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FAIR (Fair Association of Victims for Accident Insurance Reform) is a grassroots not-for-profit organization of injured car crash survivors and their supporters. We are the end-users of the auto insurance product.

We appreciate the opportunity to have input on the important issues under consideration at the Regulator.

PSG Professional Services Guideline

We support increasing the rates of Health Service Providers (HSP) and Personal Support Workers (PSW) who provide the care and rehabilitation for Ontario's car crash survivors on their road to recovery. Both the HSP and the Attendant Care Hourly Rate Guideline (ACHRG) need to be reviewed and adjusted with an eye toward what the general marketplace is paying today and they should be indexed (using CPI) going forward on an annual basis.

Adjusting the Professional Services Guideline (PSG) rates should not lead to fewer treatments available to claimants and the only way to align the stated goal of protecting the rights and interests of insurance consumers is to increase the MIG limit as well.

MIG Minor Injury Guideline

The FSRA documents state "The majority of consumers with minor injuries do not hit the threshold of $3,500 for medical/rehabilitation benefits and thus any increase to MIG rates would have only a limited impact on consumers' ability to access treatment". We would question that data point given that 13,983 claimants applied for hearings at the LAT AABS [1] looking for treatment resources in that same year, it doesn't line up with that reality or what can be read in the LAT AABS decisions.

Ontario currently has the lowest Minor Injury Guideline in Canada and the lack of interest in adjusting this means that we are now far behind in supporting claimant recovery. The MIG should also be adjusted and we would agree with the treatment providers who are suggesting that the Minor Injury Guideline (MIG) cap should be increased to a minimum of $10,000 to $15,000 and indexed to inflation (CPI) yearly.

Insurers may object to these increases, but we also see that the insurers are the beneficiaries of greater profits realized by indexing the threshold for Tort and the Deductible for claimants.

Going forward the entire MIG benefit should be accessible without requiring prior approval from an insurer; currently the final $1300 of the MIG limit of $3500 requires approval and that inhibits access to care. All of the conditions around access to MIG dollars should be removed as long as the treatment is approved by a healthcare professional. The blocks of care format (ie Block 1 (weeks 1-4), Block 2 etc) currently in use, is limiting and it interferes with recovery so the restrictions should be discontinued.

In an ideal world the thresholds, both MIG and Catastrophic (CAT), would be eliminated so that claimants would have the access they need rather than possibly being cut-off at an arbitrary monetary limit that could stand in the way of full recovery. These med/rehab threshold markers are the catalyst for litigation. The MIG of $3500, the Serious Injury cap of $65,000, and the $1,000,000 for CAT injury are all inadequate amounts and none have been increased for some time. We would suggest that this is the time to consider increases and that these thresholds also be tied to inflation going forward in order to ensure the insurance product contributes to public confidence in the insurance sector and protects the rights and interests of insurance consumers who expect to have decent coverage if they are injured. The current coverage gap between Serious Injury and CAT is $935,000 and the $65,000 for Serious Injury is an impediment to recovery resources for those who do not qualify for CAT.

The promise of Ontario's auto insurance system is to ensure injured claimants have access to necessary rehabilitation and supports to facilitate their recovery and in order to accomplish that goal these thresholds must be more realistic if not eliminated outright.

HCAI Health Claims for Auto Insurance

FSRA suggests that the Health Claims for Auto Insurance (HCAI) system supports and aligns with contributing to public confidence in the regulated sectors and protects the rights and interests of consumers and yet claimants have zero access to HCAI.

Access to the interaction between their insurer and their treatment providers is a key element of exercising control over one's recovery process. Claimant access to HCAI should start at the

beginning of a claim with the OCF-1 form and claimants should not have to rely on insurers sending out statements about funds still available to a claimant for treatments.

