

Vitelli, Romeo – Psychologist

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NOT AUTHORIZED TO PROVIDE PSYCHOLOGICAL SERVICES IN ONTARIO

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FSRA imposes an administrative penalty and compliance order against Romeo Vitelli français



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Financial Services Regulatory Authority of Ontario

TORONTO, Nov. 22, 2023 /CNW/ - The Financial Services Regulatory Authority of Ontario (FSRA) has imposed a compliance order and administrative penalty of \$15,000 against **Romeo Vitelli** (Vitelli).

The compliance order prohibits Vitelli from conducting examinations, assessments, or treatment plans under the *Statutory Accident Benefits Schedule* for 18 months.

Vitelli, a registered psychologist, made misleading statements or representations to insurers to obtain payment for services provided to an insured. Vitelli submitted thirteen reports to insurers that contained quotations about symptoms that were not said by the claimants. He also submitted a treatment plan to an insurer that indicated a claimant was employed prior to an accident when the claimant was retired.

By making misleading statements or representations to insurers in order to obtain payment for goods or services provided to an insured, Vitelli contravened section 447(2)(a.3) of the Insurance Act and committed an unfair or deceptive practice under to section 1 of Ontario Regulation 7/00.

"FSRA is committed to protecting claimants and ensuring public confidence in the auto insurance sector", said Elissa Sinha, Director of Litigation and Enforcement at FSRA, "Healthcare service providers that treat car accident victims must ensure that the information they submit to insurers is accurate to maintain the integrity of the system.

FSRA issued this order as a result of a settlement with Vitelli.

<https://www.newswire.ca/news-releases/fsra-imposes-an-administrative-penalty-and-compliance-order-against-romeo-vitelli-881964288.html>

**NOTICE OF PROPOSAL TO IMPOSE COMPLIANCE ORDER AND
NOTICE OF PROPOSAL TO IMPOSE ADMINISTRATIVE PENALTY**

<https://teao.fsrao.ca:7179/api/enforcement/downloadDocument?Id=2653&lang=en>

TO: Romeo Vitelli

TAKE NOTICE THAT pursuant to section 441 of the Act, and by delegated authority from the Chief Executive Officer of the Financial Services Regulatory Authority of Ontario (the “Chief Executive Officer”), the Director, Litigation and Enforcement (the “Director”), is proposing to order Dr. Romeo Vitelli to immediately cease the following activities:

- a. **conducting examinations for the purposes of assisting an insurer to determine if an insured person is or continues to be entitled to a benefit under the Statutory Accident Benefits Schedule — Effective September 1, 2010 (“SABS”);**
- b. **conducting assessments or examinations in connection with a determination of catastrophic impairment under the SABS;**
- c. **preparing, completing, and signing Treatment and Assessment Plans (OCF-18) as a regulated health professional or health practitioner under the SABS; and**
- d. **directly or indirectly invoicing insurers for any of the services described in clauses a to c above, except for those services provided on or before the date the Order is issued.**

Attached hereto as Schedule “A” to this Notice of Proposal is the Chief Executive Officer’s Report.

TAKE NOTICE THAT pursuant to section 441.3 of the Act, and by delegated authority from the Chief Executive Officer, **the Director is proposing to impose an administrative penalty in the amount of \$50,000 on Dr. Romeo Vitelli for knowingly making false or misleading statements or representations to insurers**

in order to obtain payment for goods or services provided to an insured, contrary to section 447(2)(a.3) of the Act.

Attached hereto as Schedule “B” are the details of these contraventions and reasons for this proposal. This Notice of Proposal and Report include allegations that may be considered at a hearing.

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G. Dr. Vitelli’s Admissions

43. On February 8, 2021, FSRA investigators interviewed Dr. Vitelli. Dr. Vitelli admitted that he did not always read every single page of every document. Dr. Vitelli also admitted to “cutting and pasting” between documents where symptoms were similar. Dr. Vitelli reasoned that if a patient had the same symptoms, then he used “a shortcut” – the purported verbatim quotations did not matter.
44. Dr. Vitelli also stated that Novo Medical’s staff used his Treatment Plan for another claimant as a template, by switching out the names and pronouns where necessary. Dr. Vitelli did not confirm the content and accuracy of the Treatment Plans he completed.
45. Dr. Vitelli also stated that he signed some Treatment Plans without including the date. He advised that Novo Medical staff would later place the date, but that he had completed and reviewed the rest of the Treatment Plan.
46. When Dr. Vitelli was asked during the examination whether it is possible that because of his reliance on previous assessment reports for different claimants, that claimants genuinely needing psychotherapy may have been denied by the insurer. Dr. Vitelli admitted that he may have placed some claimants at risk, because the insurers did not accept his Treatment Plans as true and accurate.

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II. CONTRAVENTIONS OR FAILURES TO COMPLY WITH THE ACT

2. Section 447(2)(a.3) of the Act provides that it is an offence for a person to knowingly make a false or misleading statement or representation to an insurer in order to obtain payment for goods or services provided to an insured, whether or not the insured received the goods or services.
3. The Director is satisfied that Dr. Vitelli contravened section 447(2)(a.3) of the Act by:
 - a. including false or misleading quotes and information in psychological assessment reports; and

- b. not ensuring the accuracy and truth of information contained within SABS forms submitted to insurers.
- 4. Section 439 of the Act provides that no person shall engage in any unfair or deceptive act or practice.
- 5. Section 1 of Ontario Regulation 7/00 provides that the commission of any act prohibited under the Act or regulations constitutes an unfair or deceptive act or practice.
- 6. By contravening section 447(2)(a.3) of the Act, Dr. Vitelli committed acts or pursued courses of conduct that constitute unfair or deceptive acts or practices, or might reasonably be expected to result in a state of affairs that would constitute unfair or deceptive acts or practices, under the Act.

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- 12. In respect of the **first criterion**, the Director is satisfied that Dr. Vitelli intentionally or negligently included fabricated quotes and information in Psychological Evaluation Reports and Catastrophic Impairment Determination Psychological Evaluation Reports he submitted to insurers. Furthermore, Dr. Vitelli recklessly or negligently failed to ensure the accuracy and truth of information contained in the reports.
- 13. In respect of the **second criterion**, the Director is satisfied that Dr. Vitelli's contraventions or failures to comply with the Act caused actual harm and potential harm to others. Dr. Vitelli's inclusion of false, misleading, or inaccurate information in psychological assessment reports may have resulted in denials of treatment to claimants who required the services. Dr. Vitelli's reckless behaviour with respect to his practice puts his patients at risk of not receiving the full benefit of medical and rehabilitation benefits available to them under the SABS.
- 14. In respect of the **third criterion**, the Director is not aware of any efforts made to mitigate any loss or take other remedial action.
- 15. In respect of the **fourth criterion**, the Director is satisfied that Dr. Vitelli derived an economic benefit from his contraventions and failures to comply with the Act. Dr. Vitelli received payment in the amount of \$10,000 a month under his verbal agreement with Novo Medical.
- 16. In respect of the **fifth criterion**, the Director is not aware of any other contraventions or failures to comply with a requirement established under the Act or with any jurisdiction during the preceding five years.

Nassan v Intact Insurance Company, 2023 CanLII 1470 (ON LAT), <<https://canlii.ca/t/jtz0h>>

[36] Dr. Vitelli notes that the applicant seemed preoccupied with the pain he was experiencing as well as somatic symptoms like tinnitus in both ears, blurred vision, headaches, numbness in fingers and thighs. He walked with a cane and reported frustration with interrupted sleep, stress memory difficulties, anxiety and depressive feelings. Dr. Vitelli includes in his assessment report that the applicant is experiencing strong depressive, anxious, post-traumatic and somatic symptoms. The doctor concludes in his report that the “[the 2017 MVA] contributed to a cascading series of events that led [the applicant] to collapse his defences, develop a major depressive disorder, moderate and non-psychotic PTSD and somatic symptoms disorder with predominate pain”. Dr. Vitelli admits that he assumed that the applicants’ concentration problems displayed at the assessment were also a result of the subject MVA. He determined the MVA to be the cause of the applicant’s impairments because he believed the applicant was fully functioning and working prior to the MVA. Dr. Vitelli did not know the applicant had applied for ODSP before the MVA or did he review various medical records and the applicant’s reporting as to his physical and mental status associated with his application. Dr. Vitelli confirmed in testimony that he was not aware of important and relevant pre-accident history related to the applicant as they were not included in the applicant’s self-reporting. Dr. Vitelli also admits that he did not review any pre 2017 MVA records, so his findings were mostly based on the applicant’s self-reporting. The doctor was unaware that the applicant had in fact seen a psychiatrist in the past. He was unaware of Dr. Kitamura’s assessment and report, December 19, 2016, and his diagnosis of PTSD. He was unaware of Dr. Rod Day’s psychological reports from August 29, 2018, and January 29, 2019. In his own admission, Dr. Vitelli stated some historical details should have been considered in his assessment.

