

Dear Sirs/Madams:

**Re: Canadian Independent Medical Clinics
 Association, Cambie Surgeries Corporation *et al.*
 v. Medical Services Commission *et al.*
 SCBC Vancouver Registry Action No. S090663**


By letter dated February 20, 2009, Mr. Penner of this office delivered the filed Statement of Defence and Counterclaims respecting the above noted proceeding to your office for service on your client. We have not had any response to date to Mr. Penner's letter nor any request from you for an extension of time for your client to file any pleadings in response to either the Statement of Defence or Counterclaims. This is to provide notice that we are not prepared to agree to an open-ended extension of time to file any pleadings in response. We would like to get the pleadings finalized very soon so this matter can move forward.

In my letter dated March 11, 2009, I asked for clarification as to your client's position with respect to Dr. Brian Day's publicly reported statement in the media to the effect that the Cambie Surgery Centre and the Specialist Referral Clinic (the "Clinics") are not refusing entry to the Medical Services Commission auditors. As I advised, we would like to arrange an early time for the auditors to proceed with the audits. If I do not hear from you within one week, ie. by March 27, 2009, we will assume that Dr. Day has

- 2 -

refused and is refusing entry to the Medical Services Commission auditors and proceed to court to seek orders to allow the audits to proceed.

Yours truly,



GEORGE H. COPLEY, Q.C.
Barrister and Solicitor

GHC:sf



This is Exhibit 102
 referred to in the Affidavit
 of BOB DE FAYE
 sworn before me this 23 day
 of JULY, 2009
 A Commissioner for taking Affidavits
 within British Columbia

March 20, 2009

HARPER GREY LLP
 Barristers and Solicitors
 3200 - 650 West Georgia Street
 Vancouver, B.C. V6B 4P7

Via fax 604 669-9385

Attention: William S. Clark

Dear Sirs/Madams:

**Re: Canadian Independent Medical Clinics
 Association, Cambie Surgeries Corporation et al.
 v. Medical Services Commission et al.
 SCBC Vancouver Registry Action No. S090663**

By letter dated February 20, 2009, Mr. Penner of this office delivered the filed Statement of Defence and Counterclaims respecting the above-noted proceeding to your office for service on your client. By letter dated March 6, 2009, Mr. Penner asked that you provide acknowledgement of service on behalf of your client, Specialist Referral Clinic (Vancouver) Inc.). We have not had any response to date to Mr. Penner's letters nor any request from you for an extension of time for your client to file any pleadings in response to either the Statement of Defence or Counterclaims. This is to provide notice that we are not prepared to agree to an open-ended extension of time to file any pleadings in response. We would like to get the pleadings finalized very soon so this matter can move forward.

In my letter dated March 11, 2009, I asked for clarification as to your client's position with respect to Dr. Brian Day's publicly reported statement in the media to the effect that the Cambie Surgery Centre and the Specialist Referral Clinic (the "Clinics") are not refusing entry to the Medical Services Commission auditors. As I advised, we would like to arrange an early time for the auditors to proceed with the audits. If I do not hear from you within one week, i.e. by March 27, 2009, we will assume that Dr. Day has

refused and is refusing entry to the Medical Services Commission auditors and proceed to court to seek orders to allow the audits to proceed.

Yours truly,



GEORGE H. COPLEY, Q.C.
Barrister and Solicitor

GHC:sf

Harper Grey LLP

BARRISTERS & SOLICITORS
3200 Vancouver Centre • 650 West Georgia Street
Vancouver BC, Canada V6B 4P7
Tel. 604 687 0411 • Fax 604 669 9385

WILLIAM S. CLARK
DIRECT LINE: 604 895 2808
wclark@harpergrey.com
www.harpergrey.com

File Number: 117616

March 23, 2009

VIA FAX (250-356-9154)

Ministry of Attorney General
Legal Services Branch
PO Box 9280, Stn Prov Govt
1001 Douglas Street
Victoria, BC V8W 9J7

This is Exhibit 103
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 22 day
of JULY, 2009
A Commissioner for taking Affidavits
within British Columbia

Attention: Mr. George H. Copley, Q.C.
Barrister and Solicitor

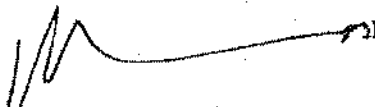
Dear Sirs/Mesdames:

