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CASE SUMMARY: BIP TO RECOVER DOCTOR'S FRAUDULENT BILLINGS AND CANCEL ENROLLMENT IN MSP

The appellant, Dr. Hefnawi, was enrolled in the Medical Services Plan ("MSP"). In 2010, he was audited by the Billing Integrity Program ("BIP"). The Medical Services Commission (the "Commission") sought recovery of funds for fraudulent or misrepresented patient billing and gave notice of its intention to cancel the appellants enrolment as a practitioner under the *Medicare Protection Act*, RSBC 1996, c. 286 ("MPA").

Administrative law – Decisions reviewed – Ministry of Health Billing Integrity Program – Judicial review – Appeals – Natural Justice – Procedural requirements and fairness – Evidence – Physicians and surgeons – Disciplinary proceedings – Billing matters – Records

Hefnawi v Health Care Practitioners Special Committee for Audit Hearings, [2018] B.C.J. No. 2932, 2018 BCSC 1311, British Columbia Supreme Court, August 3, 2018, Basran J.

In the first hearing the appellant was found to have breached several sections of the MPA. The Panel ordered repayment to the Commission and cancelled enrollment in the MSP. The Supreme Court quashed the decision of the Panel because it refused to consider Dr. Hefnawi's affidavit in reaching its decision. The matter was returned to the Special Committee and a second hearing was conducted by a new panel.

Prior to the second hearing, counsel for the appellant advised that the appellant was unavailable for the hearing. The appellant's adjournment application was dismissed. Although the appellant was available to clarify questions, the Panel did not take the opportunity to hear from the appellant. The BIP sought to admit 17 affidavits obtained from former patients and their caregivers. The appellant requested the affiant appear for cross-examination. The BIP applied to the Panel chair seeking an order that it not be required to produce the affiants. The chair decided that the BIP had no obligation to make the affiants available for cross-examination.

On appeal to the Supreme Court, the Court concluded that the appellant was entitled to a high level of procedural fairness as the penalty sought and cancellation of enrollment were serious consequences. The hearing before the Panel was also quasi-judicial in nature.

The Court found that the duty of procedural fairness was breached by the Panel in two respects. First, the Panel breached the duty of procedural fairness by scheduling the hearing at a time they knew the appellant would be unable to attend and by failing to grant an adjournment in a fair and reasonable manner.

Second, the Panel breached their duty of procedural fairness by not ordering the cross-examination of the affiants who provided the 17 affidavits. This evidence was considered central to the issues in this matter.

In the result, the Court ordered a third hearing and observed that there was unlikely to be any further opportunity to take action against the appellant if he was denied procedural fairness.

This case was digested by [Jackson C. Doyle](#), and first published in the LexisNexis® Harper Grey Administrative Law Netletter and the Harper Grey Administrative Law Newsletter. If you would like to discuss this case further, please contact Jackson C. Doyle at jdoyle@harpergrey.com.