A Clear-Eyed Analysis of Cataract Surgery Privatization:

The Kingston Health Sciences Centre's contract with a private for-profit company

Kingston Health Coalition
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In February 2023, the Kingston Whig Standard newspaper reported that Kingston Health Sciences Centre (KHSC) had contracted with Focus Medical Ancillary (FMA), a for-profit corporation, to perform some of the hospital's cataract surgeries. In the same article, when justifying this privatization, the hospital CEO, Dr. Pichora, said that while the hospital had available operating rooms it did not have the nursing staff to conduct its allocated cataract surgeries. And, although he was against a parallel private system, he thought that using for-profit facilities was not a bad thing: it was "more about how it was done."

Dr. Pichora labelled the privatization plan as an "integrated partnership." Only KHSC patients would get treatment. Only hospital surgeons would be used and they would make the final decisions on which patients had their surgery done in the hospital or at the private clinic. The training of medical staff and the surgeries would be under hospital oversight. There would be no extra charges to patients. He described the setup as "part of the hospital, essentially."

The story ran shortly after the Ontario Health Coalition (OHC) started a province-wide referendum campaign against for-profit clinics in response to the provincial government allocating a further $300 million dollars for procedures in private facilities.

The Kingston Health Coalition, the OHC's Kingston chapter, has long been concerned about the negative effects of for-profit privatization. Thirty years of scientific research, practical experience and government studies have shown that for-profit delivery of health care is more expensive, decreases quality, limits accessibility, and undercuts democracy. And, to be clear, despite all of the euphemisms – "integration", "partnership", "part of the hospital, essentially" – the Kingston contract privatizes surgeries by providing them at a for-profit corporate chain. It also includes privatization of some of the clinical staff.

The Kingston Health Coalition sought to better understand the public interest implications of this "integrated" privatization approach: specifically, its cost, accountability, and quality. This report is based on documents released from KHSC in response to multiple Freedom of Information (FOI) requests; searches of the Independent Health Facilities (IHF), the Out-of-Hospital (OHP) and the new Integrated Community Health Services Centres (ICHSC) program[1]; and the Ontario Business Registry.

This report shows that using FMA, the private clinic, even in an "integrated" model, costs the provincial health care system 56% more than performing the same surgeries in the hospital. It also creates significant problems with transparency, oversight, potential conflicts of interest, and possible violations of the Public Sector Accountability Act. The documents support the Ontario Auditor General's findings of lax quality monitoring, oversight, and accountability for private clinics.

[1] Independent Health Facilities, Out-of-hospital Facilities and the new Integrated Community Health Services Centres (ICHSC) programs are Ontario provincial programs that oversee and register private health facilities, usually for-profit companies.

The Parties

Kingston Health Sciences Centre (KHSC) is a non-profit hospital corporation that operates the Kingston General Hospital and Hotel Dieu Hospital. KHSC is a large teaching hospital affiliated with Queen's University. The Hotel Dieu Hospital site is an ambulatory care centre and does day surgeries, including cataracts. In Ontario, hospitals are non-profit and are known as "public hospitals" governed by Ontario's Public Hospitals Act (1990).

Focus Medical Ancillary (FMA) is a private, for-profit corporation formed in 2012 from the amalgamation of Everest Surgicentre Inc. and Shine Cosmetic Laser and Rejuvenation Inc. FMA's principal owner is Kevin Chadwick, who also owns Focus Eye Clinics (FEC). Chadwick's focus was FEC which concentrated on medically unnecessary laser vision correction and charged patients directly, a business that continues until today. In Kingston FMA operates at the same location as FEC. A web search for FMA takes you to the website for FEC. FEC has also been a trade name for FMA.

