
Ontario Dispute Resolution System Review

Submitted by:

FAIR

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

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FAIR Association of Victims for Accident Insurance Reform is a not-for-profit consumer organization whose members are accident victims, their supporters and consumers who have an interest in Ontario's insurance system. Our perspective is one of the end users of Ontario's insurance product and we represent those most affected by changes to coverage, Ontario's accident victims.

We appreciate the opportunity to bring the issues facing Ontario's auto accident victims to your attention.

For clarity, we have broken the topic into two issues, Mediation and Structural Issues with the Ontario Automobile Insurance Dispute Resolution System.

Mediation

Accident victims who have looked to this broken system of mediation as a remedy for their delayed or denied access to benefits quickly learn that the promise made to the drivers of Ontario is without substance and that the dispute resolution process isn't working. Mediation is now an obstacle to treatment and benefits when it should be an opportunity for resolution of issues and provide better access.

By definition mediation means that parties come together with a neutral mediator to promote reconciliation, settlement or compromise in order to negotiate settlement issues; when entered into voluntarily there is a connotation of cooperation or willingness to compromise. Under the present 'mandatory' legislation the mediation process has taken on a new meaning and has been in the way of the underlying purpose of promoting injured Ontarian's timely access to accident benefits. Whether it has been the underfunding of the system or the volume of claims (a clear indicator that the product is flawed or the system is not working) or likely the combination of both, the outcome was the recent revelation of the extent to which the system was backlogged with accident victims looking for benefits.

We are aware that over 10,000 cases are pending at the Arbitration unit and that the mediation backlog while 'cleared' has merely shifted to another level.

The delay for Mediation hearings has allowed insurer adjusters to buy time, delay payments and reserve any offers to settle with accident victims to later time – the date of the Mediation itself. This is an advantage to insurers and their profits while accident victims are left without timely treatment, without funds for even the most basic of necessities and the number of claimants who are forced into speculative loans to pay for treatment and living expenses has never been higher.

The injured driver enters into the mediation process at significant legal cost and with the hope that through negotiation, they will make a case for their benefits to be reinstated or funds for treatment will be allowed. It is the experience of many FAIR members that the delays are often deliberate and to the benefit of insurers and that little intent is exhibited on the part of the insurer to negotiate through mediation. Mediation has become 'a tool in the toolbox' for insurers to

reduce costs through denial and to delay potential payouts. Often the expenses that must be mediated are obviously owed like broken eyeglasses or medication but insurers will use the process to delay accountability, giving in on the day of mediation, having bought substantial time to delay and defend against the claim.

There is nothing barring the two litigating parties from simply picking up the telephone and making an offer to settle and yet this isn't a common approach taken by adjusters as there is no incentive to do so. If mediation were to become voluntary and the process of mediation evolved to motivate the parties to willingly come to the table then the purpose of achieving timely access to accident benefits would be far more successful. This would allow accident victims to initiate Arbitration immediately, speeding up the process, and both parties would still have the option of mediation open to them at any time, right up to the date of a final decision. Mediation, when legislated and mandatory has become an unintended roadblock to access and an obstacle by way of dragging unwilling participants into hearings where there is no real intent to negotiate.

Shouldn't the FSCO be considering the willingness of the participants to come to the table to reach settlement?

If mediation were no longer mandatory litigants would be moved through the system in a more timely fashion and those who did chose to mediate would likely be more successful. Mediation, as an open door for discussion, should always be part of the system but not necessarily mandatory. FSCO may want to consider imposing harsh penalties or consequences on the parties who fail to attempt mediation and who are unwilling to negotiate. An example of this could be no litigation costs could be sought by the party unwilling to mediate, or alternatively, heavier cost sanctions on the unwilling party. As it is now, mediation is a stage in the dispute resolution process, a goal post that must be reached in order to get to the binding Arbitration hearing and it is standing in the way of an accident victim's rights to timely access to entitlement to accident benefits. It is having an adverse effect on injured MVA victims and is contravening the very purpose of the SABS which is to prevent "economic dislocation" ([Arts v. State Farm Insurance Company](#)). In other words, by legislating mediation 'mandatory' and precluding accident victims from advancing their claim it has become a systemic obstacle causing physical, emotional and economic harm.

