

FAIR Association of Victims for Accident Insurance Reform

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Sent by email to: Rocco Guerriero, President, AIAC drguerriero@nyrc.ca

October 22, 2013

Dear Mr. Guerriero,

Thank you for your response to our September 16, 2013 open letter "*Reducing Fraud with Transparency in Ontario's IME System*".

The integrity of the Ontario auto insurance IME/IE system is in a state of disrepair so it is good to hear that AIAC shares FAIR's goal of improving the assessment system. Injured claimants should be able to trust that the assessments to which they must submit will always (not just sometimes) be impartial; and that they will always (not just most of the time) be performed by properly qualified assessors. This is the promise held out in the New Rules of Civil Procedure but it is yet to become the reality injured Ontario auto accident victims experience.

To the extent that CARF certification will improve the system - it is the same promise made when, over a decade ago, ISO certification was adopted as the means to clean up the IME system. FAIR supports changes that will improve the quality of Ontario's IMEs and so we point out that although many assessment firms have ISO certification - injured claimants continue to be subjected to highly partisan and often under/unqualified assessments. That is not to say that CARF certification won't prove to be a useful avenue for those who choose to sign up - voluntary CARF certification need not be an either/or proposition to clean up the system so why not encourage and endorse CARF certification in addition to FAIR's proposed "three strikes rule"?

The fact of the matter is that FSCO regulates Ontario auto insurance and it is they who will administer a \$500 fine for accident victims who fail to attend an independent medico-legal examination. It is FSCO's enforcement procedures, as they relate to assessments, that needs to evenly address the abuses on both sides - insurer assessors and treatment providers. FAIR wants to see all IME/IE assessors who abuse Ontario's accident victims by way of shoddy reports purged from the system - whether they sell assessments to the plaintiff lawyers or to the auto insurers. There should not be a double standard in the way FSCO monitors IMEs/IEs - nor should its enforcement procedures differ. It makes no sense that insurer assessment firms/assessors making false/deceptive statements are subject to Administrative Monetary Penalties (AMPs) while treatment provider/assessor misdeeds attract criminal fraud charges. FAIR believes that both the rogue insurer assessors and the rogue treatment providers should be subjected to criminal charges rather than the current FSCO double standard on enforcement which allows insurer assessors to pay an AMP fine rather than face fraud charges.

Surely the best "judges" of the quality of the IME/IE assessments in Ontario's personal injury system are the judges and arbitrators who, on a daily basis, must decide the weight they deserve. The fate of injured claimants rests on their decisions in this regard. The fate of

professional medico-legal assessors/experts should be determined by the same triers of fact - three strikes and the assessor is out. It is an effective and straight forward approach that might remedy the way in which, according to the CSME, substandard assessors have been "tolerated" for far too long.

FAIR looks to FSCO's monitoring and enforcement system to set standards - and to the triers of fact - and to Ontario's health regulatory Colleges - to make the promise of well qualified and impartial IME/IE assessors/experts a reality. There are many good assessors in Ontario who do an excellent job and who would have no problems under a 'three-strikes' rule, it is only those assessors whose work product is flawed that need worry that more stringent oversight and enforcement might negatively affect their income stream.

The fundamental problem with Ontario's auto accident injury benefits scheme is that it is awash in poor quality IMEs/IEs. Unless the rogue assessors (whether treatment providers or insurer assessors) who proffer highly partisan and/or unqualified assessments are purged from the system - no amount of legislative or regulatory amendments can make this a safe and trustworthy system for the injured claimants for whom it has been set up to serve. We look forward to further discussions with AIAC on this important issue. Perhaps the AIAC could address our "three strikes" suggestion as a possible first step in the process of cleaning up Ontario's IME/IE system?

Best Regards,

Rhona DesRoches
FAIR, Board Chair
FAIR Association of Victims for Accident Insurance Reform