

COURT FILE NUMBER      2101-13202

COURT                      COURT OF QUEEN'S BENCH OF  
ALBERTA

JUDICIAL CENTRE        CALGARY

PLAINTIFFS                DR. ERIC T. PAYNE, DR. JOANNA  
J. MOSER, and DR. GREGORY  
CHAN

DEFENDANTS              ALBERTA HEALTH SERVICES and  
DR. VERNA YIU IN HER  
CAPACITY AS CHIEF EXECUTIVE  
OFFICER OF ALBERTA HEALTH  
SERVICES

DOCUMENT                **SUPPLEMENTAL AFFIDAVIT OF  
DR. GREGORY KEEN-WAI CHAN**

ADDRESS FOR SERVICE    Rath & Company  
AND                        Barristers and Solicitors  
CONTACT                   282050 Highway 22 W  
INFORMATION OF        Foothills, AB T0L 1W2  
PARTY FILING THIS      Attention: Jeffrey R. W. Rath  
DOCUMENT                Telephone: 403-931-4047  
                                    Facsimile: 403-931-4048

Clerk's Stamp

**AFFIDAVIT OF DR. GREGORY KEEN-WAI CHAN**

**AFFIRMED ON DECEMBER 12, 2021**

I, Gregory Keen-Wai Chan, of Ponoka, Alberta, SOLEMNLY AFFIRM AND DECLARAE THAT:

1. I have personal knowledge of the facts and matters deposed to herein, except where stated to be based on information and believe, and where so started I believe them to be true.
2. On or around October 12, 2021, Dr. Deena Hinshaw, Chief Medical Officer of Health for the Province of Alberta ("AHS"), incorrectly identified that a 14-year old with Stage 4 brain cancer, Nathanael Spitzer, had died of severe acute respiratory syndrome coronavirus 2 ("SARS-CoV-2" or "COVID-19"). Following Nathanael's sister, Simone Spitzer, going public on Facebook about his death, Dr. Hinshaw delivered a public

apology and announced that a subsequent review determined that COVID-19 was not a primary or secondary cause of Nathanael's death.

3. Nathanael Spitzer was a patient of mine and I have received permission from his parents to disclose his personal medical information with respect to this matter. I provided care to Nathanael through home visits and inpatient care at the Ponoka Hospital and Care Centre ("PHCC").
4. Nathanael Spitzer was diagnosed with a Stage 4 brain tumor in January 2021 and was hospitalized at the PHCC on August 25, 2021, where he was undergoing palliative care. On August 26, 2021, Nathanael's COVID-19 test was negative.
5. On or around October 3, 2021, during his stay in hospital, Nathanael developed gastrointestinal symptoms. These symptoms persisted over the next 3 days. On October 6, 2021, Nathanael developed a fever and was suspected to have COVID-19. On October 6, 2021, Nathanael tested positive for COVID-19, I believe from a fully vaccinated staff member working at the hospital.
6. I believe Nathanael was infected by a fully vaccinated staff member at the hospital because, to the best of my knowledge, I am one of the only unvaccinated staff members at the hospital and I have had no symptoms of COVID-19. Around October 6, 2021, when Nathanael was infected with COVID-19, the daily COVID-19 screening I undergo was negative. On October 15, 2021, I tested negative for COVID-19 for an unrelated event.
7. In or around October 6, 2021, Nathanael's family was also regularly being screened and/or tested for COVID-19 and their test results all came back negative as well.
8. Nathanael sadly passed away on October 7, 2021, after a courageous nine-month battle with brain cancer.
9. On October 7, 2021, I consulted the Office of the Chief Medical Examiner in Calgary with respect to completing Nathanael's death certificate. After consulting with the medical investigator, the immediate cause of death is 'complications of glioblastoma'. There are no other diagnoses on the death certificate. Also, the official medical record discharge summary explicitly excludes COVID-19 in the listed 'Most Responsible Diagnoses'.
10. I do verily believe that Dr. Hinshaw's announcement violated the *Health Information Act*, *Freedom of Information and Privacy Act*, *Personal Information and Privacy Act* as she failed to obtain explicit permission to publicly discuss Nathanael's case from his parents. On or around October 12, 2021, Nathanael was the only 14-year-old child who recently died, and his death was easily identified by the public.
11. I do verily believe that Dr. Hinshaw's announcement on or around October 12, 2021, was used for propaganda purposes, which she was forced to retract when Nathanael's family went to the media to confirm that he died from brain cancer, not COVID-19.

