

WHAT LIGHT DOES POST- CHAOULLI QUEBEC SHED ON THE CAMBIE TRIAL?

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A REFRESHER ON CHAOULLI VS. QUEBEC

CONTRACT OF INSURANCE AND SUBROGATION

Coverage under contract of insurance prohibited.

15. No person shall make or renew a contract of insurance or make a payment under a contract of insurance under which an insured service is furnished or under which all or part of the cost of such a service is paid to a resident or temporary resident of Québec or to another person on his behalf.

Contracts prohibited.

- 11.** (1) No one shall make or renew, or make a payment under a contract under which
- (a) a resident is to be provided with or to be reimbursed for the cost of any hospital service that is one of the insured services;
 - (b) payment is conditional upon the hospitalization of a resident; or
 - (c) payment is dependent upon the length of time the resident is a patient in a facility maintained by an institution contemplated in section 2.





DON'T WORRY WE GOT THIS.

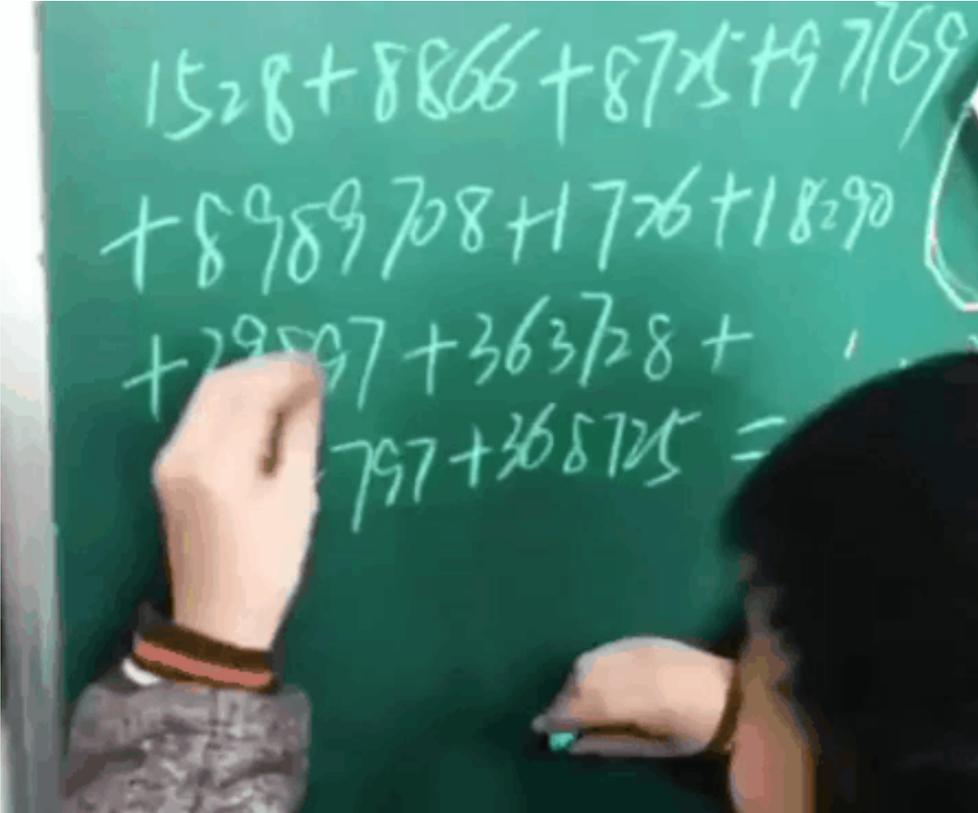
- The general feeling in 2004 was that there wasn't cause for alarm. The scientific evidence and common sense would prevail.
- But on June 9th 2005 the Supreme Court concluded, at a majority of four against three, that the prohibition on private insurance violated Section 1 of the Quebec Charter of Human Rights and Freedoms.
- Woups...

AND THEN IT GOT INTERESTING...

