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FAIR Association of victims for Accident Insurance Reform response to:

FSRA Consultation on Proposed Fraud Reporting Service Rule and Guidance **ID 2024-008**

We are pleased to see the Regulator take steps to identify fraud in the auto insurance industry to better protect the public. No one supports fraud and this is a positive step.

1. Definition of what constitutes a ‘fraud event’

Regarding the definition of a ‘fraud event’ at: 1. (e) *“fraud event” means a deceptive act or omission, or series of deceptive acts or omissions intentionally committed by a person(s) to obtain advantage, financial gain, or benefits beyond that to which one is entitled to with regard to any policy, claim, provision of goods or services or other occurrence related to automobile insurance, and for greater clarity includes instances of:.*

RECOMMENDATION: The wording be expanded to include: “committed by a person(s), business(es) or institution(s) to..”

The current language appears to specifically exclude businesses or institutions that are insurers and their associates or intermediaries.

3. Prescribed information under subsection 101.3(1) of the Act

In respect to: 3(2) *An insurer shall within thirty days after the close of each quarter of the calendar year provide the information prescribed in subsection 3(1) of this Rule with respect to fraud events which in the preceding quarter the insurer has taken action or made a decision based on reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur.*

RECOMMENDATION: Insurers should have to provide information in subsection 3(1) within 30-60 days of the event rather than after the close of each quarter.

If all insurers report at the same time the effectiveness of the Regulator may be compromised by being overwhelmed. Perhaps it is presumptuous to assume that the Regulator might take action to protect vulnerable claimants but stale-dated fraud reporting is less helpful.

GENERAL COMMENT:

If the “purpose of collecting this information is to support the more effective assessment and detection of automobile insurance fraud in Ontario” and to support “FSRA’s goal of reducing consumer harm caused through fraud” then there should be some statement about what FSRA does with this information other than “information that has been collected will be available for insurers to access to enable the assessing and detecting of fraud” in a second phase. What about consumer access to industry fraud?

Not only is the hunt for fraud left entirely to insurers (who are themselves often fraudulent in their claims practices) but it also ignores the claimant experience where insurers’ (and their intermediaries) fraud is a very real issue tens of thousands of Ontario’s claimants face every day.

Where, in this document, is the protection of vulnerable injured car crash claimants who are exposed to the fraud? This shouldn’t just be about protecting insurer profits but rather about protecting people who are scammed along the claims corridor.

This document goes back and forth about prescribed information required but fails to inspire confidence as it becomes clear this is about gathering information to identify fraud and carefully doesn't mention any action to be taken by Fraud Reporting Service ("FRS").

FSRA has taken some recent action to address fraud in the medical examination process with the Dr. Romeo Vitelli case but the failure to put the interests of consumers as a high priority is obvious. We cannot tell if any action was taken against the assessment center, Novo Medical Services Inc., for whom this psychologist prepared the medical reports that were at the center of FSRA's investigation.

In 2019, Dr. Vitelli entered into an Acknowledgement and Undertaking with the College of Psychologists following allegations of professional misconduct as a result of a complaint from a claimant and FSCO and FSRA were informed of the College's actions.

According to the FSRA website

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

In 2019, FSRA received an investigative report in support of Aviva's allegations. Documents in the report establish that Novo Medical submitted seven Psychological Evaluation Reports and one Catastrophic Impairment Determination Psychological Evaluation Report (dated between April 21, 2017 and May 4, 2018) for claimants (AK, CD, GC, JH, MM, MR, and NK). Sections of the reports are identical. The reports also include identical quotations presented as the claimants' verbatim descriptions of their injuries and symptoms. (for claimants (AK, CD, GC, JH, MM, MR, and NK)).

and;

On June 23, 2020, FSRA received a Business Activity Complaint Form from Desjardins General Insurance Group ("Desjardins") alleging that Novo Medical and Dr. Vitelli engaged in practices that contravene the Act. (five psychological assessment reports for claimants (NH, AL, KH, JS, and RR)).

and;

FSRA received an investigative report from Intact Insurance ("Intact"). (claimant (SR)).

