



579A Lakeshore Road E. PO Box 39522, Mississauga, ON L5G 4S6

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

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Submission on Third Party Reports and Medical Experts: Reports and Testimony

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 appreciate the opportunity to provide input on these very important issues that affect Ontario's vulnerable and often seriously injured patients. We take note that the CPSO has taken a more pro-active role in soliciting opinions for this review and we applaud that effort.

We will be addressing both policy issues as a whole. For MVA survivors, the Third Party Medical Reports authored by Ontario's Medical Experts are central to their claims for recovery resources and are routinely submitted as 'evidence' at hearings whether live testimony is heard or not.

More importantly these Expert reports are the 'evidence' insurers rely on to decide access to benefits during a claim and long before any hearing takes place. It's important that the College understand the true import of these Medical Expert Reports because the statement *"Physicians are also **advised** to convey that the final outcome of the legal proceeding is not determined by them, but rather by the adjudicative body involved in the legal proceeding"* is a misinterpretation of the real use of the Third Party Reports. Only a small amount of these Reports ever see the light of day in a court hearing. Their use is far more immediate and it is the basis for the denial of benefits that eventually leads to a court hearing where it may or may not be used. Suggesting that any Report discrepancies will be worked out in court does not take into account that it often takes many years for these patients to get to court to try to get the treatments they need and fails to address that the Reports become a permanent part of a medical file that can affect future care.

Ontario's Third Party medical opinion vendors are the very well paid gatekeepers to recovery resources for some of Ontario's most vulnerable injured patients. It is not unusual for these vendors to oppose treatments recommended by treating physicians or other rehabilitation providers only to be called out for their poor work product many years later in a court by a judge who ends up doing what the College ought to have done long before - quality control. Odds are a Third Party Report will be built on by other Expert opinion vendors to bolster other reasons to deny or minimize injuries during the course of a claim.

Ontario's courts are bottlenecked with claimants whose files are loaded with poor quality, unqualified or just plain biased medical information. There's no shortage of statements from Ontario's judges about the quality of the Third Party Reports and Expert testimony in relation to your members – isn't it about time you, as Regulator, took an interest in that record?

In the 2018/19 year the LAT received over 13,000 applications from victims for recovery resources they'd been denied access to based on your member's Third Party Expert Reports. These statistics paint a picture of a broken system that is so bogged down with denials that it has resulted in obscenely high numbers of MVA survivors ending up on welfare and ODSP. Auto insurance is not a closed system so when insurers dump their customers using bogus or biased medical information it falls to the taxpayers to pick up the costs.

When the Regulator splits hairs with *“When ‘advised’ is used, it indicates that physicians can use reasonable discretion when applying this expectation to practice”* it’s an indicator that the College is prepared to trust these vendors of Expert medical opinions to do the right thing. Otherwise the word ‘must’ would be used to articulate the College’s expectations wouldn’t it? CPSO is the quality control – it begins and ends with your organization so why abdicate that as Regulator when we live in times where every healthcare dollar counts and Ontario’s injured patients are being denied the care they need?

It’s very difficult for the public to understand how the Regulator has taken so few steps to protect some of the most vulnerable patients in the province. Some of these patients are severely brain injured so the lack of regulatory oversight plays out in a very negative way for those individuals. Perhaps it is as difficult for the College to understand the deliberate harm done to patients by this particular sub-group of practitioners as it is for the accident victims and the public who watch these abuses play out in a very destructive way in their lives.

The College openly acknowledges that there are no Third Party Report templates and seems to be relying on outside organizations with plenty of self-interest to do right by Ontario’s patients. This is a failure to protect patients from harm and to identify the ‘hired guns’ whose poor quality reports already litter the Ontario justice system. These are the same members who act with impunity when boundaries are described as ‘advisories’ which is the same as saying do what you think is best. Not best for the patient, just whatever you, the IME provider, thinks is ok. One would think that given the scathing reviews of some of the Third Party vendors in Ontario court decisions that the Regulator would have already taken action to better define the parameters. Perhaps it is because these vendors are sheltered from accountability and complaints by the taxpayer subsidized Canadian Medical Protective Association (CMPA) that they feel untouchable but it should not be the role of the College of Physicians and Surgeons to protect member interests by sacrificing patient safety and recovery.

