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Affidavit #1 of Dr. Antoni Otto
Sworn October 4, 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. ANTONI OTTO

I, Antoni Otto, physician, of 3237 Fraser Street, Vancouver, British Columbia, V5V 4B8, MAKE OATH AND SOLEMNLY AFFIRM THAT:

1. I am a family physician who works within the public health care system in British Columbia, and as such, I have personal 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 the residents of British Columbia are not able to pay a facility fee for surgeries at CSC or 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 health care.

My Professional Qualifications

4. I completed my medical degree at the University of Manchester in 1970.

5. I immigrated to Canada in 1973, and worked as a senior resident physician in Internal Medicine at Vancouver General Hospital from 1973 to 1974.

6. I have been working as a licensed family physician in Vancouver since 1974.

My work as a family physician in the public health care system of British Columbia

7. Family physicians are considered to be the "gatekeepers" of the health care system, as they are the most common point of entry for patients into the health care system, and provide the majority of the doctor-led care.

8. Family physicians, such as myself, see patients more frequently than specialists typically do, and have ongoing relationships with their patients.

9. I have a full time family practice based out of an office in East Vancouver. I see approximately 120 to 140 patients per week in this practice.

10. I have worked as a family physician for the past 38 years. As such, I have direct knowledge of the access to health care issues that the residents of British Columbia face.

11. For example, many of my patients experience medical symptoms or concerns that require additional assessment and treatment by a specialist. I refer my patients for consultations to a wide range of specialists (from gynecologists to orthopaedic surgeons) on a daily basis. However, it is very difficult for my patients to access specialist care in a timely manner.

12. The difficulty in accessing specialist care within a reasonable timeframe begins with obtaining a specialist consultation, as the procedure of booking the consultation itself can be very time consuming. The standard process requires that a family physician provide a specialist with a written request for a consultation. Typically, the family physician receives a response communication document, informing them that the specialist will contact either my office or the patient directly to schedule a consultation. It usually takes several days, but occasionally several weeks, for a family physician to receive this response, and up to several weeks further for the patient to be contacted by the specialist to schedule the consultation.

13. Once an appointment with a specialist has been booked, the patient must wait for the appointment for the initial consultation. This period can range from several months to two years (as with orthopaedic surgery), depending on the specialty, and the wait list length of the individual specialist.

14. These lengthy wait times for initial consultations are unacceptable. Patients require timely access to health care facilities and medical professionals in order for their care to be managed appropriately. It can be very dangerous for patients to wait for a lengthy period of time for a consultation with a medical professional or for a medical procedure and can result in irreparable harm.

15. For example, in the case of colon cancer, adequate and early screening is absolutely vital to a positive treatment outcome. Delayed diagnosis significantly reduces the survival rate of colon cancer patients, as early diagnosis and treatment is required for a successful recovery. Once a patient has been diagnosed with colon cancer, this patient will be able to be scheduled expediently for surgery in the public health care system. However, a patient who has not been diagnosed with colon cancer and needs to be booked for a consultation and a diagnostic screening may wait for months in the public system for an appointment with a specialist. While waiting for an initial consultation appointment and screening, an undiagnosed colon cancer will continue to progress. If colon cancer is detected in the early stages of the disease and treatment is expedient, the chances of a full recovery are high. However, if colon cancer progresses undetected to stage three or four, the chance of a full recovery is greatly compromised.

16. Once a patient receives a diagnosis, they must wait further to receive treatment. The wait time for treatment or a procedure that is not emergent can be upwards of one year.

17. I have observed patients who must live with debilitating serious medical conditions for months before they are able to receive a specialist consultation or appropriate treatment. Further, my patients have experienced an irreversible progression of their medical condition, such as the worsening of heart disease, while waiting for care. Other patients

experience permanent damage to their knees, backs and joints. These patients experience significant pain, restricted mobility, and the resulting inability to work or maintain other responsibilities while waiting for care.

18. During this prolonged period of suffering, many patients rely on the use of prescription painkillers. This 'interim' medication use is not part of the patient's final treatment plan, but rather, serves only to manage the patient's pain while they wait for specialist care.

19. Due to the extended delays in the public health care system, the use of painkillers can continue for months, and sometimes years.

20. Painkillers almost always have negative side effects, and if at all possible, it is better to avoid their prolonged use. Unfortunately, many of my patients must use multiple prescription painkillers to manage their ongoing pain. Combining prescription medications increases the likelihood that a patient will experience secondary medical issues.

21. Patients can easily become habituated to narcotic drugs (painkillers) if the drugs are used for prolonged periods. Habituation to narcotic drugs requires that the patient continually increase their intake of highly addictive painkillers in order to keep their pain at a manageable level.

22. Many of my patients have developed an addiction to painkillers while waiting for specialist care. Acquiring an addiction to painkillers can destroy the course of a patient's life. As a family physician, there is little I can do to prevent this or to stop it once it develops. In fact, despite knowing the risks involved, I have to write and renew painkiller prescriptions for my patients who are struggling with constant pain while they wait for specialist care.

23. Patients with an addiction to painkillers are often categorized as a higher risk for surgery. The habituation to painkillers requires a higher dosage of anesthesia to be used during

surgery. Furthermore, the long-term use of painkillers has an adverse effect on organ function, making these patients frailer. Because of these added risks, surgeons will often re-schedule the procedure, to try to wean the patient off painkillers prior to surgery. Further, many hospitals are not equipped to provide surgical procedures for high-risk patients. Due to their particular needs, high-risk patients often wait much longer than regular risk patients for surgical treatments. This is an endless and extremely frustrating cycle, as the patient has become addicted to painkillers because they were required to wait a lengthy period, in pain, for treatment.

24. Delayed access to specialist care can cause a patient to feel hopeless, and to suffer from depression. Some of my patients have expressed suicidal ideation due to the despair they feel from the prolonged suffering caused by the lengthy wait times for treatment.

My experiences with SRC

25. SRC is a private medical clinic that provides expedited specialist consultations. At SRC, patients can obtain a specialist referral within one week of requesting one. The fee for an expedited consultation is not covered under the *Medical Services Plan.*

26. I have no financial or vested interest in SRC.

27. Due to the significant consequences that can result from waiting extended periods for specialist care, I discuss the option of using SRC with my patients on a regular basis.

28. Despite the cost of using SRC, and the fact that my clinic primarily serves people within a low socio-economic demographic, I inform all of my patients of the option to use SRC because I believe the cost of the consultation is worth being able to access medical care within a reasonable timeframe.

Consequences of an Injunction

29. If an injunction were to be issued against CSC and SRC before the constitutionality of the provisions in issue are adjudicated, patients who could have used these facilities will have no choice but to be added to the wait lists in the public health care system. Other patients who want to pay a fee for timely treatment will not be able to so. These patients will join the already overly lengthy lines in the public health care system. This will increase the wait times for all the patients in British Columbia, and put a further strain on the public health care system.

30. Before a change of this magnitude is carried out, whether there is a constitutional right for the residents of British Columbia to pay for timely health care services needs to be determined. This will allow the government to make a fully informed decision about what health care services should be available to the residents of British Columbia at a time when the public health care system is not meeting the needs of the residents of British Columbia.

AFFIRMED BEFORE ME at the City of Vancouver, in the Province of British Columbia, this 4th day of October, 2012

A Commissioner for taking affidavits in the Province of British Columbia

DR. ANTONI GRZEGORZ OTTO

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