Duffy v Aviva General Insurance, 2022 CanLII 78788 (ON LAT), <<https://canlii.ca/t/jrpwj>>

[39] In terms of evidence, the respondent did not provide a rebuttal s. 44 report or reference any evidence to argue that psychological treatment was not warranted. The sole argument the respondent appeared to advance in questioning the treatment, was to assert that Dr. Vitelli, who had prepared the assessment report, has been disciplined by the College of Psychologists of Ontario for his lack of supervision in conducting assessments.

[40] Given that the respondent states in its submissions that it is agreeable to partially approving the OCF-18, subject to adjustment of the appropriate hourly rate, and that it has not led evidence to rebut the diagnoses of Dr. Vitelli, I infer that the respondent is not disputing the reasonableness and necessity of the OCF-18 for psychological services.

[41] However, even if the respondent did dispute the reasonableness and necessity of the psychological treatment, I find that the applicant has met his burden of proof in this regard. Dr. Vitelli's psychological report referenced objective diagnostic testing and conducted an interview with the applicant prior to making his diagnoses.

Abdullahi v Certas Direct Insurance Company, 2022 CanLII 6805 (ON LAT),
<<https://canlii.ca/t/jm6gg>>

[14] The applicant also relied upon a psychological pre-screen document to support his position that he sustained a psychological impairment from the accident. I place little weight on this document for the following reasons:

(i) The document is undated and not signed. It is also not clear who authored the document;

(ii) The document contains no information as to who made the provisional diagnoses of an adjustment disorder with anxiety and depression and specific phobia; and

(iii) The document contains information that is contradicted by other evidence before me. For example, the psychological pre-screen document states that the applicant was not able to return to work since the accident. In the May 24, 2017 In-home Occupational Therapy Insurer's Examination (IE) Assessment Report by Leslie Hisey, occupational therapist,^[6] however, the applicant reported that he was not gainfully employed at the time of the accident.^[7] Further, in the January 10, 2017 Initial Consultation – Data Sheet and Notes included in the Mackenzie Medical Rehabilitation Centre CNRs,^[8] it is noted that the applicant had not worked for 15 years prior to the accident. Additionally, the psychological pre-screen document stated that the applicant did not report experiencing any previous mental or emotional health problems, which is contrary to his diagnoses by Dr. Milad of anxiety and depression in May 2015 and of anxiety in May 2016.

[15] I also give little weight to the July 6, 2017 Psychological Consultation report by Dr. Vitelli^[9] in which the applicant is diagnosed with an adjustment disorder with mixed anxiety and depressed mood.^[10] Dr. Vitelli's report contained the same misinformation that the applicant was unable to return to work post-accident and that the applicant denied any psychiatric history before the accident, as was contained in the psychological pre-screen document.^[11] Dr. Vitelli also failed to review Dr. Milad's CNRs as part of the applicant's overall assessment and, therefore, made no comment on his diagnosis in light of the absence of psychological complaints in Dr. Milad's CNRs. Moreover, there is no discussion on how Dr. Vitelli arrived at the diagnosis of an adjustment disorder with mixed anxiety and depressed

mood in light of the applicant's score on the Beck Anxiety Inventory questionnaire, which Dr. Vitelli only noted as suggesting "a borderline range of reported anxiety symptoms."^[12]

[22] Additionally, the only evidence of functional limitations were the applicant's self-reports that were not supported by compelling medical evidence. For example, Dr. Vitelli's July 6, 2017 report noted that the applicant had difficulty doing household chores, undertaking many of his regular pre-accident activities, and was much less active post-accident.^[19] Unfortunately, there are no further details in Dr. Vitelli's report to support these reported limitations.

[23] The applicant's self-reports regarding his functionality were also contradictory at times. For example, the applicant reported to Hisey in the May 24, 2017 In-home Occupational Therapy IE Assessment Report that after the accident, he went from living with his aunt in Kitchener and moved in with his two sisters in York Region to have easy access to his family physician.^[20] In contrast, Dr. Vitelli's July 6, 2017 report noted that the applicant moved in with his "sister" so that she would be able to better support him.^[21] The applicant also reported to Hisey that prior to the accident, his aunt used to cook for him^[22] whereas he reported to Dr. Lori Feigelson, physiatrist, in the July 31, 2017 Physiatry Assessment IE Report that he would cook "all kinds of food."^[23] The applicant also reported to Dr. Feigelson that post-accident his sisters and his mother have taken over all of his cooking^[24] whereas he reported to Hisey that he prepares light meals for himself.^[25]

Gavrila v CUMIS General Insurance Company, 2022 CanLII 4537 (ON LAT),
<<https://canlii.ca/t/jm1t8>

[12] The respondent pointed out that the applicant advised Dr. Vitelli, psychologist, that the sessions were not beneficial. Given the concerns around Dr. Vitelli's report that I will discuss later, I have assigned less weight to this statement. As for Dr. Marchie's opinion, I am not persuaded that stretching and self-directed aerobic exercises would on their own resolve the applicant's conditions. She was undergoing a variety of treatment which are more intense compared to his suggestion.

[25] The applicant is seeking a psychological assessment in accordance with the OCF-18 dated October 17, 2018 and denied by the respondent on November 1, 2018. The applicant submitted that Dr. Romeo Vitelli's psychological assessment is reasonable and necessary to investigate the nature and extent of the Applicant's psychological impairments. The applicant submitted that the Disability Certificate ('OCF-3') notes "Sign/symptoms of emotional state, sleep disorders".

[26] The respondent submitted that the applicant unnecessarily and unreasonably incurred the psychological assessment just months after the section 44 assessments in December 2018.

[27] The applicant is relying on a report from Dr. Vitelli, psychologist, dated February 15, 2019. Dr. Vitelli opined:

Results of the current evaluation reveal moderate levels of depression and anxiety, but her somatization scores reflect the chronic pain concerns she reported during the interview. She denies suicidal or posttraumatic symptoms though her adjustment disorder symptoms are preventing her from engaging in the active lifestyle she had before the accident. While she minimizes other emotional issues, she is strongly pain-focused and views this as the primary barrier to her return to an active life.

[34] I am not persuaded by Dr. Vitelli's opinion. Other than the note regarding anxiety, I see no documented evidence of any psychological disorder, such as adjustment disorder, prior to the assessment by Dr. Vitelli in 2019. Moreover, the applicant advised Dr. Mangos that she had no recollection of consulting Dr. Vitelli for psychological screening secondary to the aforementioned OCF-18 Treatment and Assessment Plan dated October 17, 2018; nor did she express any significant desire or need for any psychological intervention.

[35] In fact, she reported to Dr. Mangos "I don't think I need to see a Psychologist for me [*sic*]." If the applicant did not recall seeing Dr. Vitelli, then it raises the question how Dr. Vitelli arrived at these conclusions. The applicant has not submitted any evidence to refute this fact. For these reasons, I am assigning less weight to Dr. Vitelli's opinion.

Frymus. v Aviva Insurance Canada, 2021 CanLII 111190 (ON LAT), <<https://canlii.ca/t/jjp11>

[38] In a Psychotherapy Progress Report dated July 19, 2017, Dr. Vitelli notes that the applicant "grew increasingly more motivated to attempt the relaxation techniques with increased practice and familiarity." This report is at odds with the applicant's remark to psychiatrist Dr. Jay Sethi, Insurer's Examiner, in October of 2017, that he found Dr. Vitelli's services unhelpful. I prefer the applicant's self-report as to the efficacy of the treatment over the assessment of Dr. Vitelli, the provider who would benefit from the delivery of further treatment to the applicant.

[39] I am prepared to accept the opinion of Dr. Hasan, the applicant's consulting psychiatrist, that he would benefit from continued counselling. There is no dispute that the

applicant sustained psychological impairments as a result of the accident. The applicant's comment to Dr. Sethi does not, in my view, show that all future psychological interventions would be unreasonable or unnecessary. Treatment with Dr. Vitelli may not have been helpful, but treatment with another provider or through another treatment modality might be.

[40] The applicant has made no submissions as to why \$3,341.87 of ongoing psychotherapy with Dr. Vitelli is reasonable and necessary. He has not specifically replied to the respondent's position that the disputed intervention is not reasonable or necessary because the applicant described Dr. Vitelli's services as unhelpful. Despite Dr. Sethi's recommendation for a mindfulness based chronic pain program or follow-up with a psychiatrist, the applicant has not submitted a treatment plan for such supports since being assessed by Dr. Sethi. Nor has he submitted any treatment plans for psychological services since Dr. Hasan made his recommendation for further counselling.

[41] The account activity summary from Novo Medical Services indicates the applicant obtained no further services after this plan was submitted. It appears, however, that the applicant obtained counselling elsewhere through his employee assistance program, because Dr. Hasan's August 23, 2018 clinical note mentions this. The applicant told Dr. Hasan that he had been attending counselling up until about eight months prior (approximately January of 2018), and that in addition to considering counselling with the service Dr. Hasan recommended, he would reach out to his "EAP" to have more sessions with his previous counsellor.

