

# What's in YOUR medical file???

There is increasing evidence that Ontario's auto accident victim's medical files are routinely being changed to suit the needs of Ontario's insurers to save money by deflating an MVA victim's injuries. Portions of reports have been removed, manipulated or even changed entirely without the author's knowledge or consent. Signatures have been forged or used without permission in many cases. Victims and their legal representatives should be viewing reports and evidence with a critical eye to insurer fraud whether it be an adjuster, an assessor, assessment centers, treatment facility or even your own lawyer's staff. This abuse of evidence is widespread and should be a major factor in the fight on fraud and yet it isn't. Accident victims are often re-victimized and defrauded out of the coverage they paid for by the fraudulent acts of others.

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A leaked document from a discussion forum

Dear Colleagues,

I am involved in an Arbitration on the issue of catastrophic impairment where Sibley aka SLR Assessments did the multi-disciplinary assessments for TD Insurance. Last Thursday, under cross-examination the IE neurologist, Dr. King, testified that large and critically important sections of the report he submitted to Sibley had been removed without his knowledge or consent. The sections were very favourable to our client. He never saw the final version of his report which was sent to us and he never signed off on it.

He also testified that he never participated in any "consensus meeting" and he never was shown or agreed to the Executive Summary, prepared by Dr. Platnick, which was signed by Dr. Platnick as being the consensus of the entire team.

This was NOT the only report that had been altered. We obtained copies of all the doctor's file and drafts and there was a paper trail from Sibley where they rewrote the doctors' reports to change their conclusion from our client having a catastrophic impairment to our client not having a catastrophic impairment.

This was all produced before the arbitration but for some reason the other lawyer didn't appear to know what was in the file (there were thousands of pages produced). He must have received instructions from the insurance company to shut it down at all costs on Thursday night because it offered an obscene amount of money to settle, which our client accepted.

I am disappointed that this conduct was not made public by way of a decision but I wanted to alert you, my colleagues, to always get the assessor's and Sibley's files. This is not an isolated example as I had another file where Dr. Platnick changed the doctor's decision from a marked to a moderate impairment.

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### **Burwash v. Williams, 2014 ONSC 6828 (CanLII) 2014-11-25** <http://canlii.ca/t/gfdrp>

[6] Cirra is not a party to this litigation. It is a national company in the business of providing medical assessments and health services for several corporate, insurance and medical legal communities through a network of independent health professionals. Cirra was created in June 2012 and is a combination of two companies, namely, Riverfront Medical Services ("Riverfront") and Medisys IMA.

[7] The Defendants retained Cirra to co-ordinate defence medical examinations of Ms. Burwash conducted pursuant to s. 105 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

[8] The Defendants do not object to the production of the files.

[9] The Defendants have requested disclosure of Cirra's complete files. The Plaintiffs allege that only partial production of the files has been made to date.

#### **Timing of the Motion**

[10] The Plaintiffs assert that they had no reason to suspect that Cirra was involved in the review, revision and editing of draft expert reports until the examination for discovery of Dr. St. Pierre when answers and subsequent productions indicated that Cirra may be using third parties to review and revise the Defendants' expert reports.

[24] The Plaintiffs provided documents that indicate that there may have been third party manipulation and alteration of the expert reports that the Defendants will rely upon at trial. Relevancy is established since this issue goes straight to the heart of the Plaintiffs' case and the medical evidence they intend to lead to prove damages.

[28] [Rule 53.03](#) of the [Rules of Civil Procedure](#) is designed to ensure the independence and integrity of the expert witness. The duty of the expert witness is to be of assistance to the court. Each expert witness is required to sign an acknowledgement that they are providing an independent and unbiased opinion. If there is reason to believe that the expert's report or opinion has been influenced by

unknown third parties and is therefore not entirely the expert's opinion, the fundamental rationale for accepting expert opinion evidence is no longer present and hence the report is not only not helpful to the court but may become misleading. This is an issue that is directly related to trial fairness.

