



This is the 7th affidavit of S. Abercrombie in
this case and was made on 28 September 2015

No. S-090663
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, 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 OF BRITISH COLUMBIA,
and ATTORNEY GENERAL OF BRITISH COLUMBIA
DEFENDANTS

AND:

DR. DUNCAN ETCHES, DR. ROBERT WOOLLARD, 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

I, STEPHEN ABERCROMBIE, Audit Manager with the Billing Integrity Program, Audit
and Investigations Branch, Ministry of Health, 1515 Blanshard Street, Victoria, British Columbia,
MAKE OATH AND SWEAR AS FOLLOWS:

1. I am an Audit Manager employed by the Province of British Columbia in the Billing
Integrity Program, part of the Audit and Investigations Branch in the British Columbia Ministry of

Health, and as such I have personal knowledge of the matters set out in this affidavit, except where stated to be based on information and belief, and where so stated I verily believe them to be true.

Background Facts

2. I was appointed as an inspector pursuant to section 36(2) of the *Medicare Protection Act*, R.S.B.C. 1996, c. 286 (the “Act”) and assigned to conduct an audit of the business practices of Cambie Surgeries Corporation, carrying on business as the Cambie Surgery Centre (“Cambie”) and the Specialist Referral Clinic (Vancouver) Inc., carrying on business as the Specialist Referral Clinic (“SRC”). I will refer herein to Cambie and SRC collectively as the “Clinics,” and to the audit of the Clinics as the “SRC-Cambie Audit”.

3. The purpose of the SRC-Cambie Audit was to determine whether the Clinics had participated in unlawful billing of beneficiaries for or in relation to a benefit (“extra-billing”).

4. The SRC-Cambie Audit was hampered by limited co-operation on the part of the Clinics’ representatives. This included a refusal to permit the inspectors to access financial reports and ledgers, an apparent lack of documentation of the business relationships between the Clinics and the physicians providing services there, and apparent incomplete or destroyed patient records.

5. Nevertheless, the SRC-Cambie Audit report, which I co-authored, found that significant extra-billing, contrary to the Act, had occurred at the Clinics on a frequent and recurring basis.

6. The SRC-Cambie Audit also determined that the extra-billing that had been identified often overlapped with physicians’ claims to the Medical Services Plan (“MSP”). As a result of the information limitations described above, however, the inspectors were unable to determine whether this overlapping-billing constituted “double-billing” (where the extra billing included a fee for the rendering of the benefit itself, as opposed to being solely a facility fee). While the Clinics’ representatives asserted to the inspectors that only “Facility Fees” had been billed, the inspectors did obtain some limited evidence to suggest that at least in some cases physician fees were also extra-billed, indicating that double-billing had occurred.

7. Because the primary purpose of the SRC-Cambie Audit was to determine whether extra-billing had occurred at the Clinics, and not whether individual physicians had been engaged in double-billing, the inspectors did not pursue the double-billing evidence in the face of the resistance offered by the Clinics' representatives.

The Current Audit

8. As a result of the SRC-Cambie Audit findings, the Medical Services Commission (the "Commission") requested that the Audit and Inspection Committee ("AIC") institute audits of the individual physicians identified in the SRC-Cambie Audit report as being associated with the overlapping-billing to determine whether double-billing of benefits had occurred and, if so, whether the rendering physicians financially benefitted from both sides of the double-billing (the "Physician Overlapping Billing Audits").

9. The AIC in turn requested that the Billing Integrity Program ("BIP") conduct audits of the individual physicians, but limited the scope of the audits to those surgeons who were identified in the SRC-Cambie Audit report as having at least some overlapping-billing which included and post-dated December 2010, to help ensure some remaining audit trail, and then all anesthetists and surgical assistants who could be identified as being associated with those respective surgeons' overlapping-billings, whether or not these other surgery team members had made a claim of MSP in connection with the specific surgeries.

10. The physicians whose billing practices form the subject of the Physician Overlapping Billing Audits are referred to herein as the "Physicians".