[42] I have been asked to determine the reasonableness and necessity of the specific treatment plans before me, not to make blanket findings about the reasonableness and necessity of future claims for medical benefits. On a balance of probabilities, I conclude that the proposal for an additional round of counselling with Dr. Vitelli is not a reasonable intervention given the limited success of past counselling with this provider. All of the evidence before me, except the records of Dr. Vitelli, the provider who would be delivering the disputed services, show that the applicant did not wish to continue under his care, and that alternate psychological supports would better meet his treatment needs.

Gera v Aviva General Insurance, 2021 CanLII 85094 (ON LAT), <<https://canlii.ca/t/jj187>>

[19] Dr. Moshiri's assessment and report are likely a more accurate reflection of the Applicant's medical condition because it included a review of Dr. Banjee's CNRs and used an interpreter. Dr. Vitelli's assessment and report included a review of only a psychological assessment pre-screen, the psychological test results, and a disability certificate dated January 7, 2017. Dr. Vitelli wrongly states that the Applicant was the driver of the vehicle involved in the accident and recommends driver desensitization, even though the Applicant does not drive.

There is no evidence to suggest that Dr. Shaul ever reviewed or cross-referenced the Applicant's answers in the clinical interview with any medical records. Further, the clinical interview in Dr. Shaul's assessment was conducted by a psychotherapist, not Dr. Shaul.

Pham v. Coseco Insurance, 2021 CanLII 43546 (ON LAT), <<https://canlii.ca/t/jg24w>>

[16] I also agree that Dr. Vitelli's report is inconsistent with the rest of the medical evidence and the applicant's self-reporting, as it is unclear what documentation he reviewed in arriving at his opinion. For instance, he states that the applicant's symptoms are "likely the most significant barriers to her inability to perform the essential tasks of her pre-accident employment" yet there is no dispute that she was working full-time at the time of the assessment, that she continues to do so and, in any case, the applicant is not claiming an income replacement benefit, which seems to be the test Dr. Vitelli refers to. Dr. Vitelli also opines that she suffers a complete inability to carry on her activities of daily living (or the same language as the non-earner benefit test under the *Schedule*), which is undermined by the applicant's own self-reporting in Dr. Peric-Todorovic's report as well as the s. 44 reports where she admits to essentially carrying out all of her pre-accident activities, including working, driving, housekeeping and self-care, as well as taking care of her ailing mother.

[17] While Dr. Vitelli concluded there was no neurological impairment, he diagnosed the applicant with specific phobia, situational type (driver/passenger) despite the fact that she has consistently driven at all times post-accident. This same inconsistency is present in Dr. Peric-Todorovic's diagnosis of "single (Isolated) phobia - vehicular anxiety" where the applicant resumed driving immediately post-accident and was commuting for 1-1.5 hours to and from work, travelling on highways and driving seven days per week. The applicant also reported to Dr. Hines that she has rarely travelled as a passenger in a vehicle but was fine when she did. I would not give effect to either of these diagnoses as there is no evidence in the file that the applicant avoids driving or riding as a passenger.

[18] I do note that the applicant's migraine headaches, dizziness and concentration issues appear consistently in the evidence. Indeed, Dr. Cadhit's notes capture the applicant's complaints about her memory lapses, her anxiety over her work, her treatment, her role in her family, *etc.* However, on the medical documentation before the Tribunal, it is unclear if these issues are accident or life and work-related and the applicant's submissions do not address how these impairments, if they are indeed accident-related, warrant removal from the MIG. The CT scan from January 25, 2018 was unremarkable. Dr. Vitelli found "no evidence that the applicant sustained more than a mild concussion" and did not offer a diagnosis on these impairments, despite noting the applicant's concerns. The Tribunal would have benefitted from a deeper analysis of these impairments. Accordingly, for these reasons, I find the applicant has not demonstrated that her accident-related impairments warrant removal from the MIG.

Ismail v. Aviva Insurance Canada, 2021 CanLII 28706 (ON LAT), <<https://canlii.ca/t/jf8mr>

[11] The applicant was not assessed by Dr. Vitelli, his psychologist, until two years post-accident. Dr. Vitelli noted the applicant's complaints of headaches, dizziness, nausea, light headedness, blurring of vision, sleep problems, cognitive issues, anxiety and emotional difficulties. Dr. Vitelli diagnosed moderate level of depression, anxiety, and somatization with severe level of posttraumatic stress, adjustment disorder with mixed anxiety and depressed mood and specific phobia situational type vehicular and recommended more treatment including driver desensitization.

[12] I give Dr. Vitelli's October 20, 2018 report no weight for the following reasons.

[13] Firstly, there is nothing in the records of the applicant's family physicians showing any significant complaints about the psychological symptoms the applicant described to Dr. Vitelli. There is no evidence that the applicant's family physicians or any other physician prescribed any medication or other treatment for psychological symptoms before the applicant saw Dr. Vitelli. There is no evidence that the applicant was referred to Dr. Vitelli by his family physicians.

[14] Secondly, Dr. Vitelli's diagnosis is made some two years post-accident without any significant prior medical evidence indicating the need for psychological assessment or treatment.

[15] Thirdly, although Dr. Vitelli stated he considers the October 26, 2016 disability certificate by the applicant's chiropractor Dr. Watkins, as noted above, Dr. Watkins does not list any suspected psychological injury arising from the accident and indicates the anticipated duration of the disability is 9 to 12 weeks which expired long before Dr. Vitelli assessed the applicant.

[16] The applicant's complaints to Dr. Vitelli, which led in part to Dr. Vitelli's diagnosis, do not appear to be the result of any miscommunication. Although Dr. Vitelli notes that English is not the applicant's first language, in reply submissions the applicant confirmed that he has no issues conversing in English with his medical doctors.

Moran v. Aviva General Insurance, 2021 CanLII 21433 (ON LAT), <<https://canlii.ca/t/jdtbj>

[52] I find that Mr. Moran failed to prove the reasonableness and necessity of this treatment plan on a balance of probabilities. Ms. Gladshyeyn's comments in the OCF-18 rely upon Dr. Vitelli's September 4, 2018 Psychological Consultation Report.^[30] Dr. Vitelli's report, however, contains a glaring error in that he indicated that Mr. Moran was unable to continue work after the first accident.^[31] Given that Mr. Moran consistently reported that he returned to work the day after his first accident to his position as a *driver* at his regular hours and duties, I do not accept Dr. Vitelli's recommendation for a driving re-integration assessment in his report as he failed to provide any analysis of his recommendation with Mr. Moran's return to work as a driver. Dr. Vitelli also failed to mention the second accident in his report despite his assessment of Mr. Moran taking place only eight days after the second accident on July 28, 2018.

Henry v Aviva General Insurance, 2020 CanLII 94794 (ON LAT), <<https://canlii.ca/t/jbwx6>>

[29] I do not accept the diagnoses of Dr. Vitelli. They are not corroborated in the clinical notes and records of L.H.'s family physician, which are notably silent on psychological complaints warranting psychiatric treatment or referrals. His conclusion that L.H. is "substantially unable to perform her usual pre-accident household, employment and home maintenance activities" is unsubstantiated. L.H. continued to function at a high level despite her acknowledged difficulties with diminished sleep, heightened irritability, anger and stress.

Salmon v Certas Home and Auto Insurance Company, 2020 CanLII 87941 (ON LAT), <<https://canlii.ca/t/jblq5>>

[19] M.S. relies on the July 28, 2018 Psychological Evaluation Report of Dr. Romeo Vitelli, Psychologist, who diagnosed her with Adjustment Disorder with Mixed Anxiety and Depressed Mood and Specific Phobia, Situational Type: Vehicular. Dr. Vitelli also noted that she "is reporting some posttraumatic symptoms" and concluded that she has "a moderate level of posttraumatic stress".^[5] Dr. Vitelli opined that M.S.'s prognosis is guarded given the severity of her impairments, ongoing cognitive difficulties and chronicity of symptoms.

[20] Dr. Vitelli's conclusions are inconsistent with the clinical observations noted in his report. From a psychometric perspective, M.S. exhibited mild levels of anxiety on the Back Anxiety Inventory and normal levels of depressive symptomatology on the Beck Depression Inventory. Her scores on the depression, anxiety and somatization scales of the Pain Patient Profile were average.

[21] According to Dr. Vitelli, M.S.'s self-reported psychological symptoms included: a reduction in sleep by roughly one hour each night; occasionally losing track of thoughts and having trouble organizing them; being easily distracted; being "more irritated" when in pain; having difficulty with laundry; and going to the mall and the movies less often.[\[6\]](#)

[22] Overall, however, M.S.'s symptoms had not significantly altered her daily routines. Nowhere in his report does Dr. Vitelli describe extreme symptomatology or significant functional impairments. He does not address the fact that she returned to work within a week of the accident, is independent in self-care, can perform almost all housekeeping duties and is socially active. His conclusion that M.S. was unable to perform her activities of daily life or handle daily responsibilities is not specifically supported.

