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80 College Street
Toronto, Ontario M5G 2E2

May 1, 2017

Re: Uninsured Services: Billing and Block Fees draft policy
Sent by Email: uninsuredservices@cpso.on.ca

Thank you for the opportunity to input on this consultation.

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.

We are concerned that the draft policy does not reflect the concerns of Ontario's car accident victims who are adversely affected by uninsured billing fees during the course of a car accident claim.

The costs of insurer medical examinations and cancellation fees come out of the recovery resource limits of auto insurance coverage in Ontario. Consumers pay for their policy and their insurer uses the promised 'coverage' dollars to pay for often very poor quality medical opinions and costs of canceled appointments with an Insurer Medical Examination (IME) provider.

As you may be aware there have been numerous media stories in the past several months in respect to the quality and trustworthiness of the third party medical opinion vendors in Ontario. There have also been recent decisions that recount the high cost of cancelled IMEs and recent HCAI data shows that the average cost of a cancelled IME appointment is between \$861 and \$1020 in 2016. None of the fees described on the OMA Uninsured Services Reference List are in line with what we are seeing in the real world.

What we are seeing is some very poor quality medical opinions at a very high price being paid for by Ontario's car accident victims who have no say on how their recovery benefits are being used to line the pockets of insurer doctors. Treating physicians are compensated with far fewer dollars to clean up the harm done to their patients with their own much more reasonably priced medical reports. As you can see from some of the links below, some physicians are becoming very wealthy by overcharging for medical reports that are without value and when MVA victims cancel assessments with these same IME providers, they are again being overcharged.

There needs to be improved oversight and much more explicit regulation to address this small segment of doctors in Ontario who cause harm and are charging excessive fees while doing so.

Thank you again for the opportunity to express our concerns about a problem at CPSO that is harming the reputation of all doctors, including those who do their very best to assist Ontario's injured auto accident victims.

Sincerely,

Rhona DesRoches
FAIR, Board Chair

2016 – Ontario insurers paid out \$861 - \$1020 per canceled medical appointment – see page 74
<http://assets.ibc.ca/Documents/Auto%20Insurance/facts/HADB-standard-report-2016H2.pdf>

Kushnir v Macari, 2017 ONSC 307 (CanLII), <<http://canlii.ca/t/gx9g6>

[21] The defendant then cancelled the examination with Dr. Ford and re-scheduled it for February 27, 2017 to allow time for this motion to be brought. On November 28, 2016 the defendant received an invoice for late cancellation fees of \$3,107.50 inclusive of HST from Dr. Ford. The defendant also cancelled the appointment with Dr. Young and re-scheduled it for April 18, 2017. No late cancellation fees were payable as a result of the cancellation with Dr. Young.

[43] I find the cancellation fee to be excessive. The amount of \$2,750.00 plus HST is what many orthopedic medical experts charge for their complete assessment including completion of their report. A reasonable cancellation fee I find would be \$1,375.00 plus HST or one-half the amount charged. In all the circumstances of this case, I assess the plaintiff's contribution to the cancellation fee at one half or \$687.50 plus HST of \$89.38 for a total of \$776.88. The plaintiff shall pay to the defendant the sum of \$776.88 for her share of the cancellation fee of Dr. Ford within 15 business days.

Francis v Leo A. Seydel Limited, 2015 ONSC 5507 (CanLII), <<http://canlii.ca/t/glcby>

(l) February 19, 2009 – The previously adjourned Third Dismissal Motion (for breach of Master Linton's order) was heard by me. The plaintiff was self represented. I dismissed the motion, but since there was no motion to vary the order of Master Linton and no affidavit evidence from the plaintiff, I ordered that the plaintiff comply with Master Linton's order and attend defence medical examinations with Drs. Hershberg and Cameron on 30 days notice. I ordered the plaintiff to pay the cancellation fees of Dr. Cameron (\$300) and Dr. Hershberg (\$3,150) within 120 days plus costs of the motion fixed at \$300 within 60 days.

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

Hired by the insurance company she was suing, the psychiatrist spent an hour and a quarter with the Ottawa-area woman — the kind of work that earned Bail as much as \$77,000 a month — and concluded Bruff-McArthur was essentially faking it.
<http://news.nationalpost.com/news/hired-gun-in-a-lab-coat-how-medical-experts-help-car-insurers-fight-accident-claims?lsa=2a71-139d>

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

[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/gs6dt>

- 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>

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.