In the Matter of:	**The Medicare Protection Act** RSBC c.286 and amendments thereto
And in the Matter of:	**A Health Care Practitioners Special Committee For Audit Hearings Panel established under s.4(3) of the Medicare Protection Act to hear the matter of Mubai Qiu, Practitioner #32352 under s.37 and s.15 of the Medicare Protection Act**

Decision and Reasons

Kathryn Kickbush Esq.	**counsel for the Health Care Practitioners Special Committee for Audit Hearings and the Billing Integrity Program**
Mubai Qiu	**on his own behalf**

Panel:
Oleg H. Tomchenko — **Chair**
Dr. Kimberley Graham
Jonalan Oddleifson

Hearing Dates: **March 24 & 25, 2014**

By Notice Letter dated June 12, 2013 to Mubai Qiu (``Qiu``) the Medical Services Commission (``Commission``) issued notice under s.37 and s. 15 of the Medicare Protection Act (``Act``) seeking, inter alia, and order pursuant to s.37 for recovery of $1,579,180.00 plus interest and costs for the period November 1, 2010 to April 30, 2012 and an order pursuant to s. 15 to cancel Qiu`s enrolment as a Practitioner under the Act.

At the outset of the hearing, counsel for the Medical Services Commission notified the panel the Commission was abandoning its application under s.15 of the Act as it lacked jurisdiction since Qiu was no longer qualified to be a Practitioner as defined in the Act

Columbia (``College``), on December 4, 2013. The reasons and decisions of the College are entered as exhibits (Ex. 1 pp. 1-416 – 1-458).

As to the s.37 claim, the Commission called evidence first through Dr. V. Davis, medical consultant to the Billing Integrity Program established under the Act. Under s. 13(3) of the Act, a practitioner who renders a benefit to a beneficiary under the Act is eligible for payment for approved services. In the case of acupuncturists, the only benefit eligible for payment under the Act is fee item #00142. That benefit is restricted to those persons who qualify for premium assistance under the Act and is limited to 10 visits in each year. Those who qualify can receive up to 10 benefits from all Health Care Practitioners, not each Health Care Practitioner. Acupuncturists are paid $23.00 for each visit.

Because of the volume and frequency of claims, the vast numbers are set out in Ex. 3, the affidavit of Marie Thelissima can be summarized as 16,000 practitioners submitting 87.6 million claims for 4.6 million beneficiaries for a total of some $2.7 billion for the fiscal year ending March 31, 2012, the payment system relies on the integrity and honesty of Medical and Health Care Practitioners to submit claims only for benefits that were rendered. S. 13(3) of the Act permits the billing and s.31 of the regulations to the Act set out the requirements for billing the Commission and the source information to be retained by the practitioner to support the billing. That information is set out in regulation s. 31(b) and by s. 31(b)(iii), is to include, "the details of the benefit including, but not limited to, an adequate clinical record, the location where the benefit was rendered, the length of time spent rendering the service and the diagnosis." S. 16 of the regulations to the Act set out the meaning of "adequate clinical record" and says it must contain "...sufficient information to allow another practitioner of the same profession, who is unfamiliar with both the beneficiary and the attending practitioner, to determine from that record, together with the beneficiary's clinical records from previous encounters, information about the service provided to the beneficiary including: ... (d) the presenting complaints, symptoms and signs, including their history;

(e) the pertinent previous history including family history;

(f) the positive and negative results of a systematic inquiry relevant to the beneficiary's problems;

(g) the identification of the extent of the physical examination and all relevant findings from that examination;

(h) the results of any investigations carried out during the encounter;...

(j) the provisional diagnosis;

(k) the summation of the beneficiariary's problems and the plan for their management.

The commission produces an annual practitioner profile on each practitioner, which compares that practitioner to all others with the same type of practice. Qiu's 2010 practitioner profile is at Ex. 1 pp. 1-55 – 1-78 and his 2011 practitioner profile is at Ex. 1 pp. 1-79 – 1-104. The 2010 profile indicates that Qiu was one of 419 acupuncturists registered as a practitioner with the Commission of which 230 billed the commission in excess of $1,000.00 for the year. The 2011 profile shows that Qiu was one of 423 registered acupuncturists and one of 242 who billed in excess of $1,000.00 for the year. Dr. Davis testified about numerous profile values that stood out and made Qiu's billings an anomaly among his practitioner group. The statistic that best summarises all the anomalies is the FTE or full time equivalent that noted that in 2010 he billed at a rate of 6 times the group average and it increased to over 7 times the group average in 2011. Other statistical information showed that Qiu was claiming to have performed services to premium assistance patients at frequencies very close to the maximum 10 visits those patients are allowed a year. In 2011 his average was 9.74 visits for each patient. In 2011 the commission paid Qiu $1,196,713.00 for the claimed services an amount that was more than 50 times the group average. Other information showed an unduly high number of "constellation" billings. That is billings to family group members at the same time.

The anomalies caused Dr. Davis to pen a memorandum dated July 5, 2012 which is at Ex 1 pp 1-35 – 1-37. That memo to the Chair of the Health Care Practitioners' Special Committee recommends that an audit into Qiu's practice be conducted. That recommendation was approved and an audit was conducted which report is at Ex.1 pp.1-40 – 1-54. The audit report concluded that none of the 2020 services claimed in the clinical records of 168 patients totalling $46,460.00 were rendered.

