

This is the 1st affidavit of
Heather Lewis
in this case and was made on
29/APR/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, 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

AFFIDAVIT

I, Heather Lewis, of 1301-865 Hornby Street, in the City of Vancouver, in the Province of British Columbia, MAKE OATH AND SAY AS FOLLOWS:

1. I am a paralegal with the Ministry of Justice, Legal Services Branch, and as such have personal knowledge of the matters hereinafter deposed to, save and except where stated to be based upon information and belief, and where so stated, I verily believe the same to be true.
2. In my role as paralegal, I provide legal administrative support to counsel for the Defendants, the Medical Services Commission, the Minister of Health of British Columbia, and the Attorney General of British Columbia.
3. On October 21, 2013, following an application made by the Defendants, Associate Chief Justice Cullen made an Order regarding production of documents in this action by the

Plaintiffs. Attached and marked as **Exhibit "A"** is a true copy of the Order of Associate Chief Justice Cullen dated October 21, 2013.

4. Between April 7, 2014, and April 17, 2014, the following letters and emails were exchanged between Jonathan Penner, counsel for the Defendants, and Peter Gall, Q.C., and Michael Elliot, counsel for the Plaintiffs:
 - a. Letter from Mr. Penner to Mr. Gall dated April 7, 2014 (**Exhibit "B"**);
 - b. Letter from Mr. Gall to Mr. Penner dated April 11, 2014 (**Exhibit "C"**); and
 - c. Email exchange between Mr. Penner and Mr. Elliot dated April 17, 2014 (**Exhibit "D"**).

Attached and marked as **Exhibits "B"**, **"C"**, and **"D"** respectively are true copies of the above correspondence and email.

5. I am advised by Mr. Penner, and verily believe same to be true, that as of the date of the swearing of this affidavit, he has not received a response to his email of April 17, 2014, to Mr. Elliot, which is attached as Exhibit "D" to this affidavit.
6. Attached and marked as **Exhibit "E"** is a true copy of the index and pages 35-38, and 40 from the transcript of the pre-trial examination of Dr. Jean Lauzon conducted on March 27, 2014.
7. Attached and marked as **Exhibit "F"** is a true copy of the index and pages 53-55 from the transcript of the pre-trial examination of Dr. Michael Gilbert conducted on April 4, 2014.
8. Attached and marked as **Exhibit "G"** is a true copy of the index and pages 36-43 from the transcript of the pre-trial examination of Dr. Jordan Leith conducted on April 11, 2014.

9. Attached and marked as **Exhibit "H"** is a true copy of the index and pages 21-22 from the transcript of the pre-trial examination of Dr. Farhad Moola conducted on April 17, 2014.
10. Attached and marked as **Exhibit "I"** is a true copy of the index and pages 86-90 and 109-114 from the transcript of the examination for discovery of Dr. Brian Day conducted on June 17, 2013.
11. Attached and marked as **Exhibit "J"** is a true copy of the index and pages 167-189, 199-210, and 252-260 from the transcript of the examination for discovery of Dr. Brian Day conducted on April 1, 2014.
12. Attached and marked as **Exhibit "K"** is a true copy of Exhibit "5" from the examination for discovery of Dr. Brian Day conducted on April 1, 2014.
13. Attached and marked as **Exhibit "L"** is a true copy of Exhibit "6" from the examination for discovery of Dr. Brian Day conducted on April 1, 2014.
14. Attached and marked as **Exhibit "M"** is a true copy of Exhibit "7" from the examination for discovery of Dr. Brian Day conducted on April 1, 2014.
15. Attached and marked as **Exhibit "N"** is a true copy of a letter from Robert Q. Grant, Q.C., counsel for the Plaintiffs, to Mr. Penner dated October 18, 2013.

SWORN (OR AFFIRMED) BEFORE)
ME at Vancouver, British Columbia)
on April 29, 2014.)
)
)
)
A commissioner for taking)
affidavits for British Columbia)


Heather Lewis

Kelth D. Evans
Barrister and Solicitor
Ministry of Justice
Legal Services Branch
#1301 - 865 Hornby Street
Vancouver, B.C. V6Z 2G3

SEAL

25-Apr-14

Vancouver
REGISTRY



This is Exhibit " A " referred to in the
affidavit of Heather Lewis

sworn before me at Vancouver
in the Province of British Columbia this

29 day of April, 2014

[Signature]
A Commissioner for taking Affidavits
within the Province of British Columbia

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, ERMA KRAHN, WALID KHALFALLAH
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Plaintiffs

and

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

Defendants

ORDER MADE AFTER APPLICATION

BEFORE)

) Associate Chief Justice Cullen

) October 21, 2013

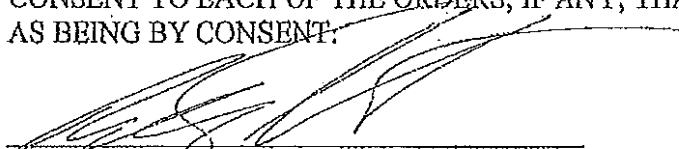
- 2 -

ON THE APPLICATION of the Defendants coming on for hearing at Vancouver, British Columbia on October 11, 2013, and on hearing Jonathan Penner and Karen Horsman, counsel for the Defendants, AND ON HEARING Robert Grant, Q.C., Shaun Ramdin and Michael Elliot, counsel for the Plaintiffs; AND ON JUDGMENT being reserved to this date;

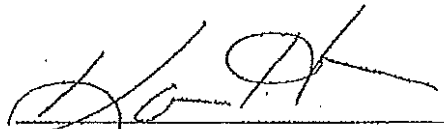
THIS COURT ORDERS THAT:

1. The plaintiffs Cambie Surgeries Corporation and Specialist Referral Clinic (Vancouver) Inc. shall within 30 days of the date of this order list and produce to the Defendants copies of the documents attached as Appendix A to this Order.
2. The plaintiffs Cambie Surgeries Corporation and Specialist Referral Clinic (Vancouver) Inc. shall pay the defendants' costs of this application in the cause.

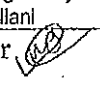
THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:


 Signature of Robert Grant, Q.C.

☐ party ☒ lawyer for the Plaintiffs


 Signature of Karen Horsman

☐ party ☒ lawyer for the Defendants

By the Court
 Digitally signed by
 Berg, Mellani
 Registrar 

"Appendix A"

1. Any shareholder agreement, the memorandum and articles, and bylaws, if any, of the Cambie Surgeries Corporation, including any amendments over time.
2. Corporate tax records for Cambie Surgery Centre and Specialist Referral Clinic (Vancouver) Inc. for the past five years.
3. Any documents reflecting the current shareholders of each of Cambie Surgeries Corporation and Specialist Referral Clinic (Vancouver) Inc.
4. The Cambie Policy and Procedure Manual.
5. Any financial or administrative policy and procedural manuals for Cambie Surgery Centre and Specialist Referral Clinic (Vancouver) Inc., including any policies relating to facility fee quotes for resident and non-resident patients.
6. Annual financial statements of Cambie Sugery Centre with any supporting notes and externally attested-to opinions for the past five years.
7. Annual accounting trial balances and general ledgers of Cambie Surgery Centre for the past five years.
8. General, special and annual general meeting minutes for Cambie Sugery Centre for the past five years.
9. Cost surgery breakdown reports, or their equivalents, provided to patients in the past five years.
10. Any constituting documents for the Specialist Referral Clinic (Vancouver) Inc., including the equivalent of memorandum and articles of incorporation, including amendments over time.
11. Bylaws of the Specialist Referral Clinic (Vancouver) Inc., including amendments over time.
12. Any shareholders agreements with the shareholders of the Specialist Referral Clinic (Vancouver) Inc., including any amendments over time.

13. Financial and administrative policy and procedural manuals for the Specialist Referral Clinic (Vancouver) Inc., including any policies relating to facility fee quotes for resident and non-resident parties.
14. Annual financial statements of Specialist Referral Clinic (Vancouver) Inc. with any supporting notes and externally attested-to opinions for the past five years.
15. Annual accounting trial balances and general ledgers of the Specialist Referral Clinic (Vancouver) Inc. for the past five years.
16. General, special and annual general meeting minutes of Specialist Referral Clinic (Vancouver) Inc. for the past five years.

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
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and

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

Defendants

ORDER MADE AFTER APPLICATION

Ministry of Justice
Legal Services Branch
1301 - 865 Hornby Street
Vancouver BC V6Z 2G3
Telephone: 604 660-3093
Facsimile: 604 660-2636

Jonathan Penner
Barrister and Solicitor



7 April 2014

Via Email: pgall@glgmlaw.com

Gall, Legge, Grant & Munroe, LLP
Lawyers
1199 West Hastings Street, 10th Floor
Vancouver BC V6E 3T5

Attention: Peter Gall, Q.C.

This is Exhibit "B" referred to in the
affidavit of Heather Lewis

sworn before me at Vancouver
in the Province of British Columbia this
29 day of April, 2014

[Signature]
A Commissioner for taking Affidavits
within the Province of British Columbia

Dear Sir:

Re: *Cambie Surgeries Corporation et al v. Medical Services Commission et al.* SCBC Action No. S090663, Vancouver Registry

I write further to the continuation of the examination for discovery of Dr. Brian Day last week (1 April 2014). We will send a comprehensive list of the outstanding requests from this discovery shortly. In the interim, there are certain discrete document production issues I wish to raise.

Ms. Horsman made a number of document requests that relate to the corporate plaintiffs' continuing non-compliance with the 21 October 2013 order of Associate Chief Justice Cullen. We ask that the plaintiffs please produce all documents ordered produced by Associate Chief Justice Cullen by next Friday, 18 April 2014.

There are three categories of documents in particular of which we seek immediate production. They are:

1. The source documents for all payments to Cambie physicians reflected in Cambie's general ledger under "Consulting-paediatric" for the five fiscal years covered by the order of Associate Chief Justice Cullen.
2. An excel version of the SRC general ledger that has NOT been redacted in any way, including redactions that relate to physician payments. Dr. Day agreed in his examination for discovery that the MS Excel version of the SRC ledger

Ministry of
Justice

Legal Services Branch
Constitutional &
Administrative Law

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Facsimile: 250 356-9154
Jonathan.Penner@gov.bc.ca

Location:
1001 Douglas Street
Victoria BC

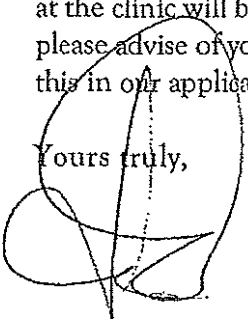
provided to us was intentionally altered to remove data. This, in our view, was improper. His lordship's order compels production of SRC's general ledger, not a redacted version of the general ledger; and

3. All source documents relating to SIS entries in the general ledgers of both clinics.

Ms. Horsman asked for production of these records at Dr. Day's 1 April 2014 examination for discovery. I ask that you please confirm by Friday 11 April 2014 that the plaintiffs will produce these records. If there is any objection to their production, we intend to bring an application to compel production. If we have not heard from you by 11 April 2014, we will assume there is an objection to production and will file and serve our application material.

At Dr. Day's discovery, your colleague Mr. Elliot advised of the plaintiffs' position that the Province is limited to the presumptive 7 hours of discovery permitted under the Supreme Court Civil Rules for each witness from Cambie and SRC. While we do not accept that such a limitation is reasonable in a case of this nature, it may be possible to avoid debate on the topic. Our remaining questions for the corporate plaintiffs pertain to the accounting records for the two clinics, a matter on which Dr. Day has frequently professed lack of knowledge. We seek your agreement that the Province may conduct a ½ day examination for discovery of Cambie's accountant, who I believe is Paul Colosi. It may be that a further ½ day with a witness who can explain the accounting practices at the clinic will be sufficient in terms of our exercise of discovery rights. Once again, please advise of your position on this request by 11 April 2014 so that we may include this in our application material if necessary.

Yours truly,


JONATHAN PENNER
Barrister & Solicitor

JP/cmb

c: MICHAEL ELLIOT, Gall, Legge, Grant & Munroe LLP, Via Email: melliot@glgm.com
JOSEPH J. ARVAY, Q.C., FARRIS, VAUGHAN, WILLS & MURPHY LLP, Via Email: jarvay@farris.com; syee@farris.com; alatimer@farris.com;
ALISON TREMBLAY, VICTORY SQUARE LAW OFFICE, Via Email: atremblay@vslo.ca
MURRAY TEVLIN, TEVLIN GLEADLE EMPLOYMENT LAW, Via Email: mtevlin@tevlingleadle.com
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GALL LEGGE GRANT & MUNROE LLP

Litigation, Workplace and Public Law

Michael Elliot
Peter A. Gall, Q.C.
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Craig T. Munroe
Joana Thackeray
Andrea Zwack

Jillian Frank
Jillian Humphreys
Shaun Ramdin
Melanie Vipond

Of Counsel
Michel Bastarache
Brian Burke
Robin Elliot, Q.C.
Roy L. Heenan, Q.C., Ad.E.
Donald R. Munroe, Q.C.
Geoff Plant, Q.C.

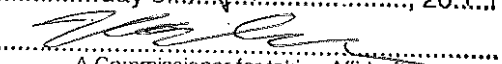
BY EMAIL

April 11, 2014

Ministry of Justice
Legal Services Branch
PO BOX 9280 STN PROV GOVT
Victoria, BC V8W 9J7

**ATTENTION: Jonathan Penner
Karen Horsman**

Dear Sir/Madam:

This is Exhibit "C" referred to in the
affidavit of Heather Lewis
sworn before me at Vancouver
in the Province of British Columbia this
29 day of April, 2014

A Commissioner for taking Affidavits
within the Province of British Columbia

**Re: *Cambie Surgeries Corporation et al. v. Medical Services Commission et al.* – SCBC Action
No. S090663 – Vancouver Registry**

In response to your letter of April 7, 2014, seeking the production of certain documents from our client, we do not object to the production of the third category, "All source documents relating to SIS entries in the general ledgers of both clinics," except to the extent that they contain privileged or irrelevant information.

However, we do object to the production of the first category. "Source documents for all payments to Cambie physicians reflected in Cambie's general ledger under 'Consulting-paedeiatric' for the five fiscal years" are not covered by the order of Associate Chief Justice Cullen. On the contrary, they relate to the financial relationship between Cambie and its physicians, which was expressly excluded by Associate Chief Justice Cullen from his order.

In respect of the second category, only information relating to physician payments were redacted. We therefore also object to the production of "an excel version of the SRC general ledger that has NOT been redacted in any way, including redactions that relate to physician payments." As in respect of the first category, we believe that these are expressly excluded from Associate Chief Justice Cullen's order as relating to the financial relationship between Cambie and its physicians.

In order to obtain the source SIS documents, our client has to work with the company in the U.S. with which it contracts for the compilation of this information. That company has informed our client that it should be able to provide the documents by early next week, and, once we have had

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the opportunity to review them, we will provide them to you. Barring any unforeseen circumstances, therefore, we will likely be able to provide those to you by April 18, 2014.

In respect of your discovery of Mr. Colosi, his discovery would not serve any useful purpose. The Defendants have completed their discoveries of the Plaintiffs, and we do not agree to have any further representatives of the Plaintiffs discovered. Any questions that Dr. Day was unable to answer that were left as outstanding requests, and to which we do not object, will be answered by way of letter.