The Origin of the FMA-KHSC contract

In February of 2021, FMA entered into a Memorandum of Understanding with KHSC and the Queen's University Ophthalmology Department to support FMA's bid to obtain provincial funding following a "[Ministry of Health] call for applications to independent health facilities (IHF)[2] for the provision of cataract surgeries in Ontario." This tripartite agreement specifies a desire that hospital and university affiliated surgeons be used "first" at the private clinic and that the University will "provide" surgeons to FMA. It outlines conditions under which the hospital and University will limit this obligation, how surgeons will be paid, and how teaching will be facilitated. It stipulated that FMA will operate as an IHF. This memorandum of understanding set the ground-work for the private cataract surgery contract which came later that year.

In July of 2021 KHSC applied to the provincial government's Surgical Innovation Fund requesting extra resources to fund the use of FMA's facilities for hospital surgeries. With the new funding, KHSC and FMA abandoned the Memorandum of Understanding and signed a new contract to allow the privatization of hospital surgeries starting on November 24, 2021.

The Basic Agreement

Fundamentally, the agreement is for KHSC to contract FMA's operating rooms to do cataract surgeries, but there is more. Private clinical staff (nurses) are also involved. The two major components of the November 2021 agreement are:

[2] Independent Health Facilities (IHF) are private clinics, almost all of them are for-profit companies, often part of chains, who are licensed in Ontario to provide government-funded medical procedures and are formally overseen by the College of Physicians and Surgeons of Ontario (CPSO). Most IHFs perform diagnostic procedures. However, in January 2023, the provincial government passed Bill 60, legislation to increase the number of surgeries done in for-profit clinics and hospitals.

1) KHSC provides the patients, surgeons, administration support, most of the surgical supplies, patient registration, staff training and pays a procedure fee to FMA from their own funding. Extra provincial grant money, outside of the contract, was obtained to boost the payment to FMA and cover the extra costs incurred by the hospital. All the surgeries done at FMA are surgeries already allocated to the KHSC in its Provincial Accountability Agreement.
2) FMA supplies the operating rooms and nurses (who are non-unionized employees of FMA as compared to nurses who work for the hospital that are unionized.).

The Finances[3]

Total Cost of KHSC-FMA Privatization Agreement: $2,036,779 or a 56% increase.

The data shows that the use of FMA facilities and staff over two years, from November 24, 2021, to September 30, 2023, cost the public health care system $2,036,779, a 56% increase over what it would have cost to perform the same services in the public hospital.

The total cost consists of:

$1,107,991 – KHSC contractual obligations to FMA (average of $427.75 /procedure).
$518,000 – top-up funds from provincial grant ($200/procedure).
$197,488 – paid by KHSC from its own funds for supplies, etc. needed for the FMA surgeries.
$213,300 – provincial grant money for extra costs needed for privatization.

If the same 2,590 procedures had been done in KHSC it would have cost $1,305,360. The higher cost to the provincial health care budget due to KHSC'S "integrated" privatization to FMA was $731,419 ($2,036,779 minus 1,305,360) or a 56% increase over using the hospital for the same procedure.

To be clear, that $2 million is money lost from the public system. Instead, these funds were used to build-up a more expensive for-profit health care provider. On top of the increased cost, this public investment in a private facility is ultimately outside the control of the hospital or government. It is subject to the workings of the market. The for-profit company could be sold, possibly to a larger a chain, which may not want to continue working with the hospital. The new owners could take the benefits from a publicly funded private facility and pursue an even more profitable path. Alternatively, the company could go bankrupt with the public losing any benefit from these public funds.

The increased cost of $731 thousand represents money that could have been paid to KHSC to open its operating rooms for extra hours, improve equipment, recruit and maintain staff, establish an off-site clinic if needed, or fund cataract surgeries in a smaller, close-by, regional hospital, such as the Lennox and Addington County General Hospital in Napanee.

[3] This financial information was obtained from KHSC through FOI requests: information includes total invoiced payments to FMA from hospital funds, as well as approved provincial funding applications submitted by, and administered by, KHSC. Invoiced payments that cover the basic occupancy charge also include some minor supply costs. The costs of services required by the hospital to support the contracting-out agreement are estimates based on contractual obligations. The surgery volumes are extrapolations from partial figures provided in a hospital briefing note on the KHSC-FMA relationship. Due to rounding the final numbers may not exactly add up.

