



Affidavit #6 of Dr. Brian Day  
Sworn May 8, 2014  
**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, WALID KHALFALLAH by his litigation guardian DEBBIE WAITKUS, and SPECIALIST REFERRAL CLINIC (VANCOUVER) INC.**

PLAINTIFFS

AND:

**MEDICAL SERVICES COMMISSION OF BRITISH COLUMBIA, MINISTER OF HEALTH SERVICES OF BRITISH COLUMBIA AND ATTORNEY GENERAL OF BRITISH COLUMBIA**

DEFENDANTS

AND:

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

INTERVENORS

**AFFIDAVIT #6 OF DR. BRIAN DAY**

I, **DR. BRIAN DAY**, Physician, of 2836 Ash Street, in the City of Vancouver, Province of British Columbia, MAKE OATH AND SAY AS FOLLOWS:

1. I am an orthopedic surgeon and the President of Specialist Referral Clinic (Vancouver) Inc. (herein referred to as "**SRC**"), and Cambie Surgeries Corporation (herein referred to as "**Cambie**"). As such, I have personal knowledge of the matters hereinafter deposed to except where stated to be on information and belief, in which case I believe them to be true.

2. I make this affidavit in support of the Plaintiffs' response to the Defendants' Notice of Application, filed on April 29, 2014 (the "**Notice of Application**").
3. I have read the Notice of Application and the Pleadings.
4. The Defendants are seeking an order for the production of the following categories of documents (collectively, the "**Documents**"):
  - a. Documents showing, for all payments to Cambie Physicians reflected in Cambie's general ledger under the "Consulting – paediatric" account for the five fiscal years covered by the order of October 21, 2013, the nature to the services provided, the fees paid, the basis for deriving the fees, and all source documents, in an electronic format which would allow for efficient use of automated data analysis functions (the "**Consulting – paediatric Documents**");
  - b. An excel version of the SRC general ledger for the five fiscal years covered by the order of October 21, 2013, that has not been redacted in any way, including redactions that relate to physician payments (the "**SRC General Ledger**"); and,
  - c. For each Cambie or SRC general ledger entry containing a reference to "SIS", the following electronic format which would allow for efficient use of automated data analysis functions for the five fiscal years covered by the order of October 21, 2013:
    - i. For revenue accounts: date of service, service provided, the patient invoice number, patient invoices, attending physicians providing the service, and the component element of the aggregate fees charged to the patient;
    - ii. For other accounts: the invoice number and patient invoices.

(the "**SIS Documents**")

**Consulting – paediatric Documents**

5. The Consulting – paediatric Documents relate solely to payments to physicians who provide services at Cambie. For example, Cambie pays the paediatric anaesthesiologists a

consultant fee on a daily basis for children's dental anaesthesia. Cambie also pays consulting fees to other physicians, including surgeons and adult anaesthesiologists who provide services at Cambie. Those payments are recorded in Cambie's general ledger under the heading "Consulting – paediatric."

### **SRC General Ledger**

6. I have reviewed the excel version of the SRC general ledger for the last five fiscal years that was disclosed to the Defendants pursuant to Associate Chief Justice Cullen's order of October 21, 2013 (the "**Order**"). The only redactions made in the excel version of the SRC general ledger that was disclosed to the Defendants pursuant to Associate Chief Justice Cullen's order of October 21, 2013, related to payments made by SRC to physicians providing services at SRC and Cambie.
7. Prior to disclosing the excel version of the SRC general ledger to the Defendants, SRC disclosed its general ledger for the last five fiscal years in "pdf" format. I have reviewed the general ledger disclosed by SRC in "pdf" format. The general ledger disclosed by SRC in "pdf" format does not contain any redactions.
8. The decision to redact the information relating to payments to the physicians who provide services at Cambie or SRC in the excel version, and not in the "pdf" version, of SRC's general ledger was deliberate. The information relating to payments to the physicians in SRC's general ledger can be manipulated when in excel format in ways that it cannot in "pdf" format. Accordingly, if the information relating to payments to the physicians was disclosed in excel format, the Defendants would be able to manipulate the data to learn more about the financial relationship between Cambie and SRC and the individual physicians.

### **SIS Documents**

9. The reference to "SIS" in the general ledgers of Cambie and SRC is a reference to "SurgiSource", which is a service provided by an American-based company called SourceMedical. The SIS system is designed to assist the operational, clinical and business processes of Cambie and SRC. Businesses such as Cambie and SRC can choose various

components of the SIS system. Currently, Cambie and SRC use the scheduling, inventory, billing and reporting components of the system.