[26] I prefer Dr. Zielinski's analysis over Dr. Vitelli's. The conclusion that M.S. did not suffer from a Major Depressive Disorder and could not meet the criteria for a diagnosis of Adjustment Disorder is consistent with the results of both assessors' psychometric testing and with M.S.'s self-reports as to the impact of her complaints on her psychological and social functioning.

[27] Certas submits that Dr. Vitelli's report lists his name as the supervising "Examiner" and Stav Balanovsky, a social worker, as the "Assessor". Certas submits that this raises questions as to who interviewed M.S. and provided an opinion, because there is no evidence that Ms. Balanovski is qualified to administer psychometric tests or provide a psychological opinion.

[28] I do not need to deal with the issue of whether Ms. Balanovski is qualified as a psychological expert. Regardless of who authored it, I give limited weight to Dr. Vitelli's report because it does not link the objective evidence and subjective reports to its diagnostic conclusions. The conclusions related to the degree of impairment resulting from M.S.'s accident-related injuries are not corroborated by other evidence.

[29] M.S. also relies on the December 4, 2019 report of Nazila Isgandarova, Social Worker, which lists psychological impairments and recommends "emotional support", 12 counselling sessions with a social worker, aqua therapy and supervised personal training.[\[11\]](#) This report has little evidentiary weight. Reema Malek, Social Worker, is also identified as an author, but neither Ms. Isgandarova nor Ms. Malek possesses the qualifications to assess and diagnose psychological injuries and impairments.

[30] There are glaring errors in the Isgandarova-Malek report. In discussing the Holmes-Rahe Life Stress Inventory, the authors clearly refer to another (male patient), whose restaurant had closed. There are other indicators that portions of the report had been reproduced from other sources: the list of complaints is almost word-for-word as it appears in Dr. Vitelli's report, but the source is not specifically cited. The recommendations are not justified as rationally

connected to M.S.'s symptoms, and some fall outside the scope of the authors' professional practice.

S.M. v Certas Home and Auto Insurance Company, 2020 CanLII 47268 (ON LAT),
<<https://canlii.ca/t/j8nw7>>

[8] I agree with Certas. On review of the clinical notes, while it is clear that S.M. has been struggling with depression and emotional issues for some time, I find that she has not demonstrated how these symptoms were exacerbated by what was, by all accounts, a very minor accident. Further, despite Dr. Vitelli's diagnosis, I find she has not provided compelling evidence from a medical practitioner explaining why her depression and anxiety prevent maximal medical recovery if she is kept in the MIG. Having experienced psychological or emotional issues in the past is not sufficient for removal from the MIG in the present, especially so where there is no compelling evidence that these issues have been exacerbated as a result of the accident.

[9] Indeed, it is difficult to reconcile S.M.'s position (and Dr. Vitelli's opinion) that she requires treatment beyond the MIG when she has not yet even exhausted the \$3,500 in funding that is available to her or where she has not incurred any of the plan. In the three notes from her sessions with Salvation Army from two years post-accident, there is a single mention of how S.M. feels the accident "still impacts her daily living" with no further details. Instead, the notes reflect concerns over her previous partner, past abuse and an ODSP application. On the evidence, while it is apparent that S.M. is experiencing many stressors in her home and personal life that are causing her anxiety, with great respect, there is limited evidence that these stressors came as a result of her accident-related impairments or were exacerbated by same.

[10] I prefer the psychological report prepared by Dr. Mandel over the report prepared by Dr. Vitelli as it is more proportional to the bulk of the evidence. While I am alive to Dr. Vitelli's diagnosis of Adjustment Disorder with Mixed Anxiety and Depressed Mood, other than an interview based on S.M.'s subjective complaints, it is unclear what other medical documents, if any, were reviewed by Dr. Vitelli. In contrast, the list of medical documentation reviewed by Dr. Mandel is considerable and pre-dates the accident, which, in my view, offered Dr. Mandel a more complete picture of S.M.'s pre-accident psychological health and how it is less likely that it was attributable to the accident than it was to several other factors. On this basis, I question how Dr. Vitelli was able to definitively trace S.M.'s psychological symptoms to the accident and not to the myriad other factors when there is ample evidence that she has struggled with depression for many years and is facing many other stressors. The other stressors include: her mother's failing health, her living situation, her personal life, her familial relationships with her brother and daughter, her finances, *etc.* On review of the clinical notes, there are limited references to the accident and no reporting from S.M. that her psychological and emotional stressors were caused by same.

[11] On the evidence, there is also limited indication that S.M.'s alleged impairments are affecting her daily function or recovery, which is the test she must meet to escape the MIG. The clinical notes from Dr. Huang reference her personal and familial struggles but do not indicate that these symptoms prevent her from recovering or that treatment within the MIG prevents her from achieving her maximal medical recovery. Dr. Vitelli's answers to the specific questions at the end of his report are also, in my view, so vague that they are unreliable. He states that S.M.'s psychological diagnosis "appears to exceed the Minor Injury Guideline" without further explanation. He recommends Driver Desensitization treatment even though S.M. reports no issues with driving. He also recommends 10 to 12 sessions of cognitive behavioural therapy because it "may be beneficial in helping her regain her former level of functioning" but does not articulate what aspects of her function he is referring to or how it would assist her. The body of the report references significant problems adjusting to pain issues and an "altered lifestyle" but does not identify what was altered nor does he attribute this alteration to the accident. Dr. Vitelli also recommends a pain management program, but where S.M. reported her pain as a 1/10 to Dr. Mandel, I am not prepared to accept that this subjective pain complaint has a psychological component necessitating treatment.

[12] While S.M. relies on Dr. Vitelli's opinion that she should be removed from the MIG, the Tribunal would have benefitted greatly from substantive submissions on this issue speaking to why removal from the MIG was required to treat her specific impairments and how her lifestyle has been altered as a result of the psychological impairments arising from the accident, as alleged. All of this is to say that I do not find, on the evidence and in the absence of direct submissions, that S.M.'s psychological impairments warrant removal from the MIG or that her pre-existing issues were exacerbated by same, as she has not provided compelling evidence to meet her burden of proof.

Psychological Treatment

[13] S.M. also claims entitlement to payment for a treatment plan proposing \$3,849.09 in psychological treatment for cognitive behavioural therapy, planning, preparation, materials and documentation. As the MIG limits have seemingly not been exhausted, I find, in any event, that the proposed treatment is not reasonable and necessary.

[14] On review, I find many of the items identified in the OCF-18 cannot be considered to be reasonable and necessary. I find the proposed cost to be somewhat gratuitous considering S.M. has only exhausted half of her MIG funding. Dr. Vitelli's notes do not indicate why \$948.05 is reasonable and necessary for the non-treatment and non-OCF-18 expenses. Indeed, I query what the difference between "planning, service" and "preparation, service" are and why these items are listed separately in the OCF-18 with separate costs. Further, there is no explanation for the necessity of \$200 for educational material or what exactly that is, aside from the notation "treatment manual". With regards to the actual treatment, it is unclear why 12 one and a half hour sessions are so needed instead of 10 or 12 one-hour sessions when the report states that S.M. "may benefit from 10-12 sessions". The goals of the plan are to return S.M. to

her pre-accident levels of psychological functioning, but again, it is unclear what Dr. Vitelli thinks that entails since there were no external records that he reviewed.

A.M.v Wawanesa Mutual, 2020 CanLII 45490 (ON LAT), <<https://canlii.ca/t/j8lm9>>

[26] A.M. submitted two psychological reports – one dated August 7, 2018 by Dr. Judith Pilowsky, psychologist,[\[21\]](#) and a second dated September 23, 2018 by Dr. Romeo Vitelli, psychologist.[\[22\]](#) In her report, Dr. Pilowsky diagnoses A.M. with posttraumatic stress disorder and persistent moderate somatic symptom disorder with predominant pain with secondary depression as a *direct* result of the accident.[\[23\]](#) Dr. Vitelli diagnoses A.M. with: adjustment disorder; persistent somatoform pain disorder; major depressive disorder; and posttraumatic stress disorder.[\[24\]](#) I place very little weight on both of these reports because although both psychologists note that they reviewed medical documents as part of their assessment of A.M. that diagnosed A.M. with major depressive disorder/episode pre-accident, neither report provides any analysis as to A.M.’s pre-existing psychological condition in relation to her post-accident psychological symptoms let alone even mention the pre-accident diagnoses. Neither Dr. Pilowsky or Dr. Vitelli were called as witnesses to testify at the hearing to provide any rationale or explanation for this very apparent oversight. Additionally, there was no indication in Dr. Vitelli’s report if an interpreter was present for A.M.’s assessment.

[38] A.M. relies upon the Catastrophic Impairment Determination Psychological Evaluation Report dated September 23, 2018 by Dr. Vitelli. Dr. Vitelli found that A.M. suffered a class 4 “marked” impairment in the domains of social functioning, concentration, persistence and pace and adaptation. Dr. Vitelli also assigned a class 3 “moderate” impairment in the ADL domain. Dr. Vitelli did not assign a WPI percentage and, rather, only provided that A.M.’s impairment rating is consistent with 30-49% WPI according to Table 3 in Chapter 4.