Re: Canadian Independent Medical Clinics Association,
Cambie Surgeries Corporation *et al* v.
Medical Services Commission *et al*
SCBC Vancouver Registry Action No. S090663

I am writing in follow-up to our telephone conversation on March 20, 2009, as well as in response to your colleague's and your various letters to my office dated March 20, March 11, and March 6, 2009. As I indicated to you during the course of our telephone conversation, I am in the process of clarifying the scope of our retainer and I will get back to you in due course. I confirm that this is acceptable to you for the time being but that your client does wish to have this matter proceed. I also confirm that you will be taking no steps by way of default against the Specialist Referral Clinic until I have had reasonable opportunity to review the scope of our retainer. I hope to get back to you in the not too distant future. In the interim if you have any questions, kindly contact me.

Yours truly,

HARPER GREY LLP

Per:  William S. Clark

WSC/wm

c: PERSONAL & CONFIDENTIAL
Dr. Brian Day

03/25/2009 11:09 FAX 604 631 3232

FMD VANCOUVER OFFICE

002/003

Fasken Martineau DuMoulin LLP *
Barristers and Solicitors
Patent and Trade-mark Agents

www.fasken.com

2900 - 550 Burrard Street
Vancouver, British Columbia, Canada V6C 0A3

604 631 3131 Telephone
604 631 3232 Facsimile

**FASKEN
MARTINEAU** 

D. Geoffrey Cowper
Direct 604 631 3186
Facsimile 604 632 3186
gcowper@fasken.com

March 25, 2009
File No.: 278141.00001/13996

VIA FAX

Attorney General of British Columbia
Legal Services Branch
6th Floor, 1001 Douglas Street
Victoria, British Columbia V8W 1X4

Attention: George H. Copley, Q.C.

Dear Sir:

Re: Canadian Independent Medical Clinics Association and others
v. Medical Services Commission of British Columbia and others
S.C.B.C. Action No. S-090663, Vancouver Registry

Thank you for your letter of March 20, 2009.

Thank you for your notice respecting remaining pleadings, and we will file and serve our Statement of Defence to the Counterclaim and any reply we choose to prepare by the end of this week.

As you might expect, Dr. Day's comments during his discussion with the media were misconstrued. It is our position on behalf of the Plaintiffs that the statute against which your client wishes to audit the Plaintiff clinics is unconstitutional, and for that reason an audit cannot proceed. To be plain, the declaration sought in the proceeding, if true, would substantially, if not entirely, change the parameters of any audit and the advice of the Court respecting constitutionality of those measures is both critical and presidential to any appropriate audit.

There can be no dispute that the audit arises out of a bona fide dispute between the clinics and the government respecting the government's obligations to amend its legislation to redress the inadequacies identified in the Supreme Court of Canada's judgment in *Chaoulli* some four years ago.

This is Exhibit 104
referred to in the Affidavit
of BOB DE FAYE
sworn before me this 23 day
of JULY, 2009
A Commissioner for taking Affidavits
within British Columbia

FASKEN
MARTINEAU 
Page 2

We have not had any contact from your office other than correspondence, and suggest that a meeting or conversation respecting the appropriate way to proceed would be both appropriate and useful in the circumstances. Perhaps you could let me know when you are next in Vancouver and we can arrange a time to meet or, alternatively, our offices could be in touch to book a telephone conference call.

Yours truly,

FASKEN MARTINEAU DuMOULIN LLP

Bernadette Spearman
for D. Geoffrey Cowper

DGC/bys

Dictated but not read



This is Exhibit 105
 referred to in the Affidavit
 of BOB DE FAYE
 sworn before me this 23 day
 of JULY, 2009
 A Commissioner for taking Affidavits
 within British Columbia

March 31, 2009

FASKEN MARTINEAU DuMOULIN LLP
 Barristers and Solicitors
 2900 - 550 Burrard Street
 Vancouver, B.C. V6C 0A3

Via Fax 604 632-3185

Attention: D. Geoffrey Cowper, Q.C.