Structural Issues With the Ontario Automobile Insurance Dispute Resolution System

Accident victims in Ontario rely on Ontario's courts to right the wrong when their legitimate claim for coverage after an accident is turned down by their insurer. Our courts and the mediation/arbitration unit have seen a sharp increase in cases brought by those injured drivers whose claims have been turned down based on a medico-legal report that disqualifies them for treatment and other benefits.

It has been said that flawed forensic evidence and unqualified expert testimony are important causes of wrongful convictions (1). It can also be said that substandard, flawed and unqualified medico-legal expert opinion evidence, either in the form of testimony or in the form of IMEs/IEs,

are important causes of wrongful decisions and an injustice in the Ontario auto insurance FSCO adjudication system.

The result of the Dr. Charles Smith case revealed the need to pay closer attention to prior adverse judicial comments relating to the quality of expert opinion evidence. That lesson seems to have been lost on FSCO's alternative resolution system. The Honourable Steven Goudge called for "vigilance and care" (2) to avoid the sorts of horrors inflicted on the innocent victims of Dr. Charles Smith's "woefully inept" "expert opinion evidence.

Do Ontario's often seriously injured and sometimes catastrophically injured auto accident victims deserve any less "vigilance and care" in this regard merely because their cases are heard in our civil justice system? It is important to remember that many injured FSCO Applicants seeking justice through its mediation/arbitration process are cognitively vulnerable.

Ontario's auto insurers send injured claimants to their "independent" medico-legal expert assessors for a second opinion in the form of an IME or IE or FAE etc. in order to decide whether or not that accident victim is entitled to benefits. The medical reports need to be highly qualified and based in fact and not fantasy when consumers are told by the insurer that the assessor to whom they must submit (or be fined \$500.00) is impartial and well qualified - all the more so because that is the very promise made in the New Rules of Civil Procedure (3).

The distinction between insurer ordered medico-legal assessments and medico-legal opinion evidence in the form of expert defence testimony is, for purposes of arguing the need for greater (quasi)judicial "vigilance" of medical opinions in the FSCO context, one without a difference.

It has been estimated that out of every one-hundred assessments a preferred auto insurer medico-legal assessment vendor performs; only one might reach trial or arbitration where it is transformed into expert opinion evidence. So if the quality of these opinions in FSCO's Arbitration Unit decisions is said to be lacking, it is a much larger problem than it initially appears when it is the tool used to disqualify claimants even before mediation occurs. It is worth mentioning that once one of these bogus IME reports is in someone's medical file, it takes on a life of its own, whether that injured person is successful at obtaining benefits or not. The IME report becomes part of the medical file that will follow that person through subsequent applications for ODSP and CPP if they are unsuccessful at obtaining the auto insurance benefits and the responsibility to pay is passed onto the public systems.

According to the Law Society of Upper Canada (LSUC), auto insurer defence lawyers and plaintiff lawyers have a professional duty to thoroughly check the qualifications of opposing experts and to challenge them whenever appropriate to do so. To not do so would expose both insurers and vulnerable FSCO Applicants to wrongful decisions tainted by flawed or unqualified "expert" medico-legal opinion evidence. The risk to the insurer is wrongfully larger payouts to opportunistic fraudsters who collude with dubious medical experts/practitioners to exaggerate symptoms so as to inflate the value of a claim. In one scenario the financial health of the auto insurer is undermined. The risk to the vulnerable claimant is flawed assessments and unqualified "expert" opinion evidence falsely alleging malingering or symptom exaggeration as a

tactic to trivialize legitimate injuries and wrongfully deflate and deny the value of a claim. In this scenario it is the physical, psychological and emotional health of the vulnerable accident victim who is hurt when wrongfully robbed of statutory treatment benefits and income replacement.