- In ROC's academic circles, the feeling was a mix of relief (*Phew! It's Quebec's charter only*) and perplexity (*But but we should have won, we were the good guys*)
- However, in Quebec a very interesting policy window opened... *What the hell are we supposed to do now?*



12 MONTHS AND ... BILL 33



- For a year, everything (and its opposite) was on the table
- In the end, we got Bill 33 which:
 - 1) legalized the sale of private insurance to cover Cataract / Knee / Hip surgeries by unenrolled physicians
 - 2) set max wait times for those surgeries and created a monitoring system of the wait in the public system
 - 3) allowed for the possibility of publicly paid surgeries in the private sector if the wait was too long

HOWEVER, ON THE GROUND...

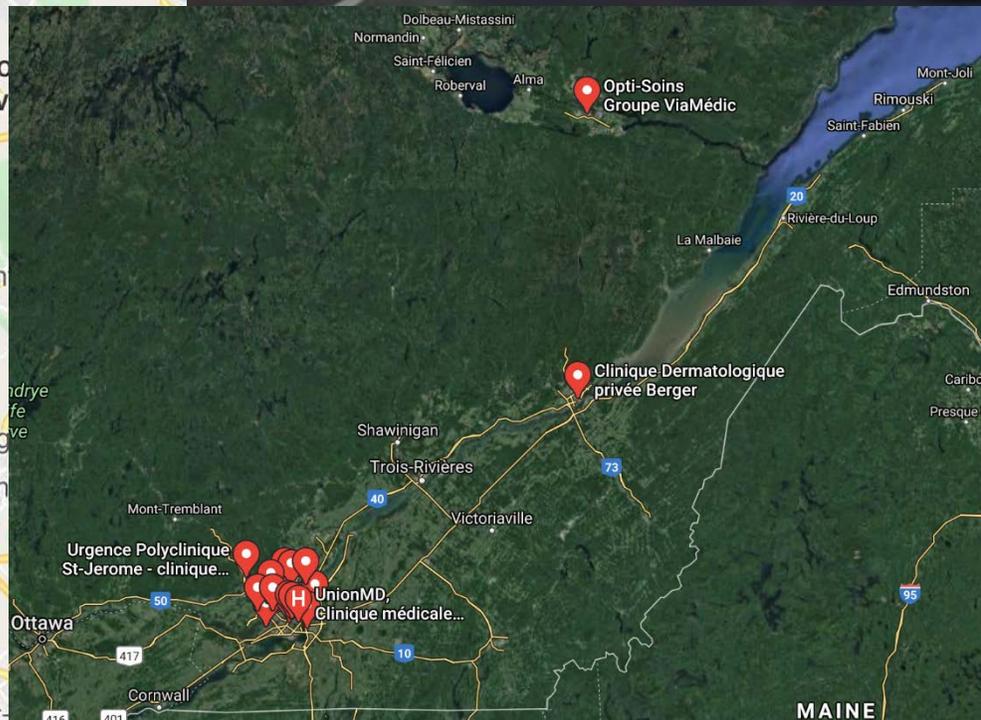
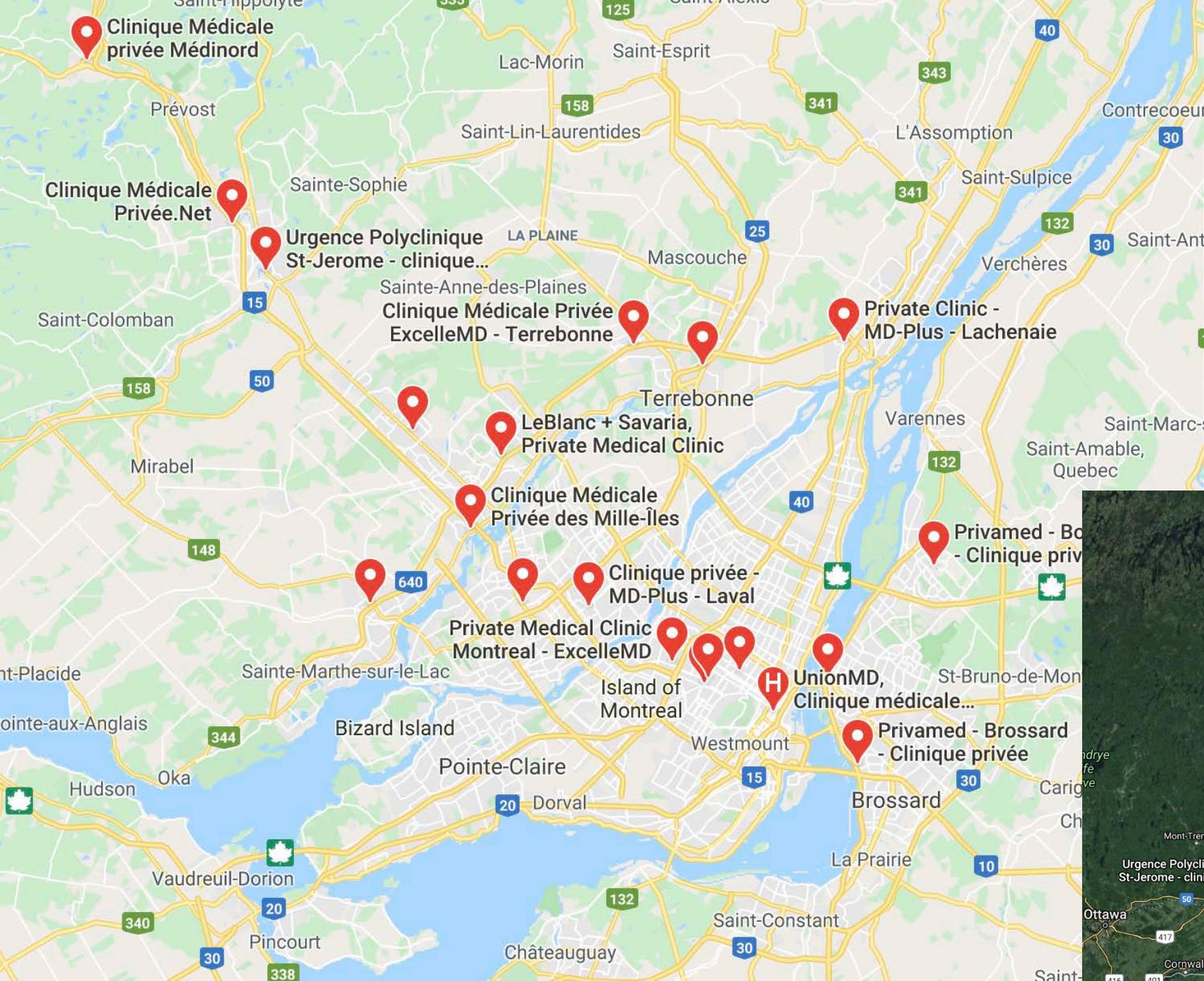
- The insurance market for those surgeries never appeared
- Wait time monitoring was implemented and is ongoing but what is done with the data isn't obvious
- No patient ever used the option to be treated by an unenrolled physician because of too long a wait in the public system.



