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**Via Email**

Warren (Smokey) Thomas  
President  
Ontario Public Service Employees Union  
100 Lesmill Road  
North York, ON M3B 3P8

**Re: Physiotherapy Services in Public Hospitals and the *Canada Health Act***

You have asked for our opinion whether the charging of fees to out-patients for physiotherapy services at Deep River and District Hospital and Kincardine and District General Hospital amounts to a violation of the *Canada Health Act*.

For the reasons that follow, it is our opinion that charging fees for physiotherapy services provided at a hospital amounts to a breach of both the spirit and specific terms of the *Canada Health Act*.

In brief, under the *Canada Health Act* ("the CHA" or "the Act"), in order to receive federal funding, the provinces must adhere to the five principles set out in the CHA: public administration, portability, universality, comprehensiveness and accessibility. The principle of comprehensiveness requires provinces to provide comprehensive insurance coverage for certain 'core' health services, including "hospital services". In our opinion, the Act's definition of "hospital services" includes physiotherapy services provided to in-patients and

out-patients at a hospital, with the result that such services must be publicly funded. It is our further view that the imposition of such fees and the progressive erosion of access to insured out-patient physiotherapy services at hospitals in Ontario violates the spirit and intent of the *Act* by impeding access to medically necessary services that the drafters of the *Act* envisaged as being among the core services that would be made available to Canadians without financial or other barriers.

## **FACTS**

This question arises from two fact situations. As we understand it, the first concerns a plan by Deep River and District Hospital to begin charging its out-patients for physiotherapy services to be provided directly by hospital staff. The second fact situation concerns the decision by the South Bruce Grey Health Centre to lease the space formerly occupied by the Kincardine and District General Hospital's physiotherapy department to a private for-profit corporation providing physiotherapy services. Physiotherapy services at Kincardine used to be provided free of charge to the Hospital's in and out-patients, paid for from the Hospital's global budget. Under the new arrangement the Hospital covers the cost of physiotherapy services provided by the corporation to its in-patients, but the Hospital's out-patients are now being billed directly by the new corporation for those services. Although there is some limited coverage under OHIP for physiotherapy services, none of the services provided at the Kincardine clinic are covered by OHIP, because the clinic is not a designated provider under the OHIP Plan. The same would presumably also be true at Deep River, were the plan to be implemented.

The South Bruce Grey Health Centre has recently announced plans to close the out-patient physiotherapy services at its other three hospital locations. The result would be that some Kincardine out-patients will no longer have any access to any insured physiotherapy services, while others will have to travel some 70 kilometres to the nearest designated clinic to access insured services.

The issue you have raised is whether one or both of these examples of the downloading of the costs of medically necessary health services onto patients is consistent with the *Canada Health Act*.

## Canada Health Act

### **The Principles of the *Canada Health Act***

The *Canada Health Act* sets out five program criteria (often called the “national principles”) that provincial health insurance plans must meet in order for a province to qualify for the full amount of the health financing made available by the federal government.

The *Act* first lists the principles in bare form, and then sets out in subsequent sections what a province must do to satisfy each criterion. The combined provisions are as follows:

1. **Public Administration:** The *Act* requires each province to have a non-profit health insurance plan, run by a public authority, accountable to the provincial government;
2. **Comprehensiveness:** Section 9 of the *Act* provides that “In order to satisfy the criterion respecting comprehensiveness, the health care insurance plan of a province must insure all insured health services provided by hospitals, medical practitioners or dentists, and where the law of the province so permits, similar or additional services rendered by other health care practitioners”. “**Insured health services**” are defined under the *Act* to mean “hospital services, physician services and surgical-dental services provided to insured persons...”
3. **Universality:** all residents of a province must have access to insurance on equal terms.
4. **Portability:** provinces must cover insured health services to their citizens during temporary absence from the province.
5. **Accessibility:** provinces must provide for insured health services on uniform terms and conditions and on a basis that does not impede or preclude, either directly or indirectly, whether by charges made to insured persons or otherwise, reasonable access to those services by insured persons.

The *Act* also contains provisions on extra-billing and user charges that apply to “insured health services”, as defined above.