12. Dr. Hinshaw's behaviour demonstrates that AHS is more concerned with propaganda and vaccination numbers than patient safety and any safe, humane or ethical practice of medicine in the Province of Alberta.
13. On the basis of the Affidavit of Dr. Laura McDougall, ..., it is my understanding that Dr. Hinshaw forms part of the executive team of AHS, which is privy to and involved in decisions that undermine patient care and contribute to the unethical practice of medicine in the Province of Alberta.
14. On November 29, 2021, the Defendant, Dr. Verna Yiu in her capacity as Chief Executive Officer of Alberta Health Services ("**Dr. Yiu**"), announced another update to the *Immunization of Workers for COVID-19 Policy* (the "**Policy**"). A copy of the updated Policy dated November 29, 2021, is attached hereto to the Supplemental Affidavit of Dr. Eric T. Payne at Exhibit "A".
15. Under the updated Policy, all AHS workers must now be fully immunized against COVID-19 by December 13, 2021, and disclose proof of their immunization status no later than November 28, 2021.
16. The updated Policy also provides for rapid testing for workers who are not fully immunized at facilities at significant risk of service disruption. Facilities at significant risk of service disruption are determined by the Vice President and Chief Operating Officer, Clinical Operations and will be communicated to affected workers at these facilities.
17. To my knowledge, the new rapid testing option for workers who are not fully immunized does not apply to me given that the Vice President and Chief Operating Officer of Clinical Operations have not identified that the PHCC are facilities at significant risk of disruption.
18. On December 2, 2021, my legal counsel, Jeffrey R. W. Rath, sent a with prejudice settlement offer to counsel for the Defendants whereby myself and the other Plaintiffs proposed a discontinuance of the jurisdiction and interim injunction applications on a without costs basis if we were granted an exception to the Policy and offered testing as an accommodation measure so that we may continue to work and provide medical services at an AHS facility. This letter is attached to the Supplemental Affidavit of Dr. Eric T. Payne at Exhibit "C".
19. AHS's Policy, specifically the limited rapid testing provisions added on November 29, 2021, fail to take into consideration that since November 1, 2021, I am already performing rapid testing twice a week with Health Canada approved COVID-19 Rapid Antigen tests (Abbott Rapid Diagnostics Jena GmbH Panbio COVID-19 AG Rapid Test Device or Bttx Inc. Rapid Response COVID-19 Antigen Rapid Test Device).
20. I have been practicing as a general family medicine physician in Ponoka for 13-years and regularly attend the PHCC to under contract with AHS to work in the emergency department and provide medical care to my family medicine patients. This includes but is not limited to attending the PHCC in order to deliver babies, provide inpatient care, and provide long-term care for my patients.



THIS IS **EXHIBIT "A"** REFERRED TO IN THE SUPPLEMENTAL AFFIDAVIT  
OF DR. GREGORY KEEN-WAI CHAN AFFIRMED BEFORE ME  
THIS 12 DAY OF DECEMBER 2021

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A COMMISSIONER FOR OATHS IN AND FOR THE PROVINCE OF ALBERTA

*ee*



**From:**  
**Sent:** December 9, 2021 1:37 PM  
**Subject:** re: PHCC ED shift availability March - August 2022

Hello physicians,

Attached is the March-August Ponoka ED shift availability list. Please drop me a line with your requests and I will reply with confirmations.

There are a few shifts in December still available and a few in March have come up since this list was generated:

<b>December 2021</b>
25-dec-am
25-dec-am
26-dec-am
27-dec-pm
28-dec-pm
<b>March 2022</b>
18-March-PM
22-March-PM
24-March-PM
26-March-AM

Thanks everyone,

g.