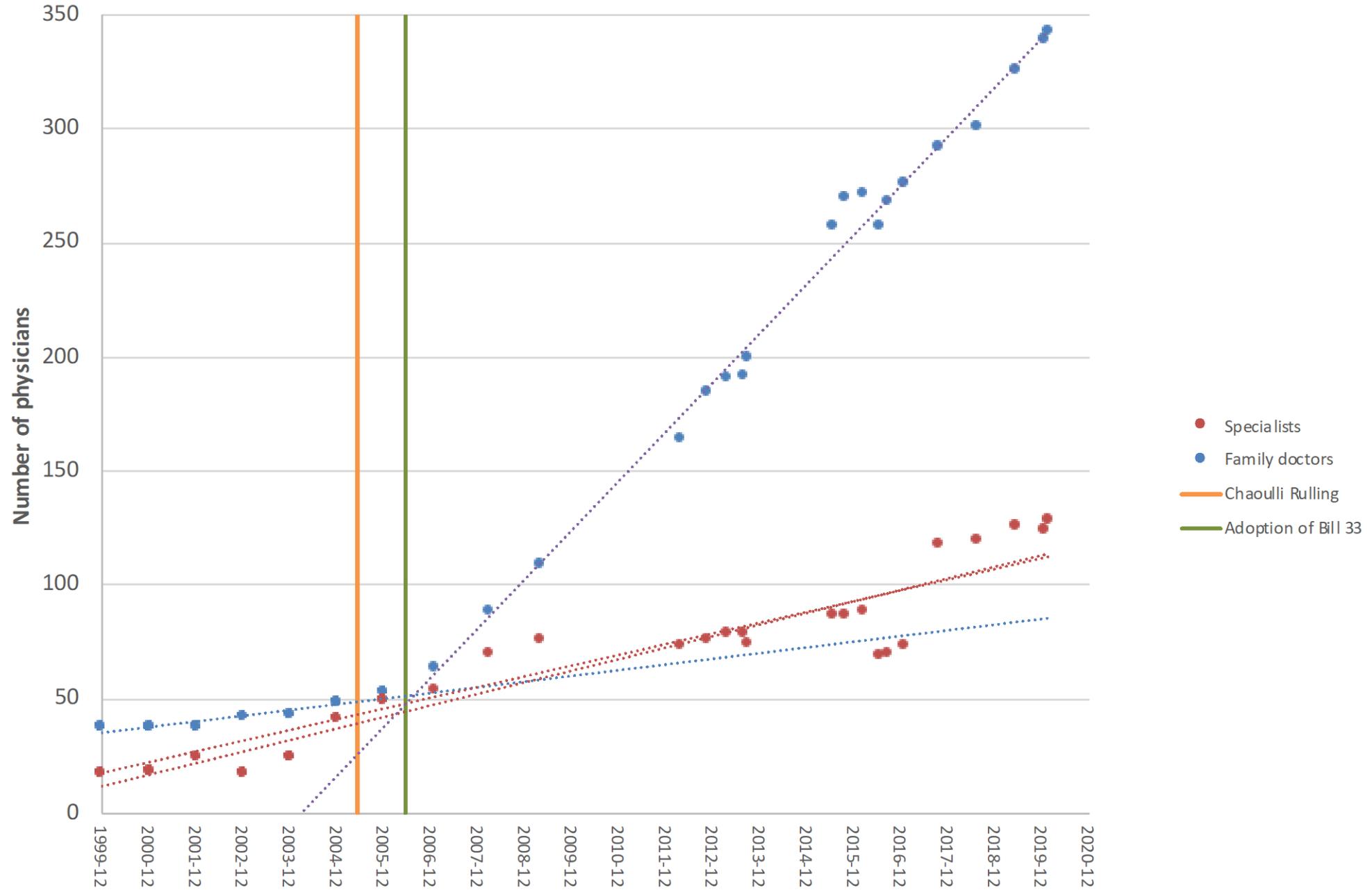
SO WHAT DID HAPPEN?