Yours very truly,

GALL LEGGE GRANT & MUNROE LLP



Peter A. Gall
Law Corporation
PAG/tt

Lewis, Heather JAG:EX

Subject: FW: Cambie Surgeries Corporation et al v Medical Services Commission et al, SCBC No. S090663, Vancouver Registry - Document Request

From: Penner, Jonathan G JAG:EX

Sent: Thursday, April 17, 2014 4:06 PM

To: Michael Elliot

Cc: Brossard, Carol JAG:EX; Horsman, Karen JAG:EX

Subject: Re: Cambie Surgeries Corporation et al v Medical Services Commission et al, SCBC No. S090663, Vancouver Registry - Document Request

As I understand it, Michael, the request was as follows:

For each general ledger entry containing a reference to "SIS", please provide in electronic format:

- a. 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;
- b. For other accounts: the invoice number and patient invoices.

Obviously the request is limited to the general ledger entries that have already been disclosed. Is additional specificity required?

Jonathan

Sent from my iPhone

On Apr 17, 2014, at 3:37 PM, "Michael Elliot" <melliot@glgmlaw.com> wrote:

Hi Jonathan,

We are reviewing the documents our clients have provided in response to your request of April 7, 2014, for the "source documents relating to SIS entries" in the general ledgers. To ensure accurate and proper disclosure, it would be of assistance to us if you would please identify the precise scope and nature of the documents you are seeking in this request.

Best regards,

Michael

Michael Elliot

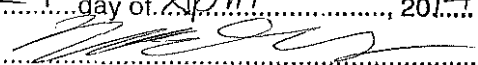
Lawyer

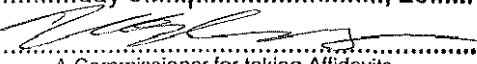
GALL LEGGE GRANT & MUNROE LLP

T (604) 891.1181

F (604) 669.5101 melliot@glgmlaw.com

1199 West Hastings Street, 10th Floor, Vancouver, B.C. Canada V6E 3T5

This is Exhibit " D " referred to in the
affidavit of Heather Lewis
sworn before me at Vancouver
in the Province of British Columbia this
29 day of April, 2014

Commissioner for taking Affidavits
within the Province of British Columbia

This is Exhibit "E" referred to in the
affidavit of Heather Lewis
sworn before me at Vancouver
in the Province of British Columbia this
29 day of April, 2014

A Commissioner for taking Affidavits
within the Province of British Columbia

**EXAMINATION FOR DISCOVERY
OF
JEAN LAUZON
MARCH 27, 2014**

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Reporter's certification	55
[Total Time: 1 hour, 7 minutes]	

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2	Documents from Specialist Referral Clinic's general ledger	38
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4	Copies of the operative procedure report from Cambie Surgery Centre (documents CSC00001023 and CSC00002152)	51

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****Reporter's interpretation of outstanding requests****

No requests made.

1 180 Q And do you get compensation from Cambie or SRC
2 directly or indirectly for the services you
3 provide at Cambie?
4 A For at Cambie?
5 181 Q Yes.
6 A It depends on the service, but not for MSP
7 patients.
8 182 Q Okay. You would for --
9 A But if it was an --
10 183 Q -- WCB?
11 A Or out of province.
12 184 Q M'mm-hmm.
13 A Or people that don't have any medical insurance.
14 185 Q Okay.
15 A Yukon, WCB. There's a lot of different
16 scenarios.
17 186 Q Okay. Are there any circumstances where you
18 don't get any compensation from either MSP or
19 Cambie or SRC for services you've provided at
20 Cambie?
21 A I hope not, unless I forget to put in the bill,
22 and I don't think so, no.
23 MR. CLARK: Well, WCB maybe. Do you get paid for WCB
24 for services at Cambie?
25 THE WITNESS: Yeah.

1 MR. CLARK: Yes.

2 THE WITNESS: Yeah. But hopefully they pay.

3 Sometimes they're really -- it's hard to get
4 them to pay, but anyway. Yeah.

5 MR. PENNER: Okay.

6 THE WITNESS: I'm sure I've missed a few, and
7 actually I did miss quite a few over the years,
8 but that's my problem.

9 MR. PENNER:

10 187 Q Okay. I'm going to show you a document that
11 we've been provided by the plaintiffs, by
12 Cambie. I don't expect that you've seen this
13 before. It's a printout from a part of their
14 general ledger, and down near the bottom -- I
15 should have marked these. You'll see your name
16 there.

17 A M'mm-hmm.

18 188 Q This is under the heading "Consulting Pediatric"
19 and --

20 A Pediatric?

21 189 Q Yeah. That's the heading for this account. And
22 it shows an amount apparently paid to you with
23 respect to consults for September 2011 --

24 A M'mm-hmm.

25 190 Q -- of \$3,150. Do you have any insight into why

1 that would be under the heading "Consulting
2 Pediatric"?

3 A Not at all.

4 MR. CLARK: You've never seen this document before?

5 THE WITNESS: No.

6 MR. PENNER: No.

7 MR. CLARK: Can we just go off the record for a
8 minute?

9 MR. PENNER: Okay.

10 **(DISCUSSION OFF THE RECORD)**

11 MR. PENNER: I'll just get that piece of paper marked
12 as an exhibit.

13 **EXHIBIT 1: One-page printout from the general**
14 **ledger of Cambie Surgery Centre**

15 MR. PENNER:

16 191 Q And you don't have -- sorry. Can you tell me
17 what that amount would relate to? No?

18 A Not really, no. It's -- Cambie determines, and
19 it's -- you'd have to ask them what it's based
20 on.

21 192 Q So --

22 A Like I told you, we do -- I do get paid for --
23 we already mentioned what I get paid for at
24 Cambie, so --

25 193 Q M'mm-hmm.

1 A -- it's a combination of those things.

2 194 Q Okay. Now, I don't necessarily expect you to

3 have the answer to this in your head, but do you

4 recall performing a colonoscopy on a patient by

5 the name of Barrie Wheeler at Cambie in

6 September of 2011?

7 A Not specifically. Sorry.

8 MR. PENNER: I'm handing your counsel a set of

9 documents that I'll be asking you questions

10 about. And maybe if I can get that marked as

11 the next exhibit. That's a bundle of documents

12 again from Cambie's general ledger. Sorry.

13 SRC's general ledger.

14 **EXHIBIT 2: Documents from Specialist Referral**

15 **Clinic's general ledger**

16 MR. PENNER:

17 195 Q Now, again, these are not documents that you've

18 seen before.

19 A No.

20 196 Q But they apparently relate to a service that was

21 provided by you at Cambie to a patient by the

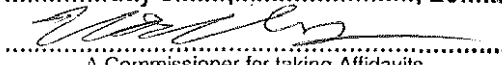
22 name of Barrie Wheeler.

23 A Yeah, I'm not sure where it says -- oh, there.

24 It's associated --

25 197 Q Under the heading "Name" on that first page it

1 colonoscopy on Mr. Wheeler and were paid \$300
2 for an IMA the same day.
3 A M'mm-hmm.
4 204 Q And maybe you can explain to me how that relates
5 to what we've been talking about. How do you --
6 A Well, it's the same as seeing an IMA at SRC. I
7 do a full history and physical --
8 205 Q Okay.
9 A -- ahead of the procedure.
10 206 Q Okay. And is that something that would
11 typically be covered by MSP if you were -- where
12 you were performing that in the public system?
13 A If it was referred by a GP, yes.
14 207 Q Okay. So the \$300 doesn't relate to the
15 surgery. It --
16 A No.
17 208 Q -- relates to the assessment in advance of the
18 surgery?
19 A M'mm-hmm. M'mm-hmm.
20 209 Q So it would have been the case that you --
21 A Yeah. And I don't see -- this is the first time
22 I've seen these amounts.
23 210 Q M'mm-hmm.
24 A When I get a cheque from Cambie, it's not
25 itemized.

This is Exhibit " F " referred to in the
affidavit of Heather Lewis
sworn before me at Vancouver
in the Province of British Columbia this
29 day of April, 2014

A Commissioner for taking Affidavits
within the Province of British Columbia

**EXAMINATION FOR DISCOVERY
OF
MICHAEL GILBART
APRIL 4, 2014**

INDEX OF PROCEEDINGS

Description	Page
Examination by Mr. Penner commenced at 10:07 a.m.	1
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[Total Time: 1 hour, 15 minutes]	

INDEX OF EXHIBITS FOR IDENTIFICATION

No.	Description	Page
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No exhibits marked for identification.

INDEX OF REQUESTS

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****Reporter's interpretation of outstanding requests****

No requests made.

1 180 Q Okay. So you're not in the habit of reviewing
2 that form with the patients?

3 A No.

4 181 Q And when you provide surgical services to a
5 beneficiary at Cambie, is it your practice to
6 disclose to them that you'll be submitting a
7 claim to MSP in relation to their surgery?

8 A No. Not typically, no.

9 MR. CLARK: I just want to clarify that by
10 "beneficiary" you mean a patient or person who
11 is enrolled as a beneficiary under the plan.

12 MR. PENNER: Yes.

13 MR. CLARK: You and I, we know that, but for the
14 record, just to be clear.

15 MR. PENNER: Okay.

16 182 Q Now, you've told me that you don't have any form
17 of agreement with SRC relating to the services
18 that you provide there and the compensation that
19 you get. How about Cambie? Is there an
20 agreement between you and Cambie?

21 A No.

22 183 Q No. And I want to be very clear on what you've
23 told me, so I'm going to tell you what I think
24 you've told me and you can correct me if I'm
25 wrong. But you get a cheque from Cambie every

1 month, the basis of which you have no insight
2 into; is that right?

3 A That's correct.

4 184 Q And it doesn't relate to any services you're
5 providing to Cambie; is that right? You've told
6 me you have no --

7 A The only service that I do at Cambie is I
8 operate as a surgeon at Cambie.

9 185 Q That's right. And you have no insight into why
10 you're getting money from Cambie, but it can
11 only relate to surgical services you provide at
12 Cambie; is that right?

13 A Yeah, that's what I do at Cambie, yes.

14 186 Q Okay. And why have you never inquired into why
15 you're getting those cheques?

16 A I mean, I just haven't. It just hasn't been a
17 topic of discussion as to why, both at the SRC
18 and at Cambie.

19 187 Q Okay. If you provide post-surgical follow-up
20 care to a patient on whom you've operated at
21 Cambie, is that typically provided at Cambie, at
22 SRC or at your office?

23 A Well, most of the patients that I see at -- or I
24 do a procedure on at Cambie, again, most of them
25 are WCB patients. And those patients, either

1 their follow-up is booked through the VSC and,
2 you know -- but often the first follow-up at a
3 week or two post surgery, let's say, is done at
4 Cambie and then the subsequent follow-ups are
5 done at the visiting specialist clinic in
6 Richmond and arranged by WCB. Most of the
7 follow-ups for patients that, say, came
8 originally from the SRC would typically be done
9 at the SRC.

10 188 Q Okay.

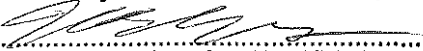
11 MR. PENNER: If we could take five minutes. I'd just
12 like an opportunity to review my notes.

13 (PROCEEDINGS RECESSED AT 11:19 A.M.)

14 (PROCEEDINGS RECONVENED AT 11:27 A.M.)

15 MR. PENNER:

16 189 Q There was just one thing that I wanted to go
17 back and clarify with you, Dr. Gilbert, about
18 the assignment of your OR time in the public
19 system. Because I'm not clear on whether
20 that's -- I've been told that the time may be
21 assigned to a group of surgeons at the -- not
22 the sports medicine clinic but what it's
23 called -- and who then divvy that time up among
24 themselves. Is that incorrect or inaccurate,
25 or ...

This is Exhibit " G " referred to in the
affidavit of Heather Lewis
sworn before me at Vancouver
in the Province of British Columbia this
29 day of April, 2014

A Commissioner for taking Affidavits
within the Province of British Columbia

**EXAMINATION FOR DISCOVERY
OF
JORDAN LEITH
APRIL 11, 2014**

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1	Patient blog entry from May 10, 2011	45

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****Reporter's interpretation of outstanding requests****

No requests made.

1 them that you'll be submitting a claim to MSP?

2 A No. That's -- I don't even do that in the
3 public system. It's just not part of the --
4 it's just not part of the consent process and
5 the discussion that goes on. It's just -- yeah,
6 no, that's -- it doesn't even come into our
7 discussion.

8 101 Q Do you receive compensation from Cambie or SRC
9 for the services you provide at Cambie?

10 A I don't receive anything from SRC for services
11 at Cambie. My understanding is they're totally
12 separate, so there's no reason for them to
13 compensate me for anything I do at Cambie.

14 Cambie, I do receive compensation for
15 the -- I don't know if you want to call it
16 administrative work or the on-call, that sort
17 of -- type of work. That's my understanding
18 what that's for. But it's not specific for a
19 patient or anything like that.

20 102 Q Do you know on what basis this compensation is
21 calculated?

22 A No.

23 103 Q Are there any circumstances in which you would
24 not receive compensation from Cambie or MSP for
25 services you provided at Cambie?

1 A Can you ask that again.

2 104 Q Are there any circumstances in which you do not
3 receive compensation from Cambie or MSP for
4 services provided at Cambie?

5 A There might be if I -- you know, if I just do
6 somebody a favour and make a phone call or
7 something like that, but I'm not sure if that's
8 also included in the compensation that I get
9 already, but I -- because I don't calculate it.
10 It's not like I submit a bill and say, you owe
11 me for doing this that day and that that day,
12 so ...

13 105 Q Do you receive any documents, either paper or
14 electronic, from Cambie? For example, pay
15 stubs.

16 A Not -- I just get a cheque, but there's -- it's
17 just -- yeah, there's no, like, pay stub or
18 anything like that on it.

19 106 Q So from Cambie it is a physical cheque?

20 A A physical cheque, yes.

21 107 Q When you provide post-surgical follow-up to a
22 patient to whom you've provided surgical
23 services at Cambie, is that follow-up care
24 typically provided at Cambie, at SRC or at your
25 office?

1 A Again, it depends on where I initially saw them.
2 So if I saw them at my office, then generally
3 I'll try to see them post-op back at my office,
4 but sometimes I'll see them back at Cambie or at
5 Ambulatory Surgical depending on my schedule,
6 wherever I am. And similarly, if it's a patient
7 that came through the SRC, I'll try to fit them
8 into my schedule at SRC, but that doesn't always
9 work. So I will sometimes see them at Cambie in
10 follow-up or I'll see them at Ambulatory
11 Surgical in follow-up or even UBC, sometimes at
12 Fortius.

13 The post-operative WCB patients were
14 usually seen at the visiting specialist clinic
15 subsequent to the first post-operative
16 follow-up. Yeah, and that's -- so they can be
17 seen anywhere. It's just -- it's mainly
18 dependent upon my schedule and if they can fit
19 into the schedule in the time period that I like
20 to see them back.

21 108 Q How are you compensated for follow-up care from
22 Cambie?

23 A Well, it depends on the patient. So if it's
24 WCB, bill WCB. If it's RCMP, I bill RCMP. If
25 it's MSP, then the usual post-operative,

1 whatever, code for that follow-up is billed. It
2 it's outside of -- if it's not -- if it's
3 outside the province or somebody who doesn't
4 have BC health care, then I'm not usually
5 compensated at all.

6 MR. INGRAM: Okay. Perhaps if we could take five
7 minutes just to review our notes and then
8 reconvene.

9 MS. GILL: Sure.

10 **(PROCEEDINGS RECESSED AT 10:48 A.M.)**

11 **(PROCEEDINGS RECONVENED AT 10:59 A.M.)**

12 MR. INGRAM:

13 109 Q If I could take you back earlier to an answer
14 you gave in which you stated you had no wait
15 list.

16 A Correct.

17 110 Q That's no wait list in the public system?