To “rub salt in the wound” FMA will only take the easiest patients, for example, those that can “mobilize without assistance”, or those without home oxygen, insulin, and nitrogen. In summary, the KHSC-FMA agreement represents a greater cost to the system for less resource-intensive work: procedures that should cost less.

The Financial Details (For Nerds Only)

Direct Payments to FMA: $1,625,991.

The amount paid directly to FMA has two components.

1. The largest component is paid by FMA invoice from KHSC’s Quality Based Program (QBP) funding which is used to cover contractual obligations to FMA of an occupancy cost ($407.85) plus supplies (on average $19.90) for a total cost of $427.75 per procedure. The QBP program pays hospitals a fixed amount per procedure. It was introduced as a mechanism for hospitals to compete on volumes of surgeries at the lowest price. The QBP amount the hospital receives is set out in an Accountability Agreement between Ontario Health, a provincial government agency, and the hospital. KHSC’s 2019-2020 accountability agreement shows that the funding for unilateral cataract surgeries was $547 per procedure in 2019 and the FOI documents state that this has dropped to $504. The hospital’s funding application explicitly states: “the request is for funding over and above related QBP funding case cost and funding received ($504).”

2. The second source of funds paid to FMA is from provincial grant top-ups, $200 per procedure. The Surgical Innovation Fund provided the $200 for the first six months. The next year was funded under the Regional Surgical and Diagnostic Efficiency and Innovation Initiative. KHSC confirmed that the $200 is on top of the contractual per procedure cost for a total direct payment to FMA of $627.75 per procedure and that it continued to be paid through the next six-month contract extension. At the time of writing no funding source for these funds had been provided.

The extra grant funding, $200 per procedure plus related costs, contradicts the QBP goal. The current government is willing to pay 56% more per procedure to a for-profit facility with no mechanism or competitive process to justify the price or the recipient. Simultaneously, it has cut funding to the hospital for the same procedure.

Privatization Costs Assumed by KHSC and Province: $410,788

In addition to the direct payments to FMA, a further $410,788 thousand was required to facilitate the use of the private facility.

The largest portion came from the KHSC-QBP funds. The hospital was responsible for providing many of the surgical supplies, patient registration, computer synchronization, administrative support, quality control, extra patient-education materials, scanning patients charts rather than direct computer entry, and the hospital’s contract negotiation and contract maintenance costs. The remainder of the Hospital’s Quality Based Procedures funding, $76.25 per procedure (total $197,488), paid for the bulk of these costs.

The hospital also received $213,300 in provincial grants to cover necessary costs related to the privatization. This amount included $130,000 for a patient navigator to facilitate patient flow between

KHSC and FMA, and $83,300 for IT and staff support to make FMA compatible with KHSC and provincial systems.

The hospital, in response to the FOI, assured the Health Coalition that all costs for the clinic were covered through the QBP funding and the provincial "innovation" funding.

Transparency, Accountability and Quality

Transparency and accountability require an openness of information both on process and on content that permits most people relatively easy access to the data they need to evaluate policy proposals. Public hospitals have a requirement to produce most information and respond to questions: For-profit private facilities do not have the same obligations. Hospitals are easy to identify and track. Tracking for-profit corporations is often more difficult.

Which Company is KHSC's Business Partner?

Focus Medical Ancillary (FMA) is a case in point, highlighting the difficulty of tracking corporations, even small ones. The sign in front of the facility, and the name by which most hospital staff and Kingstonians refer to the clinic, is Focus Eye Centre (FEC). However, the contract we are concerned with is between KHSC and FMA. The November 2021 contract states that FMA is "a licensed independent health facility" (IHF). Repeat searches of the IHF databases found neither company in Kingston. The database for the Out-of-Hospital Premises (OHP) program, which also licenses private, for-profit clinics in Ontario, was also searched in the fall of 2023 and neither FMA nor FEC were found.