[39] A.M. is assigned the WPI rating of 49% for Mental or Behavioural Disorders by Dr. Naguib Milad, physician, in his Catastrophic Impairment Analysis report dated September 28, 2018.[\[31\]](#) In this report, Dr. Milad stated:

Based on Dr. Romeo Vitelli’s Catastrophic Psychological Evaluation Report dated September 23, 2018, the claimant’s impairment due to mental and behavioural disorders with respect to the reported impairments and following the AMA Guides procedure, the whole person impairment rating (WPI) is in the 30-49 percent range. As such the score of 49% will be used to represent Chapter 14.[\[32\]](#)

[40] I place little weight on the 49% WPI rating for Mental or Behavioural Disorders as assigned by Dr. Milad and relied upon by A.M. for several reasons. First, Dr. Milad failed to provide any analysis or explanation for his assignment of a 49% WPI in his September 28, 2018 report especially when he assigned the highest percentage in the severe range when Dr. Vitelli only assigned three class 4 “marked” impairments out of the four domains.

[41] Dr. Milad was questioned about this lack of analysis in assigning the 49% WPI in his report during cross-examination at the hearing. Dr. Milad stated that he assigned 49% WPI because A.M. was fragile due to the loss of her child. Dr. Milad was evasive when questioned where this information was in his report and responded that because A.M. was pregnant at the time of the accident and had lost a previous baby that such factors *could* cause more phobia, more psychological problems and more issues. As such, Dr. Milad assigned A.M. the maximum WPI percentage in the range provided by Dr. Vitelli despite Dr. Milad testifying that his usual practice was to assign a percentage in the middle of a provided range.

[44] Third, I do not place weight on the documents relied upon by Dr. Milad in assigning A.M. a 49% WPI for Mental or Behavioural Disorders. Dr. Milad testified that he relied upon Dr. Vitelli’s September 23, 2018 report and also the September 12, 2018 Occupational Therapy Catastrophic Impairment Determination Assessment Report by Mr. Julian Amchislavsky, occupational therapist,[\[35\]](#) in making his assignment for Mental or Behavioural Disorders.

[45] In addition to the reasons discussed above in paragraph [26], I place little weight on Dr. Vitelli’s September 23, 2018 report because his assignment of A.M.’s level of impairments in the four domains is unreliable. Dr. Vitelli’s report was heavily dependent on Mr. Amchislavsky’s report, often cutting and pasting from it. Mr. Amchislavsky’s report is problematic and I place little weight on it as well because there was no indication if an interpreter was present for his assessment of A.M. and it contained glaring errors. For example, Mr. Amchislavsky reported that A.M. was responsible for all gardening tasks prior to the accident and that her husband was responsible for lawn care and snow removal prior to and after the accident despite reporting that his assessment took place at A.M.’s place of residence, which was an apartment on the 15th floor of a high rise building.[\[36\]](#) There was no evidence to support Mr. Amchislavsky’s report that there was a garden for A.M. to tend to pre-accident and it is absurd that A.M.’s husband would be responsible for lawn care and snow removal pre- and post-accident at their residence. Given these blatant errors, it causes me concerns regarding other observations made by Mr. Amchislavsky contained in his report.

[69] My rationale for providing little to no weight to Dr. Vitelli’s September 23, 2018 report is set out above in paragraphs [26] and [45]. However, it is worth noting that Dr. Vitelli assigned A.M. a class 3 “moderate” impairment in the ADL domain and only refers to Mr. Amchislavsky’s report in the areas of laundry, washing dishes/kitchen clean up, surface cleaning, bathroom cleaning, grocery shopping, bed making/changing and meal preparation. Respectfully, the ADL domain addresses far more activities than simply A.M.’s ability to clean.

[75] Dr. Vitelli assigned A.M. a class 4 “marked” impairment in the SF domain after reporting that A.M.’s social life had been affected such that she could not partake in all of her social activities that she used to enjoy. Dr. Vitelli provided no further information on what A.M.’s pre-accident social activities were. Dr. Vitelli further reported that A.M. stayed home most of the time at the time of his report and was not motivated to leave her home as leaving made her nervous and uncomfortable.[47]

[83] Dr. Vitelli assigned A.M. a class 4 “marked” impairment in the CPP domain. Dr. Vitelli reported that since her accident, A.M.’s cognitive functioning has deteriorated substantially which he noted was, “a consensus shared by other professionals who have assessed her in the past.”[50] Dr. Vitelli provides no details as to who these professionals were, then proceeds to “cut and paste” Mr. Amchislavsky’s September 12, 2018 report and assigns his impairment rating with no further analysis or discussion.

[90] Dr. Vitelli assigned A.M. a class 4 “marked” impairment in the AD domain.[54] Again Dr. Vitelli relied heavily upon Mr. Amchislavsky’s report as Dr. Vitelli’s only comments under this domain were that A.M. was not working outside of the home and discussed A.M.’s ongoing difficulties causing her to withdraw socially with no pre-accident comparison.

[160] I find that A.M. has failed to prove on a balance of probabilities that the occupational therapy situational assessment was reasonable and necessary. Mr. Amchislavsky assigned community tasks to A.M. as part of his occupational therapy assessment. No evidence was presented at the hearing that Dr. Vitelli required a separate occupational therapy situational assessment to arrive at his impairment designations. Also absent from Dr. Vitelli’s report was any discussion or comments about any gaps or further information that he required from an occupational therapy situational assessment to provide a further analysis or to confirm his impairment ratings of A.M.

A.M. v. Certas Home and Auto Insurance Company, 2020 CanLII 40347 (ON LAT),
<<https://canlii.ca/t/j8991>>

[20] Dr. Vitelli did a psychological assessment in the disputed treatment plan submitted November 21, 2018. Dr. Vitelli appears to know little about the applicant. He marks as “unknown” whether her impairments affect her ability to carry out tasks of her employment. He states that the applicant lost consciousness in the accident although there is no corroboration in any other medical record that this happened. Dr. Vitelli did not complete a full psychological assessment of the applicant. He states that “Barriers to recovery will be identified after a full Psychological Assessment”. He describes the purpose of his assessment is “...to provide clinical information necessary to formulate a treatment plan in response to the presenting

complaints”. Dr. Vitelli made only a “provisional diagnosis” of “adjustment disorder with anxiety and depression, specific phobia, situational”. Dr. Vitelli’s provisional diagnosis is insufficient evidence to meet the applicant’s burden of proof that she suffers from psychological impairment justifying treatment beyond the MIG.

R.B. v The Guarantee Company of North America, 2020 CanLII 61458 (ON LAT),
<<https://canlii.ca/t/j9fcc>>

[35] R.B. primarily relied upon the following four expert reports to support her claim for IRBs 104-weeks post-accident: a Psychological Evaluation Report dated May 21, 2019 by Dr. Romeo Vitelli, psychologist;^[16] a Neurological Report dated May 21, 2019 by Dr. Michel P. Rathbone, neurologist;^[17] a Job-Site Assessment dated May 26, 2019 by Karen Quan, kinesiologist, and supervised by Dr. Amir Owliaei, chiropractor;^[18] and a Functional Abilities Evaluation dated May 26, 2019 by Ms. Quan and Dr. Owliaei.^[19] While all of these reports were authored during the relevant period regarding R.B.’s claim for IRBs 104-weeks post-accident, I give them little-to-no weight in determining R.B.’s entitlement to IRBs for the following reasons.

[36] Firstly, there was no interpreter present at any of these four assessments despite the hearing in this matter not being able to proceed on the first scheduled date due to no Tagalog interpreter being present. The lack of interpreter is also problematic given R.B.’s testimony that she would not be comfortable working in an administrative position that would require her to speak English. The fact that no interpreter was present calls into question the opinions contained in these reports as, for example, Dr. Vitelli’s diagnostic impressions were based on, at least in part, R.B.’s self-reporting and the administration of psychometric tests with which he noted R.B. required “active supervision and assistance.”^[20] Ms. Quan and Dr. Owliaei also noted that they relied in part upon an interview with R.B. for their Job-Site Assessment,^[21] and Dr. Rathbone reported that R.B.’s mental status was “abnormal” given her difficulty with word finding during the examination.^[22] These reports do not address the impact of the language barrier on the observations or assessment methods used, which is concerning in light of R.B.’s testimony that she could not tell Dr. Vitelli everything that she wanted to during her assessment because there was no interpreter present.

[37] The lack of interpretation services at the assessments is highlighted by at least one reported inconsistency between Dr. Rathbone’s report and Ms. Quan’s and Dr. Owliaei’s functional abilities evaluation. Dr. Rathbone noted that R.B. reported to him that her dizziness and imbalance was resolved,^[23] which is consistent with R.B.’s hearing testimony, whereas Ms. Quan and Dr. Owliaei report that R.B. was having dizziness symptoms several times per week.^[24] This discrepancy between the two reports remained unexplained.

