



Affidavit #1 Rita Chiavatti
Sworn September 25th, 2012
No. S090663
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

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

PLAINTIFF

AND:

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

DEFENDANTS

AND:

SPECIALIST REFERRAL CLINIC (VANCOUVER) INC.

DEFENDANT BY COUNTERCLAIM

**DUNCAN ETCHES, GLYN TOWNSON, THOMAS MACGREGOR, THE BRITISH
COLUMBIA FRIENDS OF MEDICARE SOCIETY, CANADIAN DOCTORS FOR
MEDICARE, MARIËL SCHOOFF, DAPHNE LANG, JOYCE HAMER, MYRNA
ALLISON, and CAROL WELCH**

INTERVENERS

AFFIDAVIT #1 OF RITA CHIAVATTI

I, RITA CHIAVATTI, retail buyer, of Burnaby, British Columbia, MAKE OATH AND SAY AS FOLLOWS THAT:

1. I am the mother and litigation guardian of the Plaintiff Chris Chiavatti in this action and as such have personal knowledge of the facts deposed to herein except where those facts are stated to be based upon information and belief, which facts I believe to be true.

2. I am aware that the defendant, the Medical Services Commission (the “**Commission**”), has applied for an injunction against the Plaintiff Cambie Surgeries Corporation (“**CSC**”) and the Defendant by Counterclaim Specialist Referral Clinic (“**SRC**”) to prohibit the contravention of the *Medicare Protection Act* (the “*Act*”), specifically sections 17(1) and 18(3), which relate to billing practices for benefits under the *Act*.
3. I make this affidavit in support of the CSC’s and SRC’s opposition to the Commission’s injunction application.
4. I believe that individuals in British Columbia should have the same access that my son Chris had to the timely medical services provided by the CSC and the SRC, where they are experiencing symptoms that have a serious negative impact on them, and they are faced with unreasonable wait times in the public health care system, and that the status quo should not be altered until it is determined whether this is a constitutional right for all citizens of British Columbia.
5. As I will explain below, my son Chris suffered a serious knee injury in January 2009. When Chris sought treatment in the public health care system, Chris and I were advised that he would have to wait several months before he could have the surgery he required in the public health care system. The physical pain Chris experienced at this time affected all aspects of his life. As a parent, it was very difficult to see my son experiencing such pain and discomfort. Ultimately, my husband and I arranged for Chris to have the required surgery at the Cambie Surgeries Clinic (operated by CSC). At the Cambie Surgeries Clinic, Chris was able to have the required surgery several months earlier than he would have in the public health care system.
6. I am the mother of two children. I live in Burnaby with my children and my husband. I work as a buyer in the retail industry. My husband works as a construction manager.
7. My son, the Plaintiff Chris Chiavatti is currently a first year student at McGill University in Montreal, Quebec. Before attending McGill, Chris was a student at Burnaby North Secondary School, in Burnaby B.C., from September 2007 to June 2012.

8. On January 14, 2009, Chris injured his knee during a physical education class at school. Chris told me that during the wrestling unit in his physical education class, he was knocked backwards while on his knees and hyperextended his knee. Chris told me that his knee joint locked in that position for approximately 20 minutes.
9. As he was experiencing pain and having difficulty walking, that same day I took Chris to the emergency department at the Royal Columbia Hospital in New Westminster, British Columbia. The medical practitioners examined Chris's injured knee and took x-rays to look for bone chips. Chris and I were ultimately told by the attending physician that no chips had been found and that we should follow up with our family physician.
10. Shortly after our January 14, 2009 visit to the Royal Columbia Hospital, I scheduled an appointment for Chris with our family physician. In or about late January 2009, Chris and I attended the appointment. Our family physician told Chris and I that Chris needed to see a specialist about his knee. He referred Chris to an orthopaedic surgeon at B.C. Children's Hospital, Dr. Chris Reilly.
11. It was not until approximately mid-February 2009, when Chris was able to get an appointment with Dr. Reilly. When Chris and I attended the appointment in mid-February 2009, Dr. Reilly told Chris and I that he required an MRI of Chris' knee before he could make a diagnosis. Dr. Reilly told us that he suspected Chris may have a discoid meniscus, which he told Chris and I is a congenital disorder.
12. It was not until two months later that Chris was scheduled for an MRI. Chris attended for an MRI on April 1, 2009 at the B.C. Children's Hospital. I attended the MRI appointment with him. At that time Chris and I were advised by the attending radiologist to follow up with Dr. Reilly to discuss the results of the MRI.
13. Unfortunately, when I contacted Dr. Reilly's office to schedule a follow-up appointment, I was advised by the receptionist that it would be a very long wait, likely several months. The receptionist advised me that someone from Dr. Reilly's office would call us to confirm Chris's appointment when one became available.