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**MC v KE, 2013 CanLII 55435 (ON HPARB), 2013-09-04**

<http://canlii.ca/t/g0c3g>

7. [...]The Respondent notified the Committee that, through the complaints process, she had discovered that Riverfront Medical Services (Riverfront), the company through which the Applicant's assessment was contracted, had changed the Respondent's report without her prior knowledge or consent.

9. As a result of its investigation, the Committee decided to take no further action, noting that the Respondent reported information that she considered to be accurate and that there did not appear to be any indication that the Respondent intentionally falsified factual information in the report or that she misrepresented information about the Applicant's abilities during the assessment.

10. However, the Committee did express concern about the information uncovered during the course of the investigation related to Riverfront having altered the Respondent's report. The Committee noted the "egregious" impact that these changes could have had on the Applicant's entitlement to benefits. In the result, the Committee decided to offer advice to the Respondent about the importance of ensuring that she personally reviews and approves any assessment report she completes prior to the report being issued.

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**Macdonald v. Sun Life Assurance Company of Canada, 2006 CanLII 41669 (ON SC) — 2006-12-13** <http://canlii.ca/t/1q596>

[1] In the course of this jury trial I ruled that Dr. Frank Lipson, who had conducted a defence medical of the plaintiff, not be permitted to testify as an expert witness on behalf of the defence. Dr. Lipson had testified that a medical report purportedly signed by him had not been signed by him. He stated that his signature stamp had been affixed to the report without his authority by an individual at Riverfront Medical Evaluations Limited (Riverfront) the company who had retained him to conduct the defence medical. I made my ruling based on the evidence before me at the time. The case proceeded and the jury ultimately delivered a verdict awarding the plaintiff damages and that verdict has not been appealed. However, in view of the serious allegations that had been made against Riverfront I felt that Riverfront should be given an opportunity to respond before I delivered the full reasons for my ruling.

Subsequent to the conclusion at the trial, counsel for Riverfront appeared before me and called evidence and made submissions.

[2] I have deliberated for a very long time before delivering these reasons. Although the action out of which the problem arose has long been concluded, this case raises vexing issues as to what role may be properly played by organizations such as Riverfront in the formulation of an expert witness' opinion.

[12] Dr. Lipson initially testified that he did not know that the highlighted paragraph of the draft had been deleted from the served report when he signed it. He later testified that Linda Geladaris (Linda) a secretary at Riverfront who was responsible for "quality control" may have phoned him and told him that the highlighted portion didn't really contribute to the report or his diagnosis and that he made the decision to delete it. In response to a question from the bench, Dr. Lipson stated that he now recollected that he made a decision to delete the highlighted portion after receiving a communication from someone at Riverfront. He then stated that the communication might not have been a telephone call but it could have been in the form of an edited report sent to him by email from Riverfront and that he decided to adopt the edited report as his own.

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

#### **FSCO Minutes - March 25, 2011 – 5. "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

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***So You Think You're Covered! The Insurance Industry Rip-Off***

by Jokelee Vanderkop <http://www.deniedbenefitclaims.com/index.html>

pg 144-146 - 'Preparing for Court' - Only with his prodding did I take a closer look and was shocked to see that the signature was not mine although the typed name under it was. I was now more alert. I had never seen this letter despite my name being on it. The content of the letter had, most likely, been innocuously presented by the car insurer's claims advisor to Mr. K.'s legal clerk to type up and sign in my name, possibly under the guise of saving me a trip to their office to sign it and speed up my getting the funds. The insurer dealt with her for this transaction, rather than her boss, probably counting on her not being up to speed on the legalities. Pleased that I was finally being paid, and not recognizing the underhandedness of this letter, she signed for me without my knowledge and without authorisation. The letter was meant to benefit the insurer by tying payment of all IRBs disbursed to me by the car insurer to repayment of that money. By signing my name, the clerk had me agree to those conditions. I would be no further ahead even if the health carrier paid me and the legal battle with the car insurer would have been for nothing.

Mr. P. was to learn later that the insurer never had any intention of paying me the IRBs it acknowledged owing me that January 2001 unless their claims advisor got my signature on that letter.

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