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College of Physicians and Surgeons of Ontario
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Toronto, Ontario M5G 2E2
Sent by Email: feedback@cpso.on.ca

January 12, 2017

Dear Mr. Gerace, Dr. David Rouselle, Mr. Dan Faulkner, Mr. Brian Goldig,

I am writing on behalf of Ontario's car accident victims in my capacity as Chair of FAIR Association of Victims for Accident Insurance Reform. FAIR is a grassroots not-for-profit organization of MVA (Motor Vehicle Accident) victims who have been injured in motor vehicle collisions and their supporters.

As you may be aware there have been numerous media stories in the past several weeks in respect to the quality and trustworthiness of the third party medical opinion vendors in Ontario.

While the CPSO "acknowledges that the third party reports process often gives rise to unique issues that can be difficult to navigate" for their members, there's no acknowledgement that the system is even more difficult for the clients these third party physicians are evaluating. Insurer Medical Examinations (IME) in the context of car accident victims means the client is another doctor's patient whose care and recovery hinges on the quality of the IME physician's medical report. It is the treating doctor's patient who is being derailed and disregarded by the actions of the medical opinion for-hire College members.

We have seen no meaningful effort on the part of CPSO to ever hold these for-hire opinion vendors to account and the result is a proliferation of these 'experts' harming victims through biased and low quality medical reports in our courts. This area of medicine has long been known as the underbelly of medicine where highly paid physicians are free to behave badly without ever being held to account through CPSOs lack of regulatory enforcement and secret 'cautions'. This has led to the abuse of tens of thousands of injured and disabled accident victims in Ontario every year.

From start to finish, the 'independent' or insurer medical exam (IME) is a flawed process designed to cause harm and to stand in the way of recovery in order to save insurer dollars.

You should be aware that these third-party medical reports that disqualify MVA victims are also likely responsible for Ontario's civil court backlog. Stats Can 2015 data reveals that there are over 59,000 auto insurance related cases on the docket. These are the unpaid victims who are denied recovery resources by your members who are handsomely rewarded by Ontario's insurance companies.

One of the problems for injured MVA victims is that Ontario's auto insurers and their paid-for assessors anticipate the potential complaints to Colleges about the sleazy process of IMEs.

It begins with coercive forms that MVA victims are pressured into signing before leaving the IME assessor's offices. I am attaching several of these forms, redacted to protect the victims, and because this is a systemic problem that the College needs to address. This is not about a particular IME vendor, but about the broader use of these forms by many vendors of third-party medical opinion reports.

You will note that the forms from the Canadian Rehabilitation Institute, Custom Rehab and Assessments Canada Ltd., and Assessmed Inc. (no heading), all ask a similar question. In all three forms – “was your assessor thorough and careful with obtaining your history and assessing your impairments?” is present with minor variations.

There is absolutely no way an MVA victim can possibly know whether the assessor was thorough, careful or obtained an accurate history UNTIL the report is received some time later. The forms are a very effective way to head off any subsequent complaints about the IME doctor at Ontario's regulatory Colleges such as CPSO. Many victims tell me they are intimidated into signing the form.

Years later when a claimant finally reaches a hearing to hold their insurer to account, the IME report and expert testimony often becomes a weapon used by insurers to disqualify the victim through denying and deflating serious injuries. More often than not, the flawed and biased IME is a tool used to discourage claimants into a lower settlement long before reaching a court hearing. Either way, the poor quality of the medical opinions in Ontario cause significant harm to victims.

I am attaching several court decisions for your review that chronicle just how shoddy and biased these medical reports are and how 'experts' are used to manipulate justice. It is shameful and since some vendors have escaped accountability many times despite complaints to CPSO, it speaks to a lack of interest in public safety when transparency is traded for anonymity of your members and their interests.

It is our understanding that Dr. Platnick is the subject of a current complaint at the College and as a prolific medical opinion vendor who has examined many thousands of injured MVA victims; we are very interested in the disposition of the complaint under the new Transparency Principals. Will the outcome of the Dr. Platnick investigation be publicly available on your website?