11. The Physicians were all enrolled in MSP as practitioners with respect to the specific overlapping-billing identified to date, with one partial exception, who was not enrolled for some of the overlapping-billing he is associated with (namely, those prior to June 2009). Some of the Physicians are no longer enrolled in MSP and are no longer in British Columbia.

12. In the course of conducting the Physician Overlapping Billing Audits, the inspectors requested from the Physicians "all supporting financial and administrative documentation"

relating to the particular overlapping-billing they were associated with, as identified by the BIP audit team up and to the time of the requests. As well, they were asked to provide answers to a series of questions in relation to this overlapping-billing, whether or not they had submitted a claim to MSP relating to each of them.

13. In general, the Physicians partially responded to these information requests, usually through a common legal counsel, and indicated, in most cases, that they:

- a) were contractors of Cambie and, in the case of surgeons, also of SRC;
- b) did receive periodic lump sum payments from Cambie and/or SRC;
- c) did not know what specifically the money received was for, at least at the individual service level;
- d) were not going to make any attempt to determine what the payments were for, instead referring us to Cambie and/or SRC for this purpose; and
- e) were choosing not to provide any bank records or other information to indicate the value and frequency of these lump sum payments received, where most closely coinciding with the overlapping-billings listed for them.

14. One Physician indicated they made an attempt to follow up with Cambie for details of the payments received, in response to our request, but were declined by Cambie.

15. Two Physicians stated that they did have some additional relevant records, but did not have the Clinics' consent to provide them.

16. Another physician indicated that he was on salary with Cambie and did not receive monies in connection with specific patient procedures performed that were also billed by him to MSP.

17. Attached hereto and marked as **Exhibit "A"** to this my Affidavit is a summary that I prepared indicating the specific responses received from each of the Physicians to the BIP requests for information. The names of the Physicians have been redacted in order to comply with my obligations under the Act.

18. In the course of the Physician Overlapping Billing Audits, currently in progress, significant other evidence has been obtained, primarily from beneficiaries who were extra-billed, to indicate that the majority of overlapping-billings being tested for surgeries constituted double-billings. Evidence to date for overlapping-billings relating to pre- and post-surgery follow-up assessments remains inconclusive as to whether double-billing of the physicians' services also occurred. Only by obtaining physician payment information from the Clinics will the audit team be able to fully establish the nature and extent of these double-billings and which rendering Physicians, if any, financially benefitted from both sides of a double-billing. A Physician receiving private compensation in connection to a follow-up assessment they claimed of MSP would serve to confirm a double-billing.

19. Primarily because the Physicians have advised the BIP audit team, in effect, that only the Clinics have the documentary evidence which establishes the basis on which their payments from the Clinics have been calculated, and because they have informed the BIP audit team that this documentary evidence and any supporting explanations will have to be obtained from the Clinics themselves, I believe that records relevant to the Physician Overlapping Billing Audits are located at the Clinics. As well, I believe this documentation, mainly in electronic form, resides at the Clinics based on my early visits there under the SRC-Cambie Audit, as part of interviews of management and staff and observations of administrative operations.

SWORN BEFORE ME
at Victoria, British Columbia,
on 28 September 2015.

A Commissioner for taking
Affidavits for British Columbia

Jonathan Penner, Barrister and Solicitor
Ministry of Justice, Legal Services Branch
1001 Douglas Street, Victoria BC V8W 9J7
Phone: 250-952-0122