There needs to be a focus on gathering information on outcomes for claimants and that can be tracked through HCAI data including the costs expended by insurers in their claims denial practices. We can see what the insurers are spending on IMEs [2] but not what the cost of denying claims overall is. Significant insurer legal resources appear to be allocated to denying claims at an overwhelmed and broken hearings system [3] and this could also be tracked through more transparency in the HCAI data. Tracking the value of the treatments recommended and denied by insurers should be possible even without enhancing HCAI since those amounts are already entered into a field but then not revealed in the HCDB report.

The regulatory gap for Ontario's unregulated assessment centers shouldn't be forgotten when it comes to improving HCAI. Separating individual assessor costs from assessment center costs would further define where the Regulator should look for compliance and reveal where the excessive 'cancellation fees' are ending up.

Much of the HCAI daily function is out of our scope to give an opinion on but we suggest the user's suggestions be taken seriously in respect to modernization.

Initiative C (Health Service Provider (HSP) Framework)

FSRA's Initiative C is an opportunity to enhance cooperation and collaboration with Regulatory Health Colleges (RHC) and this should be prioritized especially as it relates to compliance issues.

Ontario's vulnerable car crash survivors have been ignored and marginalized under the current Regulatory Health Colleges (RHC) oversight model. Why? Because the self-regulating oversight has amounted to literally no consequences for the shoddy handiwork of medical professionals whose bias and ineptitude has the potential to cause real and long term harm to claimants. A College complaint in Ontario is a futile exercise for those who bring complaints forward in an effort to protect other claimants who are mandated to attend these medical assessments. In the current RHC complaint system the complainant is not invited into the process other than to supply evidence while medical professionals enjoy taxpayer funded CMPA legal protection [4] in the form of a paid defense lawyer to protect their interests.

This failure to protect the public safety was once again in the spotlight in a recent CBC GO PUBLIC article entitled ***Insurers fighting injury claims hire doctors slammed for shoddy work as key medical expert*** [5]. When GO PUBLIC asked the College of Physicians and Surgeons of Ontario (CPSO) and the College of Psychologists and Behaviour Analysts of Ontario (CPBAO) about the qualifications of Third Party experts, the Colleges punted the obligation to protect

claimants to the Attorney General's office. Both Colleges stated "it's up to courts to decide if an expert is qualified to testify" as if it doesn't matter about the quality of their members' medical reports prepared before any legal action is taken or any testimony is offered. Are the Colleges unaware that the majority of the medical assessment reports crafted by their members are used as a tool of intimidation and will likely never be seen by a judge? Of course not - it's a choice to avoid looking at this problem. While the CPSO does have an extensive page devoted to Third Party Policy [6] it is abundantly clear to claimants that there is no intention to stand in the way of a steady stream of dollars flowing from insurers into the pockets of some less than ideal medical 'experts'. We see little action to police the privately paid Drs who are beholden to rich auto insurers who are more than happy to pay more for assessing (IME) Ontario claimants than they spend treating their injuries.

The CPSO policy states the only time the "College will consider individuals who are the subject of an IME, third party medical report, or testimony to be patients for the purposes of the sexual abuse provisions set out in the *Health Professions Procedural Code,* Schedule 2 of the *Regulated Health Professions Act, 1991*, S.O. 1991, c.18." So unless you are sexually assaulted during an Insurer Medical Examination (IME), you are on your own, you are a client or individual, and not a patient. This isn't right. It is a policy that results from ignoring the needs of claimants and it denies them the standard of care offered to all other Ontarians.

We were unable to find any Third Party policy on the CPBAO website. Dr. West's CPBAO profile [7] shows that the 2023 complaint referenced in the GO PUBLIC article has already been scrubbed from his record. How does this protect the public?

It's worth noting that the CPSO has also sanitized Dr. Oshidari's registration [8] to remove any reference to any of the four College complaints [9] we've identified in the public record.