18 A Yes. For -- well, how do you define "wait
19 list"? My surgical wait list is -- I try to
20 keep it short, so most people will get in after
21 they've seen me for surgery within probably one
22 to three months, depending on the time of year.
23 Because it varies, because some people don't
24 want surgery in the summer, and they put it off.
25 But generally it's one to three months, maybe

1 maximum up to six months.

2 111 Q And you also answered that you see patients at
3 SRC for IMAs?

4 A Yes.

5 112 Q Do you discuss where the surgery would take
6 place if you would recommend surgery?

7 A Not usually. That's -- once they've decided on
8 surgery, then I pass -- they'll fill out the
9 surgical booking form and the surgical consent
10 form, and then they -- I pass them on to one of
11 the staff at SRC who then deals with booking
12 them wherever. So at that point whatever
13 discussion goes on they either decide that they
14 want to do it at Cambie Surgery or they want to
15 go into the public system and have it done.

16 113 Q Okay. So patients that you do see at SRC for
17 IMAs do go on to surgeries at Cambie?

18 A Patients that I see for IMAs at SRC -- not all
19 will have surgery at Cambie, no. But if they
20 decide to have surgery at Cambie, their choice,
21 then that's usually where their surgery is done.
22 Do I understand that correctly?

23 MR. EVANS: Go off the record for a sec.

24 (DISCUSSION OFF THE RECORD)

25 MR. INGRAM:

1 114 Q So then just to clarify the previous question,
2 what role do you play in discussing surgical
3 options for patients whom you see at SRC for
4 IMAs?

5 A So my role is to advise them whether they need
6 or don't need surgery and what surgery that is.
7 As far as -- and then I get surgical consent
8 from them. And as far as where they have their
9 surgery, I have no discussion with them directly
10 about that. That's dealt with by the SRC. And
11 if they choose to go one place or the other,
12 that's the patient's choice.

13 115 Q Okay. And to clarify an earlier question, for
14 patients that you see at SRC for IMAs you do not
15 bill MSP?

16 A That's correct.

17 116 Q Regarding the payments from SRC and Cambie that
18 we were discussing earlier, do you receive any
19 statements for services, any breakdown, or are
20 you aware of any way that you might know what
21 services you have provided?

22 A For Cambie, no. I just assume it's more like a
23 stipend or something like that when I'm -- you
24 know, if I've been there in one -- in any month,
25 I'll get a cheque. For SRC, the -- because I do

1 so many different things, then in the past --
2 well, it's direct deposit now, so they -- I
3 don't get -- I just get a deposit. And if I ask
4 or inquire about a breakdown for my medicolegals
5 and things like that, I think they'll probably
6 have access to it.

7 117 Q When you say you receive a stipend, do you
8 receive cheques regardless of whether or not you
9 provide services?

10 A Well, I don't know if you're aware that I'm one
11 of the -- like, I'm a shareholder.

12 MS. GILL: That's not relevant.

13 THE WITNESS: Okay. Okay. So yeah.

14 MR. INGRAM:

15 118 Q I'm only asking you to clarify the stipend.

16 A Well, if I'm not there, if I'm not providing
17 services there, like call services, things like
18 that, then I don't receive a cheque. So I only
19 receive a cheque if I'm actually doing something
20 at Cambie.

21 119 Q And the same goes for SRC?

22 A Yes.

23 120 Q And other than the OR booking form, do you have
24 any other input into the rates charged?

25 A No.

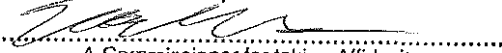
1 121 Q And do you have any role in arranging OR time at
2 UBC?

3 A Well, I do the roster as part of our group. I'm
4 the one who does the OR scheduling.

5 122 Q Could you explain what that means.

6 A So basically I get from the hospital usually --
7 let's see. I get fall schedule, spring, summer.
8 So three times a year I get the OR schedule from
9 the hospital for our group. So there's a fixed
10 number of days per week that our group gets, and
11 then it's up to me to allocate those days to our
12 group as equally as possible within the
13 restrictions or requirements of each surgeon.
14 So if -- like I said before, if a surgeon is on
15 vacation, then obviously when he's away I can't
16 give him OR time. So I try to, you know, meet
17 everybody's scheduling requirements for
18 vacation, conference leave, things like that.

19 I also go through their surgical wait list.
20 So I'll contact the -- whoever sends me the OR
21 schedule, I'll contact them and say, can you
22 send me the wait list for the next coming three
23 months that that schedule matches for each of
24 our surgeons. And then I may allocate,
25 depending on who has a longer wait list, a few

This is Exhibit "H" referred to in the
affidavit of Heather Lewis
sworn before me at Vancouver
in the Province of British Columbia this
29 day of April, 2014

A Commissioner for taking Affidavits
within the Province of British Columbia

**EXAMINATION FOR DISCOVERY
OF
FARHAD MOOLA
APRIL 17, 2014**

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	No exhibits for identification marked.	

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****Reporter's interpretation of outstanding requests****

No requests made.

1 specifically for Cambie or in general?

2 109 Q Specifically Cambie.

3 A Yes, I keep some records, yes.

4 110 Q Could you describe what that is.

5 A It's -- so often those patients are WCB

6 patients, so we'll keep a record of what we've

7 been paid for from WCB, from RCMP. If I have

8 billed MSP for their services, then we would

9 keep a record of that too.

10 111 Q Under what circumstances do you submit a claim

11 to the Medical Services Plan in relation to

12 services you've provided at Cambie?

13 A So again this would be -- looking back on my

14 electronic medical record this has been about

15 15 cases or 16 cases in the years that I've been

16 working at Cambie. And I'd say about half to

17 three quarters there was a submission to MSP for

18 the surgery that was done on a BC resident.

19 112 Q When you provide surgical services to a patient

20 at Cambie, is it your practice to disclose to

21 them that you'll be submitting a claim to MSP in

22 relation to their surgery?

23 A No, I don't discuss fees with them.

24 113 Q Do you receive compensation from Cambie or SRC

25 for services you provide at Cambie?

1 A I receive a cheque from Cambie periodically. I
2 have not received one for quite some time,
3 though.

4 114 Q On what basis is that compensation calculated?

5 A I don't know exactly how that is calculated.

6 115 Q Is there any documentation that provide a
7 breakdown or explanation of the compensation you
8 receive?

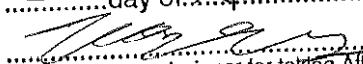
9 A No.

10 116 Q When you provide post-surgical follow-up care
11 to a patient to whom you've provided surgical
12 services at Cambie, is that follow-up care
13 typically provided at Cambie?

14 A No, it's not.

15 117 Q Where would that post-surgical follow-up care be
16 provided?

17 A Majority of the time it's provided in my office.
18 If they're WCB patients, the first follow-up
19 visit is in my office and then subsequent ones
20 are at the visiting specialist clinic, which is
21 part of WorkSafeBC. I may see the occasional
22 follow-up, as I said, at SRC, if I've seen them
23 initially through the SRC and they're visiting
24 from out of province or from the Yukon or from
25 Alberta.

This is Exhibit " I " referred to in the
affidavit of Heather Lewis
sworn before me at Vancouver
in the Province of British Columbia this
29 day of April, 2014

A Commissioner for taking Affidavits
within the Province of British Columbia

**EXAMINATION FOR DISCOVERY
OF
BRIAN DAY
JUNE 17, 2013
(VOLUME 1)**

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1	Invoice from Specialist Referral Clinic (Vancouver) Inc. to Ms. Switlo (two pages)	46
2	Blog entitled "Waiting Lists in the Private Health Care System," dated May 10, 2011	126

1 breakdown for each of the past five years,
2 including the fees paid and gross profits

3 MS. HORSMAN:

4 Q Now, I want to ask a little bit just about the
5 category (h) patients that we've been looking
6 at, Dr. Day.

7 A M'mm-hmm.

8 Q And if you flip back to page 19 of your
9 affidavit.

10 A M'mm-hmm.

11 Q Now, you've indicated there that in the last two
12 years, at least, approximately 10 percent of
13 Cambie patients are receiving medically required
14 treatment for which the physicians providing the
15 service could or do bill MSP.

16 A Yes.

17 Q And that's the category 36(h) that we just
18 looked at.

19 A Yes.

20 Q Now, the reference to the fact that physicians
21 could or do bill MSP just confused me, Dr. Day,
22 and I wondered if it's the case that in some
23 instances the physician could bill MSP for the
24 services and doesn't?

25 A Well, I think that if it's a BC-insured

1 resident, we don't have control over what they
2 do, but that's where they get their fee.

3 Q In the ordinary course you --

4 A They would bill, yeah.

5 Q I just wasn't sure about the reference "could"
6 and whether there was some reason that wasn't
7 apparent to me as to why they wouldn't.

8 A No, I don't think there is.

9 Q Because as far as Cambie's concerned, the
10 physician is not going to get compensated for
11 that surgery if they don't bill MSP.

12 A That's their fee for the surgery.

13 Q And they're not going to get compensated by
14 Cambie if they don't bill MSP.

15 A Cambie would only bill -- would only compensate
16 them for a surgical procedure on a patient who
17 was from out of province or in one -- or from
18 the Yukon WCB or for a non-insured service.

19 Q Right. I think you've answered my question, but
20 I'm going to ask it one more time.

21 For the beneficiaries where the physician
22 could or does bill MSP, that physician doesn't
23 get any extra compensation from Cambie?

24 A For the patient?

25 Q For the surgical service.

1 A No. Doesn't.

2 Q Now, of the 10 percent of the patients that
3 you've described in this paragraph, Dr. Day, are
4 you able to determine through Cambie records
5 what proportion of services may not have been
6 billed to MSP, or is that entirely between the
7 physician and MSP?

8 A The physician and MSP relationship is this --
9 now, I just want to clarify something. Cambie
10 does -- we pay fees to doctors for services that
11 the doctors do for Cambie. For example, we have
12 an anaesthesiologist who is full-time at Cambie,
13 and that doctor is responsible for functions
14 that serve Cambie Surgery Centre. So as a
15 corporation, we pay that person who is in charge
16 of our equipment, ordering equipment, looking
17 after equipment, dealing with college issues
18 when it comes to accreditation and so on and so
19 on. So we do remunerate physicians but not
20 related to a particular patient service.

21 Q And so --

22 A And I get paid by Cambie but not -- I get paid
23 for my services working for Cambie, not for my
24 services in operating on a particular patient.

25 Q So for the physicians that aren't employees of

1 the clinic in the way you've described for the
2 anaesthesiologist, a physician coming in to
3 perform a service at Cambie, they bill MSP and
4 they are not otherwise compensated by Cambie.

5 A No. The anaesthesiologist bills MSP for his
6 patients, but we pay him for services to our
7 corporation. So at Vancouver General Hospital,
8 St. Paul's Hospital and all of the other
9 hospitals you will find that there are
10 physicians -- they may be the director in charge
11 of the -- I mean, when I was at Vancouver
12 General and at UBC I used to be paid a salary by
13 the hospital for services that I did to the
14 hospital that were otherwise -- I mean, my time
15 in committees, my time in going to meetings with
16 administrators, my time in looking after the --
17 I was head of the arthroscopy service at
18 Vancouver General Hospital. That remuneration
19 was not related to me. It was a service for the
20 institution, not a service to the patient.

21 Q Let me try this one more time and see if I can
22 get it right.

23 Cambie doesn't provide any form of payment
24 to physicians that relate to the provision of
25 surgical services to patients at Cambie.

1 A Not directly to the patient, no. For BC -- for
2 MSP patients.

3 Q Yes. And I'll come back to the non-BC patients
4 in a moment, Dr. Day.

5 I wanted to ask you a question, Dr. Day,
6 about a bit of correspondence you had with the
7 Medical Services Commission.

8 A Sure.

9 Q And again, there's no magic to the particular
10 correspondence I've chosen. It's
11 representative, I think, of correspondence
12 you've had generally in this time period. It
13 was exhibit 17 to the affidavit of Bob de Faye,
14 which I understand has been filed in this
15 proceeding.

16 MR. GRANT: Okay.

17 THE WITNESS: Yes.

18 MS. HORSMAN:

19 Q Now, just so we have a common understanding of
20 the context for this exchange of correspondence,
21 I gather that the Medical Services Commission is
22 writing to you to express concern that a
23 beneficiary may have been charged in relation to
24 the provision of a service.

25 A Right.

1 any physician?

2 A They sign an acknowledgment that they are -- I
3 think you already have -- you already have a
4 copy of that where we -- we have them sign a
5 document that they understand they are acting as
6 independent contractors.

7 MS. HORSMAN: It may be in the documents and I've
8 just missed it, but I'd just ask if I could be
9 pointed to where in the document production it
10 is or if it hasn't been produced yet, produce
11 that document that Dr. Day has just described.

12 MR. GRANT: Yes.

13 **REQUEST 27: Provide the acknowledgement**
14 **re acting as independent contractors signed by**
15 **doctors at Cambie Surgery Centre or identify**
16 **such document in the list of documents**

17 MS. HORSMAN:

18 Q So in terms of how the physicians are
19 compensated for the surgical services that they
20 provide, I wanted to walk through three examples
21 so that I can understand it, depending on the
22 patient group.

23 A Okay.

24 Q So the first scenario I had in mind is that a
25 specialist surgeon has assessed a private

1 patient at SRC through -- I think sometimes you
2 call it an independent medical assessment?

3 A Right.

4 Q And so that's, as I understand, paid for by the
5 patient and not billed to MSP; is that right?

6 A Right.

7 Q And then the patient is referred to surgery at
8 Cambie, and at Cambie, then, the physician bills
9 MSP for the surgical services; is that right?

10 A Right.

11 Q So in that scenario, Dr. Day, is the surgeon
12 paid directly by the patient for the assessment
13 at SRC?

14 A Or sometimes a third party. I mean, if it's a
15 lawyer or an insurance company or -- could be
16 paid by a third party.

17 Q Okay. But in either case, the billing is
18 directly from the patient or third party payer
19 and the physician?

20 A Yes. For the assessment? No, no. It's billed
21 by the clinic. The physicians don't do any
22 billing at either clinic.

23 Q Okay. So SRC invoices the patient?

24 A SRC invoices the patient. The patients don't --
25 the doctors don't have any financial interaction

1 with patients.

2 Q Okay. And then the amount that's collected --
3 and we're still at the independent medical
4 assessment stage -- is the physician paid a
5 portion of that by SRC or all of it?

6 A Yeah, depending on what they do and what the
7 assessment is for and how long it takes and how
8 complex it is, SRC pays them a fee.

9 Q And it will be some portion of the fee charged
10 to the patient?

11 A Yes.

12 Q And is there some sort of policy document, a
13 clinic procedure manual that will set out this
14 kind of billing practice that we've just been
15 discussing?

16 A It's -- yeah, I'm sure there's a document to
17 that effect. I'm sure there is.

18 MS. HORSMAN: I'd ask that you please produce any
19 document evidencing the billing arrangements --

20 MR. GRANT: Yes.

21 MS. HORSMAN: -- as between the patient, SRC and the
22 physician.

23 MR. GRANT: Yes.

24 MS. HORSMAN: And including any document evidencing
25 the proportion of fee that goes to the physician

1 and how that's calculated.

2 MR. GRANT: All right.

3 REQUEST 28: Provide any document evidencing the
4 billing arrangements as between the patient,
5 Specialist Referral Clinic (Vancouver) Inc. and
6 the physician, including any document evidencing
7 the proportion of fee that goes to the physician
8 and how that is calculated

9 MS. HORSMAN:

10 Q And then with respect to the surgery itself, the
11 physician bills MSP?

12 A Right.

13 Q And I think we've already established -- but if
14 I've misunderstood, you can correct me,
15 Dr. Day -- that in that situation the physician
16 doesn't receive any other compensation from
17 Cambie or SRC; is that right?