[38] Secondly, Ms. Quan's and Dr. Owliaei's reports only provide information on R.B.'s functionality regarding her pre-accident employment position as a Nanny. There is no discussion as to her functionality in terms of any employment for which she is reasonably suited by her education, training and experience.

[39] Thirdly, the only assessor who reviewed any documents outside of these reports was Dr. Vitelli. Dr. Rathbone, Ms. Quan and Dr. Owliaei only reviewed each other's report(s) and Dr. Vitelli's report as part of their assessment of R.B. The failure to review additional information becomes problematic in affording weight to these reports as, for example, Dr. Rathbone's observations regarding carpal tunnel syndrome are not consistent with other evidence before me. Dr. Rathbone reports that the Phalen's Sign, a provocative test for carpal tunnel syndrome, was negative bilaterally.^[25] However, Dr. Kay had completed a second EMG and Nerve Conduction Study report dated April 29, 2019, less than a month *after* Dr. Rathbone's assessment of R.B., in which Dr. Kay opined that R.B. had very mild right carpal tunnel syndrome and, although still classified as mild, that R.B.'s left carpal tunnel syndrome had worsened since Dr. Kay's 2016 assessment. Dr. Rathbone, not having reviewed more than his fellow assessors' reports, failed to comment on the existing diagnosis of carpal tunnel syndrome by Dr. Kay in 2016 in comparison to his observations of R.B.

[40] Finally, I agree with Guarantee that the language contained in Dr. Vitelli's report is problematic. Dr. Vitelli's report states that R.B. and her husband were "unaware that 3700 pounds of metal was barreling toward them,"^[26] and provides further details of the accident as follows:

the violence of the impact; the exploding airbags; the crumpling metal, and shattering glass, also sent the harnessed bodies of Mr. and Ms. [B] flopping against the hard plastic surfaces of their inner car cabin. And amidst the spinning and trajectory, [R.B.]'s vehicle was thrown sideways, across lanes, before everything just stooped. Because of the desolate road conditions, no other vehicles were involved, and the [B]s survived. And when the battered vehicle, which offered the couple enough protection to keep them alive, stopped spinning it took the [B]s some time to come to their senses and to come to terms with their shock.^[27]

[41] When R.B. was asked if these were her words in cross-examination given the evidence that R.B.'s first language was not English, she became evasive and only answered several times that she did not remember. While I would not go as far as Guarantee suggests and find that Dr. Vitelli pursued a form of advocacy on behalf of R.B., I do agree that the evidentiary foundation for Dr. Vitelli's description of the accident is unclear and, as a result, calls into question the evidentiary foundation for the remainder of his report. Candidly, even R.B.'s counsel conceded that Dr. Vitelli's report contained language that could be disputed.

[42] As I have given the reports of Dr. Vitelli, Dr. Rathbone and Ms. Quan and Dr. Owliaei little to no weight for the reasons set out above, I am therefore not satisfied that R.B.'s self-

reports of problems with her thought processing alone are enough to persuade me that she would meet the eligibility test for IRBs post-104 weeks after the accident.

A.P. v Aviva Insurance Canada, 2020 CanLII 30413 (ON LAT), <<https://canlii.ca/t/j6nkv>>

[11] [A.P.] advances three grounds in support of her position that she does not fall within the definition of minor injury: she suffers from a chronic pain condition, she sustained a nerve impingement injury to her right elbow, and she has developed a psychological condition. The medical records are not supportive of her allegation that she suffers from chronic pain or a nerve impingement injury as a result of the accident. These conditions would appear to have developed independently of the accident. Her psychological condition is documented in a report authored by Dr. Romeo Vitelli, a psychologist. Aviva relies on the report of Dr. Marc Mandel, also a psychologist. For reasons more fully outlined below, I give little weight to Dr. Vitelli's report and I accept the findings of Dr. Mandel that [A.P.] suffers from no diagnosable psychological condition.

[23] I prefer the evidence of Dr. Mandel over that of Dr. Vitelli for two reasons. [A.P.] testified that she had never met Dr. Vitelli. Dr. Vitelli never assessed her. She had psychometric testing performed by Dr. Vitelli's psychometrist, Laura Turnbull. It appears she also attended psychotherapy sessions with Ms Turnbull. It is hard to give credibility to Dr. Vitelli's observations when he wasn't there to make them. For instance, in a section entitled Behavioural Observations Dr. Vitelli purports to record presentation difficulties observed during the assessment, as follows:

[A.P.] was cooperative, appropriately groomed and attentive. [A.P.] appeared to be in pain, as she slouched in her seat, walked slowly and carefully, and winced at several points throughout the interview. [A.P.] displayed signs of cognitive impairments in memory as she had difficulty remembering some of the questions asked of her, and recalling some of the details of her accident. [A.P.] was not disoriented or confused during the assessment.

[24] I find the reality of [A.P.]'s life is at odds with Dr. Vitelli's report where he notes an inability to perform pre-accident self-care and housekeeping activities. [A.P.] returned to work in February 2016, shortly after the accident. She reported to Dr. Mandel that she had returned to full-time duties at both of her jobs. She also reported that she was independent in personal care after needing some help from a friend earlier on after her injury and that the focus of her life was looking after her daughter. There would seem to be little similarity between the person who Dr. Mandel assessed, and the person Dr. Vitelli never met.

A.V. v. Certas Home and Auto Insurance Company, 2020 CanLII 19562 (ON LAT),
<<https://canlii.ca/t/j5t7g>>

(v) The only medical evidence before me that A.V. was diagnosed with any psychological impairments (general anxiety disorder, major depressive disorder and specific phobia - situation type - vehicular) is an April 12, 2019 Psychological Evaluation Report by Dr. Romeo Vitelli, Psychologist, at Novo Medical Services. A.V. underwent this psychological assessment within eight days of the hearing despite submitting a treatment and assessment plan (“OCF-18”) to Certas for consideration approximately nineteen months earlier for a psychological assessment. The delay in undergoing a psychological assessment further indicates to me that A.V.’s psychological complaints were, and continued to be, minor; and

(vi) I do not accept Dr. Vitelli’s diagnoses of A.V. and place little to no weight on Dr. Vitelli’s report for the following reasons:

(a) There was inconsistent evidence at the hearing as to whether or not a Tamil interpreter was present for Dr. Vitelli’s assessment of A.V. A.V. testified that one was present. Dr. Vitelli, however, claimed that A.V., “was able to complete the interview and psychometric testing with fluency” despite English not being her first language and made no note of an interpreter in his report. Dr. Vitelli also testified that a Tamil interpreter was not present for his assessment. Regardless of whether or not an interpreter attended the assessment, Dr. Vitelli conceded in his testimony that his report contained “inaccuracies,” specifically in the background portion of his report, which were due to, as he testified, “misunderstandings during the interview.” Therefore, if inaccuracies existed in at least one portion of his report, I therefore do not accept that there are no further inaccuracies in Dr. Vitelli’s report as it was based, in part, on A.V.’s self-reporting;

(b) Dr. Vitelli failed to accurately report A.V.’s pre- and post-accident employment at a lottery kiosk despite his report stating that he reviewed Dr. Bruce Ballon’s November 10, 2016 psychiatry IE report and Dr. Harry Kaufman’s November 10, 2016 functional abilities evaluation IE report, both of which clearly discuss A.V.’s pre- and post-accident work at a lottery kiosk. Dr. Vitelli further testified that he was unaware of A.V.’s employment at the lottery kiosk;

(c) Dr. Vitelli also testified that he was not aware of other information that may have impacted his conclusions and/or diagnoses of A.V., such as A.V.’s husband being on the Ontario Disability Support Program (“ODSP”) since 2016 and A.V.’s family encountering financial difficulties after the accident;

(d) Dr. Vitelli failed to identify what, if any, additional medical documentation, such as Dr. Choi-Fung's CNRs, that he reviewed as part of his assessment of A.V. in addition to the IE reports of Dr. Ballon and Dr. Kaufman, an April 11, 2016 disability certificate ("OCF-3") and a Novo Medical Psychological Pre-Screening dated September 4, 2018; and

(e) There is no indication of the duration of Dr. Vitelli's assessment of A.V.

[20] In summary, I have no evidence before me that any treating physicians or independent assessors, aside from Dr. Vitelli whose opinion I give little to weight to, provided a psychological diagnosis or any objective evidence that A.V. suffers from a psychological impairment as a result of the accident, nor any evidence that A.V. received any treatment for same. For all of the reasons set out above, I find that A.V. has failed to prove on a balance of probabilities that she sustained a psychological impairment as a result of the accident.

