

From: FAIR (fair association of victims for accident insurance reform)
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Sent: Friday, December 05, 2014 3:48 PM
To: J. R. Richards; Christina Pearce; Heather Driver
Subject: Policy question regarding evidence used at FSCO DRS hearings

Hello Mr. Richards

I have left a telephone message for you but thought it would be best to ask the questions in writing. I have directed this email to you but if you are not the correct person to answer can you please forward on.

My name is Rhona DesRoches and I am the Board Chair of FAIR Association of Victims for Accident Insurance Reform. We advocate for accident victims and for the fair treatment of claimants under our present insurance system.

In the past week I have heard of three separate incidents involving witnesses, during the course of a hearing, finding out while on the stand that the reports being used by the defendant insurance companies had been altered to deflate the seriousness of a claimant's injuries. It is my understanding that all of these cases were settled once it became apparent that medical evidence had been altered and/or tampered with thus leaving no official record of the fraudulent actions of those involved.

It is very disturbing to hear that this type of behavior is not an isolated incident but appears to be a frequent event involving more than one insurance company and more than one assessor. There are cases already listed on the FSCO website that document such behavior.

My questions are:

When an Arbitrator is confronted with manipulated, forged signatures or improper evidence what is the DRS policy regarding how to handle that situation?

What is the policy when an expert witness indicates that the report attributed to them has been altered by another party? In other words, a live witness in the here and now of a hearing, unequivocally states that the medical report at hand being used as evidence, has been fraudulently altered by another party (also present) to favor their position.

In a recent decision (separate from the 3 recent incidents mentioned above) published (below) there was no question regarding medical file manipulation - is there a policy in place that requires that the Arbitrator who is hearing the case reports this type of criminal activity? Is the duty to report such a crime part of the Arbitrator's duty as an officer of the court?

I am a lay-person, as are most of our members who are accident victims, and I am not aware of the regulations that govern those who hear these cases on a day to day basis. If there are such rules that cover this type of scenario, I would appreciate a copy of those regulations.

I ask these questions because for every case we hear about where claimants are being scammed and defrauded out of what they paid for, there are many, many more medical reports written by the same IME vendor that will never see the light of day at a hearing. But those medical reports will undoubtedly be used to settle a claim out of court and if they have had their content altered no one, including the victim, will ever know.

We see the credibility of claimants questioned regularly at hearings. What we are not seeing is an effort to protect the honesty of the justice system itself when such fraudulent activity, clearly quite common, is not addressed in any way other than insurers settling a case quickly so as to sidestep any negative backlash by having the evidence of their own fraudulent behavior in public view.

I hope that you can answer these questions with eye towards how this type of behavior, that undermines the very principals of honesty and integrity in our justice system, is to be handled by the DRS unit.

My thanks for your time and I look forward to hearing back from you.

Sincerely,
Rhona DesRoches

<https://www.canlii.org/en/on/onsc/doc/2014/2014onsc6828/2014onsc6828.html>

[6] Cira 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. Cira was created in June 2012 and is a combination of two companies, namely, Riverfront Medical Services ("Riverfront") and Medisys IMA.

[7] The Defendants retained Cira 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 Cira'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 Cira 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 Cira may be using third parties to review and revise the Defendants' expert reports.

[11] I am satisfied that the Plaintiffs have brought this motion at the earliest opportunity and that they could not have reasonably discovered that the issue existed any earlier.