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Affidavit #1 of Dr. Leslie Vertesi
Sworn October 11, 2012
No. S090663
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

CAMBIE SURGERIES CORPORATION, CHRIS CHIAVATTI by his litigation guardian RITA CHIAVATTI, MANDY MARTENS, KRYSTIANA CORRADO by her litigation guardian ANTONIO CORRADO and ERMA KRAHN.

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.

DEFENDANTS BY COUNTERCLAIM

DR. DUNCAN ETCHES, DR. ROBERT WOOLARD, DR. GLYN TOWNSON, THOMAS MCGREGOR, THE BRITISH COLUMBIA FRIENDS OF MEDICARE SOCIETY, CANADIAN DOCTORS FOR MEDICARE, MARIËL SCHOOFF, DAPHNE LANG, JOYCE HAMER, MYRNA ALLISON, and CAROL WELCH

INTERVENORS

AFFIDAVIT #1 OF DR. LESLIE VERTESI

I, Leslie Vertesi, physician, of 2350 West 37th Avenue, Vancouver, British Columbia, V6M 4B4 MAKE OATH AND SOLEMNLY AFFIRM THAT:

1. I am a physician who works in public hospitals in British Columbia, and as such, I have direct knowledge of the information stated herein, except where stated to be on information and belief, in which case I believe it to be true.

2. I make this affidavit in support of the Cambie Surgeries Clinic's (herein referred to as "**CSC**") and Specialist Referral Clinic's ("**SRC**") opposition to the injunction sought by the Medical Services Commission (the "**Commission**") to prohibit CSC and SRC from providing medical services in contravention of certain provisions of the *Medicare Protection Act* (the "***Act***") (specifically sections 17(1) and 18(3), which relate to billing practices for benefits under the *Act*) prior to a ruling on the constitutionality of these provisions.

3. As I explain below, I believe that if, without any other substantive change to the public health care system, the residents of British Columbia are not able to pay a facility fee for surgeries at CSC as a health care option, or to receive timely medical assessments at SRC, just as residents, for example, of Alberta can lawfully do, it will have a negative impact on the ability of the residents of British Columbia to access timely and effective health care.

My Professional Qualifications

4. I am a licensed emergency medicine physician.

5. I completed my medical degree at the University of Toronto in 1970.

6. From 1975 to 1985, I served as a Senior Medical Consultant to the Emergency Health Services Commission of British Columbia.

7. I have been an Associate Clinical Professor in the Department of Surgery at the University of British Columbia since 1985.

8. In 1985 I received accreditation as a certified specialist in Emergency Medicine from the Royal College of Physicians and Surgeons of Canada.

9. In 1989 I completed a Master's degree in Health Sciences and Clinical Epidemiology at the University of British Columbia. During this graduate work, I completed additional training in database design and computer simulations.

10. I served as the Chief of the Emergency Medicine Department at the Royal Columbian Hospital ("**RCH**") in New Westminster, British Columbia from 1989 to 2001, and the Medical Director of RCH from 2001 to 2003.

11. I authored and published the book "*Broken Promises: Why Canadian Health Care is in Trouble and What Can Be Done to Save It*" in 2003.

12. I have been the British Columbia government representative on the Health Council of Canada since December 2003.

13. From 2003 to 2006, I held the position of Associate Director of Health Research for the Fraser Health Authority of British Columbia.

14. In 2003, I joined Simon Fraser University ("**SFU**") as an Adjunct Professor in the Faculty of Health Sciences. At SFU, I became involved with the Interdisciplinary Research in Mathematics and Computing Science team ("**IRMACS**"), as a Senior Health Systems consultant.

15. I served as a Senior Medical Advisor for the Vancouver Coastal Health Authority of British Columbia from 2006 to 2010.

My research on wait times in British Columbia

16. Through my work at IRMACS, I have developed models of various health systems, including models of access to medical beds and wait times.