[40] (iii) A.V. underwent a psychological assessment but it was completed by Dr. Vitelli as opposed to Ms. Gronkowska who was listed as the service provider on the original OCF-18 with no explanation for the change in service providers. The completion of the psychological assessment by a different service provider at a different clinic some nineteen months after the OCF-18 was submitted to Certas is evidence that the original OCF-18 for a psychological assessment completed by Ms. Gronkowska was not reasonable or necessary;

(iv) I give little to no weight to Dr. Vitelli's report, or to the diagnoses of A.V. contained therein, for the reasons discussed in paragraph [17](vi) above; and

[63] Moreover, for the reasons stated above, I give little to no weight to Dr. Kachooie's and Dr. Vitelli's report and any information contained therein regarding A.V.'s entitlement to NEBs.

L.J. v Allstate Insurance Company, 2019 CanLII 119766 (ON LAT), <<https://canlii.ca/t/j45hp>

[20] L.J. submitted an unsigned Psychological Consultation Report dated May 29, 2018 from an assessment of L.J. on June 9, 2016. This report lists the psychologist as Dr. Romeo Vitelli and a psychometrist as Nadira Srosh. In this report, L.J. is diagnosed with Major Depressive Episode, Generalized Anxiety Disorder, Somatoform Disorder and Posttraumatic Stress Disorder. A recommendation is made for 12 psychotherapy sessions with a

psychotherapist and a chronic pain assessment. The goal of this course of treatment was to increase L.J.'s functional level to normal life activities.

[21] I place very little weight on the May 29, 2018 Psychological Consultation Report in determining L.J.'s entitlement to the treatment plan in dispute for several reasons. First, even though the assessment took place on June 9, 2016, the report was not completed until May 29, 2018. As a result, it is unclear when the recommendations contained in the report were made (at the time of the assessment or at the time the report was completed). Second, the report is unsigned. Third, the report was not in existence at the time the treatment plan was submitted to Allstate for consideration and was completed approximately two years later. Fourth, I agree with Allstate that no medical documents were reviewed prior to the assessment being completed. Finally, the report also has internal inconsistencies. For example, L.J. scored a moderate level of depression and anxiety on the Beck Inventory tests and a below-average range of depression and average range of depression on the P-3 Pain Patient Profile. However, L.J. is diagnosed with *Major Depressive Episode, Generalized Anxiety Disorder, Somatoform Disorder and Posttraumatic stress*. There is no discussion in the report as to how these diagnoses were arrived at given L.J.'s test scores of moderate, below-average and average ranges.

18-006278 v Aviva Insurance Canada, 2019 CanLII 72205 (ON LAT), <<https://canlii.ca/t/j1sxj>

[21] S.A. is not entitled to payment for psychological treatment as proposed in the treatment plan because he has failed to prove on a balance of probabilities that it is reasonable and necessary.

[22] S.A. submitted as evidence a psychological assessment report dated March 2, 2018 signed by Linda Tomas and by Dr. Romeo Vitelli as the Supervisor.^[5] This report diagnoses S.A. with adjustment disorder with mixed anxious and depressed mood, chronic and chronic pain associated with both psychological factors and a general medical condition^[6] and recommends 12 sessions of psychotherapy that incorporates relaxation training, review of sleep hygiene and principals of mindfulness.^[7]

[23] I am unable to place weight on this report and the recommendations contained therein for the following reasons:

(i) I agree with Aviva that it is unclear who performed S.A.'s assessment. The report refers to Dr. Vitelli in the third person and only lists him as the Supervisor whereas Linda Tomas, who is noted as working under the supervision of Dr. Vitelli, was "responsible for the integration of background data and the acquisition of assessment protocols, and served as the

psychometrist.^[8] As such, when the report states under the “Interview and Observation” section that S.A. “presented as sad and isolated,”^[9] it is unclear who is making these observations;

(ii) S.A. was referred to Dr. Vitelli for a psychological assessment by his lawyer^[10] as opposed to by a health care provider;

(iii) Findings in the report are contrary to the overall opinions in the report. For example, S.A. scored mild on the Beck Anxiety Inventory, moderate on the Beck Depression Inventory-II and average on the Pain Patient Profile yet the conclusion is that, “the result of psychological testing indicates clinically significant emotional distress, mostly in the form of somatic pain, depression and frustration [my emphasis added].”^[11] While S.A.’s score on the Beck Depression Inventory-II may qualify as “clinically significant,” it is clear that his scores on the other two tests do not; and

(iv) Most problematic is the reference to a different patient’s name on page 11 of the report.

[24] I am also unable to place weight on other evidence submitted by S.A. that identifies possible psychological injuries, as such determinations are outside of the practitioner’s areas of practice, such as Dr. West, as an orthopaedic surgeon, and Dr. Domenic Minnella, as a chiropractor.

18-000591 v Certas Home and Auto Insurance Company, 2019 CanLII 14394 (ON LAT), <<https://canlii.ca/t/hxrkn>>

[27] FA relies on the OCF-18 by Dr. Romeo Vitelli, which notes sleep disorders, adjustment disorder with anxiety, malaise and fatigue and stress, based on KA’s self-reporting. The findings are necessarily preliminary in nature as the objective of the OCF-18 is psychological assessment.

[29] In reviewing the medical reports of both parties, it is immediately evident that both of them depend heavily on frank and forthright self-reporting by FA. The medical conclusions in each are based in large part on FA’s answers in clinical interviews.

[30] In the IE with Dr. Finkel, FA’s statements contradicted or were inconsistent with information provided to Dr. Vitelli. FA makes no explanation for the discrepancies in self-

reporting in the different examinations. He does not attack the veracity of the IE reports on his own statements. Accordingly, I am confident in giving the IE report substantial weight in determining how FA's self-reporting speaks to his claim of psychological injury.

[31] I find that unexplained discrepancies in FA's self-reporting undermine his credibility and therefore his claim on this issue of psychological injury.

[32] As the result of my findings, I conclude that FA has failed to meet the onus on him to prove psychological injury as the result of the accident; accordingly, he cannot be removed from the MIG on this basis.

Mundinger v. Ashton, 2019 ONSC 7161 (CanLII), <<https://canlii.ca/t/j3w6c>>

[118] Many of the tests conducted by Dr. Vitelli relied on self-reporting by the plaintiff. On the Rehabilitation Checklist, in November 2018 the plaintiff identified 7 items that she perceives prevents or discourages her from returning to her pre-accident functioning, a decrease from 25 items endorsed in December 2010. In 2018 the plaintiff fell within the mild range for depression as compared to the severe range in 2010. In 2018 the plaintiff fell within the moderate range for anxiety, as compared to the severe range in 2010. Her score on the depression and anxiety scales fell on the average range for pain patients, as compared to the above average range in December 2010. He felt that she was able to cope with her pain for the most part.

[119] Dr. Vitelli concluded that the plaintiff's current psychological profile is one of moderate symptoms of anxiety, with mild symptoms of depression, post-traumatic stress, and an overall improvement in her mood since 2010. From a neurocognitive perspective, her performance ranged from low to mid-average, which was a significant improvement since 2010. He stated that he felt the plaintiff had "plateaued", although he could not speculate whether she will improve or deteriorate over time. He opined that the plaintiff would benefit from long-term psychological counselling.

[120] Dr. Vitelli concluded that the plaintiff had sustained serious impairments of important mental and psychological functions, and that there had been substantial interference in her engagement in academic, employment, social and recreational activities normally expected of a person of her age.

[121] Notwithstanding that conclusion, Dr. Vitelli's report contains the following statement, just three paragraphs later:

From a neuropsychological perspective, Ms. Munding is not considered to have sustained a substantial inability to engage in activities of normal life given that she has successfully attended school since 2016, manages self-care and household tasks independently, has maintained employment each summer since 2015 and has travelled extensively over the past several years.

[122] I am unable to reconcile Dr. Vitelli's conclusion regarding serious impairment with that statement.

[123] On cross-examination, Dr. Vitelli agreed that the plaintiff had improved significantly between 2010 and 2018.

[124] He also testified that he had no information about the beer bottle incident in November 2010, and he had not reviewed the plaintiff's employment files or her university or college records. He did not know that the plaintiff's family physician had diagnosed the plaintiff with Attention Deficit Disorder (ADD) in 2017, and did know that the plaintiff was prescribed Concerta and Ritalin for ADD. He did not know that the plaintiff's family physician first suspected that the plaintiff had ADD in 2005. He testified that he could not speculate whether lingering deficits were the result of ADD or the motor vehicle accident, and he would have to defer to the family doctor on this issue.

[125] On cross-examination, Dr. Vitelli testified that he found the plaintiff to be an accurate historian, and he did not observe any problems with her memory.

[126] While Dr. Vitelli concluded that there has been substantial interference with the plaintiff's engagement in academic, employment, social and recreational activities, these conclusions focused on the plaintiff's feelings given her age. Dr. Vitelli did not know about the plaintiff's academic record or her employment record since she completed her college program, and agreed that he would need more information to make these conclusions. He testified that he would need more information before he could provide an opinion on whether the plaintiff would be able to work in her current job in advertising. This would include a site assessment and a review of her employment records, which he had not undertaken.

