



Chronology of BCNU legal action against Victoria over user fees and extra billing

January 2003 - BCNU legal counsel writes to then-Health Minister Colin Hansen and federal Health Minister Anne McLelland, pointing out violations of the Medicare Protection Act and Canada Health Act over user fees and extra billing by physicians at private clinics. The letters ask what the governments intend to do to enforce their laws.

May 2003 - Health Canada confirms it is withholding federal transfer payments from BC because of user fees charged for medically-necessary services at private for-profit clinics.

May 2003 - Health Minister Colin Hansen tells the legislature medically-necessary surgical procedures - no matter where they are performed - must be covered and paid for by the public purse and there can be no additional charges directly to the patient."

August 2003 - After BCNU complained to the Medical Services Plan, a union member receives a refund of \$3000 from a private for-profit clinic where she received medically-necessary knee surgery.

December 2003 - BC Government introduces Bill 92 to increase its ability to police the practices of private for-profit clinics and compliance with BC Medicare Protection Act and Canada Health Act

April 2005 - BCNU files petition in BC Supreme Court seeking a writ of mandamus ordering the provincial government to enforce Medicare Protection Act prohibitions against extra billing and user fees for medicare insured services

May 2005 - Ottawa fines BC another \$72,000 because of extra billing at private surgery clinics contrary to the Canada Health Act

December 2006 - BCNU files revised petition in BC Supreme Court with more evidence of Medicare Protection Act violations

October 30, 2007 - Government argues technical objections in Supreme Court claiming BCNU lacks the authority to bring the case to court

March 18, 2008 - Mr. Justice Kelleher rules that the case presents a serious issue and BCNU has demonstrated a genuine interest in the matter. When the case is re-filed, it will involve a number of individual patients.

November 13, 2008 - As part of a long attempt to secure disclosure of relevant documents, BCNU releases internal government memos obtained under the Freedom of Information Act that confirm the government has refused to enforce laws against user fees and extra billing even though it understands these fees violate its own laws.

The union is assisting patients in preparing a new court petition on the case which will be filed in BC Supreme Court shortly

British Columbia Nurses' Union

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What the documents say

1. A November 16, 2004 briefing note - prepared for Stephen Brown, assistant deputy minister, medical and pharmaceutical services division

This document shows:

- the government would not act to enforce its own laws because of "significant political implications."
- *"MSP's current approach, amended in March 2004, is to follow up on patient complaints of extra-billing as follows: Write to the doctors involved to request refunds but do not attempt any remedial action in the event they do not voluntarily rectify the situation."*
- *Write to the patients suggesting they seek refunds"*

2. A December 10, 2004 update prepared for Assistant Deputy Minister Craig Knight for a meeting on the subject with Health Canada

This document says:

- *"In March/April 2004 the Ministry adopted revised procedures for dealing with reports of extra-billing. In essence these procedures require staff to follow up on complaints but stop short of any enforcement action. (emphasis ours)*
- *"(After asking the patient for documentation and reviewing it) if it appears to be a case of extra-billing, MSP then writes to the doctor (normally the surgeon) to remind him/her of the provisions of the (Medicare Protection Act) and to request a refund. However, MSP does not attempt any remedial action in the event the physician does not voluntarily rectify the situation."*
- The document acknowledges that before March 2004 government policy was to request refunds and if necessary, "taking remedial action against physicians pursuant to the Medicare Protection Act (MPA)" including removing them from medicare rolls.
- But that all changed after the government refused to enact the whole of Bill 92, which would have given the government the authority to take action against private clinics, as well as individual physicians. Instead the government appeared to accelerate its support for the growth of patient-pay for-profit healthcare, by simply refusing to take action against illegal extra billing and user fees.
- The document includes form letters from Phillis Chully, executive director, Medical Services Branch. An "initial letter to patients" tells patients they should not have been charged fees and should request reimbursement from the doctor involved. A "letter to physician (normally the surgeon) asks the doctor to ensure that any charges not permitted are refunded to the patient. A "follow-up letter to patient" asks whether the patient asked for a refund, whether the patient received a refund and, if so, how much was received.

3. An email from Craig Knight, ADM to then Deputy Minister Penny Ballem December 9, 2004

The email refers to a call to Ballem and to then-Health Minister Colin Hansen, with plans for a "strategic discussion" with Health Canada. Documents indicating what that "strategic discussion" might have been or where it led has not been released.

Health Canada annually deducts transfer payments from BC for extra billing and user fees charged by practitioners and private for-profit clinics in the province.

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