The behavior of Dr. Platnick is in no way unique and the problems as chronicled in the Platnick v Bent decision is commonplace in the world that MVA victims live in. There are many other medical 'experts' working the system in the same manner and harming innocent and legitimately injured MVA victims who are seeking recovery resources from the insurer they paid to protect them.

At the center of recent articles in both the Toronto Star and National Post are various members of CPSO who are vendors of medical assessments in both the auto insurance context as well as in WSIB cases. I am attaching other court decisions that point out the biases and deficiencies of some of your members.

As regulator, what is the CPSO going to do about the behavior of some of your members who have become the biggest obstacle to recovery for car accident victims in Ontario?

It's clear that many of the IME physicians in Ontario have not acted “with the same high level of integrity and professionalism as they would when delivering health care”. The attached Decisions document a multitude of violations of all 4 of the Principles listed on the CPSO Policy Statement #2-12. The flawed IME is routine and systemic and needs investigation and a resolution by the CPSO to ensure that 'do no harm' actually means something to ALL of Ontario's patients, including car accident victims.

The failure of CPSO to enforce standards means this is playing out publicly in our courts after innocent and often seriously impaired victims have been abused by your members. From coercive 'quality' forms, bogus and biased medical opinion reports and testimony, to victims who are impoverished and go without recovery resources, to our overloaded social nets and taxpayers who must pay when insurers do not, to our courts having to deal with the 'experts', it is all in your house.

It should not be up to Ontario's car accident victims to petition our government for a Public Inquiry into the medical evidence used in our courts and tribunals. It should be up to the regulatory College to ensure that their members behave in a manner that exemplifies the profession as a whole and to not turn a blind eye to undermining of care of some of the most vulnerable of patients.

What will CPSO do about these systemic issues regarding the forms and work product quality as well as whether the Platnick investigation result will be public? Will you be investigating the behavior of several other of your members mentioned in these media stories and if not, why not?

I look forward to hearing back from you about these issues.

Rhona DesRoches
FAIR, Board Chair

Toronto doctor can't sue over 'substantially true' warning he altered medical reports for insurance companies to thwart claims <https://www.thestar.com/news/canada/2016/12/06/toronto-doctor-cant-sue-over-substantially-true-warning-he-altered-medical-reports-to-thwart-insurance-claims.html> and <https://www.thestar.com/news/gta/2016/12/08/md-who-wrote-misleading-insurance-report-under-investigation.html>

Hired gun in a lab coat: How medical experts help car insurers fight accident claims

http://news.nationalpost.com/news/hired-gun-in-a-lab-coat-how-medical-experts-help-car-insurers-fight-accident-claims?_lsa=2a71-139d and <http://news.nationalpost.com/news/ontario-doctor-misrepresented-views-on-catastrophic-injuries-to-benefit-insurer-judge-rules>

Experts disqualified for history of bias?

<http://www.lawtimesnews.com/201605095398/headline-news/experts-disqualified-for-history-of-bias>

Social Justice: Expert witnesses and access to justice

<http://www.lawtimesnews.com/201602085208/commentary/social-justice-expert-witnesses-and-access-to-justice>

Arbitrator orders rare special award against insurer

<http://www.lawtimesnews.com/201511305093/headline-news/arbitrator-orders-rare-special-award-against-insurer>

Platnick v. Bent - Endorsement (1) ONSC 7340 20161201

<http://www.fairassociation.ca/wp-content/uploads/2016/12/Platnick-v.-Bent-Endorsement-1-ONSC-7340-20161201.pdf>

[15] It is undisputed that the conclusions in the report were his and his alone, even if based *entirely* upon the observations and conclusions of others. One of the other experts categorically refused to sign on to Dr. Platnick's report and Sibley appears to have abandoned the effort to secure the signatures of the others as a result. The report of Dr. Platnick was not amended or withdrawn in consequence. It formed part of the basis for the insurance company's determination to deny the claim and was submitted as supporting evidence justifying that decision in the claims process before FSCO.

Bruff-Murphy v Gunawardena, 2016 ONSC 7 (CanLII), <http://canlii.ca/t/gmr5x-see-para-53-125>

<http://www.fairassociation.ca/wp-content/uploads/2016/01/Bail-Monte-Psychiatrist.pdf>

[78] Subsequent to its ruling, the court noted that Dr. Bail's report cites terms of engagement different than those communicated to him by legal counsel. Dr. Bail's report states he was engaged "to provide his psychiatric opinion in relation to the issue of damages." Damages are normally a focus of legal counsel, not a psychiatrist.