As set out above, in order to satisfy the criterion respecting comprehensiveness, the health care insurance plan of a province must cover all “hospital services”. The Act defines “**hospital services**” in the following terms:

**“hospital services”** means any of the following services provided to in-patients or out-patients at a hospital, if the services are medically necessary for the purpose of maintaining health, preventing disease or diagnosing or treating an injury, illness or disability, namely,

- (a) accommodation and meals at the standard or public ward level and preferred accommodation if medically required,
- (b) nursing service,
- © laboratory, radiological and other diagnostic procedures, together with the necessary interpretations,
- (d) drugs, biologicals and related preparations when administered in the hospital,
- (e) use of operating room, case room and anaesthetic facilities, including necessary equipment and supplies,
- (f) medical and surgical equipment and supplies,
- (g) use of radiotherapy facilities,
- (h) use of physiotherapy facilities, and
- (l) services provided by persons who receive remuneration therefor from the hospital,

but does not include services that are excluded by the regulations.

There are no regulations specifying excluded services.

“Hospital” is defined in the *Act* so as to include “any facility or portion thereof that provides hospital care, including acute, rehabilitative or chronic care...”

In sum, then, following the language of the statute, public insurance must cover all medically necessary services provided “to in or out-patients at a hospital” “by persons who receive remuneration therefor from the hospital”. In addition, the medically necessary “use of physiotherapy facilities” by “in or out-patients at a hospital” must be covered by public insurance.

### **Funding of Physiotherapy Services in Ontario**

In 2004, the government announced that it would delist physiotherapy services from OHIP effective March 31st, 2005. In late March 2005, the government announced that the delisting would be limited to those between the ages of 18 and 64 who are not receiving benefits under the Ontario Disability Support Program, Ontario Works and Family Benefits. These changes came into effect April 1st, 2005.

Since 2005, in order to be covered for physiotherapy services Ontarians must have a doctor's referral and:

- Be 19 years old or younger, or;
- Be 65 years old or older, or;
- Be in receipt of benefits under the Ontario Disability Support Program or Family Works, or;
- Have been overnight in hospital for a condition that now requires physiotherapy treatment.

OHIP funded physiotherapy can be accessed only through Designated Physiotherapy Clinics. According to the Ontario Physiotherapy Association the number of Designated Physiotherapy licenses (previously Schedule Five Physiotherapy licenses) has been frozen since 1964<sup>1</sup>.

As we understand it, Kincardine is not a Designated Physiotherapy Clinic. Accordingly, even those patients who would otherwise be entitled to receive insured physiotherapy

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<sup>1</sup> [http://www.opa.on.ca/policy\\_ohip.shtml](http://www.opa.on.ca/policy_ohip.shtml), as accessed on Oct 6, 2008 "OHIP and Physiotherapy"

services, including those who need physiotherapy as a result of a condition for which they were hospitalized overnight at Kincardine, will be required to pay if they obtain these services at the clinic located at the hospital after discharge as in-patient from the hospital.

Homecare physiotherapy services provided through Community Care Access Centers are also publicly funded.

When the government introduced the changes in coverage for physiotherapy services the public was advised that the changes did not affect publicly funded physiotherapy services provided to in-patients and out-patients by Hospitals.<sup>2</sup>

### **Does the Deep River Plan Conform with the *Canada Health Act*?**

In our view, the plan of the Deep River Hospital to charge its out-patients for medically necessary physiotherapy services provided by its own staff does not conform with the requirement of comprehensiveness as set out under the CHA. The plan at Deep River, as we understand it, is to impose charges for medically necessary physiotherapy services to be provided to out-patients at the hospital by persons who are receiving remuneration from the hospital for that work. Accordingly, these services fall within the *Act's* definition of "hospital services" as encompassing medically necessary services provided to in or out-patients at the hospital by persons who receive remuneration therefor from the hospital, and must be publically funded.

### **Does the Charging of Fees at Kincardine Conform with the *Canada Health Act*?**

The proper application of the *Act* to the situation at Kincardine turns primarily on the interpretation to be given to the phrase "at the Hospital" in the *Act's* definition of "hospital services". In our view it is significant that this definition lists services provided by persons receiving remuneration from the hospital separately and distinctly from the list of specific services, such as the "use of physiotherapy facilities", that must be publicly funded. This appears to indicate an intention on the part of the drafters that a listed service does not have to be provided by employees of the hospital in order to fall within the definition of "hospital services" and the scope of required public insurance coverage.