An injured accident victim wrongfully labelled as a fraudulent malingerer and denied policy benefits including treatment (cognitive therapy in brain injury cases for example) on the basis of flawed and unqualified medico-legal expert opinion evidence is no less serious than being wrongfully convicted and incarcerated in the way Dr. Smith's victims were. There is no valid reasoning for allowing inferior quality expert opinion evidence in personal injury cases or to dismiss accident victims as being less important or due a lesser form of justice.

Triers of fact (judges and arbitrators) are the "gatekeepers" in terms of who is a qualified expert and who is not; whose testimony is impartial and whose is highly partisan; and whose expert opinion evidence is flawed versus whose is trustworthy. In other words: *"The value of independent assessments (expert testimony) is directly proportionate to the independence and quality that courts and arbitrators attach to them (it) (4).*

The promise made to Ontario's injured auto accident victims is that the medical assessors and experts who will determine their fate are impartial and well qualified. This is the insurer's promise, the Rules of Civil Procedure promise, the judicial "gatekeeping" promise, the LSUC promise and the OIAA Code of Ethics. How can it be that Justice Osbourne noted complaints about the proliferation of "hired gun" experts in the Ontario personal injury context has been ignored?(5) How is it that these endless promises and assurances of qualified and impartial experts are empty when it comes to accident victims? Rule 41.01 is unachievable if prior adverse comments about an expert witness are not allowed – why is it the trier of fact isn't encouraged to rely on the judgement of another trier of fact about the veracity or qualifications of an expert witness?(3)

The predictable accusations of malingering and symptom exaggeration churned out by rogue medical experts contribute heavily to FSCO's adjudication system's unacceptable wait times. Instead of holding the rogue experts accountable the FSCO went to court and argued on behalf of Ontario's insurers that waiting over a year to mediate denied treatment is "reasonable" when the Auditor General pointed out that they system was dysfunctional. Instead of addressing the injustice of bogus IMEs to innocent accident victims, FSCO supported fining accident victims \$500 for failing to attend an IME under the guise of fighting fraud. All while knowing that there is inadequate oversight and virtually no enforcement of regulations to protect Ontario's vulnerable MVA victims from third party assessors. These assessors have undermined our justice system with their bogus opinions and they are cloaked in immunity by their self regulated and inadequate oversight bodies; protected from accountability because they are never confronted with prior adverse comments.

"Clearly one hopes that a medical expert will not only be qualified to conduct a competent assessment but will also be independent and unbiased in formulating his/her opinion. But what if he or she is not". ([Bakalenikov v. Semkiw](#)) Master Short asks an excellent question and half of Ontario's accident victims can answer to that – the number of cases pending for Arbitration speak to the result of relying on hope rather than stringent regulation and disclosure. What

happens when under qualified medical "experts" proffer unchallenged expert opinion evidence in the area of chronic pain in case after case, only to concede to a lack of competency when finally challenged? ([Thevaranjan and Personal Insurance](#)) How can it be that after conceding to a lack of training and competency, that same expert can continue to proffer expert opinion evidence on chronic pain that is frequently preferred over the testimony of qualified experts by subsequent FSCO arbitrators? What about the injured subjects of all that unqualified expert testimony on chronic pain in cases both before and after Theraranjan?

How is it possible to repeatedly exaggerate ones qualifications in a manner that misleads triers of fact and to continue to do so for five years after being judicially rebuked until finally being caught a second time? ([Mrs. S and \(Lloyd's\) Non-Marine Underwriters](#)) What about all the FSCO Applicants whose mediations and arbitrations were tainted during that five year interval by a general practitioner masquerading as an orthopaedic surgeon whose opinion evidence frequently trumped that of actual orthopaedic specialists and surgeons?