STEPHEN ABERCROMBIE

Specialty / Service Description	Last Name	First Name	Pract. #	S36 Response - Directly Answered by Physician?	S36 Response Answered by Lawyer?	S36 Response Date	Indicated in general need to obtain documentation from Cambie or SRC?	Indicated, specifically, need to obtain information from Cambie or SRC with respect to the calculation of the manner in which their payments from Cambie are calculated?
A) Anaesthetists and Surgical Assistants								
1 Anaes.				No	Yes	Jun 13 2013	Yes, directly per statement: "The proper avenue to request clinic information is from the clinics directly as Dr. [REDACTED] does not have any ownership over clinic documents."	Implicitly per the statement relating to CSC payments received: "... The form of monies does not contain any information regarding any particular patient or any particular service...cannot speak to CSC's rationale for arranging/issuing the monies."
2 Anaes.				No	Yes	Jun 13 2013	Yes, directly per statement: "The proper avenue to request clinic information is from the clinics directly as Dr. [REDACTED] does not have any ownership over clinic documents."	Implicitly per the statement relating to CSC payments received: "... The form of monies does not contain any information regarding any particular patient or any particular service...cannot speak to CSC's rationale for arranging/issuing the monies."
3 Anaes.				No	Yes	Jun 13 2013	Yes, directly per statement: "The proper avenue to request clinic information is from the clinics directly as Dr. [REDACTED] does not have any ownership over clinic documents."	Implicitly per the statement relating to CSC payments received: "... The form of monies does not contain any information regarding any particular patient or any particular service...cannot speak to CSC's rationale for arranging/issuing the monies."
4 Anaes.				No	Yes	Jun 13 2013	Yes, directly per statement: "The proper avenue to request clinic information is from the clinics directly as Dr. [REDACTED] does not have any ownership over clinic documents."	Implicitly per the statement relating to CSC payments received: "... the form of monies does not contain any information regarding any particular patient or any particular service...cannot speak to CSC's rationale for arranging/issuing the monies."
5 Anaes.				No	Yes	Jun 13 2013	Yes, directly per statement: "The proper avenue to request clinic information is from the clinics directly as Dr. [REDACTED] does not have any ownership over clinic documents."	Implicitly per the statement relating to CSC payments received: "... The form of monies does not contain any information regarding any particular patient or any particular service...cannot speak to CSC's rationale for arranging/issuing the monies."
6 Anaes.				No	Yes	Jun 13 2013	Yes, directly per statement: "The proper avenue to request clinic information is from the clinics directly as Dr. [REDACTED] does not have any ownership over clinic documents."	Implicitly per the statement relating to CSC payments received: "... The form of monies does not contain any information regarding any particular patient or any particular service...cannot speak to CSC's rationale for arranging/issuing the monies."
7 Anaes.				No	Yes	Jun 13 2013	Yes, directly per statement: "The proper avenue to request clinic information is from the clinics directly as Dr. [REDACTED] does not have any ownership over clinic documents."	Implicitly per the statement relating to CSC payments received: "... The form of monies does not contain any information regarding any particular patient or any particular service...cannot speak to CSC's rationale for arranging/issuing the monies."

This is **Exhibit A** referred to in the Affidavit #7 of Stephen Abercrombie, sworn before me at Victoria, British Columbia, this 28-day of September, 2015.