Dear Sirs/Madams:

**Re: Canadian Independent Medical Clinics
 Association, Cambie Surgeries Corporation et al.
 v. Medical Services Commission et al.
 SCBC Vancouver Registry Action No. S090663**

This is to acknowledge receipt of your letter dated March 25, 2009, and Mr. Martin's letter dated March 27, 2009. We have also received a copy of the Plaintiffs' REPLY AND DEFENCE TO COUNTERCLAIMS by fax on March 30, 2009.

First, you said in your letter dated March 25, 2009, that Dr. Day's comments during his discussion with the media were misconstrued. But you did not say how they were misconstrued. In view of the DEFENCE OF CAMBIE SURGERIES CORPORATION TO THE COUNTERCLAIM OF THE DEFENDANT, THE MEDICAL SERVICES CORPORATION, it seems clear that Dr. Day has refused and is refusing entry to the Medical Services Commission auditors to carry out the audit. If that is not Dr. Day's position and he will voluntarily permit the auditors to attend and carry out the audit, would you kindly so advise.

Second, you suggest a meeting or telephone conference to discuss the "appropriate way to proceed" in this matter. Since the Specialist Referral Clinic is also the subject of a Medical Services Commission audit and is named as a defendant to a Counterclaim, their counsel should be included in any such discussion. Accordingly, I am copying this correspondence to Mr. William Clark who up until now has been acting for the Clinic. When the pleadings have been finalized, we would be pleased to have the discussion by way of teleconference which you have suggested. We will listen to any suggestion you have as to an "appropriate way to proceed" and then seek instructions from our

Ministry of
 Attorney General

Legal Services Branch
 Constitutional &
 Administrative Law

Mailing Address:
 PO BOX 9280 STN PROV GOVT
 Victoria BC V8W 9J7

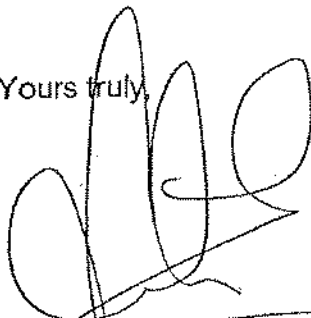
Location:
 1001 Douglas Street
 Victoria BC

Telephone: 250 356-8875
 Facsimile: 250 356-9154

- 2 -

clients. I will have my office arrange a telephone conference when the pleadings have been finalized.

Yours truly,

A handwritten signature in black ink, appearing to be 'GHC', written over a horizontal line.

GEORGE H. COPLEY, Q.C.
Barrister and Solicitor

GHC:sf

c.c. William S. Clark
W. Stanley Martin



This is Exhibit 106
 referred to in the Affidavit
 of BOB DE FAYE
 sworn before me this 23 day
 of JULY, 2009
 A Commissioner for taking Affidavits
 within British Columbia

March 31, 2009

HARPER GREY LLP
 Barristers and Solicitors
 3200 - 650 West Georgia Street
 Vancouver, B.C. V6B 4P7

Via fax 604 669-9385

Attention: William S. Clark

Dear Sirs/Madams:

**Re: Canadian Independent Medical Clinics
 Association, Cambie Surgeries Corporation et al.
 v. Medical Services Commission et al.
 SCBC Vancouver Registry Action No. S090663**

This is to acknowledge receipt of your letter dated March 23, 2009, in respect of the above-noted action. I am enclosing a copy of my letter of today's date to Mr. Cowper for your information.

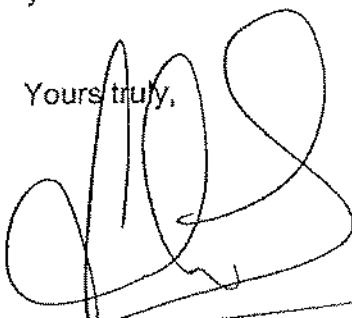
I understand that you are clarifying the scope of your retainer. As it has now been over five weeks since your office was served with the Statement of Defence and Counterclaim, and you have apparently been unable to confirm that you are able to accept service on behalf of the Specialist Referral Centre, we will be proceeding to serve the Centre directly in order that we may ensure that we do not encounter any further unnecessary delays in obtaining the relief sought against the Centre. We will expect a Statement of Defence to the Counterclaim within, at least, the time limits mandated by the Supreme Court Rules.

As I indicated in my letter dated March 20, 2009, we assume that Dr. Day, contrary to his statement reported by the media, is refusing and will refuse entry to the

- 2 -

Medical Services Commission auditors. We would appreciate your advising us at your earliest convenience if that assumption is mistaken.