How can it be that a psychologist not authorized by the CPO to practice in the area of neuropsychology - and therefore not qualified to submit expert opinion evidence in personal injury brain injury cases can taint so many FSCO cases? And why was/is no effort made to alert former brain injured victims of unqualified expert opinion evidence once FSCO is made aware of an "experts" dismal lack of qualifications/training? ([Rumak and Personal Insurance - Special Award](#))

These abuses are only possible for as long as expert witnesses are secure in knowing that prior adverse (quasi)judicial comments regarding their lack of qualifications will not be adduced as a means to challenge them. These past judicial comments will not be offered as evidence because lawyers rarely try to do so and because triers of fact are unwilling to allow them. ([Desbiens v. Mordini](#)) In 2004 a trier of fact refused to consider prior negative comments but said: *"I do not wish to be understood to say that this line of questioning is impermissible under any circumstances. If a satisfactory evidentiary basis is laid it may become relevant."* This leaves us to wonder in what set of "circumstances" prior adverse judicial comments can or will be adduced to challenge an expert witness. Little if anything was said about the issue, yet six years later in ([Bakalenikov v. Semkiw](#)) prior adverse judicial comments were considered without question and without explanation. Clarity on this issue is long overdue. Vulnerable and innocent accident victims, whose treatment and benefits are dependent on the quality of the assessments and evidence, should not be the victims of a lesser degree of the standard of justice in our courts.

Once an under qualified rogue expert has proffered opinion evidence and tainted cases without challenge on the basis of previous flawed, substandard expert testimony, it is too late to "fix" the injustice – the damage is done. In fact - (in contrast to the Dr. Smith example) FSCO refuses to even inform victims of unqualified expert testimony - much less re-visit their tainted decisions.

These are only a few examples of a systemic problem. FSCO was asked in 2011 to investigate the extent of flawed expert opinion evidence but chose not to - preferring instead to leave it to the triers of fact to discover rogue experts on a case by case basis (*Counsel Forum Minutes of Meeting - March 25, 2011*).(6) Yet, FSCO triers of fact, for whatever reason, are either unwilling

or unable to benefit from the insights (adverse comments) of previous triers of fact regarding the experts who stand before them. Does this make any sense? Is it fair to injured, vulnerable litigants to do nothing when Ontario's arbitrators call the reports they must rely on to decide eligibility to benefits "inaccurate, failed, misleading, defective, incomplete, deficient, not correct and flawed". (<http://www.fairassociation.ca/the-independent-medical-examination-imeie/>) Lowering the standard of 'expert testimony' has lowered the possibility for justice and created an unsafe environment for injured auto accident victims.

As has been said, injured claimants are promised that the system is fair and neutral. They are assured that the system allows only impartial and qualified experts to proffer opinion evidence. But these few cases don't inspire confidence. Worse, the promises that injured litigants can trust the system and its experts are undercut by what stakeholders say out of earshot of the public - in places where auto accident victims aren't welcome. For example: does this inspire confidence:

"We have all to realize that times are changing-amateurism, bias and fraud in the domain of IMEs will be tolerated less and less in the future...For those of you doing IMEs for years, it is time to notice this approaching shift: the cost of litigation, cost of automobile insurance and lack of quality control of IMES, leading to public scandals, might soon lead the parties requesting IMES to be more critical when the appraising medicolegal credentials of an expert before hiring his/her services." (Canadian Society of Medical Evaluators - 2011 - President's Message)(7)

At this point is worth once again considering Master Short's words: *"The optics of forcing a vulnerable party to be examined by an opposing expert who will be able to testify from a position of power and prestige and depriving the party of any independent record of the event, are not good. Justice must not only be done but be seen to be done. Experts can and should be given a mandate of independence. This cannot be confused with granting them a presumption of independence."* ([Bakalenikov v. Semkiw](#))

