

CLASS ACTION REGARDING THE BILLING OF COSTS ACCESSORY TO INSURED MEDICAL OR OPTOMETRIC SERVICES (“ACCESSORY FEES”) IN THE FORM OF MEDICATION OR ANESTHETIC AGENTS BILLED ABOVE COST

NOTICE OF AUTHORIZATION AGAINST THE FMSQ, THE FMOQ AND THE AOQ

The Superior Court has authorized Philippe Léveillé, the representative plaintiff, to institute a class action against the *Fédération des médecins spécialistes du Québec*, the *Fédération des médecins omnipraticiens du Québec* and the *Association des optométristes du Québec* ("**Federations**"). The Federations are now defendants in this class action, which had previously been authorized against the Attorney General of Québec (on behalf of the Minister of Health and Social Services - "**MSSS**"). The class action concerns the billing of costs accessory to medical or optometric services insured by the *Régie de l'assurance maladie du Québec* ("RAMQ") in the form of medication or anesthetic agents billed above cost, and bears file number 500-06-000695-144.

CLASS MEMBERS

The criteria for membership in the class action are:

- Between May 15, 2011, and January 26, 2017, you paid a physician, an optometrist or a private clinic for the use of a medication or an anesthetic agent;
- The amount paid was higher than the cost paid by the doctor, optometrist or private clinic;
- The medication or anesthetic agent was used during the performance of a service insured and paid by the RAMQ; **AND**
- This amount does not correspond to other accessory fees paid in relation to medical or optometric services insured by the RAMQ; persons who paid such fees form a separate group in the class action *Daniel Raunet v. Procureur général du Québec* (500-06-000793-162).

If you meet these criteria, you may, depending on the final judgment in the case, be entitled to monetary compensation for the accessory fees that you were billed.

Class counsel's fees will be paid only in the event of success, and according to a percentage of compensation paid to class members that will be approved by the Court. You will therefore not have to pay anything unless you get compensation.

NEXT STEPS

The authorization judgement is an initial step that allows the class action to begin. This judgment does not determine the defendants' liability. The defendants will be able to raise their defenses at trial.

Following such trial, which will take place in the Montreal Division, the Superior Court will decide whether one or more of the defendants must compensate the class members, and if so, what the amount of compensation should be.

To do so, the trial judge must answer several questions that have already been determined by the Court in its authorization judgment, as well as the conclusions sought. These questions and conclusions can be found in Appendix A.

YOU CAN ASK TO INTERVENE

A class member may apply to the Court to intervene in the class action. The Court will authorize such intervention if it deems it useful to the members.

FOR MORE INFORMATION

If you would like to receive information on the progress of the case, you can subscribe to the newsletter of the lawyers for the plaintiffs and class members, by filling out the online form at: <https://tjl.quebec/en/class-actions/costs-for-drugs-and-anaesthetic/>.

WARNING! Your subscription to the newsletter is not a claim. If the class action is successful, you will have to file a claim according to the procedure determined by the Court.

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APPENDIX A

QUESTIONS AND CONCLUSIONS AUTHORIZED BY THE COURT

Questions authorized by the Court:

- Were insured persons, as defined in the *Health Insurance Act*, required to pay the doctors, optometrists and private clinics that were originally named as defendants, for costs accessory to services insured under Article 3 of the *Health Insurance Act*, in the form of medication and anaesthetic agents billed above the cost price?
- How should the following phrases be interpreted : "*compensation pour le coût des médicaments et des agents anesthésiques utilisés*" in the *Manuel des médecins omnipraticiens*; "*compensation pour certains frais de pratique que détermine ce tarif. Ces frais comprennent les médicaments et les agents anesthésiques*" in the *Manuel des médecins spécialistes* and "*compensation pour le coût des médicaments et des agents anesthésiques utilisés en rapport avec la dispensation d'un service assuré*" in the *Manuel des optométristes*?
- Do the above phrases authorize physicians, optometrists and private clinics to bill insured persons accessory fees that do not correspond to the cost of medication and anesthetic agents accessory to insured services, while indicating that the bill covers such medication and anesthetic agents?
- Does this billing represent additional remuneration to the basic remuneration paid by the RAMQ for an act that it insures?
- If so, is this a form of billing prohibited by the *Health Insurance Act*?
- In this context, did the Minister of Health and Social Services commit a civil fault by tolerating this illegal billing?
- Did the Federations commit a civil fault by inciting their members to violate the law by illegally charging fees in connection with insured services, or by authorizing third parties to do so?
- If so, must the defendants pay, solidarily, an amount equivalent to all fees illegally billed to group members, plus legal interest and the additional indemnity provided for in article 1619 C.C.Q.?

Conclusions sought authorized by the Court:

GRANT the class action;

CONDEMN the MSSS and the Federations solidarily to pay to each member of the group a sum equivalent to the amount illegally billed by a physician, optometrist or private clinic, as well as legal interest and the additional indemnity provided for in article 1619 C.c.Q., and **ORDER** the collective recovery of these sums;

ORDER the defendants, according to their liability, to deposit with the Office of the Clerk of the Superior Court all sums subject to a collective recovery order, together with interest and additional indemnity;

TAKE any other measures that the Court deems necessary to safeguard the rights of the parties;

THE WHOLE with legal costs, including expert fees and opinions.