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August 26, 2013

Dear Dr. Stanton

I am writing to you on behalf of FAIR Association of Victims for Accident Insurance Reform (FAIR), a not-for-profit consumer based organization whose members are injured motor vehicle accident (MVA) victims, their families and their supporters. There are over nine million drivers in Ontario and potentially any of those individuals could be involved in an auto accident and be required by their insurer to attend an Independent Medical Examination (IME).

Recent articles in the Toronto Star indicate that the CPSO is working on a Transparency Project Phase 1. It is unfortunate that FAIR was not advised of this ongoing consultation as the issue of transparency in respect to Ontario's third party assessors is a priority concern for our organization.

Over the past several months we have sent the College of Physicians and Surgeons of Ontario many letters on the issue of how CPSO's lack of transparency and member accountability plays out for Ontario's vulnerable auto accident victims. To date we have not received a response.

<http://www.fairassociation.ca/wp-content/uploads/2013/02/An-Open-Letter-to-Ontarios-Auto-Insurance-Stakeholders-Feb-19-2013.pdf>  
<http://www.fairassociation.ca/wp-content/uploads/2013/03/An-Open-Letter-to-Ontarios-Auto-Insurance-Stakeholders-March-4-2013.pdf>  
<http://www.fairassociation.ca/wp-content/uploads/2013/03/Open-Letter-to-additional-Stakeholders-March-11-2013.pdf>  
<http://www.fairassociation.ca/wp-content/uploads/2013/03/Open-letter-to-Stakeholders-March-19-2013.pdf>  
<http://www.fairassociation.ca/wp-content/uploads/2012/12/Letter-to-Minister-of-Health-Dec-5-2012.doc.pdf>

The volume of decisions on the Canlii website and on the Financial Services Commission of Ontario (FSCO) Dispute Resolution website speaks volumes about the quality of many of the medical evaluations in Ontario. These are evaluations and reports by Ontario's physicians that Ontario's Arbitrators and Judges call "inaccurate, failed, misleading, defective, incomplete, deficient, not correct, flawed and of little value or useful purpose".

The FSCO Anti-Fraud Task Force recommendations rely on the CPSO for oversight of the quality of 'independent' medical evaluations for Ontario's accident victims. Examinations performed by physicians regulated by the CPSO and that injured auto accident victims are mandated to attend or be fined \$500.00 for refusing to do so. Consumers have the expectation that there is quality control but the reality is that some IME physicians have a long history of complaints about their unprofessional behaviour that is being hidden from public knowledge. FAIR did present in person to the Anti-Fraud Task Force on the issue of CPSO transparency and oversight; our written submission can be found at:

[http://www.fin.gov.on.ca/en/autoinsurance/submissions/Fraud\\_Task\\_Force\\_FAIR\\_final\\_submission\\_Aug\\_27\\_12.pdf](http://www.fin.gov.on.ca/en/autoinsurance/submissions/Fraud_Task_Force_FAIR_final_submission_Aug_27_12.pdf)

Consumer and patient complaints about IME physicians isn't useful or transparent when complaints are often disposed of with confidential oral, written, remedial cautions that are not part of the public record. The lack of information about these cautions is putting vulnerable and often cognitively impaired auto accident victims at risk. The public is never told about prior complaints about IME providers and it's recently come to light that the CPSO isn't reviewing their own past decisions about member doctors while investigating subsequent complaints. Vendors of medical opinions are assured that they are able to abuse accident victims with impunity when the College fails to follow the regulations that obligate them to consider a member's prior complaints.

The PFR v BU decision (below) recently posted on the Canlii website confirms just how far the current system will go to accommodate the unprofessional behaviour of some physicians while putting the reputation of all physicians on the line.

First the CPSO doesn't share the information about prior complaints about an assessor before the innocent and unsuspecting victim attends an IME by making many of their complaint dispositions 'private and confidential'. CPSO doesn't share the

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information of past complaints with the complainant while the investigation regarding PFR is taking place and doesn't even consider the prior inappropriate behaviour in its own investigation process. CPSO failed again to protect the public interests by fully sharing the file with the complainant who, in appealing the flawed CPSO decision to the Health Professions Appeal and Review Board (HPARB) was entitled to finally see the full complaint history of that physician. After the medical examination, after the damage has been done in a IME report, and the complaint made to the College is under review by HPARB, and only then is the information about prior complaints in which the College failed to protect other previous complainants made available to the consumer. In the case of PFR v BU the College did not provide the Applicant with the actual available prior decisions at any time during the process, keeping this individual in the dark about the physician's history – how often is that happening?