Not to require expert witnesses to disclose to the court all prior adverse judicial comments relating to the quality of their previous expert opinion evidence 'presumes' that they are properly qualified and completely impartial. Is that a safe presumption to make? Clearly it is not. Perhaps this issue needs to be addressed by Ontario's Civil Justice Rules Committee? If prior adverse judicial comments are to continue to be ignored so that no matter how many are accumulated the expert will be perpetually given a clean slate in her/his next case - and the one after that - creating a chain of injustices - then Ontarians need to be told that this is so. At least once given fair warning, they will not be so easily misled by false promises from FSCO and the LSUC that all is well and that rules and procedures ensure that the experts who will determine their fate are being properly checked and challenged in order to ensure they are properly qualified experts.

Ontario's auto insurance IME/IE/expert witness system has become seriously compromised and is without adequate oversight. As a result, consumers no longer have faith in a justice system that is bogged down with over 10,000 litigants waiting with cases of benefits denied on the basis of a flawed IME. There is no 'independent' in a report that too often is prepared by an assessor who is financially dependent on insurers and whose past 'mistakes' have been covered up and buried so claimants will never know.

We pay insurance for a reason, we want to be covered in case of injury and we want those whom we may accidentally injure or maim to have every opportunity to reach maximum recovery and to return to their regular lives as quickly as possible. The system should accommodate accident victims and treat them fairly and not punish the vulnerable by creating delays no matter how unintentional.

FAIR ASSOCIATION OF VICTIMS FOR ACCIDENT INSURANCE REFORM

1) The Federal/Provincial/Territorial Heads of Prosecutions Committee today released its new report on wrongful convictions entitled [The Path to Justice: Preventing Wrongful Convictions](#).

"The update canvasses the latest information on the most important causes of wrongful convictions, as described in the 2005 Report, including tunnel vision; eyewitness mis-identification; false confessions; use of in-custody informers; and **inappropriate use of forensic evidence and expert testimony**. Each of these issues is discussed in the context of what has been learned since 2005, through research and commissions of inquiry, for example."

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2) *** *"No justice system can be immunized against the risk of flawed scientific opinion evidence. But with vigilance and care, we can move toward that goal."* The Honourable Stephen T. Goudge, Commissioner, Inquiry into Pediatric Forensic Pathology in Ontario, Report released October 1, 2008, at p. 46 of Executive Summary
<http://www.attorneygeneral.jus.gov.on.ca/inquiries/goudge/index.html>

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3) **Rules of Civil Procedure 4.1.01 (1) It is the duty of every expert engaged by or on behalf of a party to provide evidence in relation to a proceeding under these rules,**

(a) to provide opinion evidence that is fair, objective and non-partisan;

(b) to provide opinion evidence that is related only to matters that are within the expert's area of expertise; and

(c) to provide such additional assistance as the court may reasonably require to determine a matter in issue.

Duty Prevails

(2) The duty in subrule (1) prevails over any obligation owed by the expert to the party by whom or on whose behalf he or she is engaged.

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4) *** "The value of independent assessments is directly proportionate to the independence and quality that courts and arbitrators attach to them." [Letter to the Editor: Independent medical examinations provide "necessary check and balance"](#) - Canadian Underwriter - 2012-12-20

5) [Civil Justice Reform Project - Ministry of the Attorney General](#)

Dec 9, 2010 - Honourable Coulter A. **Osborne**, Q.C

Proliferation and Bias of Experts

Consistent with the views of the CBA Task Force on Systems of Civil Justice, the Discovery Task Force and the Advocates' Society Policy Forum, the vast majority of those consulted in the course of this Review identified the proliferation of experts as a significant problem that often leads to a battle of competing experts. Some observed that as soon as one party retains an expert, an opposing party is forced to retain an expert. The expert witness merry-go-round bears with it an advantage to a litigant who has significant financial resources.

There is also the issue of partiality. A common complaint was that too many experts are no more than hired guns who tailor their reports and evidence to suit the client's needs. I know that this problem exists, but I hasten to add that not all experts should be tarred with the same brush.