17. I have conducted modeling research on the wait times for surgical procedures in collaboration with the Ministry of Health Services of British Columbia. Some of this work was presented at the Operations Research in Health Care's international conference in 2009. The research was also published in this organization's peer-reviewed journal in 2009 as "*Performance Metrics and Service Discipline in a System-Scale Model of Surgical Wait List.*"

18. I also submitted an informal discussion document on surgical wait times, "*The Mathematics of Waiting for Care*" to the Ministry of Health of British Columbia.

19. A key finding from this set of research, using data from approximately 2006, was that the surgical wait times provided by the government of British Columbia, like in most other provinces, do not include the wait time experienced by patients whose cases are not completed. Despite being advised that surgery is needed, these patients ("**drop-offs**") do not receive the surgical procedure.

20. Furthermore, the data consistently showed that patients who received surgery had the shortest wait times. In contrast, the drop-offs experienced much longer wait times. In fact, the drop-offs typically waited more than twice as long than those patients who received surgery.

21. In effect, the longer a patient waits, the higher the incidence of the patient 'dropping off'. The patient may pursue other avenues of medical care, or choose not to have the procedure at all.

22. This is a major concern, as my research demonstrated that the number of drop-offs in British Columbia is significant. In or around 2006, approximately 18% of booked cases for hip arthroplasty and 24% of the booked cases for knee arthroplasty were not completed.

23. While dropping off is expected to occur in most fields that have a queue for service, significant levels of drop-offs (for example, 15% or higher) are considered to be a clear indication of under-service. The rates of drop-offs for medically necessary surgery in British Columbia indicate that the public health care system is not meeting the needs of the patients of British Columbia.

24. Most provincial governments, including that of British Columbia, that report wait times do not include or even mention the drop-off rates in their wait time assessments. These omissions, intentional or not, result in providing misleading information to the public on official government resources, such as the Surgical Patient Registry website (run by the Ministry of Health).

25. By not accounting for the drop-offs, nor measuring the length of their wait times, the provincial government is providing an underestimate of the actual wait time for surgical procedures and an underestimate of the actual number of people waiting for surgery.

26. As an example, in or around 2006, my research showed that the true wait time experienced by patients waiting for knee replacements was, on average, 15% longer than the reported wait time. Typically, the actual wait time across all surgical procedures, while varying between health authorities, ~~is~~ was 10-20% longer than the publicly reported value. D.S. AK

27. There is a common public misconception that surgical wait times result from an insufficient number of available physicians to perform the surgical procedures. In fact, the evidence I have reviewed demonstrates that the actual constraint on the number of surgeries performed is the availability of surgical facilities.

Consequences of an Injunction

28. Some residents of British Columbia currently experience overly lengthy wait times for surgical procedures. The current data on wait times that is available to them is misleading, and underestimates the actual wait time a patient will experience.

29. My research shows that, in our current public health care system, it is the lack of facilities, and not the number of surgeons, that cause lengthy wait times for surgery. As long as a lack of facilities continues to be the major constraint preventing patients from seeking alternatives, such as paying a facility fee to receive surgery at CSC, and eliminating a parallel option for surgical facilities, access to timely health care in British Columbia will not improve. Likewise, preventing patients from paying a fee to receive timely medical assessments at SRC will increase the strain on the public health care system.

30. If an injunction were to be issued against CSC and SRC prior to the constitutionality of the provisions at issue being determined, the patients who are scheduled to receive care at CSC and SRC, and who have previously been allowed to do so, will be added to the wait lists in the public health care system. If there is no substantive change to the public health care system, the injunction will have a negative impact on the health care system in British Columbia because it will increase the wait times for all of the residents of British Columbia.

AFFIRMED BEFORE ME at the City of Vancouver, in the Province of British Columbia, this 11th day of October, 2012

A Commissioner for taking affidavits in the Province of British Columbia

Ania Kolodziej
Exp. August 31 2014

DR. LESLIE VERTESI