The new euphemistically-titled Independent Community Health Surgical Centres (ICHSC), which replaced the IHF's private clinics program in 2023, responded to an inquiry about FMA: "Focus Medical Ancillary (Ottawa) became an IHF now ICHSC in January 2023." The Ottawa clinic was listed as Everest Surgicentre, a registered business name that expired on August 4, 2023, two months before the April 2023 contract extension expired. To be clear, that information pertains to Focus Medical Ancillary Ottawa, not Kingston, but the information shed light on what is happening in Kingston.

With this information, doubling back to the Out-of-Hospital Premises (OHP) database, Everest Surgicentre Kingston was found to be licensed as that type of private clinic starting in the spring of 2021, the year the contracting-out started. The College of Physicians and Surgeons (CPSO), which oversees the OHP program, does not indicate the corporate owner of the facility on its website. Regardless, Everest Surgicentre is not mentioned in any of the contracts provided under the FOI. A personal correspondence from the CPSO was categorical, "Focus Medical Ancillary is not an OHP." It seems likely that the Kingston facility contracted by KHSC was licensed as an OHP under a registered business name, that has expired, possibly to FMA or a company related to FMA. FMA's Kingston facility, at the time of signing the November 2021 contract, was not a licensed IHF and according to the public databases, it has never been a licensed IHF in Kingston.

It should not be necessary to consult a lawyer and spend hours searching potential licensing programs to check if a company taking government money was clear in its contractual declarations. Without paying for a formal legal opinion, it is still not clear that being licensed under a now expired trade name, in a different government program, possibly to a sister company, would satisfy the contract. KHSC responded to a question about FMA's IHF status that there are "no records at KHSC". It should not be this difficult to find a connection to a licensing program and calls into question KHSC's oversight of this

contract. More generally, it reinforces an Ontario's Auditor General's finding that publicly funded for-profit health care facilities have limited monitoring.

Quality Control

Once the connection to Ontario's Out-of-Hospital licensing program was established, the only information listed on the College of Physicians and Surgeons of Ontario website was the facility's address and that it had passed an inspection on July 21, 2022. To the hospital's credit, they did their own quality inspection and identified a list of concerns from hand-washing facilities to a risk of sterile supply contamination. These concerns were serious enough to warrant an amendment to the original contract adding the clause, "that FMA will ensure that all Medical Device Reprocessing [capitals in original] requirements meet regulatory standards, including physical layout and workflow." The quality findings from the hospital's inspection support a long-held Health Coalition contention that public hospitals provide better quality than for-profit clinics.

Is there a Contract?

The contract's dates also call into question KHSC's oversight of the process. The November 24, 2021, contract ran until March 31, 2022, matching the dates on the hospital's first funding application. A contract extension from April 1, 2023, to September 30, 2023, was included in the initial FOI response. A second FOI specifically asked for the contract from April 1, 2022, to March 30, 2023. However, no new contract, or extension to cover that time period, was provided. Based on the FOI documents, it appears that for that year an informal arrangement governed the payment of hundreds of thousands of dollars covering hundreds of patients' surgeries at a for-profit centre.

What is the Contract?

The exact intent of the contract is also not clear. The contract refers to it as an "occupancy agreement". If the hospital was just renting suitable surgical space to expand its ability to do surgeries, then questions must be asked: Why does FMA have extra nursing staff when KHSC does not? Why is FMA, even with contractual safeguards, holding hospital patient's information? Why are the nurses and all support staff not employees of KHSC if it is KHSC work? And why, if only KHSC patients will be treated by KHSC surgeons, were the hospital's surgical staff asked to register with the CPSO as staff of Everest Surgicentres?