Of note is that the audit which is the subject of this hearing is the second audit conducted by the Commission (called "this audit"). The first audit (called the "first audit") for the period April 1, 2008 to October 31, 2010 (Ex.1 pp. 1-5 – 1-21) reached the same conclusion as this audit. One month after the period covered by this audit, in December 2010, the auditors of the first audit conducted an exit interview with Qiu. Dr. Simon Au Young, the practitioner inspector for both audits, testified that he spoke to Qiu about the requirements for clinical records. The exit interview for this audit was conducted in August 2012. A transcript of the interview is at Ex 1 pp. 1-357 – 1-400. It is

noted that during both interviews, Qiu disputed the necessity for adequate clinical records, said that the patient's signature next to an alleged treatment date is sufficient evidence of a clinical record but did when questioned provide some of the detail needed in a clinical record. We were directed to some of the clinical records that were obtained during the audit and they contain a paucity of the required information. Many only have the name of the patient, telephone number, care card number, date of birth and sex. Almost none have the patient's address completed. Any diagnosis, if one is written at all, is extremely rudimentary; neck pain, joint pain, leg pain. What is complete is a date of purported treatment and the apparent signature of the patient. Almost all show 10 treatments over a fairly short period and nothing after, notwithstanding Qiu's assertion that he treated patients whether they could pay or not. It appears that notwithstanding the first audit and the deficiencies it noted, Qiu did not appreciably change his routine or his charting to comply with the requirements of the Act.

Qiu attended the hearing. He did not challenge the Commission's witnesses regarding charting. He gave evidence. Much of it was a lament but he did not assert that his charting was sufficient. He did say that his charting was complete but acknowledged it did not meet the requirements of the Act. He said that was the fault of the College for not informing him of charting requirements. He also said that his assistants filled out charts and they did not have proper training.

Notwithstanding his assertions, Qiu on March 1, 2012 entered into a Settlement Agreement with the Commission. While dealing primarily with the monetary issues and time of payment, Qiu agreed to a consent order that could be filed with the Supreme Court of British Columbia on the happening of certain events and which states in part:

THE HEALTH CARE PRACTITIONER'S SPECIAL COMMITTEE FOR AUDIT FURTHER ORDERS that Mubai Qiu will, when billing MSP for services:

....

b) keep adequate clinical records for each patient in accordance with the *Medical and Health Care Services Regulation, B.C. Regulation 426/97;* and...

There is no evidence that Qiu changed his charting methodology to comply with his agreement during the last two months of the audit period or at all. He did not posess adequate clinical records for any of the beneficiaries treated in the audit sample. Furthermore, s.37(1)(a)and (c) of the Act provide that in the event of an unjustified departure from the patterns of practice or billings of practitioners in the practitioners, or a misrepresentation as to the nature and extent of billings, repayment can be ordered. The evidence is that Qiu's billings accounted for 20% of the billings of the billings of all 818 acupuncturists billing MSP in 2010 and 2011. In 2011 Qiu claimed he

provided services to beneficiaries for 359 days of the year, provided benefits to 100 to 199 patients on 201 of those days and provided benefits to over 200 patients a day on 71 days. His "record" was 397 beneficiaries on April 16, 2011 followed closely by April 27, 2011 when he allegedly treated 308 beneficiaries. The numbers on their own are mindboggling. When considering that Qiu had a physical layout of 9 treatment beds in 5 rooms and a waiting room with 3 or so chairs and his practice had a maximum of 3 assistants, the numbers are quite frankly, impossible. He would not have time to record in his charts what is an adequate clinical record and even more importantly, would not have the time to consider what is required for the charting. It is incomprehensible that all patients he allegedly treated were entitled to premium assistance. The evidence showed that he claimed to also bill private insurers. If true, that makes his MSP billings even more fantastical. In his evidence, Qiu did not say there wee any errors made by the auditors. He said he was very experienced and quick to provide services. Even so, the largest number of patients he said he saw in a day was 100. It is illogical to accept Qiu's records and claims as true and accurate.

The reasons of the College, referred to above, deal with much the same evidence that we heard and we do not find it necessary to repeat it in detail since it is an alternative basis for the claim, the primary basis being the lack of adequate clinical records. We find the evidence clear and compelling to show that Qiu manufactured records claiming to provide benefits, which he could not have done and made claims for benefits that were not rendered.

In assessing the amount claimed by the Commission, we are entitled to rely on statistical and other source information (s.37(6) of the Act). The audit report is such evidence. It has not been refuted in any manner. We find it clear and compelling. It along with the other evidence discussed above show that on the balance of probabilities Qiu has made claims for benefits not provided. Because it is not possible from Qiu's audited charts to determine that any benefit to any patient to which he rendered services for the audit period of this audit, we conclude that it is deemed that no benefits at all were rendered during the audit period of this audit Qiu owes the Commission *$1,579,180.00.*

This Panel orders that Qiu pay to the Commission the sum of $1,579,180.00 plus the prescribed statutory surcharge and interest (ss37(1.3) & 37(1.4)) plus costs (s.37(8)) of the audit and this hearing.
In the event the parties cannot agree to costs, we will hear submissions.

Dated: April 22, 2014

Oleg H. Tomchenko, chair

Kimberley Graham

Jonalan Oddleifson