Is it fair that the College is protecting their member physician and not the public by not considering (during the investigation) several concurrent complaints by more than one MVA victim whose future medical care hangs in the balance of what is said in these flawed IME reports? Add to these multiple ongoing complaints that "The Committee noted, however, that it had previously received other complaints from patients regarding the Applicant's unprofessional communication, many in the IME context." So a multitude of complaints, past and several ongoing still isn't enough to warn the public that a physician may not be fit to perform IMEs. At what point does the safety of Ontario's ill and injured auto accident victims come before the interests of an IME provider? When will the CPSO live up to their statutory duty under section 3(2) of the *Code* to serve and protect the public interest?

Certainly disclosure or transparency isn't seen at the Health Professions Appeal and Review Board level despite their own mandate to protect the interests of Ontarians. HPARB decisions posted on the Canlii show that the lack of transparency is fixed at the review level as well and the physician names have all been reduced to initials on HPARB decisions. It is the complainant or patient, whose information is often personal and whose identity should be protected. But the physicians, who are the subjects of the complaints, get anonymity too, treated as if divulging their names puts them at jeopardy, and this guarantees that the public will remain in the dark and at risk when attending IMEs without relevant information. This protects only those doctors and has sacrificed the reputation of many good doctors in the process when the public is left to guess and speculate who the offending IME providers are by way of initials.

Many FAIR members have made complaints to the CPSO regarding physician assessors without satisfaction. They bring their complaints forward so that other MVA victims will not be victimized by unscrupulous and biased IME providers that are often beholden to insurers or who are unqualified and/or have written poor quality medical reports. Had FAIR been actively sought out to provide feedback as we have done in the past, we would have welcomed the engagement on an issue that we feel is undermining Ontario's insurance coverage, harming innocent accident victims and is one of the major reasons for the backlog in Ontario's courts.

We hope that you will consult with the public on this issue in a meaningful way going forward and we look forward to hearing back from your office about our concerns.

Regards  
Rhona DesRoches  
FAIR, Board Chair

PFR v BU, 2013 CanLII 46994 (ON HPARB) <http://canlii.ca/t/fzwbq>

22. The requirement to consider prior decisions is couched in mandatory terms under section 26(2) of the *Code*.

**Prior decisions**

(2) A panel of the Inquiries, Complaints and Reports Committee *shall*, when investigating a complaint or considering a report currently before it, consider all of its available prior decisions involving the member, including decisions made when that committee was known as the Complaints Committee, and all available prior decisions involving the member of the Discipline Committee, the Fitness to Practise Committee and the Executive Committee, unless the decision was to take no further action under subsection (5). [Emphasis added]

23. The Committee has not complied with this legislative provision as it has considered only summaries of the matters detailed in the "CPSO Physician Profile" rather than the entire decisions.

24. Further, the Committee has not complied with the section 25 (6) (c) which provides as follows:

**Notice to member**

(6) The Registrar shall give the member, within 14 days of receipt of the complaint or the report,

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- (a) notice of the complaint, together with a copy of the provisions of sections 28 to 29, or notice of the receipt of the report;
- (b) a copy of the provisions of section 25.2; and
- (c) a copy of all available prior decisions involving the member unless the decision was to take no further action under subsection 26 (5).

25. The Committee did not comply with section 25 (6) (c) because it provided the Applicant with the summary of the matters contained in the "CPSO Physician Profile" but did not provide the Applicant with the actual available prior decisions.

26. The Board finds the Committee's investigation to be inadequate as a result of its failure to comply with section 25(6) (c) and 26(2) of the *Code*.

27. The Board, therefore, returns this matter to the Committee and requires it comply with sections 25(6) (c) and 26 (2).

[http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_91r18\\_e.htm#BK51](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_91r18_e.htm#BK51)

PFR v EH, 2013 CanLII 46912 (ON HPARB) <http://canlii.ca/t/fzw77>

PFR v GJR, 2013 CanLII 46913 (ON HPARB) <http://canlii.ca/t/fzw93>

[http://www.thestar.com/life/health\\_wellness/2013/07/02/college\\_of\\_physicians\\_and\\_surgeons\\_wants\\_more\\_transparency\\_about\\_doctor\\_discipline.html](http://www.thestar.com/life/health_wellness/2013/07/02/college_of_physicians_and_surgeons_wants_more_transparency_about_doctor_discipline.html) and

[http://www.thestar.com/opinion/editorials/2013/07/03/get\\_rid\\_of\\_secret\\_transparency\\_project\\_editorial.html#](http://www.thestar.com/opinion/editorials/2013/07/03/get_rid_of_secret_transparency_project_editorial.html#)