[79] Dr. Bail did not have the authority to re-write his terms of engagement. He testified he has conducted 5,500 IME during his career. Dr. Bail was very experienced in IME engagements.

[84] The credibility of Dr. Bail's version of what the plaintiff told him regarding her pre-MVA history is impaired in several ways by his other conduct, reporting and testimony in this case.

[108] Dr. Bail was making up evidence as he testified to support his conclusions adverse to the plaintiff.

[122] Dr. Bail was not a credible witness. He failed to honor his obligation and written undertaking to be fair, objective and non-partisan pursuant to R. 4.1.01. He did not meet the requirements under R. 53.03. The vast majority of his report and testimony in chief is not of a psychiatric nature but was presented under the guise of expert medical testimony and the common initial presumption that a member of the medical profession will be objective and tell the truth.

Mamado v Fridson, 2016 ONSC 4080 (CanLII), <http://canlii.ca/t/g6dt> <http://www.fairassociation.ca/wp-content/uploads/2016/12/Soric-Rajka-Physiatrist.pdf>

- Dr. Soric misread Ms. Mamado's pre-accident medical history. She was convinced that in May 2010 Dr. Peck had noted that the plaintiff had "intractable" back pain before the accident, when in fact the note read "intermittent". Dr. Soric conceded this error most grudgingly, and then insisted the error was irrelevant to her conclusion despite having previously emphasized it in her testimony;
- She had no recollection of how much time she spent reviewing Ms. Mamado's brief and preparing her report;
- Several of the tests she claimed to have performed were not documented in her report;
- Dr. Soric appeared indignant when it was revealed that out of her income last year, which was in the range of \$450,000 - \$470,000, the majority came from assessments for defence lawyers and insurance companies. (She has never testified on behalf of a plaintiff, except on one occasion when the plaintiff also happened to be her patient). Incredibly, she is of the view that she can be seen as entirely neutral no matter to whom she owes much of her livelihood.

Waldock and State Farm 2015-11-16, Arbitration FSCO 4689 <https://www5.fSCO.gov.on.ca/AD/4689> <http://www.fairassociation.ca/wp-content/uploads/2016/12/Cashman-Frank-Emil-Psychiatrist.pdf>

Upon considering that State Farm refused to accept Mr. Waldock's application for determination of a catastrophic impairment by relying on Dr. Cashman's report, which failed to follow the accepted guidelines to determine whether a person is catastrophically impaired; and, considering that State Farm had ample evidence that Mr. Waldock was very seriously injured and partially incapacitated as a result of the accident, I find that State Farm must be considered responsible for unreasonably withholding or delaying payments to Mr. Waldock, pursuant to the Act.

Other examples of poor quality or biased IMEs at : <http://www.fairassociation.ca/the-independent-medical-examination-imeie/> and <http://www.fairassociation.ca/ime-providers-adverse-comments/>

Petition for a Public Inquiry 2016

<http://bit.ly/1UCMUn2> and <http://bit.ly/1RVIJ7P>

- The failure of Ontario's courts and judges to ensure that medical expert witnesses are in compliance with the Rules of Civil Procedure. Too many experts act as hired guns for insurers.
- The overuse and abuse of our courts by Ontario's auto insurers to delay payments to legitimate claimants. Currently about half of all claims are initially denied by auto insurers.
- The improper and wasteful expenditure by insurers of hundreds of millions of insurance premium dollars on medical reports to fight their own clients' legitimate claims.
- The role of Ontario's regulatory colleges in failing to meet their obligations to the public through the lax application of standards.
- The cost to the Ontario taxpayers for financial and medical support for MVA victims whose claims have been fraudulently denied by Ontario's insurers who commission poor quality or partisan medico-legal reports.

<http://www.fairassociation.ca/wp-content/uploads/2016/06/Inquiry-into-Medical-Evidence-petition.pdf> and <http://www.fairassociation.ca/>