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<sup>2</sup>

OHIP - Changes in Coverage for Physiotherapy Services - Ontario MOHLTC Website, March 2005

Kincardine may be expected to argue that it has closed its physiotherapy department and that there are no longer any “physiotherapy facilities”, “at the hospital”, despite the fact that there remains a physiotherapy clinic located at the hospital, and despite the hospital’s continued ownership of the physical space in which physiotherapy services are provided. Kincardine is, however, continuing to provide physiotherapy facilities and services to its in-patients, albeit through the medium of an outside corporation located on hospital premises. To this extent the decision it has taken may properly be characterized as a decision to deny access to those same facilities and services to its physiotherapy out-patients without the imposition of a fee. In light of the *Act*’s apparent indifference to whether a listed service is provided by the Hospital’s employees or through another medium, there is, in our view, a good basis on which to argue that this decision violates the terms of the comprehensiveness provision of the *Canada Health Act*.

It is also our view that an interpretation of the *Act* that would not serve to encourage hospitals to limit insured physiotherapy services available on their premises to in-patients while, in effect, making money from their out-patients in the form of lease payments from for-profit physiotherapy corporations is more consistent with the overall intent of the *Act*.

At the broadest level, the movement of services not otherwise funded by OHIP out of hospitals and into private for-profit facilities serves to increase the extent to which wealth buys better care. It is clear that this makes health coverage for Canadians less comprehensive, less accessible, less universal, and less subject to public administration. As such, moves of this kind can properly be characterized as contrary to the general principles that lie behind the *Canada Health Act*, as expressed in its statement of objectives<sup>3</sup>, and as set out in the bare list of principles in section 8.

More specifically, the fact that the *Act* contains express reference to coverage for out-patient physiotherapy services indicates that its drafters envisaged that Canadians should have access to physiotherapy out-patient services at hospitals free of charge.

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<sup>3</sup> It is hereby declared that the primary objective of Canadian health care policy is to protect, promote and restore the physical and mental well-being of residents of Canada and to facilitate reasonable access to health services without financial or other barriers (CHA, s.3)

**Conclusion**

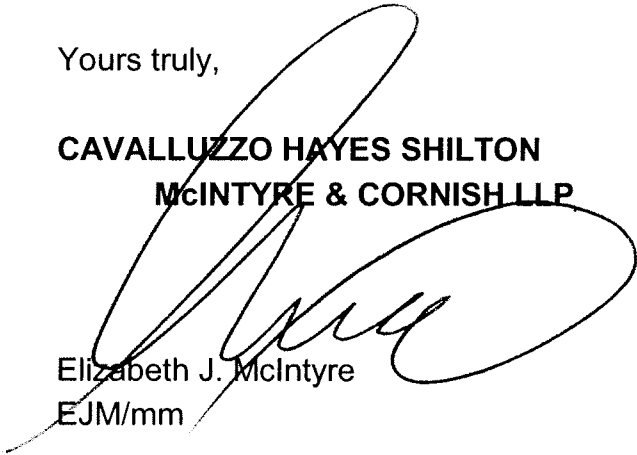
The CHA's inclusion of in and out-patient physiotherapy services provided at a hospital in the list of services that every province must publically fund indicates that the drafters of the *Act* envisaged that out-patient physiotherapy services would and should be made available to Canadian citizens free of charge through hospitals. In our view, this supports an interpretation of the definition of "hospital services" that would require physiotherapy facilities that are located "at a hospital", and that are used by the hospital to provide physiotherapy services to in-patients, to be made available free of charge to hospital out-patients, irrespective of whether the hospital has chosen to provide those services through its own employees.

In addition, it is our view that the *Act* is clear that when a hospital provides in and out-patient physiotherapy services at a hospital through its own employees, these services must be publically funded.

Please do not hesitate to contact us if you have any questions.

Yours truly,

**CAVALLUZZO HAYES SHILTON**  
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