18 A Right.

19 Q Okay. Then the second scenario is a patient
20 that falls within the WCB or WorkSafeBC program.

21 A Right.

22 Q And so if a surgery is performed, it's going to
23 be, I gather, under the contractual arrangement
24 with -- between the clinic and the WCB.

25 A Yes.

1 Q So in that event, again let's assume we have an
2 assessment and then a surgery. Okay? How is
3 the surgeon compensated in that scenario for the
4 initial assessment to determine if surgery is
5 necessary?

6 A They're paid by Workers' Compensation Board.

7 Q So for the initial assessment as well?

8 A Yes.

9 Q And that's a matter of a private --

10 A Right.

11 Q -- not private, a direct billing arrangement
12 between the physician and the WCB?

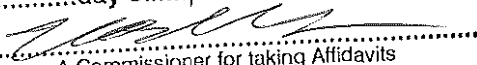
13 A Yes. The doctors have their own individual
14 BCMA-negotiated contract with WorkSafeBC.

15 Q Okay. And then when the surgery itself is
16 carried out, again, is it the doctor billing the
17 WCB directly for the surgical services?

18 A Yes.

19 Q And then finally the third scenario is where
20 surgery is performed on a non-resident. And I'm
21 going to say for the purpose of this scenario
22 assume it's a non-resident of Canada, so it's
23 not a Canadian citizen. So in that circumstance
24 there's no billing of MSP or any other payer; is
25 that right?

- 1 A No.
- 2 Q Okay. And in this scenario the patient is going
- 3 to pay both a facility fee and a surgery fee
- 4 or --
- 5 A Yes.
- 6 Q -- physician fee? So in this scenario how is
- 7 the physician compensated for the assessment?
- 8 Is it in the same way as the BC beneficiaries?
- 9 A Yes, the clinic will pay the physician.
- 10 Q And then in that event, how is the physician
- 11 compensated for the surgery if they're not
- 12 billing MSP?
- 13 A The clinic collects the fee from the patient or
- 14 sometimes the insurance company, if they're
- 15 non-residents, and then pays it to the doctor.
- 16 Q Okay. And again, I hope I'm not repeating old
- 17 ground. I just want to make sure that I've
- 18 already covered this in my requests so far. But
- 19 there will be a fee schedule that determines
- 20 what the surgical service is going to consist of
- 21 that's charged to the patient?
- 22 A Yes.
- 23 MS. HORSMAN: And I believe I've already requested
- 24 that, but if I haven't, if I can get that.
- 25 MR. GRANT: Okay.

This is Exhibit " J " referred to in the
affidavit of Heather Lewis
sworn before me at Vancouver
in the Province of British Columbia this
29 day of April, 2014

A Commissioner for taking Affidavits
within the Province of British Columbia

**EXAMINATION FOR DISCOVERY
OF
BRIAN DAY
APRIL 1, 2014
(VOLUME 2)**

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1 April 1, 2014
2 Vancouver, BC
3 (VOLUME 2 - CONTINUED FROM JUNE 17, 2013)
4 (PROCEEDINGS COMMENCED AT 10:03 A.M.)
5 BRIAN DAY, duly sworn.

6 EXAMINATION BY MS. HORSMAN:

7 451 Q Dr. Day, I wanted to start by asking some
8 questions about some accounting records that
9 were produced by the corporate plaintiffs in
10 compliance with the order of Associate Chief
11 Justice Cullen, and I've given you a copy of the
12 order.

13 A Okay.

14 452 Q It's this one right here dated October 21st,
15 2013.

16 A Okay.

17 453 Q And if you flip to appendix A of that order,
18 there's a list of documents.

19 Now, I presume you've seen a copy of this
20 order before today?

21 A No, I hadn't.

22 454 Q All right. I presume you received some --

23 A I may have received them, but I haven't -- you
24 know, I receive lots of materials from lawyers.
25 I received 28 expert reports, and I haven't read

1 them all. There's lots of stuff that I get that
2 I don't -- don't go through every word. So I
3 probably have received this, but I wouldn't
4 probably have read it.

5 455 Q Right. Well, I suggest this order is probably
6 in a little bit of a different category of other
7 material you may have received from your lawyers
8 because this order obliged the corporate
9 plaintiffs to produce a list of documents.

10 A Right. Yeah. I was aware of that.

11 456 Q Okay. And you understood that the documents
12 that the corporate plaintiffs were compelled to
13 produce are the documents listed in appendix A?
14 And feel free to take a moment --

15 A Sure.

16 457 Q -- if you want to read through it.

17 A Sure.

18 458 Q You understood that to be the case?

19 A Yes.

20 459 Q All right. And who was responsible for
21 assembling the records in appendix A from Cambie
22 in order to comply with this order?

23 A It would have been our executive director and
24 our accountant or accountants.

25 460 Q All right. And who is the accountant at Cambie?

1 A There are -- the main accountant is Paul
2 Colosie.
3 461 Q And the executive director?
4 A Lorraine Varner.
5 462 Q All right. And who had the responsibility for
6 complying with the order from the Specialist
7 Referral Clinic?
8 A That would have been our manager, Zoltan Nagy,
9 who you've previously discovered, plus Lynn
10 Furlotte, who's the executive director, plus
11 Criseida Simancas, who is the accountant.
12 463 Q All right. Can you give us a spelling on the
13 last name?
14 A I believe it's S-i-e-m-e-n-c-a-s [sic], but I'm
15 not absolutely sure of that.
16 464 Q And did you have direct involvement in the
17 process of assembling documents --
18 A No.
19 465 Q -- to comply with this order?
20 A No.
21 MS. HORSMAN: Just one minute. If we can go off the
22 record.
23 (DISCUSSION OFF THE RECORD)
24 MS. HORSMAN:
25 466 Q And who is the accountant at SRC?

1 A I already told you that.

2 467 Q I thought you --

3 A Criseida Simancas.

4 468 Q Okay.

5 A You asked for the spelling just now.

6 469 Q Okay. I'm not sure I understood that that

7 individual was the accountant, but --

8 A Okay.

9 470 Q All right. Now, a category of document that

10 both Cambie and SRC was ordered to produce was

11 the general ledgers for the clinics for the past

12 five years. Were you aware of that?

13 A Yes.

14 471 Q And I just want to understand a little bit

15 better some of the information that's reflected

16 in the general ledger accounts, and so I'm going

17 to put an excerpt in front of you.

18 A Okay. I may not know the answers for all of

19 these questions.

20 472 Q Understandable. And so if you don't know the

21 answer, you can advise and I might leave it as a

22 request with your counsel.

23 So the first document I'm showing you,

24 Dr. Day, is an excerpt from what I understand to

25 be the general ledgers of Cambie from fiscal

1 2012, and it relates to consulting services
2 accounts.
3 A All right.
4 473 Q And what I'm wondering about are some entries
5 under the heading "Consulting Pediatric." Do
6 you see that? I've highlighted it in yellow on
7 the excerpt in front of you.
8 A Yes. That -- so you're wondering -- are you
9 making a statement or asking a question?
10 474 Q I'm trying to get you to the point in the
11 document that I have a question about. Do you
12 see the heading "Consulting Pediatric"?
13 A Yes.
14 475 Q And so what does that heading refer to?
15 A It likely refers to dental surgery, because
16 they're the only children we treat.
17 476 Q Okay.
18 A I mean young children.
19 477 Q All right. And then you see immediately under
20 "Consulting Pediatric" is a payment -- the first
21 entry. It's sort of back on the first page.
22 Under the heading -- under the highlighted
23 "Consulting Pediatric."
24 A M'mm-hmm.
25 MS. HORSMAN: Mr. Elliot, if you can help out

1 maybe --

2 MR. ELLIOT: Yes. Yes.

3 MS. HORSMAN: -- by pointing out where I'm at in the

4 document.

5 478 Q The first entry appears to reflect a payment to

6 Dr. Brian Day in the amount of just over

7 \$44,000. Do you see that?

8 A Yeah. That wouldn't be under "Consulting

9 Pediatric," though.

10 479 Q Well, it appears to be on the general ledger.

11 A Well, I don't do pediatric work, so it wouldn't

12 be ... That may -- that may be the appearance,

13 but it's not reality.

14 480 Q Okay. And can you yourself --

15 A I get a salary from Cambie, right, for being a

16 medical director.

17 MR. ELLIOT: Let her finish the question.

18 MS. HORSMAN:

19 481 Q Can you yourself offer any explanation today as

20 to why those kinds of entries would be listed

21 under the heading "Consulting Pediatric"?

22 A No.

23 MS. HORSMAN: Can I ask that it be left as a request,

24 then, that inquiries be made of the accountant

25 at Cambie or whoever might know the answer as to

1 what the significance of the term "consulting
2 pediatric" is in terms of the entries reflected
3 under that heading?

4 MR. ELLIOT: Yes.

5 **REQUEST 50: Advise what "consulting pediatric"**
6 **signifies in terms of the entries reflected**
7 **under that heading in the excerpt from the**
8 **general ledger for fiscal year 2012**

9 MS. HORSMAN:

10 482 Q So, Dr. Day, if I can just stick with the entry
11 for yourself, the first entry, under the heading
12 "Consulting Pediatric," the 44,000 payment that
13 appears to reflect a payment from September
14 2011. Are you able to explain to us as we sit
15 here what the \$44,000 would have related to?

16 A It would be for my work as a medical director.

17 483 Q It wouldn't relate to your work as a physician
18 providing services at Cambie?

19 A Some of it could relate to that. It could be
20 related to -- for example, in non-BC residents
21 Cambie collects payments through SRC directly
22 from, say, Alberta patients, some RCMP patients,
23 some non-residents. So it could be that.

24 484 Q Okay. And I presume there would be some sort of
25 source document for the \$44,000 figure that

1 would tell me what that figure is comprised of
2 in terms of the various services that you've
3 indicated it may pertain to?

4 A I don't know.

5 MS. HORSMAN: Okay. Well, I'm going to leave it as a
6 request that --

7 THE WITNESS: Okay. It could just be a payment of my
8 annual salary, one of the installments.

9 MS. HORSMAN: Right. So what I'm hoping to do is get
10 some clarity on that rather than guessing today.
11 So if there's a source document that indicates
12 what the \$44,000 reflected in that general
13 ledger excerpt relates to, that it be produced.

14 **REQUEST 51: Provide the source document for the**
15 **\$44,000 payment to Dr. Brian Day indicated in**
16 **the first entry under the heading "Consulting**
17 **Pediatric" in the excerpt from the general**
18 **ledger for fiscal year 2012**

19 MS. HORSMAN:

20 485 Q Now, if you flip to the second page of the
21 excerpt I've just given you. And again I've
22 highlighted one entry, which is in respect of a
23 Dr. Michael Gilbert.

24 A M'mm-hmm.

25 486 Q Do you see that? And Dr. Gilbert is also an

1 orthopedic surgeon; is that right?

2 A Yes.

3 487 Q Okay. And the same account, "Consulting
4 Pediatric," reflects a payment to Dr. Gilbert of
5 some \$9,900. Do you see that?

6 A Yes.

7 488 Q And are you able to tell me as we sit here what
8 the payment to Dr. Gilbert relates to?

9 A No.

10 MS. HORSMAN: So again I'd leave it as a request that
11 if there's a source document -- and I presume
12 there must be -- that describes the nature of
13 the services provided by Dr. Gilbert that would
14 result in a \$99,000 [sic] payment, that it be
15 produced.

16 MR. ELLIOT: Right.

17 **REQUEST 52: Provide the source document for the**
18 **\$9,900 payment to Dr. Michael Gilbert indicated**
19 **under the heading "Consulting Pediatric" in the**
20 **excerpt from Cambie Surgery Centre's general**
21 **ledger for fiscal 2012**

22 MS. HORSMAN:

23 489 Q And then on the third page of that same excerpt,
24 Dr. Day, you see there's a highlighted entry for
25 Dr. William Penz.

1 A Yes.

2 490 Q And that's in an amount of just over, I think,
3 \$13,000. And Dr. Penz is an anesthesiologist;
4 is that right?

5 A Correct.

6 491 Q And again are you able to tell us as we sit here
7 what the \$13,000 payment to Dr. Penz would
8 pertain to?

9 A That would be for consulting services and
10 medical services to Cambie.

11 492 Q Is Dr. Penz an employee?

12 A No, but he is a contract -- contract worker.

13 493 Q All right. And is there a contract that
14 reflects the nature of the arrangement between
15 Dr. Penz and Cambie?

16 A All of the doctors at Cambie that have
17 privileges sign a -- sign a privileges statement
18 through the College of Physicians and Surgeons
19 of British Columbia, so he would have signed
20 that.

21 494 Q And there's no other contract between Dr. Penz
22 and Cambie?

23 A No. He acknowledges in his annual reappointment
24 that he is an independent contractor.

25 495 Q Are you aware if Dr. Penz works at any other

1 facility in British Columbia other than Cambie?

2 A I don't think he does.

3 MS. HORSMAN: And again if there's documents --

4 source documents that would reflect the details

5 of the payment to Dr. Penz in the entry that

6 I've just put to Dr. Day, I ask that it be

7 produced.

8 MR. ELLIOT: All right.

9 **REQUEST 53: Provide the source document for the**
10 **\$13,000 payment to Dr. William Penz indicated on**
11 **the third page of the excerpt from Cambie**

12 **Surgery Centre's general ledger for fiscal 2012**

13 MS. HORSMAN: Can I get that document we've just been
14 looking at back from you, Dr. Day.

15 Can I please have that marked as an exhibit
16 for identification, Madam Reporter, and we can
17 refer it to as "excerpt from Cambie Surgery's
18 general ledger for fiscal 2012."

19 **EXHIBIT 3: Excerpt from Cambie Surgery Centre's**
20 **general ledger for fiscal 2012**

21 MS. HORSMAN:

22 496 Q Now, Dr. Day, I've only put to you a brief
23 excerpt from the general ledger and, in
24 particular, the consulting pediatric accounting
25 records, but they reflect a series of payments

1 to physicians who I believe are not pediatric
2 dentists, and so --

3 A Yeah. Yeah.

4 497 Q And so as we -- again as we sit here today are
5 you able to provide me with any specific
6 illumination as to what the payments to
7 physicians who are not pediatric dentists under
8 that heading might pertain to?

9 A I suspect it's something --

10 MR. ELLIOT: The financial relationship between the
11 physicians and Cambie Clinic and SRC, I believe
12 in both Cullen's most recent order but
13 particularly the one in front of Dr. Day, that
14 was not determined to be relevant to the
15 questions.

16 MS. HORSMAN: Well, they're reflected in documents
17 that have been produced by the plaintiff, and I
18 presume you'd agree I'm entitled to follow up
19 with questions about the nature of the details
20 contained in the financial records that have
21 been produced.

22 MR. ELLIOT: Except to the extent that they relate to
23 things that Associate Chief Justice Cullen has
24 deemed to be not relevant to this action.

25 MS. HORSMAN: Okay. Well, I don't agree with you,

1 but I take it you're making an objection, so
2 you're instructing Dr. Day not to answer that
3 series of questions?

4 MR. ELLIOT: That's correct.

5 MS. HORSMAN: All right. So I'm going to leave it as
6 a request for the plaintiff -- the corporate
7 plaintiffs to please produce the source
8 documents for any payment to physicians under
9 the heading "Consulting Pediatric" for the last
10 five fiscal years that the records were produced
11 in compliance with Associate Chief Justice
12 Cullen's order.

