



This is the 1st affidavit
of Dr. Renate Matthias in this case
and was made on July 11, 2011

Brought Pursuant to the *Class Proceeding Act* RSBC 1996, c.50

NO. S-111412
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

DR. RENATE MATTHIAS

PLAINTIFF

AND:

BRITISH COLUMBIA MEDICAL ASSOCIATION
(CANADIAN MEDICAL ASSOCIATION – B.C. DIVISION)

DEFENDANT

AFFIDAVIT

I, Dr. Renate Matthias, medical doctor and physician, of 700 - 1006 Beach Ave., in the City of Vancouver, Province of British Columbia, SWEAR THAT:

1. I am the plaintiff in the within action and as such have personal knowledge of the facts and matters deposed to in this Affidavit.
2. I am a medical doctor and a physician and I have since 1977 been qualified and licensed to practice medicine in the province of British Columbia, and I have an address for delivery at 700 - 1006 Beach Ave., Vancouver, B.C. V6E 1T7.
3. Her Majesty the Queen in right of the Province of British Columbia, (the "BC Government") has for many years enacted legislation with the intention and effect of establishing a government funded system for the provision of basic medical services to eligible

persons. At the present time, the legislation includes the *Medicare Protection Act* RSBC 1996, c. 286 and regulations made pursuant thereto. The BC Government has established the Medical Services Plan (“MSP”) pursuant to the *Medicare Protection Act* RSBC 1996, c. 286 and related statutes and regulations

4. The BC Government, by its associated agencies, under the Medical Services Plan provides certain services (the “MSP Services”) to eligible persons including:

- (a) medically required services provided by a physician enrolled with MSP;
- (b) maternity care provided by a physician or a midwife (see the BC Midwifery Program);
- (c) medically required eye examinations provided by an ophthalmologist or optometrist;
- (d) diagnostic services, including x-rays and laboratory services, provided at approved diagnostic facilities, when ordered by a registered physician, midwife, podiatrist, dental surgeon or oral surgeon;
- (e) dental and oral surgery, when medically required to be performed in hospital;
- (f) orthodontic services related to severe congenital facial abnormalities.

5. The BC Government via the Medical Services Plan and related legislation and regulations has established a system by which physicians in the province of British Columbia will provide the MSP Services without charging the recipients of such services, but rather will be compensated for their work from public funds.

6. The system established by the BC Government to incent physicians to provide MSP Services includes a pay component and a benefits component. In particular:

- (a) physicians who provide MSP Services are entitled to be paid by the BC Government for their work either on a salary basis or on a fee for service basis

according to, both according to schedules set by the BC Government with the agreement of the defendant (the “BCMA”) from time to time;

- (b) physicians who provide MSP Services are entitled to certain benefits which are established by the BC Government with the agreement of the BCMA from time to time (“Physician Benefits”);

7. When the BC Government establishes amounts of pay and benefits to be provided to physicians, the amounts of said pay and benefits are communicated to all eligible physicians, including myself.

8. When eligible physicians, including myself, provide MSP Services we do so with the expectation that we will be provided with appropriate compensation including pay and benefits.

9. As far as I know, it is not a requirement of any statute or contract that a physician must be a member of the BCMA. In British Columbia, individual physicians have a right of freedom of association to join or not to join the BCMA.

10. At any particular time, a number of physicians who are qualified to practice medicine in the province of British Columbia, and who receive funding from the BC Government by reason of the provision of MSP Services are not members of the BCMA. (referred to hereinafter as “Non-members”). I note that it is admitted by the BCMA in the instant Response to Civil Claim that there are at present about 1,200 Non-members.

11. I am a Non-member.

12. I note the purposes of the BCMA as alleged by the Defendant herein at paragraph 2 of the Response to Civil Claim, and I say that:

- (a) I do not require the BCMA for the advancement of my “scientific welfare”, my “educational welfare”, or my “professional welfare”. Insofar as those terms have

any meaning, I take personal responsibility to advance my own such descriptions of welfare;

- (b) I do not require the BCMA for my economic welfare and I would be content to negotiate my own economic arrangement with the BC Government if I were permitted to do so;
- (c) I do not require the BCMA to promote the highest quality healthcare delivery, as I see that as a personal responsibility of mine, and a responsibility of the Ministry of Health and the Government;
- (d) I feel and take personal responsibility for my own integrity and honour and that of my chosen profession and I do not require the BCMA to take over this responsibility for me;
- (e) I do not require the BCMA to further the interests of the Canadian Medical Association (“CMA”);
- (f) I do not require the BCMA to be my agent in bargaining and I would prefer to negotiate my own fair arrangement if permitted to do so;
- (g) I find it objectionable that the BCMA seeks to rely on an alleged role as my “agent” in bargaining an Agreements (at Response to Civil Claim paragraph 2 (e)), and at the same time says I am not a party to the resulting Agreements (at Response to Civil Claim paragraph 43 and 46), and thus somehow lack standing to complain.

