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Mr. Michael McBane
National Coordinator
Canadian Health Coalition
2841 Riverside Drive
Ottawa, Ontario
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Dear Mr. McBane:

Re: Health Care Privatization

You have asked for a very brief overview of the implications of recent health care privatization initiatives in light of Canada's obligations under international trade, investment and services agreements.

Of particular concern are proposals to invite private and foreign investment in areas of the health care sector that have, until now, been the exclusive domain of public sector and not-for-profit service providers. The privatization of hospital services in Alberta, and certain diagnostic procedures (MRI and CT Scans) in Ontario are two of the most recent examples.

There is now a growing body of expert legal opinion and scholarly articles that have considered the potential impact of international "trade" disciplines on Canada's medicare system. It is fair to say that a consensus has now emerged that acknowledges the fundamental contradictions that exist between the goals of trade liberalization, and those that are necessary to sustain Canada's public health care system.

For example, the investment rules of NAFTA and the services disciplines of the General Agreement on Trade Services (GATS) of the WTO share a common objective, namely to contain the capacity of governments to regulate or otherwise intervene in these spheres

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of the economy. On the other hand, Canada's health care system depends upon a comprehensive framework of federal and provincial policy, law and funding arrangements that restrict the rights of private investors and service providers in order to preserve a public health care system based on the five principles of the Canada Health Act: public administration, comprehensiveness, universality, portability and accessibility.

The inherent and explicit contradictions between public health care and free trade explain why Canada needed to protect its health care system from the full impact of trade disciplines. To do so, it negotiated certain reservations under NAFTA and the GATS. Ultimately the future viability of the Canada's public health care system depends upon the integrity and broad application of these safeguards.

However, the effectiveness of these critical protections is undermined when the social service and not-for-profit character of core medical services is adulterated by privatization and for-profit service delivery. Moreover, once the integrity of these safeguards is eroded, it may not be restored.

Equally problematic is Canada's obligation to provide "National Treatment" to foreign investors and service providers. This means that once the right to provide health care services on a for-profit basis is offered to some investors, Canada may be obliged to offer the same opportunity to other foreign investors and service providers on the same favourable terms. Thus what may begin as an isolated experiment with privatization, may soon spread as competing private companies claim the same opportunities in other areas of the health care system or regions of Canada.

The precise extent to which Canada will be obliged to provide National Treatment in the health care sector is uncertain, and depends to a degree on the integrity of the safeguards we noted. It is important to understand, however, that this question will ultimately be answered, not by Canadian parliaments or legislatures, but by international trade or investment tribunals. By the time that judgment is made, it will be too late to correct the errors that may only then come to light.

The adverse impact of free trade rules can already be observed on Canada's health care system. As you know, amendments to Canada's drug patent laws were made in order to bring them into conformity with WTO rules. Two WTO challenges to those reforms for not having gone far enough have since succeeded. Together these developments account for

the fact that since free trade, increases in the cost of medicines have outstripped those for any other area of the health care system.

Another troubling precedent was set when United Parcel Services of America invoked the extraordinary and coercive enforcement machinery of NAFTA investment rules to challenge Canadian policy concerning postal services. The pernicious arguments UPS is making in those closed international proceedings, are just as dangerous to public health care services.

In light of the seriousness of the new risks posed by Canada's international trade commitments, it is crucial for all Canadian governments to avoid eroding the public and not-for-profit character of health care services. Failure to do so is likely to lead to consequences that may have far-reaching, adverse, and irredeemable impacts on Canada's health care system. We trust that this will provide at least a general indication of the gravity of the risks associated with Alberta and Ontario privatization projects.

Sincerely,



Steven Shrybman

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