Yours truly,

A handwritten signature in black ink, appearing to be 'GHC', written over a horizontal line.

GEORGE H. COPLEY, Q.C.
Barrister and Solicitor

GHC:sf

c.c. D. Geoffrey Cowper, Q.C.
W. Stanley Martin



This is Exhibit 107
 referred to in the Affidavit
 of BOB DE FAYE
 sworn before me this 25 day
 of July, 2009
 A Commissioner for taking Affidavits
 within British Columbia

April 20, 2009

Via fax 604 669-9385

Via Fax 604 632-3185

HARPER GREY LLP
 Barristers and Solicitors
 3200 - 650 West George Street
 Vancouver, B.C. V6B 4P7

FASKEN MARTINEAU DuMOULIN LLP
 Barristers and Solicitors
 2900 - 550 Burrard Street
 Vancouver, B.C. V6C 0A3

Attention: William S. Clark

Attention: D. Geoffrey Cowper, Q.C.


Dear Sirs/Madams:

**Re: Canadian Independent Medical Clinics
 Association, Csmble Surgerles Corporation et al.
 v. Medical Services Commission et al.
 SCBC Vancouver Registry Action No. S090663**

In my letter to Mr. Cowper dated March 31, 2009, I said that when the pleadings have been finalized, we would be pleased to have a discussion by way of teleconference as he had suggested. When that teleconference is held, we will listen to any suggestion either of you have as to an "appropriate way to proceed" and then seek instructions from our clients. Mr. Clark having now filed an Appearance on behalf of the Specialist Referral Centre, we anticipate that the pleadings should be closed next week. I will ask my assistant, Sue Filion, to contact your respective offices to arrange a suitable date and time to have that teleconference.

I wish to confirm also that I have not heard back from either of you to contradict our understanding that Dr Day has refused and is refusing entry to the Medical Services Commission auditors to carry out the audits which the Commission has ordered.

Yours truly,


GEORGE H. COPLEY, Q.C.
 Barrister and Solicitor
 GHC:sf

Harper Grey LLP

BARRISTERS & SOLICITORS
 3200 Vancouver Centre • 650 West Georgia Street
 Vancouver BC, Canada V6B 4P7
 Tel. 604 687 0411 • Fax 604 669 9385

WILLIAM S. CLARK
 DIRECT LINE: 604 895 2808

wclark@harpergrey.com
www.harpergrey.com

MINISTRY OF
 ATTORNEY GENERAL
RECEIVED

APR 27 2009

LEGAL SERVICES
 BRANCH

File Number: 117616

April 21, 2009

Ministry of Attorney General
 Legal Services Branch
 PO Box 9280, Stn Prov Govt
 1001 Douglas Street
 Victoria, BC V8W 9J7

Attention: Mr. George H. Copley, Q.C.
 Barrister and Solicitor

Dear Sirs/Mesdames:

Re: Canadian Independent Medical Clinics Association,
 Cambie Surgeries Corporation *et al* v.
 Medical Services Commission *et al*
 SCBC Vancouver Registry Action No. S090663

This is Exhibit 108
 referred to in the Affidavit
 of BOB DE FAYE
 sworn before me this 23 day
 of JULY, 2009

A Commissioner for taking Affidavits
 within British Columbia

We are in the process of preparing our Statement of Defence to the Counterclaim on behalf of the Specialist Referral Clinic. We expect to require some additional time beyond the Rules of Court, although we are cognizant of your intent to close the pleadings as soon as possible. We ask that you take no steps in default without advising us first as we would simply file a *pro forma* statement of defence but, in our view, it makes more sense to close the pleadings on the basis of a meaningful response. If there is any issue with respect to the above, please contact me.