Third Party Reports or IMEs are commissioned as a basis for deciding access to recovery/rehabilitation resources and the Third Party medical opinion is the lynch-pin of any access to resources promised by the insurer. So the reports are incredibly important to Ontario’s accident victims. And with no clear message from the Regulator about what those reports should look like it has accomplished exactly what insurers’ desire. A system in chaos with our courts awash with shoddy and useless medical opinion evidence and bogged down with tens of thousands of Ontario patients waiting for a hearing so they can get the help they need for recovery.

Surely this mis-understanding about the importance of the Third Party Reports is not the intent. Surely the lack of oversight doesn’t mean that the College of Physicians and Surgeons is knowingly participating in harming some of the most vulnerable patients in the province so some members can profit. Surely the self-interest of a small subset of doctors shouldn’t be able to erode public confidence in the Regulator in this fashion or more importantly the reputations of ALL of Ontario’s good and decent doctors who do their very best to assist their patients towards wellness.

There are many steps to take to create some protection for these Ontario patients. It can start with providing ‘duty of care’. While there is no treating relationship, there should always be a duty not to harm. It’s a basic understanding that the public has toward the medical profession and it is they who have to deal with the negative impact of any institutional failure to protect them from your members at a time when their focus should be on recovery.

A common complaint from our membership is about having someone with them during an examination. Denying patients this basic right just because they are in litigation is undermining public confidence in the self-regulation of all of Ontario’s doctors. This is especially true of those who are cognitively impaired and young children who ought not to be left alone with an Expert who has no duty of care and whose obligation is solely to the insurer who hired them. CPSO should not blindly believe that all of their members are fine upstanding citizens who can be trusted to do the right thing. It’s endangering some very vulnerable people. Ontario’s court decisions have information available that a Regulator ought to be paying attention to and we have contacted you about these issues in the past without even an acknowledgement of how serious the situation has become. Many individuals would like to

videotape their IME as they no longer trust Ontario's Experts – this is a way to eliminate some of the ill-will that exists in regards to these insurer assessors and the feeling is that if they are doing nothing wrong, then what is the problem? MVA claimants who bring escorts are even denied having their supporter sitting outside the examining room while the assessor often has their staff post themselves with-in earshot to be witness to the exam. Again this is one-sided to assist the assessor and not the patient.

It is common practice post examination that medical examiners hand out coercive forms that MVA victims are pressured into signing before leaving the IME assessor's office with the question "was your assessor thorough and careful with obtaining your history and assessing your impairments?" presented 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 CPSO and this practice should be addressed by CPSO.

This is a good time to suggest that CPSO caution Third Party Experts about photocopying driver's licenses when asking injured car crash survivors to prove who they are at a medical exam. It is against PIPEDA recommendations and completely unnecessary.

In respect to a suspicious finding we cannot express in strong enough terms that the patient must be advised of any unexpected significant clinical finding or condition and their treating practitioner must also be advised. Anything less is unacceptable. This should be followed up in writing keeping in mind that the examinee may have limited understanding or comprehension at the time of the medical exam.

Given that it can take many years before a patient ends up in a courtroom it should be regulation that all doctors keep their notes and reasons for their opinions available for review. Much like math in a school setting the court will want to know how the opinion was formed. Quality of life for patients hangs in the balance of the Third Party medical opinion and when a doctor cannot substantiate how an opinion was reached there should be a sanction.

Ghost-writing reports and Consensus Reports continue to be a big issue for claimants as are Paper Reviews. No medical opinion should be part of the record when the patient has not even been seen as happens with paper reviews where cut-and-copy opinions are easily manipulated. There should be a record of who wrote what and when in any report including any office staff who are also known to adjust and/or edit Third Party medical opinions. This will continue to become a larger problem with multi-national assessment center growth in Ontario and as there becomes more opportunities to manipulate medical files with even more individuals handling the information. CPSO should further investigate this evolution of the Third Party medical field or landscape as it's clear that your members face difficulties in even controlling the use of their signatures and their opinions are known to be 'tweaked' in the editing process for consensus reports.

Thank you for the opportunity to express our concerns and we would be happy to meet with your office to further discuss these issues.