Commissioner for taking affidavits for British Columbia

Specialty / Service Description	Last Name	First Name	Pract. #	S36 Response - Directly Answered by Physician?	S36 Response Answered by Lawyer?	S36 Response Date	Indicated in general need to obtain documentation from Cambie or SRC?	Indicated, specifically, need to obtain information from Cambie or SRC with respect to the calculation of the manner in which their payments from Cambie are calculated?
1 GP -Surgical Assist				Yes	No	16-Dec-13	Implicitly by stating they no hold no records related to CSC or SRC.	No - asserts received no monies from SRC and CSC.
2 GP -Surgical Assist				No	Yes	Jun 13 2013	Yes, directly per statement: "The proper avenue to request clinic information is from the clinics directly as Dr. [REDACTED] does not have any ownership over clinic documents."	Implicitly per the statement relating to CSC payments received: "... The form of monies does not contain any information regarding any particular patient or any particular service...cannot speak to CSC's rationale for arranging/issuing the monies."
3 GP -Surgical Assist				Yes	No	12-Dec-13	Implicitly by stating that they hold no documents relating to their services at CSC.	Implicitly per statement that they received monthly lump sum payments from CSC for all surgery cases without offering further details.
4 GP -Surgical Assist				Yes	No	28-Nov-13	Implicitly, by stating that don't have any records for the service rendered at CSC and CSC was not helpful when they tried following up there for information.	Implicitly by stating that Cambie was not helpful when they tried following up there about information, after saying immediately beforehand that they do not recall billing anyone for the service.
5 GP -Surgical Assist				No	Yes	Jun 13 2013	Yes, directly per statement: "The proper avenue to request clinic information is from the clinics directly as Dr. [REDACTED] does not have any ownership over clinic documents."	Implicitly per the statement relating to CSC payments received: "... The form of monies does not contain any information regarding any particular patient or any particular service...cannot speak to CSC's rationale for arranging/issuing the monies."
6 GP -Surgical Assist				No	Yes	Dec 19 2013	Implicitly by stating that they hold no documents relating to their services at CSC.	No - did not respond as to whether or not received CSC payments.
7 GP -Surgical Assist				Yes	No	Jan 17 2013	Implicitly by stating they were not involved in any document preparation	No - asserted that not paid for any of the CSC cases.
8 GP -Surgical Assist				No	Yes	Dec 12 2013	Implicitly by stating that they hold no documents relating to their services at CSC.	No - did not respond as to whether or not received CSC payments.
9 GP -Surgical Assist				No	Yes	Dec 20 2013	Yes, directly per statement: "The proper avenue to request clinic information is from the clinics directly as Dr. [REDACTED] does not have any ownership over clinic documents. Yes, indirectly per statement that Dr. [REDACTED] has some clinic documents which he does not have the consent of CSC to provide.	Implicitly per the statement relating to CSC payments received: "... The form of monies does not contain any information regarding any particular patient or any particular service...cannot speak to CSC's rationale for arranging/issuing the monies."

Specialty / Service Description	Last Name	First Name	Pract. #	S36 Response - Directly Answered by Physician?	S36 Response Answered by Lawyer?	S36 Response Date	Indicated in general need to obtain documentation from Cambie or SRC?	Indicated, specifically, need to obtain information from Cambie or SRC with respect to the calculation of the manner in which their payments from Cambie are calculated?
10 GP -Surgical Assist				No	Yes	Nov 19 2013	No (unusual for the common legal counsel for the majority of the physicians, not to have applied the standard response on behalf of practitioner, directing BIP to the clinics)	Implicitly per the statement relating to CSC payments received: "... The form of monies does not contain any information regarding any particular patient or any particular service...cannot speak to CSC's rationale for arranging/issuing the monies."
11 GP -Surgical Assist				No	Yes	Dec 12 2013	Yes, directly per statement: "The proper avenue to request clinic information is from the clinics directly as Dr. does not have any ownership over clinic documents."	Implicitly per the statement relating to CSC payments received: "... The form of monies does not contain any information regarding any particular patient or any particular service...cannot speak to CSC's rationale for arranging/issuing the monies."
B) Surgeons								
1 Surgeon				No	Yes	Dec 12 2013	Yes, directly, per statement: "The proper avenue to request clinic information is from the clinics directly as Dr. does not have any control over clinic documents." "Yes, indirectly per the statement: "... Dr. does have some additional records that are relating to scheduling which Dr. does not have consent of SRC to provide..."	Implicitly per the statement relating to CSC payments received: "... the form of monies received from there does not contain any information regarding any particular patient or any particular service...cannot speak to CSC's rationale for arranging/issuing the monies."
2 Surgeon				No	Yes	Dec 13 2013	Yes, directly, but only in terms of shareholder profit sharing arrangements. "... This information should be obtained from the clinic."	No by stating: "... Dr. has no received monies in connection with CSC regarding specific patient procedures he performs there that are also billed by him to MSP."
3 Surgeon				No	Yes	Dec 13 2013	Yes, directly, per statement: "The proper avenue to request clinic information is from the clinics directly as Dr. does not have any control over clinic documents."	Implicitly per the statement relating to CSC payments received: "... the form of monies does not contain any information regarding any particular patient or any particular service...cannot speak to CSC's rationale for arranging/issuing the monies."
4 Surgeon				No	Yes	Dec 13 2013	Yes, per statement: "The proper avenue to request clinic information is from the clinics directly as Dr. does not have any control over clinic documents."	Implicitly per the statement relating to CSC payments received: "... the form of monies does not contain any information regarding any particular patient or any particular service...cannot speak to CSC's rationale for arranging/issuing the monies."
5 Surgeon				No	Yes	Dec 13 2013	Yes directly, per statement: "The proper avenue to request clinic information is from the clinics directly as Dr. does not have any control over clinic documents."	Implicitly per the statement relating to CSC payments received: "... the form of monies does not contain any information regarding any particular patient or any particular service...cannot speak to CSC's rationale for arranging/issuing the monies."