None of these provisions would have been necessary if the hospital was engaged in a simple occupancy agreement, or if KHSC had used its own operating rooms when they were not in use: on weekends or on evenings from 3:30 pm to 7:30 pm.

Trust

Accountability also involves trust that public institutions and physicians are only committed to providing the best public health care system and that their motives are clear. Such trust involves a level of transparency, including on long-term program goals and on what options were thoughtfully considered. Neither of these are demonstrated in the FOI documents.

The FMA-KHSC contract is neither accountable nor transparent. There was no mechanism in place to ensure that broader public interests are central in the plans or that public money is being used in the most effective way to improve public health care. Rather, the motivations for the contract are unclear, the appearance of conflict of interest is significant and 'on the surface' the sole sourced contract

appears in violation of provincial law. None of these findings inspire trust that this program for an "integrated" privatization of cataract surgeries is in the public's best interests.

Temporary "Occupancy Agreement" or Long-Term Partnership?

The initial grant applications from the hospital stress the "temporary" nature of the FMA-KHSC agreement aimed at reducing wait times due to COVID. Ostensibly, extra temporary space was needed so the hospital could "focus on urgent work," such as, cancer cases, more complex ophthalmology cases and orthopedic cases. KHSC ophthalmology operating rooms (OR) were to be used for more urgent non-ophthalmologic cases, and the proposal, to make up for the loss in operating space, was that easier eye surgeries would go to FMA. This was the public story explaining why KHSC was using the FMA facility.

In the grant proposal, KHSC referred to the use of FMA as a test for "the option of moving work to the community that doesn't require academic hospital care." The hospital's April 18, 2023, briefing note on the KHSC-FMA partnership states, "The continued collaboration with Focus Eye Centre (FEC) [FEC not FMA used in original document] …. demonstrates a return on investment with a public and private partnership which has moved activity to the community that does not require academic hospital care." In this sentence, 'community' needs to be read as a 'for-profit clinic' and 'public and private partnership' as a contract to privatize. If a real "community-based" clinic was needed, a better option would have been to establish a facility completely operated by the hospital.

Again, the documents reveal no discussion of options, including the simple one of extending the hours of the existing hospital ORs. This is simply a question of money and staff. Yet, it was possible to get money for a for-profit clinic at extra cost and for the clinic to recruit staff. It is a well-documented phenomenon that private clinics draw staff away from public hospitals.

Another public-sector option would be to expand services in nearby regional hospitals, such as in Napanee, a half-hour drive from Kingston. Napanee used to provide approximately 400 cataract surgeries annually, however that work was moved to KHSC. A regional strategy to support capacity has the added public benefit of helping stabilize smaller public hospitals that are crucial to their communities. Instead, the hospital and the province supported moving work to a more expensive for-profit clinic.

Conflicts of Interest

The KHSC-FMA contract involves hundreds of thousands of dollars of public money meant to provide an essential service. It is clear from the FOI documents that the plans for this contract were developed between KHSC, Queen's University, FMA and local ophthalmologists, most with corporate and/or personal connections to FMA, Queen's University and a variety of other for-profit clinics. Amid these interlocking personal and corporate relationships, it is difficult to tell what, if any, steps were taken to ensure that patients in the region were getting the best value for public money. Rather, it appears as if a local group of ophthalmologists are making arrangements that made sense to them, their related corporate interests, and the corporate interests of people they know, with local hospital and university leadership.

Staff crossover between Focus Eye Centres, Queen's University and KHSC compounds the impression of potential conflict of interest, or, at least, decision making clouded by staff having financial relationships in multiple organizations which are contracting with each other. For example, the Medical Director of Focus Eye Centres (FEC) is an associate professor at Queen's School of Medicine, a fact prominently displayed on the FEC website. His association with Queen's includes hospital privileges at KHSC. Other surgeons who are listed as refractive cataract surgeons at FEC, a procedure for which they charge extra

payments from patients, are also associated with Queen's University and KHSC. FEC and FMA are closely related companies, with the same owner. On September 5, 2023, KHSC responded to the Kingston Health Coalition's concerns about conflict of interest with the statement: "From our perspective there are no Conflicts of Interest [capitals in original] to declare [in the relationship between KHSC and FMA]".