13 MR. ELLIOT: Very good.

14 **REQUEST 54: Provide the source documents with**
15 **respect to any payment to physicians under the**
16 **heading "Consulting Pediatric" contained in the**
17 **five fiscal years of records produced in**
18 **compliance with the order of Associate Chief**
19 **Justice Cullen**

20 MS. HORSMAN: And for each of the consulting services
21 noted please advise of the nature of the
22 services provided, the fees paid and the basis
23 for deriving the fees, firstly, and second,
24 provide any and all source documents.

25 MR. ELLIOT: We will take that under advisement.

1 REQUEST 55: Advise of the nature of the
2 services provided, the fees paid and the basis
3 for deriving the fees for each of the consulting
4 services noted in the records produced in
5 compliance with the order of Associate Chief
6 Justice Cullen and provide any and all source
7 documents

8 (**TAKEN UNDER ADVISEMENT**)

9 MS. HORSMAN: Now, Dr. Day, more in the nature of an
10 administrative loose end, I'm advised that the
11 general ledger that was produced for Cambie for
12 fiscal year 2008 is incomplete, and so I'd
13 request that the plaintiff please provide in
14 Excel format a complete general ledger for
15 fiscal year 2008.

16 MR. ELLIOT: Okay.

17 REQUEST 56: Provide in Excel format a complete
18 general ledger for Cambie Surgery Centre for
19 fiscal year 2008

20 MS. HORSMAN:

21 498 Q Now, Dr. Day, when the general ledger for
22 Specialist Referral Clinic, SRC, was delivered
23 to the attorney general -- again, that was in
24 compliance with the order of Chief Justice
25 Cullen -- it was in PDF format. Were you aware

1. of that?

2. A I'm not sure.

3. 499 Q Okay. And again those would have been the

4. individuals you listed that complied with the

5. order from SRC's perspective?

6. A Did Justice Cullen order that they be provided

7. in a specific format?

8. 500 Q He didn't, no. I'm not suggesting that the PDF

9. was non-compliant; I'm just --

10. A Okay. I will tell you that you have been

11. provided -- and this is probably why you have

12. some of the materials that Justice Cullen would

13. not have authorized be released. You have been

14. provided with a lot more information in our

15. financials than we were required to provide, and

16. the reason for that is there were thousands and

17. thousands of entries that we could not go

18. through. So actually you have been provided

19. with a lot of information that just because it

20. was provided to you does not mean it was in --

21. because of Justice Cullen's order. It was

22. because we did not have the manpower to go

23. through thousands and thousands and thousands of

24. pages of financials extracting that information.

25. We're not like the government; we don't have an

1 unlimited source of funds and staff. We don't
2 have -- we don't have taxpayer funds that we can
3 waste on that type of activity. We are a small
4 clinic. So you have been provided with a lot of
5 information that you were not entitled to, but
6 we gave it to you because we did not have the
7 resources to do otherwise.

8 MS. HORSMAN: I'm going to try and shorten today's
9 proceedings. I've been told by your counsel
10 that they take the position that I'm limited to
11 three hours today, Dr. Day, and so the discovery
12 process -- and we went through this last time --
13 is a process by which I'm entitled to ask the
14 plaintiff questions and you're obliged to answer
15 them. And so if today is going to be a
16 repetition of the last day where I get lectured
17 at as opposed to having my questions answered,
18 then we should just end it now and I'll go seek
19 some direction from the judge as to how this
20 process is going to continue.

21 THE WITNESS: If you think that I am not going to
22 deal with issues that relate to the -- to the
23 matter at hand, which is -- which is -- and you
24 know I've said this before. I don't need to
25 reiterate what I said last time. I consider

1 this to be a case of -- relating to the rights
2 of patients in Canada who are on -- and in BC in
3 particular, who are suffering on wait lists.
4 That is what I consider this case to be about.

5 We have freely admitted that Cambie and
6 SRC, or at least Cambie anyway, is in conflict
7 with some of the aspects of the *Medicare*
8 *Protection Act* that we believe to be unlawful,
9 and that's the basis of the case. But if you
10 want to -- I'm happy to sit here and go through
11 every detail of every ledger if you think that's
12 the crux of the case. So I'll sit here and
13 answer those questions. But I will not -- I
14 will not -- I will not be forced into
15 eliminating comments and for you to say I should
16 not comment on what I think is an appropriate
17 answer to your questions that relate to poor
18 access to patient care and the whole reason for
19 the existence of a facility like Cambie and a
20 facility like SRC.

21 MS. HORSMAN: Well, your speeches are frequently
22 non-responsive to questions that I'm asking, and
23 so what I would like right at the outset of
24 today's process is an agreement on the record
25 that Dr. Day understands that today's process is

1 a process by which I'm entitled to ask questions
2 and he needs to give a responsive answer unless
3 there's an objection from counsel.

4 MR. ELLIOT: Can we go off record and take a couple
5 minutes?

6 MS. HORSMAN: Okay. Just for the record, we're going
7 to go off record so that Dr. Day can have a
8 moment with his counsel to discuss this.

9 **(DISCUSSION OFF THE RECORD)**

10 MS. HORSMAN:

11 501 Q Well, all right, Dr. Day. The order of
12 Associate Chief Justice Cullen directed that the
13 plaintiffs produce the annual accounting trial
14 balances and general ledgers of SRC for the past
15 five years, were you aware of that?

16 A Yes.

17 502 Q And when that general ledger for SRC was first
18 delivered to the attorney general's office it
19 was in PDF format, and I wondered who was
20 responsible for preparing the general ledgers
21 for delivery in that form.

22 A It would have been the staff at SRC.

23 503 Q Mr. Nagy?

24 A It would be a combination of Mr. Nagy, Lynn
25 Furlotte and Simancas, the accountant. Between

1 them they would have -- would have put that
2 information together.

3 504 Q All right. We subsequently requested and were
4 provided an Excel version of SRC's general
5 ledger for the past five years. Were you
6 aware --

7 A Yes.

8 505 Q -- of that?

9 MR. ELLIOT: Just let her finish the question.

10 MS. HORSMAN:

11 506 Q I believe you indicated you were aware of that?

12 A Yes.

13 507 Q And were the same individuals responsible for
14 delivering the Excel version of the records?

15 A I assume so.

16 508 Q All right. Well, Dr. Day, the reason why I'm
17 asking these questions is that when you compare
18 the PDF version of the SRC ledger against the
19 Excel version there's data missing from the
20 Excel version. Specifically, the PDF version
21 lists the names of physicians to whom fees were
22 paid, whereas the physicians' names have been
23 removed from the Excel spreadsheet. Can you
24 explain how that alteration was made?

25 A I think that in the Excel version it's possible

1 to remove the physician ID, and in keeping with
2 Justice Cullen's order information relating to
3 physician payments between the clinics and the
4 physicians was not part of what he ordered.

5 509 Q So the removal of that information from the
6 Excel version was deliberate?

7 A Yes.

8 MS. HORSMAN: I'm going to ask that the plaintiff
9 please produce general ledgers for SRC in Excel
10 format with a complete set of data, including
11 the names of physicians.

12 And we can take this up with the court,
13 Mr. Elliot, if we need to later, but there's no
14 exemption in the order of Mr. Justice Cullen.
15 Both clinics were required to produce their
16 general ledgers not in redacted form.

17 **REQUEST 57: Provide general ledgers for**
18 **Specialist Referral Clinic in Excel format with**
19 **a complete set of data, including the names of**
20 **physicians**

21 MS. HORSMAN:

22 510 Q Now, Dr. Day, the doctors' fees in the Excel
23 data for SRC are summarized by category, and so
24 I just wanted to better understand the different
25 categories and was hoping you could help me with

1 that.

2 The categories in particular include
3 "independent medical assessment," "independent
4 medical exam fees" and "IMA complex." Those are
5 three different categories. Are you able to
6 explain to me the differences in those three
7 services?

8 A So medicolegal would be as described:
9 medicolegal reports for lawyers. IMAs would be
10 independent medical examinations that are not
11 complex, and the others would be those that are
12 complex.

13 511 Q And can you help me out with what the difference
14 between a complex and a non-complex IMA would
15 be?

16 A If someone had multiple issues that were -- that
17 required more complicated and longer assessment,
18 that would be complex.

19 512 Q And does that result in a higher fee for the
20 assessment?

21 A Usually, yes.

22 513 Q I wanted to ask another question, Dr. Day, which
23 again I may need to leave just as a request but
24 we'll see if you can answer it in this room, is
25 with respect to information that shows up in the

1 descriptive field for the general ledgers. And
2 again I don't propose this is exhaustive of this
3 type of information; it's just -- this is an
4 example of the excerpt I'm about to give you
5 from the general ledger, and I've highlighted
6 the points I had questions about.

7 And so you'll see through that document,
8 the excerpt I've put in front of you, which
9 again is an excerpt from the general ledger of
10 Cambie from fiscal year 2012, we find frequent
11 reference to "SIS revenues," "SIS payments,"
12 "SIS deposits" and "SIS receipts." And I
13 wondered if you knew if SIS stands for "surgical
14 information systems."

15 A SIS is simply the software that Cambie uses for
16 its -- it's basically a specific software
17 program that is used widely in surgery centres
18 in the United States.

19 MS. HORSMAN: Okay. So for each general ledger
20 category containing a reference to SIS I request
21 that the plaintiffs please provide in electronic
22 format for revenue accounts the date of service,
23 service provided and the patient invoice number,
24 the attending physician providing the service
25 and the component element of the aggregate fees

1 charged to the patient, firstly, and for other
2 accounts, non-revenue accounts, the patient
3 invoice number and patient invoices.

4 **REQUEST 58: Provide in electronic format for**
5 **each general ledger category containing a**
6 **reference to SIS for revenue accounts the date**
7 **of service, the service provided, the patient**
8 **invoice number, the attending physician**
9 **providing the service and the component element**
10 **of the aggregate fees charged to the patient and**
11 **for non-revenue accounts the patient invoice**
12 **number and patient invoices**

13 MS. HORSMAN: Madam Reporter, if I could get this
14 excerpt marked as an exhibit for identification
15 as well. It could be described as "excerpt from
16 Cambie general ledger referencing SIS."

17 **EXHIBIT 4: Excerpt from Cambie Surgery Centre's**
18 **general ledger referencing SIS**

19 MS. HORSMAN:

20 514 Q Dr. Day, if we can go back to the order of
21 Associate Chief Justice Cullen in appendix A.
22 Term 3 compelled the corporate plaintiffs to
23 produce any documents reflecting the current
24 shareholders of each of Cambie Surgeries
25 Corporation and Specialist Referral Clinic Inc.,

1 from the plaintiffs' production. The first is
2 CSC 14695. It's entitled "Surgical Fee
3 Estimates Facility Fee," and the second is
4 CSC 3884, which is labelled "Surgical Price
5 List."

6 A Right.

7 531 Q And this was part of the plaintiffs' recent
8 production, which I understood to be responsive
9 to the order of Associate Chief Justice Cullen.

10 If we start with the first of the
11 documents, which is the 14695 in the upper
12 right-hand corner.

13 A Yeah.

14 532 Q Who prepared this document?

15 A This is -- this is -- this document would have
16 been prepared by our accountant at Cambie, I
17 assume.

18 533 Q Well, have you seen this document before?

19 A I think I've seen similar documents. I don't
20 know if the prices on this one are the same as
21 the ones I've seen because from time to time we
22 increase our prices. But this is the type of --
23 I think one of the things that you need to
24 understand is that there cannot be a fixed price
25 list for a fixed -- for a special -- for a

1 diagnosis. The price list is determined based
2 on an individual surgeon's time that we -- that
3 the -- that we expect he takes or she takes. It
4 depends on the equipment that they fill in as
5 being necessary for that procedure, whether we
6 have to rent equipment. And that's why there's
7 a range. There is -- so when -- if I were to
8 book, say, a Bankart repair, there would be a
9 history of what I used for that operation, of
10 how long I take, of how long the patient stays,
11 and within that range there would be a fee
12 quoted. So that's how it works.

13 One of the things you need to understand is
14 you can never find a document or fees like this
15 relating to the hospitals in British Columbia
16 because they don't know most of what their costs
17 are. And so these fees range based on -- based
18 on complexity of the procedure, time of the
19 procedure, individual surgeons and sometimes
20 whether they're -- whether they're from
21 different locations, non-residents, who are more
22 complex to deal with because we have to deal
23 with insurance companies and may be charged a
24 higher administrative fee.

25 But this is as accurate as a fee schedule

1 that you can get. Like I said, you wouldn't
2 find anything like this in a hospital because
3 they can't give you -- they can't -- they don't
4 know their costs.

5 534 Q I'm quite sure there's much I don't understand
6 about the way facility fees are set at Cambie,
7 which is why I'm asking the question, Dr. Day.
8 And in my defence we've asked for documents many
9 times that will help illuminate things and this
10 is the most we've been given. So I just wanted
11 to ask some questions about it and so maybe
12 hopefully fill in some of the blanks.

13 A That's why --

14 535 Q You can keep that. I want to ask you some
15 questions about it.

16 A Okay.

17 536 Q So sticking with CSC 14695. And I take your
18 point, Dr. Day, that individual surgeries will
19 vary depending on their complexity. So what
20 would the purpose of this surgical fee estimate
21 chart be? Why was it prepared?

22 A It's prepared so that the staff can give an
23 inquiring individual or organization a range of
24 what they can expect the cost to be.

25 537 Q So this is provided for the purpose of whoever

1 happens to be dealing with members of the
2 public?

3 A Or with corporations or with insurance
4 companies.

5 538 Q All right. So it's for the purpose of giving
6 quotes, in other words?

7 A Yes.

8 539 Q All right. And so again, just so I'm clear in
9 my own mind as to how the actual facility fee is
10 set, can you walk me through an example of how
11 we'd get from this to a specific fee, facility
12 fee, for a particular surgery?

13 A So, for instance, if surgeon A and surgeon B
14 each booked -- let's take number -- let's take
15 Bankart procedure. The range here is \$5,115 to
16 \$10,725. The lower fee might be for a small
17 Bankart -- sorry, for -- let me see. Yes, for a
18 small degree of pathology in which a surgeon
19 believes he'll only need one or two implants and
20 the surgery will take two hours or three hours
21 and the patient will stay for ten hours. And
22 the high one would be where the surgeon says
23 this is a complex procedure, it's going to use
24 four implants, and the patient may have to stay
25 overnight. And that's the process.

1 540 Q And so when the physician is making this
2 determination about whether it's --
3 A No, the physician doesn't make the
4 determination.
5 MR. ELLIOT: Just let her finish.
6 MS. HORSMAN:
7 541 Q Well, if the physician doesn't make the
8 determination, then perhaps we can start again.
9 Who makes the determination of where, as between
10 5,000 and 10,000, the actual facility fee is
11 going to land?
12 A The person at SRC will phone the accountant at
13 Cambie and say, this surgeon has -- wants to do
14 this procedure on this type of patient using
15 these devices. What does that cost?
16 542 Q And then in turn Cambie will advise SRC what the
17 cost is and SRC prepares an invoice for the
18 patient?
19 A Yes.
20 543 Q All right. And so when the physician explains
21 to SRC what the surgery is going to require, is
22 that done at the time of an assessment at SRC?
23 A Sometimes. Sometimes it's done before they come
24 to SRC. I mean, people travel to -- I mean,
25 I've treated patients coming from Europe,

1 professional soccer players. They need to -- I
2 mean, they usually don't care what it costs, but
3 they are told an estimate in advance of getting
4 on a plane and coming. They're not going to fly
5 into Vancouver and then be told what it costs
6 and then fly home because it's too expensive.