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6 Surgeon	[REDACTED]	[REDACTED]	[REDACTED]	No	Yes	Nov 19 2013	No.	No. Asserts that received no payments from CSC in relation to the benefits. This assertion is corroborated by the pricing comparisons which consistently indicate that only a facility fee was privately charged under this surgeon's surgeries and by a beneficiary respondent's assertion to this effect.
7 Surgeon	[REDACTED]	[REDACTED]	[REDACTED]	No	Yes	Dec 13 2013	Yes directly, per statement: "The proper avenue to request clinic information is from the clinics directly as Dr. [REDACTED] does not have any control over clinic documents."	Implicitly per the statement relating to CSC payments received: "... the form of monies does not contain any information regarding any particular patient or any particular service...cannot speak to CSC's rationale for arranging/issuing the monies."
8 Surgeon	[REDACTED]	[REDACTED]	[REDACTED]	No	Yes	Dec 12 2013	Yes directly, per statement: "The proper avenue to request clinic information is from the clinics directly as Dr. [REDACTED] does not have any control over clinic documents." "Dr. [REDACTED] has a clinic document in relation to one audited patient but does not have consent of the clinic to produce it."	Implicitly per the statement relating to CSC payments received: "... the form of monies does not contain any information regarding any particular patient or any particular service...cannot speak to CSC's rationale for arranging/issuing the monies."
9 Surgeon	[REDACTED]	[REDACTED]	[REDACTED]	No	Yes	Dec 12 2013	Yes directly, per statement: "The proper avenue to request clinic information is from the clinics directly as Dr. [REDACTED] does not have any control over clinic documents."	Implicitly per the statement relating to CSC payments received: "... the form of monies does not contain any information regarding any particular patient or any particular service...cannot speak to CSC's rationale for arranging/issuing the monies."
10 Surgeon	[REDACTED]	[REDACTED]	[REDACTED]	No	Yes	Dec 12 2013	Yes directly, per statement: "The proper avenue to request clinic information is from the clinics directly as Dr. [REDACTED] does not have any control over clinic documents."	Implicitly per the statement relating to CSC payments received: "... the form of monies does not contain any information regarding any particular patient or any particular service... CSC is better able to speak to its rationale for issuing the monies."
11 Surgeon	[REDACTED]	[REDACTED]	[REDACTED]	No	Yes	Dec 13 2013	Yes directly, per statement: "The proper avenue to request clinic information is from the clinics directly as Dr. [REDACTED] does not have any control over clinic documents."	Implicitly per the statement relating to CSC payments received: "... the form of monies does not contain any information regarding any particular patient or any particular service...cannot speak to CSC's rationale for arranging/issuing the monies."
12 Surgeon	[REDACTED]	[REDACTED]	[REDACTED]	No	Yes	Dec 12 2013	Yes directly, per statement: "The proper avenue to request clinic information is from the clinics directly as Dr. [REDACTED] does not have any control over clinic documents."	Implicitly per the statement relating to CSC payments received: "... the form of monies does not contain any information regarding any particular patient or any particular service...cannot speak to CSC's rationale for arranging/issuing the monies."

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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.
DEFENDANT BY COUNTERCLAIM

AND:

DUNCAN ETCHES, GLYN TOWNSON, THOMAS MACGREGOR,
THE 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

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