Broader Public Sector Accountability Act Violations

On the surface, the KHSC-FMA contract also appears to violate the Procurement Directive under the Public Sector Accountability Act. The Directive requires that any hospital contracts over $100,000 (2021 limit) be let through an "open competitive" process. There is no indication in the documents provided that any other alternatives to FMA were considered or that a competitive process was used. It was clear that the hospital knew that under their contractual arrangement they would be paying FMA hundreds of thousands of dollars, easily surpassing the threshold requiring a competitive process.

The Future of the FMA - KHSC Arrangement

The hospital's April 18, 2023, Briefing Note recommends that KHSC "submit … to Ontario Health … a three-year funding proposal for the KHSC/FEC [FEC not FMA in original] partnership on the basis of reducing the unilateral surgical backlog." The Briefing Note also raises the need for a human resources strategy if there is to be a long-term relationship; a necessary suggestion but one made significantly more difficult when the staff is divided between two employers. The hospital confirmed that as of year-end 2023 FMA is still being used for hospital surgeries.

Since no required written agreement to extend the current contract beyond September 2023 was sent with the FOI return, the possibility exists that there is no valid contractual relationship between FMA and KHSC despite continued spending of public funds on a private facility. Regardless, indications are that some sort of arrangement continues, and that hospital work will be privatized to Focus Medical Ancillary, or Everest Surgicentres, or Focus Eye Centres, or some other corporate name.

The Cloudy Vision of KHSC's "Integrated" Privatization Model

Hospital representatives have presented the "integrated" privatization approach taken by Kingston Health Sciences Centre as being in the public's benefit. This goal was to be achieved by having one patient wait-list controlled by the hospital; only hospital affiliated surgeons working in both facilities; hospital control of quality; and, with the same patient cost for non-OHIP ophthalmologic procedures in both the hospital and the for-profit clinic.

But the question is: Why? Surgeries done within the hospital system are already part of an integrated system with less management, less duplication, and more oversight than in the KHSC-FMA arrangement. There is already one wait-list where patients are prioritized based on need, where quality is controlled through well-established practices, and where the surgeons and staff are vetted through the best public-sector processes. KHSC-only operations are inherently more integrated than those provided through a contract between two different corporate structures, with different mandates, operating under different legislation and with different decision-makers.

Even in the best-case scenario, the cost of this arrangement is 56% more expensive than public hospital care for the same service with no benefit to patients or the public. The extra cost is money wasted that could be used for any number of urgent public health care needs, such as more hospital beds and staff, increasing primary care community health centres and fixing home care. Further, both the November 2021 contract and an earlier February 2021 Memorandum of Understanding with FMA clearly show a conflict over staffing between the for-profit clinic, the hospital and the university. If it is to function, the clinic will need to take staff from the public system. It is not clear why these staff aren't simply employed in the public system.

Finally, the nature of the KHSC-FMA contract lacks transparency, an ongoing problem with public money spent on for-profit health care corporations. The private corporate partner is not clear. Proper extensions in the contract are in doubt. Is it a temporary "occupancy agreement", or a more in-depth, long-term privatization? What options were considered? Is there a conflict of interest and how were decisions made? Was there a violation of the Public Sector Accountability Act? Without transparency there can not be public accountability, or trust, that decisions are being made only in the public's interest.

A clear-eyed analysis of the "integrated" privatization contract between KHSC and FMA leaves little doubt about the inherent problems with contracting to for-profit clinics. It takes very little imagination - only political will on the part of the hospital and province - to find cheaper public sector solutions that provide long-term benefits to the community, build capacity that is under public control, and offer a process that is more accountable, transparent, and democratic.