13. The BC Government establishes pay and Physician Benefits for Non-members via periodic negotiation with the BCMA, even though the BCMA has been given no authority to negotiate anything on behalf of the Non-members including myself.

14. For at least the last 10 years I have been entitled to apply for and receive, upon fixed criteria, benefits under benefit plans established by the BC Government. These benefits are

available to me as part of my compensation for services rendered to members of the public, even though I am a non-Member.

15. For at least the past 10 years the BC Government has periodically entered into contracts with the BCMA for the purpose of setting out mutual obligations concerning, among other things, the amounts of pay and benefits that would be paid and provided by the BC Government for physicians providing MSP Services.

16. The benefits made available by the BC Government are the same as for BCMA members and non-Members. The BC Government has agreed to make the benefits available to all qualified BC physicians via certain contractual relations with the BCMA.

17. At present, the contracts between the BC Government and the BCMA respecting physician pay and benefits (the "Agreements") include:

- (a) Exhibit "A" - Physician Master Agreement (the "PMA") - November 1, 2007, and subsequent amendments;
- (b) Exhibit "B" - General Practitioner's Subsidiary Agreement – November 1, 2007;
- (c) Exhibit "C" - Specialists Subsidiary Agreement – November 1, 2007;
- (d) Exhibit "D" - Rural Practice Subsidiary Agreement – November 1, 2007;
- (e) Exhibit "E" - Alternative Payments Subsidiary Agreement – November 1, 2007;
- (f) Exhibit "F" - Benefits Subsidiary Agreement (the "BSA") – November 1, 2007, and subsequent amendments; and
- (g) Exhibit "G" - Benefits Administration Agreement (the "BAA") – June 12, 2008.

18. I note that it is admitted by the BCMA that at Paragraph 3.2 (a) of the Physician Master Agreement the BC Government granted to the BCMA the sole and exclusive right, and the BCMA undertook the obligation to represent the collective and individual interests of

all physicians receiving payments funded by the Government, including physicians who were Non-members of the BCMA.

19. It is set out in the Physician Master Agreement Exhibit “A” herein, the Benefits Subsidiary Agreement Exhibit “F” herein, and the Benefits Administration Agreement Exhibit “G” herein, that the BC Government undertook an obligation to provide all qualified BC physicians providing MSP Services, including BCMA members and Non-members alike, certain benefits, as defined in associated benefit plans. The said benefits are stated to consisted of:

- (a) Physician Disability Insurance Program (“PDI Program”);
- (b) Continuing Medical Education Fund (“CME Fund”);
- (c) Canadian Medical Protective Association Rebate Program (“CMPA Rebate Program”);
- (d) Contributory Professional Retirement Savings Plan (“CPRSP Plan”);
- (e) Parental Leave Program;
- (f) Pregnancy Leave Program; and
- (g) Physician Health Program.

20. I note that it is admitted that each of the benefit plans had particular qualifying criteria which were the same for all qualifying physicians whether BCMA members or Non-members.

21. I note that it is admitted that in order for the BC Government to make the agreed benefits available to qualifying physicians, it was necessary to establish and fund a suitable administrative system whereby physicians could apply for benefits, applications could be evaluated, and benefits provided where appropriate.

22. I note that it is admitted that the BC Government could have itself undertaken the administrative work to provide the benefits, or it could have gone to public tender for a

professional benefit administrator, but instead of doing so, it chose to provide the promised benefits owing to BC physicians by contracting with the BCMA under the Benefits Subsidiary Agreement (the “BSA”) and the Benefits Administration Agreement (the “BAA”).