6. "Doctored" Reports:

Senior Arbitrator Nastasi reported that a recent unit meeting arbitrators reported two separate hearings in which in the middle of testimony by a doctor or assessor, it became clear that the report issued / produced by the Clinic or assessor was not the same report created by the doctor / assessor on the witness stand. Liz put the issue out to the group to assess whether this has been a recent issue or new trend that counsel have also experienced.

Counsel Response:

In the past IR adjusters would contract out to individual assessors and defence counsel could potentially request certain doctors that they liked to work with BUT today - to save money almost 100% of the assessment work is farmed out to Brokers leaving very little choice about who will do the assessment.

Stan P. - 100% of ALL assessments are "doctored" - in that the actual doctors and assessors are not able to do MOST of the report for \$2000. The result is that the clinic administrators are the ones setting up most of the report and then doctors actually write a small portion of the actual report.

Eric G - the \$2000 cap is "unworkable" - most of the work is done by the broker because of the limited amount of money available to pay for the report.

Suggestion - FSCO needs to look at this in a more systemic way.

Query - what is FSCO's or an arbitrators' responsibility when this issue comes up during a hearing ? - When an arbitrator does encounter this during a hearing then they need to report on it and this will have an effect in the future on whether that company or assessor receives any further business.

<http://www.fSCO.gov.on.ca/en/drs/counselforum/Pages/2011-03-25.aspx>

Canadian Society of Medical Evaluators - 2011 - President's Message:

Dear Members & Colleagues,

"We have all to realize that times are changing-amateurism, bias and fraud in the domain of IMEs will be tolerated less and less in the future...For those of you doing IMEs for years, it is time to notice this approaching shift: the cost of litigation, cost of automobile insurance and lack of quality control of IMES, leading to public scandals, might soon lead the parties requesting IMES to be more critical when the appraising medicolegal credentials of an expert before hiring his/her services."

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[Desbiens v. Mordini](#), 2004 CanLII 41166 (ON SC) — 2004-11-17

[Cross-examination of Dr. Ameis On Prior Negative Judicial Comments](#)

[265] In cross examination, plaintiffs' counsel sought to impeach Dr. Ameis credibility by referring to a number of cases before this court and the Financial Services Commission of Ontario (FSCO) in which negative comments had been made by the judge or arbitrator concerning Dr. Ameis lack of objectivity and impartiality in his role as an expert.

[274] I do not wish to be understood to say that this line of questioning is impermissible under any circumstances. If a satisfactory evidentiary basis is laid it may become relevant.

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[Bakalenikov v. Semkiw](#), 2010 ONSC 4928 (CanLII) — 2010-09-15

[53]With respect to parties or witnesses, however, whether lay or expert, the dynamics of an adversarial system introduce pressures that leave the door open to conscious or even subconscious polarization. In situations where experts are regularly retained by either plaintiffs or defendants, financial considerations add to the potential for polarization. It is naive to assume, without more, that a medical expert who generates significant income from providing IME's for a particular "interest group" is completely immune to these pressures, whether they are acted on or not. It should also be recognized that the pressures may well increase in the presence of a large institution that regularly requires IME experts to provide opinions taking a particular view of the issues. While obvious instances of unreliable expert evidence may be infrequent, anytime an expert is less than honest, the potential for a just result is undermined....

The pressures facing medical experts which are inherent in an adversarial system are inevitably exacerbated in an IME setting where the party being examined (often the plaintiff) is cognitively or emotionally vulnerable, or where the person being examined has limited language skills or faces cultural inhibitions that impact on the assessment. Clearly one hopes that a medical expert will not only be qualified to conduct a competent assessment but will also be independent and unbiased in formulating his/her opinion. But what if he or she is not? Experiences in many settings involving interactions between persons in positions of authority and those in positions of vulnerability (e.g. residential schools, prisons and seniors homes)

demonstrate that the greater the imbalance of power and the less accountability there is in the system, the more potential there is for abuse. How does a plaintiff with functional or memory impairments challenge the evidence of a highly trained, articulate and experienced expert? The optics of forcing a vulnerable party to be examined by an opposing expert who will be able to testify from a position of power and prestige and depriving the party of any independent record of the event, are not good. Justice must not only be done but be seen to be done. Experts can and should be given a mandate of independence. This cannot be confused with granting them a presumption of independence.