10. The source documents for the SIS entries in the general ledgers of Cambie and SRC are effectively patients' charts of Cambie and SRC's patients. The SIS entries reflect the costs incurred in relation to the services provided to Cambie and SRC's payments, as well as revenues that are derived from those services.
11. The information that the SIS Documents contain, however, is not directed to compiling an accounting record in respect of Cambie and SRC's services to their patients, although they do contain some information that is relevant to that record. Rather the SIS Documents contain the complete medical and surgical histories of patients, and therefore will include past medical issues, medications used, and past surgeries. Much of this information is subject to doctor-patient confidentiality, which would be breached if Cambie and SRC were obliged to disclose it to the Defendants.
12. The SIS Documents number approximately 41,000. Cambie and SRC would incur substantial cost if required to produce these documents. Cambie and SRC would not only be required to compile all of these documents, but to review each document to ensure that no confidential information is disclosed.

***Relevance of Documents and prejudice to Cambie and SRC from disclosure***

13. I had understood from the Order that documents relating to payments to physicians were not required to be disclosed to the Defendants. I am very concerned about disclosing the Documents. Disclosure of the Documents may compromise the financial viability of SRC and Cambie and appear to be irrelevant to the issues in this litigation.

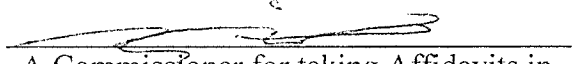
***Discovery of Mr. Paul Colosie***

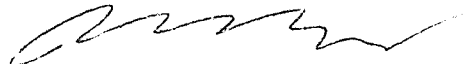
14. On March 5, 2014, I was advised by Plaintiffs' counsel that the Defendants intended to proceed with their examination of me on April 1, 2014 (the "**Examination**"). I was aware of my obligation to inform myself prior to the Examination. In order to inform myself for my Examination, I took the following steps:

- a. I reviewed all relevant past correspondence and reports, including with respect to our legal counsel and auditors, patients, physicians, government bodies and regulatory agencies
  - b. I reviewed all official and other court documents relevant to this action;
  - c. I reviewed the share and financial structure and documents of both Cambie and SRC in detail, as well as management and financial issues relating to shareholders, physicians and staff and Cambie and SRC; and,
  - d. I corresponded with our legal counsel regarding my obligations under discovery.
15. At the Examination, Defendants' counsel asked me questions regarding a wide range of topics, including, by way of example, questions relating to how many peer-reviewed publications I have had, the source of a statement made in an article that I published in a newspaper, my experience with and knowledge of the healthcare systems in various other countries, and specific entries in Cambie's general ledger relating to specific physicians.
16. Among the questions relating to specific entries in Cambie's general ledgers, counsel for the Defendants' asked me questions regarding payments to myself and two physicians under the heading "Consulting – paediatric" in CSC's general ledgers.
17. As described earlier, "Consulting- paediatric" is a heading that covers various payments to physicians who provide services at Cambie. There is no uniform manner in which each payment is made, as those payments depend on the particular arrangement that Cambie has made with the individual physician and the services that that physician provides at Cambie. There is therefore no way in which anyone can answer questions relating to the entries under "Consulting – paediatric" for a particular physician without first knowing the specific arrangement between CSC and that physician and the services that the physician provided in the relevant year. In my case, that specific arrangement includes receipt of a salary as Medical Director of Cambie.
18. I am aware of my obligation to inform myself regarding the outstanding requests and intend to govern myself in accordance with that obligation.

19. My knowledge regarding this action far exceeds the knowledge of any other potentially qualified representative of Cambie, including Mr. Paul Colosie.
20. Mr. Colosie is Cambie's in-house financial manager. Mr. Colosie is not familiar with this case. He is not aware of any issues relating to the action that have not already been addressed by me.
21. It would require a substantial amount of time for Mr. Colosie to inform himself appropriately for an examination, and any knowledge acquired that is relevant to the issues in this case would be that which is imparted to him by me. Cambie would be put to considerable expense if Mr. Colosie, who performs important and on-going duties for Cambie, were required to prepare for and attend an examination in respect of this proceeding.

SWORN BEFORE ME at the City of )  
 Vancouver, in the Province of British )  
 Columbia, this 8 day of May 2014 )

  
 A Commissioner for taking Affidavits in )  
 the Province of British Columbia )

  
 DR. BRIAN DAY

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