7 544 Q Okay. Just so that I'm -- you can tell me if
8 I've got this right. The final facility fee
9 price is something determined by the clinics and
10 not the physician, but it's based on information
11 that the treating physician provides about the
12 complexity of the surgery and what's required?

13 A Or that we know -- the clinic knows about the
14 complexity. Sometimes the surgeon does not
15 necessarily know the cost or the materials or
16 the time, so the clinic is the final -- the
17 clinic determines the final price. The surgeons
18 would not be talking prices with the patients
19 because they don't know them.

20 545 Q M'mm-hmm. And so you made a reference earlier
21 to the physicians filling something in. Is
22 there a sheet that they fill out?

23 A Well, they fill in the diagnosis and a treatment
24 plan. Or they would dictate that in their
25 operative -- in their consultation report that

1 this patient needs this, this and this, and they
2 will recommend an overnight stay if they -- if
3 that's deemed necessary. And so all of that is
4 built into the price determination.

5 546 Q I see. And so then the price determination is
6 made from that report provided by the physician?

7 A By that report and by the forms that are filled
8 out by the patient. Sometimes they want to stay
9 overnight. You know, sometimes they don't want
10 to go home. Sometimes it's the patient.

11 547 Q Okay. And, Dr. Day, again just for the sake of
12 my own clarity the second document that I've put
13 in front of you, the 3884 surgical price list,
14 have you seen this document or a document like
15 it before today?

16 A Yes.

17 548 Q All right. And would this price list have been
18 prepared for a similar reason? That is, to
19 provide surgery quotes to patients?

20 A This is just an overall -- this would be an
21 overall -- an overview of what this is.

22 549 Q All right. And is there a separate surgical fee
23 estimate form or surgical price list for a
24 patient who is not a BC beneficiary, so will be
25 paying the full surgery costs, including

1 physician time?

2 A Yes. Well, they would -- that would be in this

3 range too.

4 550 Q Okay. I thought your evidence from last time

5 had been that for patients from, say, out of the

6 country that aren't beneficiaries under the

7 Medical Services Plan they would pay a facility

8 fee plus additionally pay for the physician's

9 time?

10 A Correct.

11 551 Q So the quote for their surgery would be

12 different from the quote for the same surgery

13 for a BC beneficiary, wouldn't it?

14 A Yes, but this is illustrated in this fee

15 schedule.

16 552 Q Yes. But what I'm getting at is the additional

17 fee that an out-of-country patient would pay,

18 the fee for the physician time, is that

19 reflected in any quote document that Cambie

20 maintains?

21 A It's in this document. So someone from out of

22 country undergoing a Bankart repair, the

23 surgeon's fee would be included and it would

24 move it to the higher level of the range.

25 553 Q I see. So the physician's fee is part of what

1 creates the range in document 14695?

2 A Yes. Yes.

3 554 Q And is there any separate document that Cambie
4 maintains that would illustrate to me what
5 component of this range relates to physician
6 fees?

7 A No. No. Because this is just -- this is the
8 range that we used to quote the fees.

9 555 Q All right. And so again if you look at
10 CSC 3884, the surgical price list.

11 A Yes.

12 556 Q Again is the actual physician's time for
13 out-of-country patients reflected in the
14 estimated quotes on CSC 3884?

15 A On this one, yes.

16 557 Q "On this one" being 3884?

17 A Yeah.

18 558 Q Is that a yes?

19 A Yes.

20 559 Q All right. I'm not trying to be difficult here,
21 Dr. Day. I just want to make sure I have your
22 evidence correct because -- I don't know if you
23 recall last time we spent quite a lot of time on
24 something called "Surgical Price List BC
25 Residents," which is CSC 2994, which looks like

1 a document, to my eye, very similar to 3884.
2 And I thought the explanation given to me last
3 time was the document I've just handed you, the
4 surgical price list for BC residents, only
5 quoted a facility fee and didn't include the
6 physician's time.

7 A Yeah. Well, you know, I don't know the date of
8 this one. I don't know the date of that one
9 either. So I've seen -- I've seen this page
10 before and I don't know when it's dated or when
11 it was -- when it was -- when it was -- this
12 was -- this is created as an overview guide to
13 the staff, and it's not -- this is the
14 definitive price list. Because what happens is
15 the Specialist Referral Clinic will contact
16 Cambie and say this is what's going to be done.
17 What is the price? So this is given to -- so
18 someone makes a phone call and this is the
19 approximate price. So this document here seems
20 to be a facility -- facility and administrative
21 fee, because I've noticed that the ranges are
22 different, so it may also be at a different --
23 different point in time. This too is -- this
24 too is different. I see, for instance, a knee
25 scope/menisectomy, the maximum on this is 4,800

1 and on this one is 3,950. So I don't -- I
2 assume that's -- I don't know when these are
3 dated.
4 560 Q And I presume --
5 A But these are not the definitive documents.
6 This is the -- this is -- it's Cambie that gives
7 the quote back to the clinic.
8 561 Q Right.
9 A This is something the staff may have at SRC as a
10 guide.
11 562 Q Okay. And, Dr. Day, I presume that it wasn't
12 you that created any one of the three documents
13 we've been discussing?
14 A No.
15 563 Q Do you know who created them?
16 A No.
17 MS. HORSMAN: Can I just leave it as a request that
18 inquiries be made as to who created these three
19 documents. And, Dr. Day, could I just grab them
20 back from you so I can identify them for the
21 record. Document CSC 14695, CSC 3884 and
22 CSC 2994. Inquire as to who created them and
23 make further inquiries of that person as to
24 whether any or all of these documents include
25 physician's time in addition to the facility

1 fee.

2 **REQUEST 67: Advise who created documents**
3 **CSC 14695, CSC 3884 and CSC 2994 and whether any**
4 **of the documents include physician's time in**
5 **addition to the facility fee**

6 MS. HORSMAN: Madam Reporter, perhaps I could just
7 mark the documents as the next exhibits.

8 And so the first would be entitled
9 "Surgical Fee Estimate Facility Fee," undated,
10 from Cambie, CSC 14695. And I should say for
11 the record I've been referring to that as a
12 document number but I believe it's actually a
13 page number in how the documents have been
14 listed by the plaintiff.

15 **EXHIBIT 5: Document entitled "Surgical Fee**
16 **Estimate Facility Fee" (document CSC 14695)**

17 MS. HORSMAN: And then the next one is a document
18 entitled "Surgical Price List," CSC 3884.

19 **EXHIBIT 6: Document entitled "Surgical Price**
20 **List" (document CSC 3884)**

21 MS. HORSMAN: And the third is entitled "Surgical
22 Price List BC Residents," CSC 2994.

23 **EXHIBIT 7: Document entitled "Surgical Price**
24 **List BC Residents" (document CSC 2994)**

25 MS. HORSMAN:

1 operates on that is compliant with the *Medicare*
2 *Protection Act* or advise in writing that it has
3 not been done

4 MS. HORSMAN:

5 664 Q Do you have still in front of you, Dr. Day, the
6 letter from your counsel of October 18th, 2013,
7 which is the response to the discovery requests?
8 And also affidavit number 3?

9 Dr. Day, if you go to page 6. I wanted to
10 ask you some questions about the response to
11 request 25. And that was when I asked that the
12 plaintiffs produce a breakdown by year of the
13 percentage of patients falling each -- into each
14 of the categories described in paragraph 36 of
15 your affidavit number 3.

16 A Right.

17 665 Q And the response was that the corporate
18 plaintiffs didn't maintain records in a format
19 suitable to provide accurate values requested.
20 And to the extent that records are maintained,
21 there's a breakdown that don't entirely -- that
22 doesn't entirely match up with paragraph 36 of
23 your affidavit number 3, and so I just wanted to
24 ask for some clarification.

25 A What would you like to --

1 666 Q Well, I'm just -- if you'd give me a moment to
2 orient myself here.

3 So starting with the "private self-pay,"
4 which is the first category in your response to
5 request number 25. Do you see that?

6 A M'mm-hmm.

7 667 Q "Private self-pay," 305 patients in that
8 category. And this is for the period January 1
9 to December 31, 2012. And so I'm wondering if
10 those private self-pay patients might include
11 patients in categories E, G or H of your
12 paragraph 36. And you can take a moment to
13 review paragraph 36 if you need to.

14 So category E in your paragraph 36 is
15 out-of-country residents.

16 A Yes. It would include those.

17 668 Q And category G are the insured residents seeking
18 surgical procedures not deemed to be medically
19 required according to the commission and
20 therefore not benefits, and you've given the
21 example of cosmetic surgery and eye surgeries.
22 That might be included in the "private self-pay"
23 category?

24 A Right.

25 669 Q And then H is the category of -- we've been

1 talking about, insured residents for whom
2 waiting times in the public health care system
3 are unacceptable, et cetera.

4 A Right.

5 670 Q And so I'm wondering if you can tell me if the
6 "private self-pay" in the response to request 25
7 would include patients from each of those three
8 categories.

9 A Yes, probably does.

10 671 Q And are you able to tell me of the 305 what
11 number are category H?

12 A No.

13 672 Q Your records have no way of depicting that?

14 A No.

15 673 Q I'm right, am I not, Dr. Day, that the patients
16 falling in categories E and G, the other two
17 categories, would receive payment for their
18 services not through the Medical Service Plan
19 but through a billing process that's facilitated
20 by SRC?

21 A Yes.

22 674 Q And so I would have thought, given that
23 difference in the billing practice, it would
24 have been quite easy to determine how many of
25 these patients fall within category H because

1 the physicians providing the service wouldn't
2 have received a payment from SRC for the
3 service.

4 A We don't do the billing for the doctors on MSP
5 patients.

6 675 Q I understand that.

7 A So they're probably categorized and lumped
8 together.

9 676 Q I understand that, but you --

10 A That's what I -- that's what I read this as.

11 677 Q -- you do do the billing for the other two
12 categories, the E and G categories?

13 A Right.

14 MS. HORSMAN: Well, it seems to me it should be
15 possible on that basis alone in the sense that
16 there's going to be a different billing method
17 for the non-BC beneficiaries falling within
18 category of "private self-pay" to determine who
19 within that category are the BC beneficiaries.
20 So I'd ask that the plaintiffs please try again
21 to determine how many of the 305 patients
22 referred to in the response to question 5 in the
23 correspondence of October 18th, 2013, fall
24 within category H of Dr. Day's affidavit
25 number 3.

1 **REQUEST 74: Advise how many of the 305 patients**
2 **referred to in the response to question 5 in the**
3 **correspondence of October 18, 2013, fall within**
4 **category H of Dr. Day's affidavit number 3**

5 MS. HORSMAN:

6 678 Q And then the very last category on the
7 request 25 -- the response to request 25 is
8 "SRC referrals." And that category, "SRC
9 referral," Dr. Day, I don't know, and I just
10 wonder if you can confirm if this is the case.
11 Those 662 represent the total number of patients
12 in 2012 who received -- who had surgery
13 performed at Cambie that were referred following
14 an assessment at SRC? Is that what that number
15 represents?

16 A I assume so.

17 679 Q Okay. And does the 662 include the 305 private
18 self-pay, or is that an additional category of
19 patients?

20 A No, you'd have to add them up and see.

21 MS. HORSMAN: Okay. Well, I'd leave it as a request
22 from whomever compiled this information,
23 Mr. Elliot, that the plaintiffs determine how
24 many of the 662 "SRC referral" patients included
25 in response 25 are also included in "private

1 self-pay" category, the 305.

2 REQUEST 75: Advise how many of the 662 patients
3 in the "SRC referral" category included in
4 response to request 25 are also included in the
5 305 patients in the "private Self-Pay" category

6 MS. HORSMAN: And also determine how many additional
7 patients falling within the category of "SRC
8 referrals" also fall into category H of
9 Dr. Day's affidavit number 3, paragraph 36.

10 REQUEST 76: Advise how many additional patients
11 in the "SRC Referral" category also fall within
12 category H at paragraph 36 of Dr. Day's
13 affidavit number 3

14 MS. HORSMAN:

15 680 Q Now, Dr. Day, if you turn to paragraph 81 of
16 your affidavit number 3.

17 A This one? Page ...

18 681 Q Page -- pardon me. Paragraph 81 of affidavit
19 number 3. And in the first sentence of
20 paragraph 81 you've deposed that in 2011 -- so
21 that's the year before the year we were just
22 looking at -- Cambie provided surgical treatment
23 to approximately 415 BC residents who privately
24 paid a facility fee to Cambie for their
25 medically required surgical treatment, and you

1 anticipated that the numbers for 2012 and 2013
2 would likely be similar.

3 And then skipping down to the very final
4 sentence of paragraph 81:

5 "During November and December an average
6 of 50 private pay BC residents receive
7 surgical treatment at Cambie each month."

8 Now, it appears from affidavit number 3, which
9 was sworn in October 2012, that as of this time
10 not only could Cambie identify the number of
11 patients falling into category H; it could also
12 track them into the future and break them down
13 by month. Isn't that what paragraph 81 tells
14 me?

15 A Possibly, yes.

16 682 Q And I'm wondering if you can help me reconcile
17 the precision of that data with the response to
18 request 25, which indicates that the records of
19 Cambie and SRC didn't permit such a breakdown.

20 A Well, it does use the word "approximately," so I
21 don't know how much detail was gone into,
22 but ... approximately 415 patients. I think
23 they may have just gone through and seen that
24 they were BC residents.

25 683 Q And so who --

1 A Non-WorkSafeBC BC residents.

2 684 Q And so who would have assembled the information
3 that's reflected in your paragraph 81 of
4 affidavit number 3?

5 A Likely our accountant.

6 MS. HORSMAN: All right. Well, it appears that
7 your accountant has already assembled the
8 records for 2011, so I'd ask that that
9 information that underpinned paragraph 81, the
10 source information for paragraph 81 of Dr. Day's
11 affidavit, be produced. That is a breakdown
12 of -- pardon me -- a clarification that the 415
13 are the number of patients falling within
14 category H of Dr. Day's affidavit number 3,
15 paragraph 36.

16 **REQUEST 77: Provide the source information for**
17 **the assertion at paragraph 81 of Dr. Day's**
18 **affidavit number 3 that 415 patients fall within**
19 **category H at paragraph 36 of Dr. Day's**
20 **affidavit number 3**

21 MS. HORSMAN: And also for each of the past five
22 years could the plaintiffs please advise what
23 portion of the gross profit of Cambie came from
24 private pay patients falling in category H of
25 affidavit number 3, paragraph 36.

1 REQUEST 78: Advise for each of the past five
2 years what portion of the gross profit of Cambie
3 Surgery Centre came from private pay patients
4 falling in category H at paragraph 36 of
5 Dr. Day's affidavit number 3

6 MS. HORSMAN:

7 685 Q If you turn -- if you go down to paragraph 83 of
8 affidavit number 3, Dr. Day. The very last
9 sentence of paragraph 83 you've deposed:


10 "It's simply not financially possible for
11 Cambie to cover the cost of the operating
12 room facilities and associated nursing
13 staff and equipment for these patients."

14 Now, by "these patients" do you mean the BC
15 beneficiaries falling within category H of
16 paragraph 36 of your affidavit number 3?

17 A Yes.

18 686 Q And so for 2011, for example, it was not
19 financially possible for Cambie to cover the
20 facility fee cost for 415 patients out of what I
21 guess would be approximately 4,000 or so that
22 Cambie treated that year?

