Affidavit #1 of Dr. Alastair Younger
October 1st, 2012
No. S090663
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

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

PLAINTIFFS

AND:

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

DEFENDANTS

AND:

SPECIALIST REFERRAL CLINIC (VANCOUVER) INC.

DEFENDANTS BY COUNTERCLAIM

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

INTERVENORS

AFFIDAVIT #1 OF DR. ALASTAIR YOUNGER

I, Alastair Younger, surgeon, of 560, 1144 Burrard Street, Vancouver, BC, MAKE OATH AND SOLEMNLY AFFIRM THAT:

1. I am a surgeon who works within public hospitals in British Columbia and at the Cambie Surgeries Corporation (herein referred to as "**CSC**") and the Specialist Referral Clinic ("**SRC**"). As such, I have personal knowledge of the information stated herein, except where stated to be on information and belief, in which case I believe it to be true.

2. I make this affidavit in support of SRC's and CSC's opposition to the injunction sought by the Medical Services Commission (the "**Commission**") to prohibit SRC and CSC from providing medical services in contravention of certain provisions of the *Medicare Protection Act* (the *"**Act**"*) (specifically sections 17(1) and 18(3), which relate to billing practices for benefits under the *Act*) prior to a ruling on the constitutionality of these provisions.

3. As I explain below, I believe that if the residents of British Columbia are not able to pay a facility fee for surgeries at CSC or obtain timely medical assessments at SRC, just as residents, for example, of Alberta can lawfully do, it will have a negative impact on the ability of the residents of British Columbia to access timely and effective health care.

My Professional Qualifications

4. I am a fully licensed orthopaedic surgeon with sub-specialty training in foot and ankle surgery.

5. I completed my medical degree at Aberdeen University in Scotland in 1985. Following this, I obtained a M.Sc. in Kinesiology from Simon Fraser University in Vancouver in 1990.

6. I completed an orthopaedic surgery residency at the University of British Columbia, becoming a Fellow of the Royal College of Surgeons of Canada in 1995.

7. I completed sub-specialty training through a Total Joint Arthroplasty fellowship at the University of British Columbia in 1995, an Arthritis Surgery fellowship at Harvard University in 1997, and a Foot and Ankle fellowship at the University of Washington in 1998.

8. I have been an Associate Professor in the Faculty of Medicine at the University of British Columbia since 2009.

9. I am a consultant at St. Paul's Hospital, and co-founded the Orthopaedic Research Office, the British Columbia Foot and Ankle Clinic, and the Fellowship Training Program in foot and ankle surgery.

10. I was a founding member of the Canadian Orthopaedic Foot and Ankle Society, and served as the president of this organization.

11. I helped develop the British Columbia Foot and Ankle Clinic, and lobbied to have the program created at Providence Health Care, because I recognized the extensive need for foot and ankle treatments in the province.

12. I have conducted extensive research in my field and have written numerous peer reviewed publications and give numerous presentations and speeches at medical conferences.

My work as a surgeon in public health care system in British Columbia

13. I perform orthopaedic surgeries at St. Paul's Hospital. I primarily perform foot and ankle surgery.

14. I receive referrals for patients with foot and ankle problems from across the province. There is an extremely high level of demand for foot and ankle treatments in British

Columbia. While I make myself available to St. Paul's Hospital five days a week to meet this demand, the hospital does not have the resources to fully utilize my surgical skills and time.

15. At St. Paul's Hospital I see approximately 12 new patients referred for surgical consultation per clinic day. With the appropriate resources, I would be able to double this consultation rate.

16. Further, I would be capable of performing two to three times as many surgeries per week as I presently do at St. Paul's Hospital if the appropriate resources were available (such as double operating rooms within the main operating room). The resources provided are variable dependent on funding. Approximately two out of every 20 cases I do is cancelled because of delays during the surgical day. In August 2012 I booked 14 surgeries and one was cancelled because of delays, and in September 2012 I booked 18 surgeries and two were cancelled because of delays. This works out to approximately five completed cases per week. In the same time period I performed 14 cases at Cambie surgery center for a combination of self-pay and WCB patients, or approximately two cases per week.

17. There is minimal funding for strategies that would lead to the reduction of the lengthy wait times for foot and ankle surgeries in British Columbia. Following the *Chaoulli v. Quebec* case, British Columbia improved the access to care for knee and hip replacement surgeries. This was facilitated through the provision of clinic space, patient education programs, and increasing the OR capacity through the use of 'swing' rooms (allowing an increase from completing approximately 3 joint replacement surgeries per day to 10 joint replacement surgeries per day). Following these measures, the joint replacement program at the University of British Columbia has approached the efficiencies of hospitals in the United States.

18. While I have worked with St. Paul's Hospital to make some gains, the ability of the public system to provide similar funding to match the hip and knee replacement program

to support the Foot and Ankle Clinic has not been achieved. Without increasing funds for clinic time and space, patient education and support from physiotherapy, nursing and anesthesiologists, and operating time the Foot and Ankle Clinic cannot provide better access to care for the patients of British Columbia.