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[Thevaranjan and Personal Insurance](#) Arbitration, 2006-08-24, Reg 403/96 Final Decision

Dr. Peter Marton

Dr. Peter Marton also testified on behalf of the Personal. He testified that he attained his PhD in clinical psychology in 1977 in New York State. He is a registered member of the Ontario College of Psychologists and of the Ontario and American Psychological Associations. He has conducted a practice in clinical psychology since 1977, specializing in the treatment of both adults and children. Dr. Marton conceded he does not have expertise in treating and assessing chronic pain. He testified that in his practice he performs assessments at the request of several assessment facilities predominantly for insurers and employers. He does a minimum of two insurer examinations per week for AssessMed. Overall, Dr. Marton performs five to six insurer and employer assessments for four assessment facilities weekly, earning about 40% of his income from this practice.

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[Rumak and Personal Insurance - Special Award](#) Arbitration, 2004-10-07, Reg 403/96

Personal did not terminate Mr. Rumak's benefits in 1998 on the basis of this report. Neither did it seek a follow-up neuro-psychological assessment to confirm Dr. Shah's findings that "Mr. Rumak has made a remarkable cognitive recovery." I note this latter fact because Personal knew from the Catastrophic DAC report dated October 26, 1999 that Dr. Shah was not qualified to do a neuropsychological assessment on Mr. Rumak. [See note 5 below.]

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Note 5: In the Catastrophic DAC report, which found Mr. Rumak had suffered a catastrophic impairment as a result of the car accident, Dr. H. Becker noted that "Dr. Shah is not registered by his college to undertake such neuropsychological assessments."

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In short, at the time that Personal terminated Mr. Rumak's income replacement benefit in September 2000, Personal had clear notice that Dr. Shah's neuropsychological assessment of Mr. Rumak in 1998 was not valid because of his lack of qualifications to do so.

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[Oppedisano and Zurich Insurance](#) Arbitration, 1999-07-06

Although Dr. Grant has a resume which describes him as a specialist in sports and orthopaedic medicine, Mr. Oppedisano's counsel challenged Dr. Grant's credentials at the hearing. As a consequence, Zurich's counsel telephoned Dr. Grant during a recess. Dr. Grant confirmed that he is not an orthopaedic specialist and has no specialist certification. A certificate of status of registration from the College of Physicians and Surgeons lists Dr. Grant as having no specialty qualifications. In the context of individual medical assessment, this can be misleading. Dr. Grant would have self described himself more properly as a general practitioner with an interest and experience in sports medicine.

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[Mrs. S and \(Lloyd's\) Non-Marine Underwriters](#) Arbitration, 2004-08-03, Reg 403/96

Lloyd's retained Dr. Paul H. Grant, a general practitioner, to assess the Applicant. In a number of documents, including Explanations of Benefits Payable by Insurance Company, correspondence, and Lloyd's counsel's written submissions, Dr. Grant's reports are referred to as orthopaedic assessments. On Dr. Grant's reports, under his signature is "Orthopaedics & Sports Medicine" and he entitles supplementary reports as "Orthopaedic Addendum." The Applicant's counsel submitted, and I accept, that this is misleading since Dr. Grant is not an orthopaedic surgeon. Dr. D.J. Ogilvie-Harris, an orthopaedic surgeon, confirms this in his July 19, 2002 report. I therefore regard Dr. Grant as a general practitioner and do not accept Dr. Grant's opinions as orthopaedic opinions.