23 A I think we already discussed the fact that
24 approximately ten times the cost that the
25 surgeon receives is the cost that -- the cost to

This is Exhibit " K " referred to in the
affidavit of Heather Lewis
sworn before me at Vancouver
in the Province of British Columbia this
29 day of April, 2014

A Commissioner for taking Affidavits
within the Province of British Columbia

CAMBIE

SURGERY CENTRE

Surgical Fee Estimates - (Facility Fee)

Subject to clinical assessment and precise procedure

Arthroscopic Knee Surgery		Range	
Menisectomy/Loose Body	2,610	5,220	
Menisus Repair (including one implant)	3,260	6,540	
Anterior Cruciate Repair or Reconstruction	4,160	9,480	
Revision ACL for Failed Previous Surgery	5,060	13,330	
Posterior Cruciate Repair or Reconstruction	5,660	17,210	
Patellar Tendon Tenolysis	2,410	4,880	
Excision of Pre-Patellar Bursa	2,115	3,658	
Osteochondral bone graft (femur (OATS)	4,360	8,905	
Knee Joint Unicompartamental	15,520	18,763	

Shoulder Surgery		Range	
Acromioplasty and Excision Distal Head of Clavicle	4,915	9,350	
Excision of Distal Head of Clavicle	4,915	7,755	
Shoulder Debridement/Decompression/Removal of Loose Body	4,115	7,040	
Shoulder Debridement/Decompression/Distal Clavicle Excision	4,615	7,590	
Bankart Repair	5,115	10,725	
Acromioplasty	4,915	8,635	
Rotator cuff repair/Shoulder Debridement/Decompression/Removal of Loose Body	5,265	10,560	
Capsular shrinkage procedure	4,115	7,590	
Biceps tenodesis or repair	4,915	8,305	
Shoulder exam/Manipulation under Anaesthesia	2,815	4,840	
ORIF Shoulder	5,215	10,450	
ORIF Shoulder with Bone Graft of Non-Union	5,665	10,945	

Elbow Surgery		Range	
Lateral or medial epicondylar release	2,565	4,345	
Arthroscopic removal of loose body/Debridement	3,565	6,628	
Arthroscopic elbow capsular release	3,715	6,958	
Excision of Radial Head	3,565	6,903	
Arthroscopic or open elbow ligament repair	3,715	7,068	
Ulnar nerve transposition	3,115	4,895	

Hand and Wrist Surgery		Range	
Tendon and ligament repair, transfer, or tenolysis, tenosynovectomy	3,115	5,335	
Scapholunate reconstruction	3,915	7,013	
Neurolysis	2,565	3,878	
Endoscopic carpal tunnel release (NON OR) Local no anaesthetist	1,715	2,420	
Endoscopic carpal tunnel release (OR)	2,315	3,603	
TFC repair	2,615	4,813	
Arthroscopy (debridement) of Wrist	2,915	5,033	
Distal Radial osteotomy and bone graft	4,715	7,728	
STT wrist fusion/Debridement/Arthrodesis	4,715	7,738	
ORIF and Bone graft of non union scapoid	4,065	7,013	
Distal ulnar hemiresection arthroplasty	4,115	6,463	
ORIF (One Bone, Finger, Toe)	2,490	4,510	
Palmar fasciectomy	2,615	4,923	
Fusion PIP/MCP Joint Arthroplasty	2,915	5,363	
Ulnar shortening osteotomy	4,215	7,123	
Ganglion excision	2,065	3,410	
Amputation finger (s)	2,615	4,015	
Trapezial Arthroplasty	2,615	5,033	
Nerve repair or exploration - Major	3,015	6,055	
Needle Aponeurotomy	1,115	1,760	

Exhibit 5 for Identification

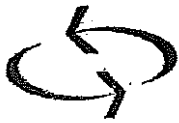
Witness: BRIAN DAY

Date: APRIL 1, 2014

Reporter: CHRISTY PRATT

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SPECIALIST
REFERRAL
CLINIC

CAMBIE
SURGERY CENTRE

SURGICAL PRICE LIST

Prices can vary depending on complexity. Barring a client is medically fit both assessment and surgery can occur in one trip. Spine surgery and other more complex procedures are the exception.

Knee:

- Knee Scope-Meniscectomy: \$3,700 - \$4,800
- ACL repair - \$6,700 - \$7,700
- Revision ACL reconstruction: \$7,900 - \$8,900
- PCL can be about: \$10,000 - \$17,000
- Partial Knee Replacement: around \$18,000

Shoulder surgeries: \$5,900 - \$12,000

Foot and Ankle: \$4,800 - \$14,000

- Ankle Replacement: \$19,000

Spine (lumbar and cervical): \$8,600 - 18,000

Hernia Repair: \$3,500 - \$4,200

Hand and Wrist: \$2,900 - \$7,500

- Needle Aponeurotomy: \$1,000 - \$1,600

Depending on complexity, special equipment and implants needed, surgical costs can vary substantially.

The Specialist Referral Clinic and the Cambie Surgery Centre have created a seamless process for our traveling clients. Generally speaking we can book within a few weeks.

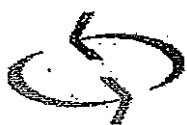
This is Exhibit " L " referred to in the
affidavit of Heather Lewis

sworn before me at Vancouver
in the Province of British Columbia this

29 day of April, 2014

[Signature]
A Commissioner for taking Affidavits
within the Province of British Columbia

Exhibit 6 for Identification
Witness: BRIAN DAY
Date: APRIL 1, 2014
Reporter: CHRISTY PRATT
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SPECIALIST
REFERRAL
CLINIC

CAMBIE
SURGERY CENTRE

SURGICAL PRICE LIST: BC RESIDENTS

Prices can vary depending on complexity. Barring a client is medically fit both assessment and surgery can occur in one trip. Spine surgery and other more complex procedures are the exception.

Knee:

- Knee Scope-Meniscectomy: \$3,700 - \$3,950
- ACL repair - \$6,700 - \$7,100
- Revision ACL reconstruction: \$7,900 - \$8,400
- PCL can be about \$15,000
- Partial Knee Replacement: around \$16,000

Shoulder surgeries: \$5,900 - \$9,000

Foot and Ankle: \$4,800 - \$10,000

- Ankle Replacement: \$19,000

Spine (lumbar and cervical): \$8,600 - 17,000

Hernia Repair: \$4,400

Hand and Wrist: \$2,900 - \$6,400

- Needle Aponeurotomy: \$1,600

Depending on complexity, special equipment and implants needed, surgical costs can vary substantially.

The Specialist Referral Clinic and the Cambie Surgery Centre have created a seamless process for our traveling clients. Generally speaking we can book within a few weeks.

This is Exhibit "M" referred to in the
affidavit of Hettner Lewis

sworn before me at Vancouver
in the Province of British Columbia this

29 day of April, 2014

[Signature]

A Commissioner for taking Affidavits
within the Province of British Columbia

Exhibit 7 for Identification

Witness: BRIAN DAY

Date: APRIL 1, 2014

Reporter: CHRISTY PRATT

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Heenan Blaikie

VIA EMAIL

Of Counsel
The Right Honourable Pierre Elliott Trudeau, P.C., C.C., C.H., Q.C., FRSC
(1984 - 2000)
The Right Honourable Jean Chrétien, P.C., Q.C., O.M., Q.C.
The Honourable Donald J. Johnston, P.C., Q.C., Q.C.
Donald R. Munro, Q.C.
Pierre Marc Johnson, Q.C., FRSC
The Honourable Michel Bastarache, Q.C.
The Honourable René Dussault, FRSC
Peter M. Blaikie, Q.C.
André Bureau, Q.C.

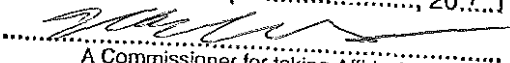
Our File No. 059896.0002

October 18, 2013

Ministry of Attorney General
Legal Services Branch
6th Floor - 1001 Douglas Street
PO Box 9280 STN PROV GOVT
Victoria, BC V8W 9J7

Attention: Jonathan Penner

Dear Sirs and Madams:

This is Exhibit "N" referred to in the
affidavit of Heather Lewis
sworn before me at Vancouver
in the Province of British Columbia this
29 day of April, 2014

A Commissioner for taking Affidavits
within the Province of British Columbia

Re: *Cambie Surgeries Corporation et al v. Medical Services Commission et al*
SCBC Action No. S090663, Vancouver Registry

Please find our responses, to the requests for information made of Dr. Day on June 17, 2013, and Mr. Nagy on June 18, 2013, at their Examinations for Discovery. This response supplements the responses provided in our letter of July 16, 2013.

Dr. Day

1. Provide any documentation reflecting a recommendation by the Canadian Orthopaedic Association that orthopaedic surgeons operate for a minimum of 10 hours weekly to maintain their professional competence.

Response:

No such documents are in the control or possession of the Plaintiffs.

2. Provide any documents relating to the calculation of the \$450/hour OR fee described in the 1997 article by Deborah Jones in the Canadian Medical Association Journal.

Response:

No such documents are in the control or possession of the Plaintiffs.

3. Provide any business plan, prospectus, or any other similar document related to the creation of the Cambie Surgery Centre that was provided to potential investors.

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Response:

As set out in Affidavit #5 of Dr. Day, sworn October 9, 2013, no such documents are in the control or possession of the Plaintiffs.

4. Provide Cambie Surgeries Corporation's loan agreement with the Royal Bank of Canada and any business plan provided to the bank in support of the loan application.

Response:

As set out in Affidavit #5 of Dr. Day, sworn October 9, 2013, documents relating to "any business plan", no such documents are in the control or possession of the Plaintiffs.

In regards to the request for any "loan agreement with the Royal Bank of Canada," we have previously opposed requests for documents regarding sensitive and confidential information relating to Cambie and SRC's corporate, business, and administrative operations. We opposed such requests on the basis that the sought out documents, if they exist, are irrelevant to the issues in this litigation.

The validity of such requests was the subject of an application brought by the Defendants before ACJ Cullen on October 11, 2013. We await ACJ Cullen's ruling on the application.

5. Provide Cambie Surgeries Corporation's shareholder agreement, including any amendments.

Response:

We refer you to our response for Request 4.

6. Provide Cambie Surgeries Corporation's memorandum and articles of incorporation, including any amendments.

Response:

We refer you to our response for Request 4.

7. Provide any bylaws of Cambie Surgeries Corporation, including any amendments.

Response:

We refer you to our response for Request 4.

8. Provide any business plan, prospectus, or similar document provided to potential investors in the Specialist Referral Clinic.

Response:

As set out in Affidavit #5 of Dr. Day, sworn October 9, 2013, no such documents are in the control or possession of the Plaintiffs.

9. Provide any business plan provided to the bank in support of the application by Specialist Referral Clinic (Vancouver) Inc. for a line of credit.

Response:

As set out in Affidavit #5 of Dr. Day, sworn October 9, 2013, no such documents are in the control or possession of the Plaintiffs.

10. Provide a copy of any written administrative services agreement between Specialist Referral Clinic and Cambie Surgery Centre, including any unsigned draft agreements.

Response:

As set out in Affidavit #5 of Dr. Day, sworn October 9, 2013, no such documents are in the control or possession of the Plaintiffs.

11. Provide the fee schedule used by staff at Cambie Surgery Centre to calculate the cost of surgeries for BC resident beneficiaries, including any that have existed over time.

Response:

A current version of Cambie's fee schedule, or surgical price list, was disclosed to you as document CSC00003884 in the Plaintiffs' Fourth Supplemental List of Documents dated September 11, 2013.

A previous version of this list was disclosed to you as document CSC00002994 on the Plaintiffs' First Supplemental List of Documents dated May 31, 2013.

As set out by Dr. Day in his examination for discovery, the surgical price list provides an estimate of the facility fees associated with various procedures conducted at Cambie. It does not include the cost of the surgeon's time, or other fees the surgeon may charge, including fees relating to the complexity of the surgery, and whether special equipment and/or implants are required. Accordingly, the surgical price list represents the base price range of surgery.

As set out in Affidavit #5 of Dr. Day, to Dr. Day's knowledge, no other past versions of Cambie's fee schedule or surgical price list exist.

12. Provide the fee schedule used by staff at Cambie Surgery Centre to calculate the cost of surgeries for non-BC residents, including any that have existed over time.

Response:

The plaintiffs Cambie and SRC advise that documents CSC00002994 and CSC00003884, as described in our response to Request 11, establish the base price ranges for surgeries for all the patients treated at Cambie. Non-BC residents may be required to pay additional fees, as determined by the surgeon on a case-by-case basis.

13. Provide any documents indicating how the fee schedules were calculated over time, including any internal accounting documents carried out in order to determine the appropriate cost structure.

Response:

As set out in Affidavit #5 of Dr. Day, sworn October 9, 2013, no such documents are in the control or possession of the Plaintiffs.

14. Produce corporate tax records for the past 5 years for both Cambie Surgeries Corporation and Specialist Referral Clinic (Vancouver) Inc.

Response:

We refer you to our response for Request 4.

15. Produce any agreements with the Workers' Compensation Board, past or present.

Response:

Please see the Plaintiffs' Fourth Supplemental List of Documents of September 11, 2013.

16. Produce any documents relating to the calculation of the fee schedule relating to the Workers' Compensation Board patients.

Response:

As set out in Affidavit #5 of Dr. Day, sworn October 9, 2013, no such documents are in the control or possession of the Plaintiffs.

17. Advise whether there is any difference between documents 243 and 244 other than the fact that one of them is signed and the other is no. [sic]

Response:

The plaintiffs Cambie and SRC advise that the unsigned document is a previous draft of the signed contract. There are minor differences between these two documents; for example, the executed version contains an additional category termed 'Dispute Resolution.'

18. Produce any agreements between Cambie Surgeries Corporation and any Health Authorities other than the four (or five) produced to date.

Response:

We have disclosed all such agreements in the control or possession of the Plaintiffs.

19. Produce any documents indicating the basis on which Cambie determined that the fee schedule in its 2004 agreement with the Vancouver Coastal Health was acceptable.

Response:

As set out in Affidavit #5 of Dr. Day, sworn October 9, 2013, no such documents are in the control or possession of the Plaintiffs.

20. Produce any documents illustrating how the figure of \$1600 per hour for "other" surgeries in the 2006 agreement with the Vancouver Coastal Health Authority was calculated.

Response:

As set out in Affidavit #5 of Dr. Day, sworn October 9, 2013, no such documents are in the control or possession of the Plaintiffs.

21. Produce the slide picture of an e-mail from Providence Health Care relating to a savings of 33%.

Response:

Please see the Plaintiffs' Fourth Supplemental List of Documents of September 11, 2013.

22. Advise when document #762 was prepared.

Response:

The plaintiffs Cambie and SRC advise this document was prepared on or around June 1, 2013.

23. Produce any surgical price lists for non-BC residents.

Response:

We refer you to our response to Requests 11 and 12.

24. Produce any surgical price lists for both BC residents and non-BC residents that have existed over time.

Response:

We refer you to our response to Requests 11 and 12.

25. Produce a breakdown by year of the percentage of patients falling into each of the categories described in paragraph 36 of Dr. Day's Affidavit #3.

Response:

This request involves the entirety of patients who have received any assessment or care at Cambie. The plaintiffs Cambie and SRC do not maintain their records in a format suitable to provide accurate values for the categories requested. To the extent they have maintained records, the Plaintiffs have provided a representative breakdown of patients for the period January 1 to December 31, 2012 as follows:

Number of Cases per category:

Private self-pay: 305

Pediatric Dental Surgery: 1024

Cosmetic Surgery: 509

Workers' Compensation: 1039

RCMP: 54

ICBC: 1

Other third party payers: 330

Health Authority: 1

SRC Referrals: 662 - Note: This category contains cases that are referred to Cambie through SRC, and does not distinguish whether the case is private self-pay, cosmetic surgery, third party payers such as Workers' Compensation cases, or another category.