23. It is set out in those agreements, amongst other things, as follows:

- (a) the BC Government would advance monies to the BCMA in respect of each benefit plan; (BSA)
- (b) the monies advanced by the BC Government to the BCMA were to be used solely to provide benefits and to fund the cost of administering such benefits;
- (c) the funds advanced included sufficient amounts to compensate the BCMA for the costs of administering the plans; (BAA, clause 3.3)
- (d) the BCMA was to administer the benefits with the same degree of care, skill and efficiency as would be employed by a prudent and reasonable benefits administrator performing the same services; (BAA, clause 2.3)
- (e) the BCMA was entitled to reimbursement for its costs of administering the benefit plans from the BC Government, but only such costs as were reasonable and reasonably comparable to the costs that would be charged by a prudent and reasonable professional benefits administrator performing the same services; (BAA, clause 3.1)
- (f) the BCMA was required to use a portion of the funds advanced to provide benefits to Non-members; (BSA, clause 7.1 (b))
- (g) the BCMA agreed to administer the benefit plans for Non-members with the same standard of administration as for BCMA members; (BSA, clause 7.1 (b))
- (h) the BCMA was allowed to charge an administration fee to Non-members which would not be more than the equivalent of dues and levies charged to BCMA

members in the calendar year in which the Non-member applies for benefits.
(BSA, clause 7.1(c))

- (i) the BCMA was required to report annually to the Government on its expenditures related to the administration of the Benefit Plans to allow the BC Government to meet its statutory obligations to account for the use of public money; and
- (j) the BCMA benefits department was required to report the value of administration fees charged to Non-members for each Benefit plan on an annual basis.

24. I have sought and been unable to find any proper reporting, leading me to conclude that the BCMA has failed or refused to comply with the reporting obligations set out above at paragraphs 25 (i) and (j).

25. Each time I, or other Non-member, apply for and qualifies for any benefit provided in the Benefit Plans, the BCMA withholds what I consider to be arbitrary and excessive administration fees, in the sense that the fees have no apparent relationship to the actual cost of administration cost of providing the benefit.

26. The BCMA has an apparent practice and policy of charging Non-members an administrative fee, without any regard to the reasonable cost of administration of that certain benefit, such that usually a Non-member is charged the same amount as s/he would have paid in dues and levies to join the BCMA. In many cases the administration fee charged exceeds 50% of the value of the given benefit. I note this is admitted in paragraph 31 (a) of the Response to Civil Claim.

27. The amounts charged to Non-members are excessive in the sense of not being reasonably comparable to the costs that would be incurred by a prudent and reasonable professional benefits administrator performing the same service.

28. The practice of taking excessive administration fees has continued for at least 10 years. Before November 1, 2007, benefit plans were similar to the current plans. During this entire period, the BC Government contracted with BCMA to provide the benefits to all qualifying BC physicians, including Non-members, and the BCMA charged excessive and arbitrary administration fees.

29. I personally have for at least the past 10 years suffered loss and damage because BCMA has charged me excessive administration fees in order for me to receive benefits I have earned by providing services to my patients. The result of this is that I have not received the benefits I was entitled to as compensation for my services.

30. Particulars of excessive administration fees charged to me recently are as follows:

A. Continuing Medical Education Plan Benefit:

- (a) I applied for CME benefits on January 20, 2009. My application at that time was for reimbursement of qualifying continuing medical education expenses incurred in the prior 4 years, from 2006 to 2009;
- (b) I applied for \$1,150 in respect of qualifying CME expenses in 2006, and BCMA charged an administration fee of \$603.75 (52.5%);
- (c) I applied for \$1,400 in respect of qualifying CME expenses in 2007, and BCMA charged an administration fee of \$603.75 (43.125%);
- (d) I applied for \$1,400 in respect of qualifying CME expenses in 2008, and BCMA charged an administration fee of \$735.00(43.125%);
- (e) I applied for \$1,400 in respect of qualifying CME expenses in 2009, and BCMA charged an administration fee of \$349.65 (25%);

B. Contributory Professional Retirement Savings Plan Benefit:

- (a) For at least the past 10 years the BC Government has funded a benefit plan for BC physicians to allow them to accumulate retirement savings (“CPRSP”) via contributions to Registered Retirement Savings Plans (“RRSP’s”);
- (b) During that 10 year period I applied for and received RRSP benefits in accordance with eligibility requirements communicated to me from time to time;
- (c) Available CRRSP benefits for each eligible physician increases with the amount of MSP Services provided pursuant to the Medical Services Plan;
- (d) CRRSP benefits consist of basic benefits and in addition, in the case of applicants who are long service physicians, certain length of service benefits;
- (e) Physicians must contribute their own funds to their RRSP savings accounts to receive matching CRRSP benefits, and monies paid into the said RRSP’s are locked-in until the physician ceases practicing medicine in the province;
- (f) Until the most recent claim period, the BCMA charged me an administration fee of approximately \$300 per year;
- (g) In the most recent claim period, the BCMA charged me an administration fee equal to 50% of each applicant’s basic CRRSP benefit,
- (h) In the current claim period I was charged \$1,615 by way of an administration fee for her CRRSP benefit;
- (i) I consider that both the \$300 annual fee and the higher fee charged in the current year are unreasonable and excessive fees;