Despite insurers reporting they had been defrauded there was no action taken by FSRA until February 8, 2021, when FSRA investigators interviewed Dr. Vitelli. It was during this process that "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."

Finally in 2021 action was taken by FSRA with the suggestion "an administrative penalty in the amount of \$50,000 should be imposed on Dr. Vitelli for knowingly making false or misleading representations to insurers in order to obtain payment for goods or services provided, contrary to section 447(2)(a.3) of the Act."

The public was eventually informed in a press release on "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)."

For 4 years innocent injured claimants interests were ignored, first by the College of Psychologists (CPO) whom the Regulator relies on to enforce quality control and then by FSRA during the process of deciding what to do about the fraud.

We could find no evidence that Novo Medical Services Inc. was ever held accountable for their participation in harming the most seriously injured car crash survivors. Nova Medical is still actively in business providing assessments of Ontario's auto insurance claimants for insurers.

FAIR's files indicate there are likely more victims of the fraudulent reports as well as through 'expert' evidence at hearings where Dr. Vitelli's testimony was often criticized. There is also evidence that more than one assessment center used the services of Dr. Vitelli "through four healthcare clinics" mentioned on the CPO website document at <https://cpbao.ca/wp-content/uploads/Notice-of-Hearing-Vitelle-Dr.-Romeo-2.pdf>.

As of May 2024 the CPO https://members.cpbao.ca/public_register/show/1461 has listed the current referrals of Dr. Vitelli to the Discipline Committee.

We see no evidence that the 13 plus victims of this fraud were informed by FSRA or the CPO that they'd been scammed and that their cases had been tainted by the fraudulent and uncaring actions of Dr. Vitelli and Nova Medical.

To this day AK, CD, GC, JH, MM, MR, NK, NH, AL, KH, JS, RR, and SK may all still be in the dark about how their cases and access to rehabilitation were recklessly ignored by the insurer's choice of assessment centers.

We bring up this particular case for several reasons but the most important is that there is no point to gathering information if there is no intent to protect the public's interest. It should never be just about insurer profit and gain over informing the public in a timely fashion and this should be reflected in the proposed Rule and Guidance.

Timely reporting from insurers coupled with judicious action from the Regulator would better protect claimants. The promise to follow through on the insurer reporting fraud is missing in this Guidance along with a willingness to share fraud trends with the public and not just insurers.

Taking steps to enforce compliance with Dr. Vitelli was an important mile-stone for the Regulator and we recognize this. The problem lies in the two and half years from the Notice of Proposal to Impose Administrative Penalties on March 31, 2021 to informing the public on November 22, 2023 in a press release. It appears that for two and a half years vulnerable claimants lacked protection because FSRA withheld this information. This should never happen.

The investigation and the conclusion record poses other serious questions related to the outcomes for the victims of this fraud.

It's still an open question whether Dr. Vitelli will be able to continue to provide services for auto insurers through medical examinations and testimony going forward. None of that is clear in the information on the College of Psychologists (CPO) website or in FSRA's documentation and neither contribute to public confidence in the automobile insurance sector.

In this instance insurers did the right thing but we can tell you we routinely hear about bogus insurer medical exams and this Guidance presents deaf ears to claimants who are harmed in the current system

that relies on the Regulator to take action to protect them. What about Nova? Should they have been subject to an Administrative Penalty and/or closed out of performing these medical assessments?

Our suggestion to include businesses and institutions in the wording is based on this case above as is our comment about the importance of timeliness in reporting fraud.

Something needs to be done about the regulatory hole that exists for assessment centers who currently have no oversight and who, in this case, appear to have participated in, or should have known about, the fraud taking place.

Consumers believe the Regulator has a distinct obligation to follow-through on the fraud they find by way of informing victims of that fraud and, by extension, to protect the potential or future victims from the perpetrators by barring the fraudulent players from activity in the auto insurance medical landscape. This can be done by closing the door to Health Claims for Auto Insurance (HCAI) access. There should be an active dialogue to disclose this type of medical fraud activity between relevant Colleges and FSRA. Further, the Colleges should also be required to participate in cleaning up this fertile ground for fraud that harms Ontario's patients.

Thank you for the opportunity to voice our concerns.

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