19. I consider a waiting period of six weeks to three months for my surgical procedures reasonable, as it gives the patient time to prepare for and become educated on the procedure. Unfortunately, the actual wait time for my patients is a minimum of 11 to 33 months to obtain a consultation (depending upon the referral source), and then at least another 6 to 14 months to receive surgery depending upon the site of surgery (outpatient or inpatient).

20. These wait times are unreasonable. After waiting one year for a consultation, many of my patients wait another year to receive surgery. I often have to ask my patients to re-sign their consent forms, as the consent forms expire after one year.

21. During this wait time, my patients have considerable pain and restricted mobility.

22. My patient's mobility issues and pain prevent them from working, and some of my patients have lost their jobs while waiting for care. As an example, I recently attended to a patient who was a flight attendant. Her particular ailment prevented her from working, yet she was not able to access care in a timely manner in the public health care system. Due to limited financial resources, she decided to travel to Taiwan to purchase her treatment. Her surgery was not successful. As a result, she has been off work for a year and a half. I have recently seen this patient for a consultation in the public health care system. While I recognize that she requires further surgery, and that she has been off work for a year and a half, due to capacity issues she will have to wait 6 months to have expedited surgery in the public system in Canada. This patient may permanently lose her job as a result of the delay in her treatment and extended absence from work. If she had the legal option to purchase private care within British Columbia, this patient would have

been able to receive a higher quality of medical care in a timely manner at lower cost without leaving the country.

23. Patients suffer unnecessarily when treatments are delayed. My patients have experienced unnecessary physical and psychological suffering as a result of extended wait times for treatments. The physical harm caused by delayed treatments can also be irreparable. For example, a patient with diabetes and foot pathology is at risk of amputation. If access to care is restricted then amputation may result.

My work as a surgeon at SRC and CSC

24. I began performing orthopaedic surgeries at CSC in 1998. I worked at CSC because I received limited operating time at St. Paul's Hospital within the first years of my practice. For example, I obtained one day a week of surgery time in my first year of practice. I was available the other three days of the week for work, however the public health care system was not able to utilize my additional available time and skill. Had it not been for the ability to see patients for consultations at SRC and operate at CSC, I would not have stayed within Canada.

25. By performing surgeries at CSC, I was able to provide timely care for my patients and to fully utilize, practice and improve my surgical skills within the first 2 years of my practice.

26. An excellent surgeon we recently trained in 2011 in our fellowship program left to work in the United States and rejected a job offer in Surrey, British Columbia because he was offered one half day per week of elective surgery. He was concerned he would lose his surgical skills and now works in Tacoma, Washington.

27. I do not encounter issues with rationed OR time at CSC, and I am able to book OR time as needed for my patients. I currently conduct approximately 2 procedures per week at CSC.

28. After SRC commenced operations, I began to also see patients for medical assessments or consultations at SRC on an expedited basis. This allowed me to further reduce my wait lists in the public system.

29. I perform predominantly foot and ankle treatments at CSC. The equivalent procedures in the public health care system would have a wait list of one year. At SRC and CSC, I am able to see patients for consultations almost immediately upon request and provide surgical treatment within two weeks.

30. If SRC and CSC did not exist, I would have moved to the United States, because of the limited opportunities to work within the public health care system early in my practice.

31. I believe that facilities like SRC and CSC are directly responsible for improving access to medical care in the public system in British Columbia. Through SRC and CSC, recently graduated orthopaedic surgeons can now access the surgical time required to maintain their skills. This access, which is largely unavailable in the public health care system, helps retain young orthopaedic surgeons in British Columbia. Without incentives like this, the overall functioning of the public health care system may be jeopardized. For example, in the early 1990's, due to a lack of funding, the Orthopaedics department at the Prince George Regional Hospital faced significant recruitment issues. This resulted in the department not having enough orthopaedic surgeons to cover the daily overnight call shifts, and the hospital was forced to fly surgeons into Prince George to cover the call shifts.

32. There is currently less funding at St. Paul's Hospital for orthopaedic care than was previously available. Accordingly, within the last six-month period, 1/5 of my already limited OR time has been lost.

33. If the injunction sought by the Commission were to be granted against SRC and CSC, it would have a direct and negative impact on my patients and the patients of the other

doctors who work at SRC and CSC, as these patients would be added to the wait lists in the public health care system. This would extend the already lengthy wait lists for everyone that uses the public health care system.

34. The additional 2 patients per week, who would otherwise obtain timely medical care through SRC and CSC, would extend my wait list in the public health care system by 6 months. The lengthy wait times within the public system have not, in my experience, led to sustainable increases in resources to improve access to medical care.

35. By allowing individuals who are capable and willing to pay for medical services to access care in the private system, surgeons will be able to provide more surgeries and the wait lists in the public health care system will be shorter. As a result, all of the residents of British Columbia will be able to access medical care faster.

AFFIRMED BEFORE ME at the City of Vancouver, in the Province of British Columbia, this 1st day of October, 2012

A Commissioner for taking affidavits in the Province of British Columbia

DR. ALASTAIR YOUNGER

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