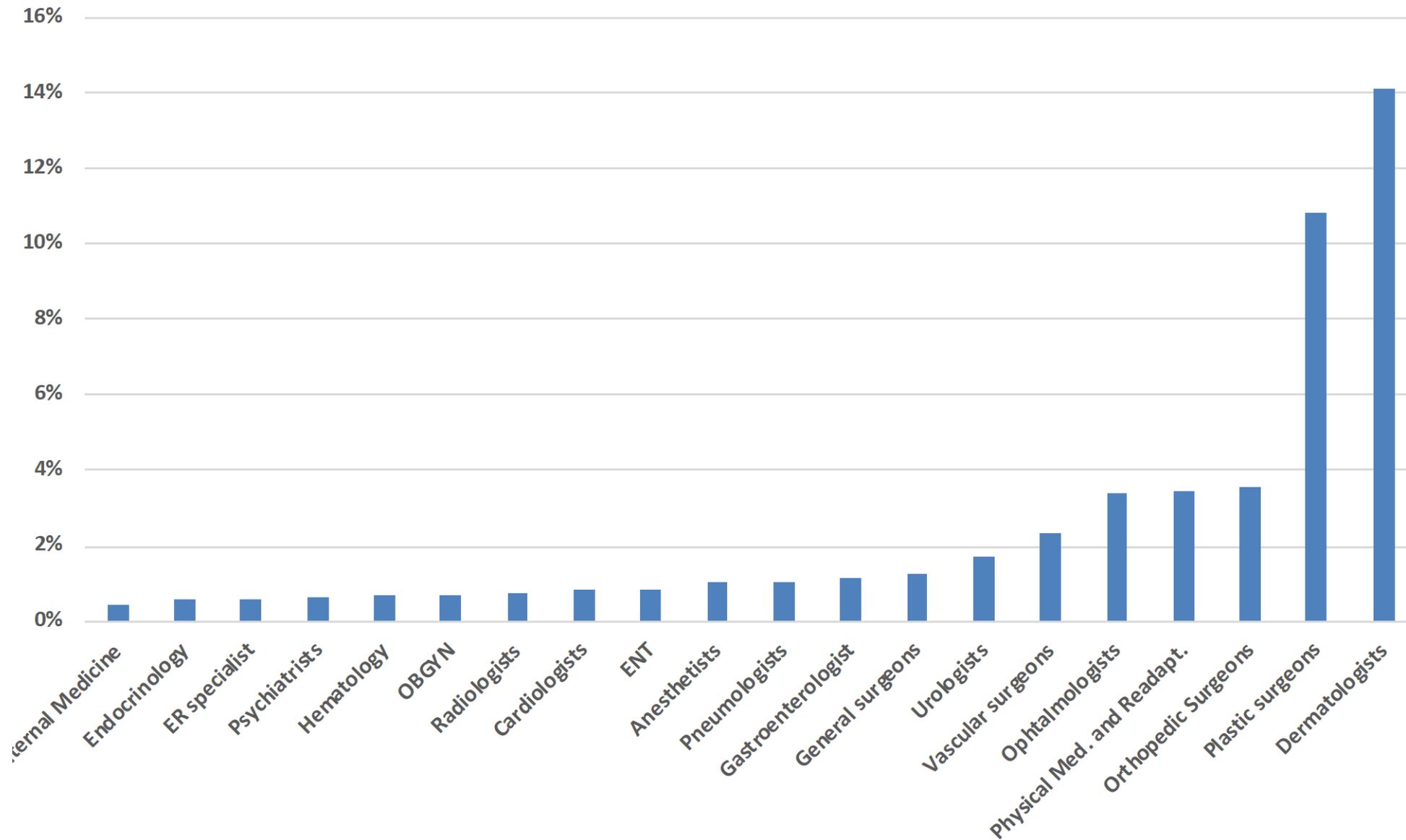
- Private investors got the message that the private-delivery health care market was worth investing .
- Many family doctors decided to jump ship and un-enroll from the public system.
- There was a generalized tendency for medical clinics to develop creative double-billing practices.