Total: 3925

26. Produce a breakdown by year of the percentage of revenue, including fees paid and gross profit, for each of the categories described in paragraph 36 of Dr. Day's Affidavit #3.

Response:

We refer you to our response for Request 4.

27. Produce, with respect to each of the patients referred to in paragraph 19 of Dr. Day's affidavit #3, the nature of the treatment provided to them, who the treating physician was, and the basis upon which Cambie determined that the patient was facing an unacceptable delay in the public system.

Response:

This request refers to the entirety of patients who have received any assessment or care at Cambie, which amounts to approximately 3900 patients per year (based on 2012 numbers) and answering would impose a burden on the Plaintiffs that is grossly disproportioned to the value, if any, of the information requested to the issues in this proceeding. Beyond the magnitude of the request, this question is unanswerable in part because Cambie, as an entity, does not

determine whether a patient is facing an unacceptable delay in the public system. What constitutes an unacceptable wait time is specific to an individual patient and is determined through consultation between the physician and patient. It is the Plaintiffs' understanding that their patients would not elect to pay for private medical care if it were reasonably accessible within the public system at no cost.

Cambie's philosophy is based on a patient focused, patient empowered approach. If the delay were acceptable to the patient, the patient would remain on the public wait list and pay no fee, rather than pay a facility fee. The Defendant's may well consider the delay acceptable. But Cambie believes that patients have a right to make fundamental decisions about their own health and well-being and not have the state make these decisions for them.

It is the Plaintiffs' position that upon being advised that medically necessary care is needed, patients should have the right to access such care on a timeline that meets their needs.

28. Produce a list of the "approximately 70 private medical clinics" referred to in paragraph 17 of Dr. Day's Affidavit #3, and the basis on which Dr. Day asserts that each clinic is providing medical services that would be considered benefits on a private-pay basis.

Response:

No such documents are in the control or possession of the Plaintiffs. The answer was based upon Dr. Day's personal knowledge, acquired from both public documents and communications with other clinics.

29. Produce any document from either Cambie or SRC providing guidance as to what constitutes a medically unacceptable wait time for surgery in the public system.

Response:

No such documents exist, as clinical decisions, such as what constitutes a medically unacceptable wait time, are specific to an individual patient, and determined on a case-by-case basis through consultation between the physician and patient.

30. Produce a current shareholder list of each of Cambie Surgeries Corporation and Specialist Referral Clinic (Vancouver) Inc.

Response:

We refer you to our response for Request 4.

31. Identify the document referred to by Dr. Day, signed by physicians, acknowledging that they are independent contractors.

Response:

We refer you to Document ID CSC00002867.

32. Produce any documents evidencing the billing arrangements as between patients, SRC, and physicians relating to independent medical assessments, including any document evidencing how the proportion of the fee that goes to the physician is calculated.

Response:

As set out in Affidavit #5 of Dr. Day, sworn October 9, 2013, no such documents are in the control or possession of the Plaintiffs.

33. Produce the fee schedule for non-resident patients.

Response:

We refer you to our response to Requests 11 and 12.

34. Produce anything in writing to document the statement made in paragraph 78 of Dr. Day's Affidavit #3 that surgeons with privileges at Cambie Surgery Centre provide Cambie with their availability to perform services only after they have scheduled all possible procedures in the public system.

Response:

Please see the Plaintiffs' Fourth Supplemental List of Documents of September 11, 2013 for examples of these types of documents.

35. Inquire of Dr. Leith whether he has a past or present practice of not accepting patients for consultations in the public system, but allowing patients onto his public surgery list after privately paid consultations at SRC.

Response:

This is not an accurate characterization of Dr. Leith's practice. It is our understanding that governmental restrictions upon the public health care system, such as rationing access to operating rooms, detrimentally affect both waitlists for surgery and consultations. Surgeons typically stop accepting patients on their consultation waitlist when facing significant patient backlogs on their public surgical waitlists, since further consultations would inevitably add to their backlog of patients waiting for surgery, reducing the value of the initial consultation at the time of surgery, and making the surgery waitlist unmanageable. Similarly, the wait time for a consultation itself may be so lengthy that the surgeon is unable to advise, within a reasonable time frame, whether surgery is needed, let alone conduct the surgery within a medically appropriate period.

In attempting to seek timely care, patients may obtain a consultation from another surgeon, including ones available through Cambie and SRC. In such a case, if the patient is advised that surgery is needed, the general experience is that the patient will obtain these services privately, and therefore will never be placed on the public waitlist. However, the patient is entitled to decline treatment, or to wait for treatment in the public health care system. If the patient chooses to obtain treatment through the public health care system, the patient would be placed on the public waitlist.

Further, following assessment at Cambie or SRC, the patient may be advised that they require a procedure that is not available at Cambie. Therefore, if the patient decides to pursue the recommended treatment, they must necessarily obtain this treatment in the public health care system (as in the patient plaintiff Mandy Martens' case).

36. Make the same inquiry of other physicians providing assessment services at SRC.

Response:

We refer you to our response to Request 35.

37. Produce any agreements or other documents, currently used or used in the past, between Cambie and SRC and the physicians providing services at Cambie that evidence:
- a. The nature of their contractual relationship
 - b. Any operational or administrative policies that govern physicians' delivery of services at Cambie or SRC
 - c. Any procedures or policies regarding the method of payment where MSP is not billed
 - d. Any payments at all to physicians where MSP billed
 - e. Any remuneration of any form to physicians, including any documents evidencing payment of shareholder dividends, profit-sharing, or shareholder loans in the past ten years

Response:

With respect to matters (a), (c), and (d), as set out in Affidavit #5 of Dr. Day, no such documents are in the control or possession of the Plaintiffs.

With respect to matters (b), and (e), we refer you to our response for Request 4.

38. Produce any documents describing the arrangements between Cambie and SRC and the anesthesiologists or surgical assistants, including:
- a. The nature of their contractual relationship
 - b. Any operational or administrative policies that govern their delivery of services at Cambie or SRC

- c. Any procedures or policies regarding the method of payment where MSP is not directly billed
- d. Any payments at all where MSP is billed
- e. Any remuneration of any form to the anesthesiologists or surgical assistants

Response:

With respect to matters (a), (c), and (d), as set out in Affidavit #5 of Dr. Day, no such documents are in the control or possession of the Plaintiffs.

With respect to matters (b) and (e), we refer you to our response for Request 4.

39. Produce all clinical and administrative records held by Cambie or SRC relating to Chris Chiavatti, Mandy Martens, Krystiana Corrado, and Erna Krahn, including any correspondence between either of the clinics and any of the patients or their families regarding services at either Cambie or SRC.

Response:

Any outstanding records held by Cambie or SRC relating to the patient plaintiffs were disclosed to you on the Plaintiffs' Fourth Supplemental List of Documents of September 11, 2013. Cambie and SRC advise that they do not hold any further records relating to the patient plaintiffs, medical or otherwise.

40. Advise why Mr. Chiavatti was not charged an administration fee.

Response:

Mr. Chiavatti was charged a reduced fee for compassionate reasons. Cambie and SRC advise that such fee reductions are typically provided informally by Dr. Day. In cases such as Mr. Chiavatti's, the administration fee is often waived as part of the overall discount.

41. Inquire of Dr. Penz why he did not bill MSP for Ms. Krahn's 2012 operation.

Response:

We will make the inquiry and disclose the response, subject to privilege.

42. Advise how many Cambie patients have been given a fee break, a reduction in fees, or fee forgiveness in the last ten years.

Response:

Over the period 1999-2013, Cambie advises that 414 of their patients received their services on a pro-bono basis and did not pay for their surgery. Cambie does not maintain a list of patients who received their services for a reduced fee, but estimates that since opening in 1996, over 500 patients have had a portion of their fees reduced.

43. Advise why four pages were selected from the Cambie policy and procedure manual for production.

Response:

These pages were provided to set out Cambie's standard hours of operation, its flexible policy for scheduling additional operating time beyond the standard hours, as well as to establish the scope of the surgical services that Cambie provides its patients access to.

44. Produce the entire Cambie Policy and Procedure Manual.

Response:

We refer you to our response for Request 4.

45. Produce the business model referred to in paragraph 86 of Dr. Day's Affidavit #3.

Response:

As set out in Affidavit #5 of Dr. Day, sworn October 9, 2013, no such documents are in the control or possession of the Plaintiffs.

46. Produce any financial analysis that supports the assertions in paragraphs 85 and 86 of Dr. Day's Affidavit #3 about the business's ability to operate as a viable business.

Response:

As set out in Affidavit #5 of Dr. Day, sworn October 9, 2013, no such documents are in the control or possession of the Plaintiffs.

47. Produce:

- a. Financial and administrative policy/procedure manuals for the clinics, including any policies relating to facility fee quotes for resident and non-resident patients;
- b. Annual financial statements with any supporting notes and externally attested to opinions dating back to the inception of each company;
- c. Annual accounting trial balances and general ledgers as far back as they are available;
- d. Annual non-dividend or non-profit distribution or transfer of monies or benefits to physicians, whether or not shareholders, by physicians, annually since 2001 including but not limited to salaries, contractor billings and loans; and
- e. General, Special and Annual General Meeting minutes for as far back as they are available

Response:

We refer you to our response for Request 4.

48. Advise how many of the nurses employed by Cambie Surgery Centre also work in the public health care system.

Response:

The plaintiffs advise that, as of August 2013, a total 31 of the 59 nurses employed by Cambie Surgery also work in the public health care system.

Mr. Nagy

1. Inquire whether there is someone employed by Cambie Surgery Centre performing duties equivalent to those performed by Mr. Nagy at SRC, and who that person is.

Response:

The plaintiff Cambie advises there is no direct equivalent of Mr. Nagy's position at Cambie Surgery Centre.

2. Advise whether Dr. Day invited Mr. Nagy to become Interim President of the Canadian Independent Medical Clinics Association.

Response:

Although this question is irrelevant to the issues in this litigation, Mr. Nagy advises that he cannot remember the exact details of becoming the Interim President, and that it may have originated from an invitation from Dr. Day.

3. Confirm whether SRC invoices third party payers for post-surgical follow-ups.

Response:

The plaintiffs Cambie and SRC advise that third party payers are not invoiced for post-surgical follow-ups.

4. Confirm whether SRC records will illustrate how physicians are compensated for post-surgical follow-ups.

Response:

As set out in Affidavit #5 of Dr. Day, sworn October 9, 2013, no such documents are in the control or possession of the Plaintiffs.

5. Produce anything in writing that is used to determine the amount charged for an IMA at SRC.

Response:

As set out in Affidavit #5 of Dr. Day, sworn October 9, 2013, no such documents are in the control or possession of the Plaintiffs.

6. Produce any documents that evidence how payments for IMAs are split between SRC and the physician.

Response:

As set out in Affidavit #5 of Dr. Day, sworn October 9, 2013, no such documents are in the control or possession of the Plaintiffs.

7. Produce an example of a form used by SRC in seeking a quote from Cambie Surgery Centre in a case involving a complex surgery.

Response:

Please see the Plaintiffs' Fourth Supplemental List of Documents of September 11, 2013.

8. Produce an example of the form used in circumstances where a refund is provided to a patient following surgery that ended up being less complicated than expected.

Response:

An example of a refund cheque, issued in this type of situation, was disclosed to you as document CSC00003885 in the Plaintiffs' Fourth Supplemental List of Documents, dated September 11, 2013. The refund was provided to a patient, as the specialized biological materials ordered for the procedure were not required. Cambie typically cannot use these materials in other cases, nor return them, and therefore absorbs the cost.

9. Advise how often SRC has refunded fees to a patient because the estimated surgery cost exceeded the actual cost of surgery.

Response:

We refer you to our response for Request 4 made of Dr. Day.

10. Provide invoices depicting refunds where estimated surgery costs exceed actual cost for the past 10 years.

Response:

We refer you to our response for Request 4 made of Dr. Day.

11. Advise of the amount of the administration fee charged to patients and, if it differs in different circumstances, what the difference is.

Response:

We refer you to our response for Request 4 made of Dr. Day.

12. Advise why no administration fee was charged to Mr. Chiavatti.

Response:

Mr. Chiavatti was charged a reduced fee for compassionate reasons. Cambie and SRC advise that such fee reductions are typically provided informally by Dr. Day. In cases such as Mr. Chiavatti's, the administration fee is often waived as part of the overall discount.

13. Produce any documents reflecting the administrative processes referred to in paragraph 4 of Mr. Nagy's affidavit #1.

Response:

No such documents exist in the control or possession of the Plaintiffs.

14. Produce any of the fee structures referred to in paragraph 4 of Mr. Nagy's Affidavit #1, if they are different from the requests made of Dr. Day.

Response:

We refer you to our response to Requests 11 and 12 made of Dr. Day.

15. Advise whether the facility fee charged to BC residents is the same as the facility fee charged to non-BC residents; whether it was the same in 2006; and produce any documents that depict the fee schedules for facility fees for those two classes of patients, now and in 2006.

Response:

We refer you to our response to Requests 11 and 12 made of Dr. Day

16. Produce all cost surgery breakdown reports, or their equivalents, provided to patients in the past 10 years and specify in each case whether the patient was either a beneficiary or non-BC resident.

Response:

We refer you to our response for Request 4 made of Dr. Day.

17. Enquire as to whether the patient GM was ever considered for a reduction or refund of fees on the basis that Dr. Day has employed in other cases.

Response:

Dr. Day advises patient GM was not considered for a refund or reduction of fees on the basis employed in other cases, as GM was not treated by Dr. Day. To Dr. Day's knowledge, no request for fee forgiveness was made by GM directly to Dr. Gilbert or to Dr. Day. It is our understanding that patient GM specifically

requested that the Defendants in these proceedings reimburse him for the cost of the medically necessary care that he was unable to access within the public health care system.

18. Produce any constituting documents from Specialist Referral Clinic (Vancouver) Inc., including the equivalent of the memorandum and articles of incorporation, including amendments over time.

Response:

We refer you to our response for Request 4 made of Dr. Day.

19. Produce any bylaws of Specialist Referral Clinic (Vancouver) Inc., including amendments over time.

Response:

We refer you to our response for Request 4 made of Dr. Day.

20. Produce any shareholders agreements with the shareholders of Specialist Referral Clinic (Vancouver) Inc., including any amendments over time.

Response:

We refer you to our response for Request 4 made of Dr. Day.

21. Produce:
- a. Financial and administrative policy/procedure manuals for the clinics, including any policies relating to facility fee quotes for resident and non-resident patients (to extent not covered by previous request);
 - b. Annual financial statements with any supporting notes and externally attested to opinions dating as far back as they are available;
 - c. Annual accounting trial balances and general ledgers as far back as they are available;
 - d. Annual non-dividend or non-profit distribution or transfer of monies or benefits to physicians, whether or not shareholders, by physician, annually since 2001 including but not limited to salaries, contractor billings and loans;
 - e. General, Special and Annual General Meeting minutes for as far back as they are available.

Response:

We refer you to our response for Request 4 made of Dr. Day.

Yours truly,

Heenan Blaikie LLP

A large, stylized handwritten signature in dark ink, appearing to read 'Robert W. Grant', is written over the printed name and firm name.

Robert W. Grant, Q.C.
Law Corporation

RWG/sg

HBdocs - 15758766v1