Yours truly,

HARPER GREY LLP

Per: William S. Clark *W.S. Clark*

MKK/wm

c: Fasken Martineau DuMoulin LLP
 Attention: Mr. W. Stanley Martin
 Your File: 278141.00001/13996



This is Exhibit 109
 referred to in the Affidavit
 of BOR DE FAYE
 sworn before me this 25 day
 of JULY, 2009
 A Commissioner for taking Affidavits
 within British Columbia

May 6, 2009

HARPER GREY LLP
 Barristers and Solicitors
 3200 – 650 West Georgia Street
 Vancouver, B.C. V6B 4P7

Via fax 604 669-9385

Attention: Williem S. Clark

Dear Sirs/Madams:

**Re: Canadian Independent Medical Clinics
 Association, Cambie Surgeries Corporation et al.
 v. Medical Services Commission et al.
 SCBC Vancouver Registry Action No. S090663**

On April 21, 2009, you wrote to advise that you expect to require some additional time beyond the Rules of Court to prepare the Statement of Defence for your client, the Specialist Referral Clinic, to the Counterclaim. I wrote in reply on April 27, 2009, asking that you provide a specific date by which you would be able to file that Statement of Defence so that we can plan on how to move this matter forward.

The Counterclaim naming Specialist Referral Clinic as a defendant by way of Counterclaim was filed on February 20, 2009, and a copy was delivered to you on that date. Mr. Penner of this office wrote on March 6, 2009, requesting an acknowledgment of service. At that time there was no response to Mr. Penner's letter and no request from your client for an extension of time to file pleadings which I noted in my letter dated March 20, 2009. In that letter I advised you that we are not prepared to agree to any open-ended extension of time to file pleadings in response to the Counterclaim. I also advised that we would like to get the pleadings finalized very soon so this matter can move forward. On March 23, 2009, you wrote to advise that you are in the process of clarifying the scope of your retainer and said you would get back to me in due course. In my letter dated March 31, 2009, in response I noted it had been five weeks since the service of the Statement of Defence and Counterclaim on your office and you were apparently unable to confirm that you were able to accept service on behalf of the Specialist Referral Clinic. I advised that we would serve the Clinic directly so that there would be no further unnecessary delays in obtaining the relief sought against the Clinic. I said that we will expect a Statement of Defence at least within the time limit mandated by the Rules of Court. The Clinic was served directly with Notice to Defendant by Counterclaim dated April 1, 2009. An Appearance was filed by you on April 9, 2009, on behalf of the Specialist Referral Clinic.

Ministry of
 Attorney General

Legal Services Branch
 Constitutional &
 Administrative Law

Mailing Address:
 PO BOX 9280 STN PROV GOVT
 Victoria BC V8W 9J7

Location:
 1001 Douglas Street
 Victoria BC

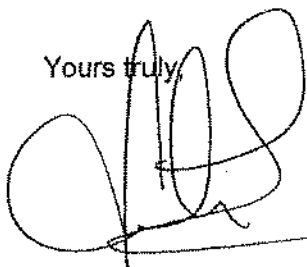
Telephone: 250 356-8875
 Facsimile: 250 356-9154

In my letter to you and Mr. Cowper dated April 20, 2009, I said that I anticipated that pleadings would be closed next week. In your letter dated April 21, 2009, you said that while recognizing our intent to close pleadings as soon as possible, you are in the course of preparing the Statement of Defence on behalf of the Specialist Referral Clinic but anticipate requiring some additional time beyond the Rules of Court. In my letter in response dated April 27, 2009, I asked that you provide a specific date by which you would be in a position to file a Statement of Defence on behalf of your client so that we can plan on how to move this matter forward. That date has not been provided.

It is now 3 1/2 months since your office was served with the filed Statement of Defence and Counterclaim. It is approximately 5 weeks since your client was served directly with Notice to the Defendant by Counterclaim and we do not have a specific date by which your client will file a Statement of Defence. In view of the extended delay in this matter, this is to advise you, as requested in your letter dated April 27, 2009, that we intend to file an application to seek default judgment on or after May 13, 2009.

I also note that on March 11, 2009, I wrote to advise that Dr. Day had been quoted in the media as saying, on behalf of your client the Specialist Referral Clinic, that the clinics, including your client, have not been refusing entry to the Medical Services Commission auditors. I asked for clarification as to whether this is indeed the Specialist Referral Clinic's position. I have not had any meaningful response to that request which has been repeated in writing on several occasions.

Yours truly,

A handwritten signature in black ink, appearing to be 'GHC', with a large loop at the end. To the right of the signature, the word 'For:' is written in a small, handwritten font.

GEORGE H. COPLEY, Q.C.
Barrister and Solicitor

GHC:sf