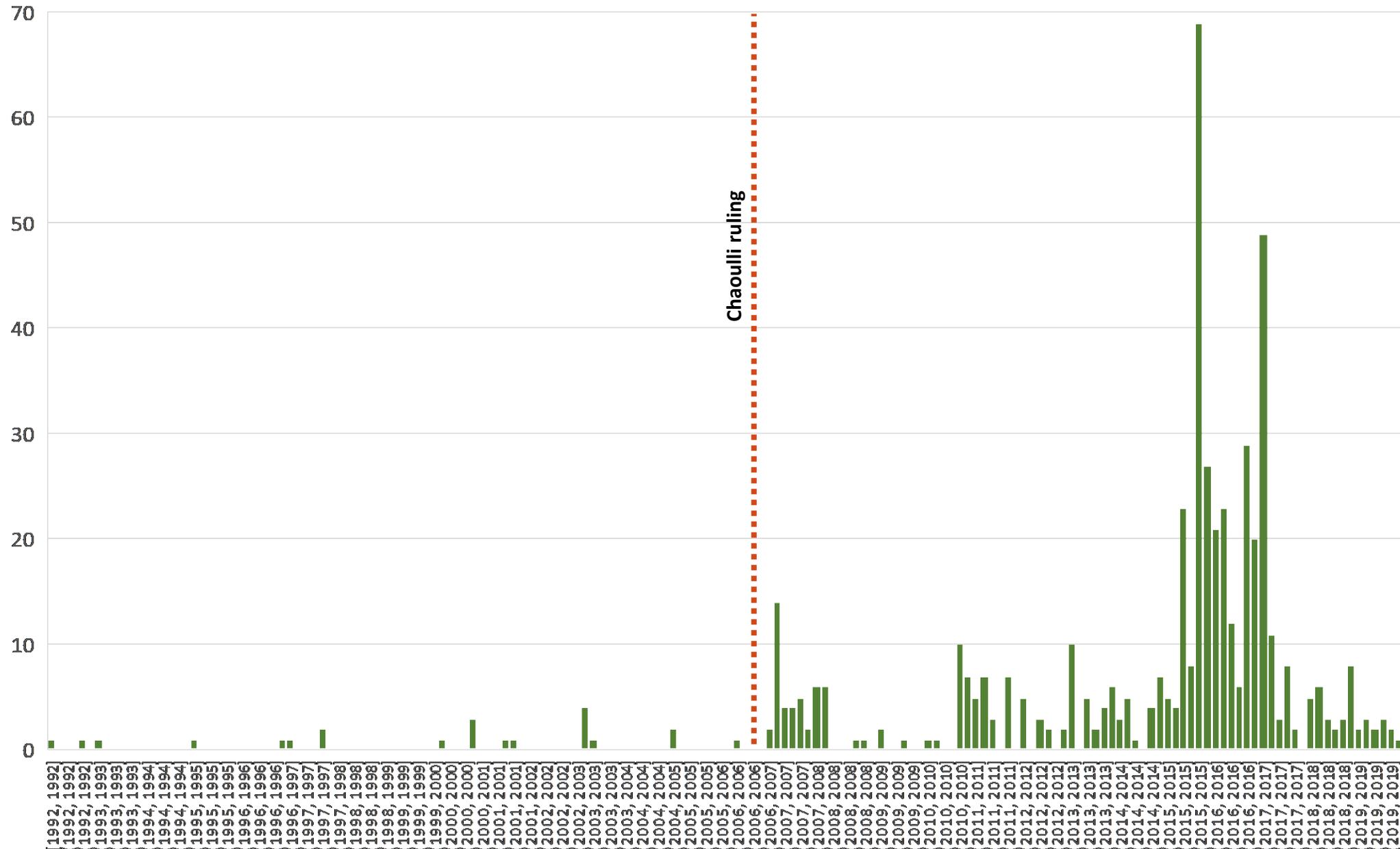
Unenrolled physicians in Quebec 1999-2020



Unenrolled Specialist Physicians as a proportion of the total specialty workforce - Quebec 2020



Monthly occurrence of articles using the expression "frais accessoires" for medical services in Québec's four largest newspapers 1992-2019



LESSONS FOR CAMBIE FROM CHAOULLI



- A court ruling isn't the end of the case (by a long shot)
- When a market develops, it is like toothpaste getting off the tube, mostly a one-way process
- The overall impact from the Cambie case ruling will be a mix of market forces (demand, supply, investment decisions) and post-ruling legislation over a long period of time

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Those slides are available at:
www.pocosa.ca