We would encourage the FSRA to take action to ensure the safety of Ontario's injured car crash survivors who are required by legislation to attend insurer medical assessments (IMEs). Transparency is key to public confidence and Regulatory Health Colleges (RHC) that protect their members while keeping the public in the dark about member failures and bias should be called out for facilitating a rinse and repeat action that endangers patients.

There isn't a consistent Third Party Policy used across the regulatory Health Colleges nor is there adequate information about the complaints regarding medical opinion vendors' examinations, reports, and testimony that is accessible to the public. FSRA needs to seek an information sharing agreement with the Regulatory Health Colleges (RHC) to create a safe place for claimants to be medically assessed. That traffic of information should flow both ways. The expectation is that the RHC would be obligated to take action when a substantive complaint from a claimant is forwarded to them by FSRA.

We should note there are good medical assessors and experts in this field but there are far too many assessors with poor report writing skills and biases working in the system and causing chaos for claimants. Shoddy IME reports and testimony is one of the drivers for the excessive volume of cases at the Licence Appeal Tribunal (LAT). FSRA should not just be looking at billing practices because this is about personal safety and the integrity of the system FSRA regulates.

It's not enough to say "FSRA is not responsible for overseeing standards of practice and quality of care provided by regulated health professionals, which falls under the supervision of the Regulatory Health Colleges" when FSRA's defined statutory objects are to "contribute to public confidence in the insurance sector" and to "protect the rights and interests of insurance consumers". Ignoring the absence of meaningful regulatory oversight by the RHC is to ignore the quality of the product and the means by which insurers delay and deny claims through harmful acts. FSRA needs to act.

We appreciate the effort and dedication on the part of FSRA to organize the consultation materials and shape the discussions for the road toward improving the auto insurance landscape and for inviting our participation in the process.

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[1] Tribunals Ontario 2022-23 Annual Report Table 2: LAT-AABS Caseload Overview
Appeals received 13,983
https://tribunalsontario.ca/documents/TO/Tribunals_Ontario_2022-2023_Annual_Report.html#lat

[2] Ontario Health Claims Database HCDB Standard Report 2024H1
https://a-us.storyblok.com/f/1003207/x/39162399ea/hcdb-standard-report-2024h1.pdf (pgs 38, 39)

[3] Ontario Trial Lawyers call for immediate review of the Licence Appeal Tribunal
Eight years of concerning trends, lack of transparency and procedural fairness indicate systemic flaws with the LAT
https://cdn-res.keymedia.com/cms/files/ca/119/0394_638669771490615295.pdf

[4] CMPA https://www.cmpa-acpm.ca/en/membership

[5] Insurers fighting injury claims hire doctors slammed for shoddy work as key medical experts CBC News : Nov 18, 2024
The College of Physicians and Surgeons of Ontario (CPSO) does have a policy that requires doctors working as medical experts to be "comprehensive and relevant; fair, objective and non-partisan; and transparent, accurate and clear," but the college says it's up to courts to decide if an expert is qualified to testify.
Go Public got a similar response from the College of Psychologists and Behaviour Analysts of Ontario and the Ontario Attorney General's office, which is in charge of the Ontario court system.
https://www.cbc.ca/news/health/insurance-medical-legal-experts-injury-1.7382872

[6] CPSO THIRD PARTY MEDICAL REPORTS Endnotes

[1.] The College will consider individuals who are the subject of an IME, third party medical report, or testimony to be patients for the purposes of the sexual abuse provisions set out in the *Health Professions Procedural Code,* Schedule 2 of the *Regulated Health Professions Act, 1991*, S.O. 1991, c.18. https://www.cpso.on.ca/Physicians/Policies-Guidance/Policies/Third-Party-Medical-Reports

[7] Dr. Curtis West https://members.cpbao.ca/public_register/show/20419

[8] Dr. Alborz Oshidari https://register.cpso.on.ca/physician-info/?cpsonum=64671 ;

[9] http://www.fairassociation.ca/wp-content/uploads/2024/09/Oshidari-Alborz-Physiatrist.pdf