

FAIR Association of Victims for Auto Insurance Reform
579A Lakeshore Rd. E. P.O. Box 39522
Mississauga, ON L5G 4S6
<http://www.fairassociation.ca/>

To: Kathleen Wynne, Premier; Andrea Howarth, Leader NDP; Tim Hudak, Leader Conservative Party; C. Sousa, Minister of Finance; Financial Services Commission of Ontario; Insurance Bureau of Canada; College of Physicians and Surgeons of Ontario; Health Professions Appeal and Review Board; Alliance of Community & Medical Rehab Providers; Ontario Trial Lawyers Association; Canadian Society of Medical Examiners; Association of Independent Assessment Centers; Deb Mathews, Minister of Health; J. Singh, MPP, NDP; Alan Shanoff, Toronto Sun

March 4, 2013

FAIR Treatment for Ontario Accident Victims – MVA Victims at Risk Due to Secret Cautions

Two weeks ago (Feb. 19, 2013) FAIR sent an open letter to several Ontario auto insurance stakeholders asking each to articulate its position with respect to a "three strikes rule" that would help reduce the number of shoddy assessments used to decide whether injured accident victims are entitled to treatment and benefits. We have not heard back from these stakeholders.

Today we write to ask each of the same stakeholders to state whether or not they agree with the proposition that Ontario health professionals providing medico-legal assessments and/or proffering expert opinions in auto accident injury cases should be required to disclose any and all College reprimands or censures related to previous assessments.

Recently the *Toronto Star* carried a series of investigative reports on the topic of "secret cautions" issued by the the *College of Physicians and Surgeons of Ontario*. Some, including the opposition parties, are already saying that "*Health Minister Deb Matthews must take "immediate" action to ensure that Ontario's health regulatory colleges publish cautions issued to doctors, dentists and others for mistakes or improper behaviour*".

FAIR believes that it is unfair to require injured claimants to submit to insurer commissioned medico-legal assessments conducted by assessors who have been "secretly cautioned" for previous substandard assessments. Some health professionals doing these assessments in the Ontario auto insurance sector have been cautioned by their licensing body (College) more than once - but are not required to disclose these cautions to the subjects of their assessments. To make the matter even worse - the Ontario Auto Insurance Anti-Fraud Task has recommended to FSCO - and through FSCO to the Finance Minister - a regulatory change allowing a \$500 fine to be levied against any injured claimant who fails to submit to a scheduled insurer assessment (IME/IE). If injured claimants are to be coerced into submitting to insurer commissioned IME/IEs in this way - then the insurers' preferred assessors shouldn't be hiding "secret cautions" from the now captive subjects of these 'independent' assessments.

It is upon the outcome of these assessments that insurance adjusters base their decisions as to whether or not to provide treatment benefits (and/or other policy benefits) as spelled out in the accident victim's policy. So it is important that the examinations be done by highly qualified health professionals who are

completely impartial and are truly "in good standing" with their regulatory College. These assessments should not be done by health professionals whose assessment work product has been repeatedly found wanting by our courts and certainly not by an IME/IE vendor who has been the recipient of undisclosed "secret cautions" issued by her/his College as a result of previous substandard assessments.

Improving the quality of these medico-legal assessments with a "three-strike rule" and with a requirement that "secret cautions" be disclosed to the subjects of the assessment will help improve our Ontario auto insurance injury assessment system. Surely all the stakeholders will agree? But if not - surely those stakeholders who don't agree will say so - and will say why they don't?

Rhona DesRoches is the Chair of FAIR Association of Victims For Accident Insurance Reform
<http://www.fairassociation.ca/> (fairautoinsurance@gmail.com)

[Health minister urged to tell colleges to publicize cautions](#) Wed Jan 16 2013 Health Minister Deb Matthews must take "immediate" action to ensure that Ontario's health regulatory colleges publish cautions issued to doctors, dentists and others for mistakes or improper behaviour, say opposition parties.

[Professional colleges and self-regulation](#) Tue Jan 15 2013

[Health colleges given go-ahead to make cautions public](#) Mon Jan 14 2013 The colleges that regulate the province's health workers argue they are not permitted to publish the warnings they issue to doctors, dentists, nurses and others for mistakes or improper behaviour. The province says otherwise.

[Doctors, dentists, pharmacists: The mistakes you can't know about](#) Fri Jan 11 2013 STAR
INVESTIGATION: Want to find out if your health-care provider has a caution-free record? You're out of luck. The warnings given to them are being kept secret by their regulatory colleges because they aren't required to tell you about them