[127] Most significantly, Dr. Vitelli explained that when he used the words "substantial interference", he meant only that it "may interfere to some extent", and that depended on how well, in the long run, the plaintiff held on to the gains she has made.

[128] The term "substantial interference" does not mean "may interfere to some extent". Such an interpretation would render the threshold meaningless. That is clear from both the legislation and the cases interpreting the legislation. This clarification by Dr. Vitelli renders his conclusions unusable for the purposes of s. 4.3 of the Regulation.

17-008143 v Aviva Insurance Canada, 2018 CanLII 112122 (ON LAT),
<<https://canlii.ca/t/hw8cr>>

[55] The information regarding the applicant's ongoing injuries and physical limitations in Dr. Vitelli's report and in the treatment and assessment plans in dispute is in stark contrast to the information contained in the applicant's family doctor's CNRs and December 9, 2016 Disability Certificate and the information in Mr. Salerno's report. The CNRs make no mention of complaints of any neck, left shoulder or lower back pain or any other accident related injuries at any time within the three months after the accident, other than complaints relating to sore left ribs. On December 9, 2016, when the family doctor examined the applicant he noted in his CNRs that the applicant had tender ribs. On December 9, 2016 the family doctor indicated on a Disability Certificate that the applicant did not suffer from a substantial inability to perform the housekeeping and home maintenance, which is consistent with the applicant's self-reporting to Mr. Salerno of his ability to do so in July 2017.

[56] When the applicant was cross-examined on June 7, 2018, he stated that he had phoned his union every day looking for work, but he could not recall when he had started calling his union. The applicant is reported to have advised Mr. Salerno on July 17, 2017 that he had been calling his union daily and if a job as a plumber had been available at that time he would have returned to work. The consistency of this portion of the information reported by Mr. Salerno with the applicant's own testimony regarding him having called the union every day, lends credibility to the other information reported to Mr. Salerno by the applicant, particularly as it is consistent with the information from the family doctor's documentation. What was reported to Mr. Salerno is also consistent with what the applicant told Dr. Naaman, physiatrist, on March 3, 2018, namely that he had been unable to find work until November 2017 and that he returned to work for one month at that time and was then laid off. I find the information reported to Mr. Salerno regarding the applicant's activities and him looking for work in July 2017 to be reliable and have given no weight to the contradictory information regarding the applicant's condition in July 2017 contained in Dr. Vitelli's report.

17-005288 v Intact Insurance Company, 2018 CanLII 140345 (ON LAT),
<<https://canlii.ca/t/hzxfd>>

[19] I prefer the evidence of Dr. Mandel over that of Dr. Vitelli because Dr. Vitelli's findings are inconsistent with the applicant's level of function, and he did not review or consider any medical documentation to support his conclusions.

R. v. Ahmad, 2018 ONSC 536 (CanLII), <<https://canlii.ca/t/hs2rk>

[9] Following the verdict, counsel for Mr. Ahmad arranged for him to be psychologically assessed. The report of forensic neuropsychologist Romeo Vitelli states that the information for the report was based on self-reporting evidence provided by Mr. Ahmad who “seems to be a stable individual with a responsible work ethic and does not have any emotional or psychological disturbances.” The report also states that Mr. Ahmad feels that he is being punished for something he did not do.

[10] I find the report to be troubling because it is dated February 9, 2018 and yet makes reference to Mr. Ahmad’s attendances on February 10 and February 28, 2018 after the report had been signed. Accordingly, I place little weight on the contents of the psychological report.

17-001856 v Travelers, 2018 CanLII 13173 (ON LAT), <<https://canlii.ca/t/hr1d7>

[21] The respondent submits that the disputed OCF-18 completed by Dr. Vitelli also “demonstrates [his] unfamiliarity” with the applicant, since he answered “unknown” when asked whether the applicant had any prior disease, condition or injury.

[22] The respondent therefore submits that Dr. Vitelli was not in a position to provide an accurate opinion with respect to the applicant’s psychological state, or the causation of her psychological impairment.

[23] The respondent also relies on the IE report of its own psychological assessor, Dr. Douglas Saunders, who assessed the applicant on November 18, 2016. The respondent submits that, unlike Dr. Vitelli, Dr. Saunders was provided with and did review the applicant’s medical records prior to the subject accident. Dr. Saunders diagnosed the applicant with “mild to moderately elevated symptoms of anxiety and depression that met the criteria for [psychological] impairment”, but concluded that such impairment was not “solely, directly and causally related to the [subject accident]” and that her impairment is the result of “psychosocial factors including problems in her relationship and larger social environment.” Dr. Saunders further opined that, from a psychological perspective, there was no evidence of a pre-existing condition that was aggravated or exacerbated as a result of the subject accident.

[24] In reply submissions, the applicant submits that Dr. Vitelli did not have access to the applicant's full medical records "due to its extensive nature". The applicant contends that Dr. Vitelli nonetheless was able to diagnose her based on his expertise and experience as a registered psychologist of 29 years. In reply to Dr. Saunders' opinion that the applicant's psychological impairment is unrelated to the subject accident, the applicant submits that "[a]lthough her symptoms may be related to her social and domestic situation, it has been exacerbated by the accident."

[27] I place little weight on Dr. Vitelli's diagnosis of a psychological impairment as being attributable to the subject accident because:

- In his assessment report, he confirmed that he did not have any of the applicant's medical records available for review at the time he assessed the applicant;
- At the top of page 3 of his report, Dr. Vitelli specifically noted that his "diagnostic and treatment recommendations are based on the medical documentation available at the time of the assessment, the [applicant's] self-report during the clinical interview and the objective measures administered. Any additional information or a determination that the [applicant] was not candid in her self-report may alter the opinions expressed in this report."
- Multiple notations in his report have been proven incorrect and inaccurate in the medical evidence submitted by both parties for the hearing.

Law Society of Upper Canada v. Spiegel, 2017 ONLSTH 188 (CanLII), <<https://canlii.ca/t/h65p5>>

Summary:

SPIEGEL – Integrity – Failure to Co-operate – Findings – The Paralegal engaged in the following professional misconduct: he was knowingly dishonest when he submitted forms containing misrepresentations to insurance companies; he acted in bad faith and without integrity when he knowingly submitted and invoiced for treatment plan forms that he was not entitled to prepare under the Statutory Accident Benefits Schedule; he acted without integrity and in bad faith when he submitted multiple treatment plans to insurance companies in order to increase his claim for fees payable to his company; and he failed to co-operate with the Society's investigations by failing to provide requested documentation.

Procedure – Particulars – Notice – The panel based its analysis and formal findings on the narrower core allegations, regarding the Paralegal's honesty and integrity, on which the Society focused in its final submissions, rather than on the more expansive allegations as

set out in the Notice of Application – The Paralegal had adequate notice of these allegations.

REASONS FOR DECISION ON FINDINGS

INTRODUCTION

[1] David A. Wright (for the panel):– Roland Spiegel is a paralegal who assisted clients who had been in motor vehicle accidents with health care benefit claims against insurance companies. The Law Society alleges that he has engaged in misconduct in his interactions with insurance companies on behalf of multiple clients, including by: filing misleading documents, altering standard forms, bombarding companies with lengthy fax transmissions, communicating inappropriately, filing multiple forms and claiming time for services he did not provide. It also says that he failed to co-operate in the investigation of his conduct.

Dr. Vitelli and Dr. Bennett

[74] Dr. Vitelli is a psychologist whose signature Mr. Spiegel affixed to some of the OCF-18 treatment plans. Mr. Spiegel testified that each time he did so, he faxed the document to Dr. Herbert Kaye, a psychometrist and assistant who had Dr. Vitelli's authorization to affix his signature. He said that he met both Dr. Vitelli and Dr. Kaye and the arrangement was that Dr. Kaye would review the document, discuss it with Dr. Vitelli and affix his signature.

[75] When then confronted by Law Society counsel about the fact that there was no fax header on the document from Dr. Kaye, Mr. Spiegel changed his evidence to say it had been sent by e-mail. Mr. Spiegel provided no evidence of any email communication with Dr. Kaye, saying he had lost his e-mails.

[76] Dr. Kaye, a former psychologist whose licence is revoked, is deceased. Dr. Vitelli did not testify. The College of Psychologists cautioned Dr. Vitelli as a result of a complaint from an insurance company. The Law Society included hearsay evidence about what Dr. Vitelli told the investigator, but we do not give that any weight because there is no indication that it was necessary that it be admitted as hearsay evidence; Dr. Vitelli could have been called as a witness.

[77] We do not accept Mr. Spiegel's evidence that he sent the document to Dr. Kaye each time. We would expect there to be some record of this, given the numerous OCF-18s that were filed with his signature. Given this, and Mr. Spiegel's change of story within the course of a few minutes during his evidence, we draw the conclusion that he is not telling the truth. However, we find that the Law Society has not proven that Dr. Vitelli had no knowledge of Mr. Spiegel's use of his signature and did not approve it. We have no direct evidence from Dr. Vitelli against which to evaluate Mr. Spiegel's evidence that he did have this agreement.