THIS IS **EXHIBIT "B"** REFERRED TO IN THE SUPPLEMENTAL AFFIDAVIT  
OF DR. GREGORY KEEN-WAI CHAN AFFIRMED BEFORE ME  
THIS 12 DAY OF DECEMBER 2021

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A COMMISSIONER FOR OATHS IN AND FOR THE PROVINCE OF ALBERTA

*cel*

[Redacted]

Sent to my AHS account

Gregory Chan

[Redacted]

Gregory Chan

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**From:** CZMA <[MedicalAffairs.CZInfoandAlerts@albertahealthservices.ca](mailto:MedicalAffairs.CZInfoandAlerts@albertahealthservices.ca)>

**Sent:** Friday, December 10, 2021 10:00:17 PM

[Redacted]

**Subject:** URGENT: Temporary surgical diversion from Red Deer Regional Hospital Centre

**Sending on Behalf of Dr. Michael Mulholland, Kim Storey, Dr. Cinzia Gaudelli, and Sharon Bilanski**

**Date:** December 10, 2021  
**To:** CZ Rural Physicians  
**From:** Dr. Michael Mulholland, Facility Medical Director, RDRHC  
Kim Storey, Senior Operating Officer, RDRHC  
Dr. Cinzia Gaudelli, Peri-operative Medical Lead, Central Zone  
Sharon Bilanski, Director, Surgical Services, Central Zone

Dr. Jennifer Bestard, Zone Medical Director, Central Zone

*ca*



**CC:** Janice Stewart, Chief Zone Officer, Central Zone

**RE:** Temporary surgical diversion from Red Deer Regional Hospital Centre

Red Deer Regional Hospital Centre (RDRHC) is experiencing significant volumes of patient requiring surgical intervention presenting to the site. These unusually high volumes are compounded by ongoing staffing challenges and vacancies within the anesthesiology team and we are unable to keep pace with the number of cases being placed on the urgent surgical add list.

We have exhausted all options within the facility to increase our surgical capacity, and that of our rural surgical sites wherever possible to assist.

With volumes continuing to grow, we must take further action to ensure patient safety.

**Effective immediately, we are implementing Level 5 of the Surgical Surge Protocol.**

This means that surgical cases referred to RDRHC from within the Zone will be diverted to facilities in Edmonton or Calgary. Only cases meeting the criteria outlined in the surgical surge protocol Level 5 will remain at RDRHC.

Surgical patients already admitted to RDRHC will remain on site and be seen by our surgical teams as quickly as possible. This includes patients already on the add list.

We anticipate this diversion will remain in place until at least 8 a.m. on December 13, 2021. The situation will be reviewed and evaluated daily, and will be lifted as soon as possible.

While this diversion is in place, the following processes apply:

- **Current RDRHC inpatients requiring surgical consultation:** If the patient is located at RDRH, consult the appropriate surgical service.
- **Patient transfers will be coordinated through RAAPID:** Surgical cases that can be transferred to Edmonton or Calgary must go through RAAPID North or RAAPID South. Patients that are likely surgical and would otherwise be sent to a surgical urgent assessment clinic (Plastics OPD or Ortho trauma etc.) will also be referred, via RAAPID to our neighboring zones.
  - **RAAPID North:** [1-800-282-9911](tel:1-800-282-9911) or [780-735-0811](tel:780-735-0811)
  - **RAAPID South:** [1-800-661-1700](tel:1-800-661-1700) or [403-944-4486](tel:403-944-4486)

We recognize that this is a significant impact to not only our patients, but to our surgeons as well. This is not a decision that we take lightly, and it has only been made following extensive conversation and exploration to ensure all possible options have been exhausted before taking such a drastic step.

We appreciate your understanding and support as we work through these challenges and resume surgical services as quickly as possible at RDRHC.

If you have questions or concerns, please reach out.

Dr. Michael Mulholland  
Associate Zone Medical Director, Red Deer Metro,  
Cell: [403.588.4259](tel:403.588.4259)  
[michael.mulholland@ahs.ca](mailto:michael.mulholland@ahs.ca)

*Physicians have been blind copied in order to protect their personal information.*



**Central Zone Medical Affairs**  
**43 Michener Bend**  
**Red Deer AB T4P 0H6**  
**[www.albertahealthservices.ca](http://www.albertahealthservices.ca)**

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