

President's Letter

October 12, 2016



**Christopher Cox,
MD, FRCSC, FACS
President**

NLMA files appeal regarding release of FFS physician information

Dear Colleagues,

In my September 23 President's Letter, I informed you that the NLMA received a letter from the Office of the Information and Privacy Commissioner (OIPC), indicating that the Commissioner has recommended that all MCP billings listed by physician name and specialty should be disclosed and released to the applicant requesting the information under the *Access to Information and Protection of Privacy Act, 2015 (ATIPPA, 2015)*. In this case the applicant is CBC Newfoundland and Labrador. The Commissioner's full Report A-2016-019 can be viewed [here](#).

The Department of Health and Community Services has since advised that it will comply with the Commissioner's recommendation. The Department's official response can be viewed [here](#).

The Board of the NLMA has decided to appeal the Commissioner's decision because we believe there are important legal issues that need to be addressed. For instance, the Commissioner has determined that FFS physician names and billing information do not constitute "personal information" within the meaning of the *Act*. This is contrary to prior decisions of the Commissioner. The Commissioner's recommendation is also grounded in a recent decision of the Ontario Information and Privacy Commissioner, dated June 1, 2016. That decision has been appealed by the Ontario Medical Association and is now before the Ontario courts.

A further important legal issue raised in the Commissioner's decision is whether FFS physicians are "employees" within the meaning of the *Act*. This issue has not been previously considered by the OIPC or the courts in this province and, in our view, it is not supported by the legislation.

You will recall that the NLMA did not object to the release of salaries and names of salaried physicians. Our decision not to object or to seek an appeal of that decision was based on our legal interpretation of the *Act*. Salaried physicians are "employees" within the meaning of the *ATIPPA, 2015*, and the NLMA did not believe an appeal was a viable course of action. However, in the context of FFS physicians it is our view, and that of our legal counsel, that FFS physicians are not employees within the meaning of the *Act*.

As the NLMA has maintained throughout, the issue is not about concealing MCP information or avoiding accountability or scrutiny. Rather the issue is about whether disclosure of FFS physician names is specifically mandated under the *ATTIP, 2015*. In our view, it is not. The rates that FFS physicians can bill for various services are publicly available. Additionally, MCP has an extensive auditing process to ensure that individual FFS physicians are properly billing MCP for the services they provide to patients.

The NLMA filed its notice of appeal with the Supreme Court of Newfoundland and Labrador Trial Division earlier today. We will continue to keep members apprised of developments on this matter as they unfold.

Sincerely,



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President



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