14. The next several months were very difficult for Chris and for our family.
15. Prior to his injury, Chris had been an active student and athlete. Chris was on the ski team and participated in the ski club at his high school, he was the captain of his high school's Reach for the Top team for several consecutive years (a team trivia competition for high school students across Canada), he was the editor of his high school newspaper, he was a peer tutor, and he was involved in a variety of clubs at his school.
16. Following his injury, things were a lot different with Chris. During this time, Chris told me that he was experiencing pain in his knee and had difficulty sleeping as a result. Chris also told me that straightening his leg in any way caused him extraordinary pain, and that his knee would frequently lock. The pain was so bad that he stopped participating in sporting activities and could not engage in physical activities of any kind. Based on my discussions with Chris and my observations of him, it was clear to me that his injury also interfered with his ability to attend school and enjoy school and extra-curricular activities, as he had difficulty even walking around the campus of his school.
17. It was very difficult and stressful to see my son in this state. I wanted him to be able to go out and do things with his friends, but instead he was withdrawn, and would sit at home. Chris told me this was because he was in pain. It was evident to me that he was experiencing almost constant physical pain and that this was having a serious impact on all aspects of his life. I felt powerless. It seemed there was nothing I could do to help him.
18. I called the orthopedic surgeon's office frequently to inquire about cancellations (in hopes of obtaining an earlier appointment). I was told by the receptionist that there were many people waiting to see Dr. Reilly and if an emergency came up then Chris's wait time would be even longer. She told me that she could not even estimate how long it would be before Chris would have an appointment with Dr. Reilly.
19. In June 2009, when I contacted Dr. Reilly's office the receptionist advised me that Chris had been put on a waiting list of 400 people for a diagnostic consultation. Both Chris and

I were surprised to hear that he was not already on a waiting list. When I asked where on the list Chris was listed, I was advised that Chris was near the end of the list. The receptionist asked me to stop calling as there were at least 400 children ahead of Chris on the wait list and there was no way for her to estimate an appointment date.


20. By October 2009, Chris was still on a wait list for a diagnostic consultation, which I understood had to take place before treatment could be administered.
21. After approximately eight months of waiting for a consultation with an orthopaedic surgeon with no success and no upcoming appointment set, my husband and I decided to consider alternatives. I discussed our situation with a work colleague, who suggested I book an appointment with Dr. Brian Day at the Specialist Referral Clinic. My husband and I contacted the clinic shortly thereafter, and booked a consultation appointment within days.
22. On October 28, 2009, I attended with Chris for his appointment at the Specialist Referral Clinic. The appointment was with Dr. Brian Day.
23. Based on Dr. Day's clinical evaluation and the MRI previously done at BC Children's Hospital, Dr. Day immediately told Chris and I that he had diagnosed Chris with a tear in the meniscus. Almost immediately Chris was scheduled for day surgery at the Cambie Surgeries Clinic, operated by CSC. Conveniently the surgery was scheduled for the day immediately preceding a school holiday, so Chris would only miss one day of school while recovering from the surgery.
24. On November 19th, 2009, Chris attended the Cambie Clinic for a day surgery on his knee. I attended with him.
25. After the surgery, Chris and I met with Dr. Day. Dr. Day told Chris and I that during surgery he noted that there was a softening of the cartilage adjacent to the torn meniscus. Dr. Day told Chris and I that such softening is likely related to delayed treatment, and

that any further delay in Chris's treatment would likely have resulted in further, irreversible, joint damage.

26. In approximately February or March 2010, I attended a follow-up appointment with Chris at Dr. Day's office. When Chris and I returned home from the appointment, there was a message on our answering machine from Dr. Reilly's office advising that Chris had been scheduled for a consultation for September 2010. As a result of contacting the Cambie Clinic, Chris was able to consult a specialist and have surgery almost a year before he would have been able to in the public health system.
27. My husband and I paid approximately \$750 for Chris's surgery at the Cambie Clinic.
28. Following the surgery, Chris underwent physiotherapy for several weeks. I recall that within approximately one month Chris appeared to be back to his regular self. Chris told me that he was able to sleep again. Once again he was able to participate in extra-curricular activities and to focus on his studies. In his final year of high school, he even obtained an offer for placement at Yale University.
29. Chris is now attending McGill University. Chris was awarded a renewable annual scholarship from McGill, along with a number of other scholarships. While Chris received an offer for placement at Yale University, our family was not able to pay for the high fees associated with a private university in the United States. Chris advises me that he plans to join the ski club at McGill and to participate in extra-curricular activities.

30. If the CSC is not able to provide surgeries to patients such as my son, this will cause unnecessary pain and suffering to citizens of British Columbia, such as my son, who would not otherwise be able to access timely medical services.

SWORN BEFORE ME in the City of)
Burnaby, in the Province of British)
Columbia, on this 25th day of September,)
2012)



A Commissioner for taking affidavits in)
the Province of British Columbia)
Ania Kolodziej
Exp. August 31, 2014



RITA CHIAVATTI