
Response to:

**The College of Physicians and Surgeons of Ontario
Medical Expert: Reports & Testimony draft policy**

Submitted by:

**FAIR
(Fair Association of Victims for Accident Insurance Reform)**

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INTRODUCTION

FAIR (Fair Association of Victims for Accident Insurance Reform) is a grassroots not-for-profit organization of MVA (Motor Vehicle Accident) victims who have struggled with the current auto insurance system in Ontario.

Our members lives, as a result of these MVAs, have been turned upside down by brain injury, loss of limbs, need for surgery and reparative therapy, long-term debilitating injuries, loss of time from work, loss of jobs and sometimes loss of independence.

FAIR wants to see reforms to auto insurance legislation that will improve the way in which all MVA victims, particularly those with traumatic injury, are treated under provincial insurance legislation. Not only are FAIR members faced with the challenges of overcoming and adapting to injury, we are also faced with an insurance system that does not fairly provide consumers with needed rehabilitation coverage and benefits. We are faced with sub-standard medical reports and are often examined by physicians acting outside of their area of expertise. Third Party Reports prepared by physicians hired by insurers to perform IME (independent medical assessments or evaluations) is one of the core reasons for the present backlog of almost 40,000 MVA victims waiting for hearings to get treatment and benefits at FSCO (Financial Services Commission of Ontario) today.

FAIR gives a voice to the thousands of people in Ontario who have become amongst the most vulnerable people in our province. We welcome the opportunity to comment on the CPSO's Draft Policy "Medical Expert: Reports and Testimony Policy Consultation".

Areas of Concern

Objectivity & Impartiality

One of the key features of the draft policy includes the expectation that physicians will provide objective and impartial opinions on matters that fall within their scope of expertise when acting as medical experts. The CPSO, at line 105 is careful to say "*When providing expert opinions, physicians embody these values and uphold the reputation of the profession by acting with the same high level of integrity and professionalism as they would when delivering health care.*"

Unfortunately, there has been a long history at CPSO of substandard reporting, physicians opining outside their area of expertise and failing to report patient complaints about physicians. This lack of transparency enables a group of pro-insurer physicians to carry on their business with impunity.

The circumstance of withholding information about past complaints of impartiality, when applied to Ontario's injured auto-accident victims, puts them at considerable risk when attending an IME examination. Relevant information such as multiple complaints about bias or qualifications of physicians is not part of the public record unless the matter is referred to Discipline. The CPSO cannot be said to hold the public's interest above their own member's profit margins when information about pro-insurer assessment mills is withheld.

"Physicians must be honest, objective and impartial. They must ensure that the opinions they provide are reasonable, fair, balanced, and substantiated by fact."

Transparency

FAIR believes that in order for consumers to have faith that CPSO's role of self-governance is working there must be a higher level of transparency in reporting complaints about physicians to the public. Or, there should be a warning to the public that they are at risk when attending IMEs. It is not enough to say *"Trustworthiness, altruism and service are values which guide the medical profession."* If that were the case, there would not be almost 40,000 injured Ontarians waiting for hearings to get rehabilitation and benefits at FSCO. A significant proportion of injured MVA victims have been disqualified by a physician who likely did not demonstrate the *"high level of integrity and professionalism as they would when delivering health care"* that the CPSO expects of their members.

When a physician produces a substandard report that is not *"honest, objective and impartial"* or opines outside their area of expertise with regularity, the public, especially vulnerable MVA victims, have a right to know BEFORE attending an IME. The College must take a greater interest in protecting the public's interest as well as the reputation of all those treating physicians who do their best for MVA victims.

The level of transparency that the CPSO professes to demand of its members should be applied to CPSO's own policy. Public disclosure about those pro-insurer doctors with multiple complaints about the quality of their reports or their qualifications would restore confidence that CPSO doesn't just represent their members but also the interests of all Ontarians in a quality healthcare system.

Suspicious Findings: Obligation to Inform

"When acting as medical experts, physicians may review the personal health information of an individual whom they are not treating, or they may examine that individual. In the context of the review or examination, a physician may become aware of a suspicious finding, including an unexpected significant clinical finding or condition which raises serious concerns, or which the physician perceives will require essential intervention. Before disclosing the suspicious finding to the individual, physicians should seek independent legal advice regarding the particular obligations that may apply in the specific circumstances."

CPSO, in taking this position, has put the patient's health interests not front and centre but rather at the whim of persons outside the medical field. Whether or not the paying party's (the insurer) legal representative feels that you should or should not know what medical issues you may have is not appropriate and it does not contribute to putting Ontario's injured MVA victim's health first. This is in sharp contrast to the CPSO mandate:

"The profession, through and with the College, has a duty to serve and protect the public interest by regulating the practice of the profession and governing in accordance with the Regulated Health Professions Act."

The current issue of assessor bias and inconsistent or inaccurate reports prepared by the medical community is not addressed in any depth in this draft policy. How are injured MVA victims to discern which IME doctor are will report a medical issue to their physician? Will the insurer lawyer do the right thing? How would such a thing be decided? What level of 'suspicious' is enough to initiate disclosure?

Substandard IME reports and pro-insurer, biased physicians are not adequately dealt with by the CPSO. The CPSO's philosophy that to inform a client of a suspicious finding is to step into the area of diagnosis can be dealt with within the policy changes. A physician who is performing an IME does not have to 'treat' the patient but should be obligated to inform both the patient and their family physician of medical findings. To do less is a disservice to those individuals who are already dealing with life-changing medical issues.

Conclusion

MVA victims deserve the best possible chance of attaining maximum recovery. Ontario should demand the best policy to govern all physicians and that will not be achieved through these proposed changes to the Third Party Policy.

A more comprehensive overhaul of the rules that govern physicians who perform IMEs is needed to protect Ontario's most vulnerable citizens. Enforcement of the regulations is the key to the public having the confidence that the CPSO is protecting the public interest. In order to accomplish this, the College must review its own policy of public disclosure.

Better oversight of those physicians whose income is derived from IMEs is needed. The CPSO needs to develop a transparent reporting system for the public that accurately reflects the complaints made about pro-insurer physicians and substandard reports.

IME physicians who are already in the insurance industry pocket should not be entrusted with the important task of deciding whether suspicious findings are important enough to report. Nor should it be the decision of the legal community. The obligation to the patient must always come first.

The volume of legitimately injured people having to wait up to two years for hearings at FSCO should not be ignored; it is, in part, the result of the CPSO's failing oversight system. It is at this point that the CPSO must look at how many MVA victims have been denied benefits by Ontario's pro-insurer physicians and ask how many of those 40,000 denials are the result of sub-standard IME reports or physicians performing IMEs that are outside their area of expertise.

FAIR believes that the lack of oversight of the CPSO is at the heart of the dysfunctional system that MVA victims must deal with when making a claim. We hope that the CPSO will live up to their mandate to protect the public interest and put health before physician profit.

MVA victims face many obstacles, they have become a casualty of the war on fraud and now face decreased benefits and rehabilitation. IME physicians are the gatekeepers to the treatment and rehabilitation even though they are not treating physicians. The proliferation of flawed IME reports has put added stress on an overburdened health system forcing treating doctors to work harder to overcome the consequences for their patients. Patients who are subjected to staged assessments, substandard IME reports and unqualified assessors should not be faced with CSPO policy as another obstacle.

FAIR appreciates the opportunity to express our concerns about the changes to the draft policy.