C. Physician Disability Insurance Program:

- (a) For years BC Government has funded a benefit plan for BC physicians to provide an insurance policy under which income continuation benefits would be available in the event of a disability (“PDI Program”);
- (b) BC physicians who are members of the BCMA and Non-members are eligible for government funded PDI Program benefits;
- (c) The PDI Program is voluntary, in the sense that BC physicians must apply for and qualify for coverage based on medical evidence of good health;
- (d) Physicians who are BMCA members can in addition apply for and receive additional disability insurance coverage from a minimum of \$500 to a maximum of \$12,000 replacement earnings;
- (e) The PDI Program is based on physician’s prior calendar year eligible earnings and physician’s type of practice. The maximum monthly income replacement benefit is \$6,100;
- (f) Coverage under the PDI Program is a taxable benefit to each BC physician who applies for and receives coverage, though physicians are not required to pay directly for coverage;
- (g) For at least the past 10 years the defendant has charged me unreasonable and excessive fees in respect of the PDI Program and has failed to provide me the full amount of the benefit to which I have been entitled;

D. Canadian Medical Protective Association Rebate Program (“CMPA Rebate Program”);

- (a) For years the BC Government has funded a benefit program for BC physicians named the CMPA Rebate Program. Under that program qualifying BC

physicians are reimbursed for a certain portion of the cost of membership in the Canadian Medical Protective Association (“CMPA”);

- (b) The 2010 CMPA Rebate amount for BC physicians is equal to the increase of CMPA fees over fees incurred in 1985, the base year;
- (c) Physicians who are paid on a non-salaried basis and have qualifying income in the prior calendar year are eligible for a CMPA Rebate;
- (d) The reimbursement percentage to which a physician is entitled from the program is based on gross payments from the Ministry of Health or payment made under a service contract during the previous calendar year as follows:
 - (i) Gross Income over \$30,000 – 100%;
 - (ii) Gross Income \$15,001 to \$30,000 – 75%;
 - (iii) Gross Income \$10,001 to \$15,000 – 50%;
 - (iv) Gross Income \$5,001 to \$10,000 – 25%;
- (e) Gross Income less than \$5,000 - none
 - (i) For the entire period during which the CMPA Rebate Program has been in effect, I have earned qualifying income sufficient to receive a 100% rebate;
 - (ii) For the past at least 10 years the defendant has charged me unreasonable and excessive fees in respect of the CMPA Rebate Program and has failed to provide me the full amount of the benefit to which I have been entitled.

31. Now produced and shown to me and marked as exhibits are the documents setting out my application for the various benefits and the administration fees charged, as referred in the previous paragraph, as follows:

- (a) Exhibit "H" is a letter I received from the BCMA in October 2008, setting out the CME benefits owing to me;
- (b) Exhibit "I" is my application of January 2009, for the CME benefits owing to me;
- (c) Exhibit "J" is the statement of February 2009, of the cheque I received and the administration fees charged;
- (d) Exhibit "K" is the letter from the BCMA of May 2009 in respect of the benefits of CPRSP, PDI, CME, and CMPA rebate and setting out my fee for services total billing amount for 2008;
- (e) Exhibit "L" is my letter to the BCMA complaining about excessive administration fee charges;
- (f) Exhibit "M" is a letter of June 2009, from the BCMA itemizing my benefits and their administration charges;
- (g) Exhibit "N" is my letter to the BCMA raising concerns about the administration charges;
- (h) Exhibit "O" are itemizations of cheques and deductions of November 2009 and February 2009 in respect of my CME benefits;
- (i) Exhibit "P" is a December, 2009 letter to me from the BCMA responding to my concerns about administration charges;
- (j) Exhibit "Q" are two pages of itemized administration fees received by the BCMA, sent to me in February, 2010.

