

From: **FAIR (fair association of victims for accident insurance reform)** <fairautoinsurance@gmail.com>

Date: Wed, Feb 5, 2025 at 1:43 PM

Subject: Re: Acknowledgement of Information Received

To: @cpso.on.ca>

Hello Ms. Barr,

Thank you for responding to our email of December 4, 2024.

I am forwarding on some new LAT decisions that speak to the quality of the work product of Dr. Oshidari. Please see the bottom of this email.

Respectfully, we would point out that the majority of the third party reports written by your members never see the light of day in an Ontario court. These examinations and the resulting reports are routinely used to undermine claims and to disparage, denigrate and malign Ontario patients who are seeking medical treatment resources. In other words the opinion reports are prepared to block access to treatments and to favour insurers who will profit from that denial by way of deflating the serious nature of a claimant's injury. This happens long before any court hearing could happen and deeply affects recovery options and opportunities.

We recently forwarded multiple cases from Ontario courts that mention Dr. Oshidari as a way for CPSO to view what your member is doing to harm claimants who, despite being designated as owed no duty of care, are always another of your members' patients and are deserving of consideration as such. Dr. Oshidari has displayed a serious lack of judgement to provide expert opinions according to the parameters set out in [Third Party Medical Reports policy](#) Dr. Oshidari's work product fails to meet the standards articulated under this policy to be comprehensive and relevant and the triers-of-fact comments are clear that this IME provider is not fair, objective, and non-partisan.

Note that the IME of the catastrophically injured claimant in Fleming-Dorie was a psychiatry paper review report and "Dr. Oshidari acknowledges that his opinion is based on a purely physical point of view". If it isn't a physical examination how can it be a physical point of view and how does that square up with an accurate, complete and comprehensive report that is the stated CPSO expectation? The adjudicator made note of Dr. Oshidari "missing consideration of the impact of the applicant's mental or behavioural impairments" and this undoubtedly has a particularly negative effect on the quality of life for a catastrophic patient.

In the DiGiulio case the disconnect in the injured patient information is revealed by the adjudicator with "Dr. Oshidari's findings in his report of the applicant's ongoing complaints are contradictory to his conclusions that he had reached maximum medical recovery". This failure to comply with the Third Party Policy is obvious under section 20: Fair, Objective & Non-Partisan where CPSO advises that physicians must: "provide statements and/or opinions that

are reasonable and substantiated by fact, scientific knowledge and evidence, and sound clinical judgment". It is not much of a reach to surmise this is either a bias at work or a lack of care when it comes to producing reports when there is a consistent failure (see our previous email) to "ensure the statements and/or opinions they provide are not influenced by prejudice or bias, the party who requests or pays for their services, or the potential outcome of the third party process".

It's easy to say that the adjudicators caught these issues but what about the triers-of-fact that did not catch on to this? Or, more importantly, the multitude of reports created solely for the purpose of deflating injuries as a tool for insurers to deny claims? The reports who never see the light of day? Those are the work products that the CPSO ought to be concerned about. There is no court to rely on for an opinion about the quality of the expert reports in these cases - just the College of Physicians and Surgeons, whose promise is to protect the public. Not some public but all of the public whose safety and health is put at risk by your members. While the "medical expert's role is to assist the adjudicative body by providing a fair, objective and non-partisan opinion" how does this measure up to the expectation that the reports have value? When the medical expert fails to live up to that promise of impartiality, the public's faith in the College and in self-regulation is undermined in a very profound way.

I hope to hear back from you that the College is taking steps to protect this very vulnerable subset of patients who are reliant on the College fulfilling the promise to protect their interests first and foremost.

Sincerely,
Rhona DesRoches
FAIR, Chair
www.fairassociation.ca

Fleming-Dorie vs. Certas Home and Auto Insurance Company, 2025 CanLII 5849 (ON LAT), <<https://canlii.ca/t/k97mb>

[62] Further, the respondent argues that from a physical/functional perspective, the applicant does not suffer from an impairment that results in her complete inability to engage in any employment or self-employment for which she is reasonably suited by education, training or experience. The paper psychiatry report of Dr. Alborz Oshidari and the functional abilities evaluation report of Dr. Brent Souter, both dated February 21, 2023, are relied on by the respondent in support of this argument.

67] I do not find the respondent's IRB assessments regarding the applicant's post-104-week employability persuasive because:

i. As I indicate above, I do not accept Dr. Sivasubramanian's opinion that the applicant's current mental health impairments are not related to the accident but rather are the result of her borderline personality disorder and bipolar disorder. I find that the accident has exacerbated the applicant's pre-existing mental health issues.

ii. In the case of Dr. Alborz Oshidari's psychiatry paper review report and Dr. Brent Souter's functional abilities evaluation report, both dated February 21, 2023, the testing and findings are solely focused on the applicant's physical abilities, with no consideration of the impact of psychological impairments on her ability to work. Dr. Oshidari acknowledges that his opinion is based on a purely physical point of view. Dr. Souter defers to "the concurrent medical assessor" the question of whether the applicant suffers from any impairment (including psychological) caused by the accident. Given my finding that the applicant sustained a CAT impairment based on mental or behavioural impairments under Criterion 8, the applicant's employability from a mental and behavioural perspective is necessary in assessing her entitlement to an IRB under section 6(2) of the Schedule.

iii. In Mr. Marcus Bachmann's vocational evaluation and transferable skills analysis dated February 21, 2023, he describes the applicant expressing fatigue and decreased tolerance as testing continued, her increasing frustration with more complex testing and her slow progress, exceeding the time allotted, on other tests. Mr. Bachmann does not consider the impact of the applicant's psychiatric/psychological impairments on her test results or the proposed occupations for which the applicant may be suited based on her education, training or experience. Mr. Bachmann acknowledges that due to psychiatric and other possible confounding factors, job matches in his report "are offered provisionally" and that the applicant may benefit from a "situational assessment, work placement, job try-out or through other means." No situational or other assessment appears to have been arranged for the applicant by the respondent based on Mr. Bachmann's suggestion. **As with the reports of Drs. Oshidari and Souter, I find Mr. Bachmann's report to be of limited use given its missing consideration of the impact of the applicant's mental or behavioural impairments on employability.**

[82] I find that:

- i. **The applicant has sustained a CAT impairment as defined by the Schedule;**

Di Giulio v Aviva General Insurance, 2024 CanLII 108236 (ON LAT), <<https://canlii.ca/t/k7qq2>

[32] I give little weight to the report of Dr. Oshidari dated April 1, 2021 which concluded that the treatment plan in dispute for chiropractic treatment is not reasonable and necessary. I agree with the applicant's submissions that **Dr. Oshidari did not have Dr. Steiman's report dated February 13, 2020, nor the CNRs from Power Flow Chiropractic when he assessed the applicant.** Dr. Oshidari noted that the applicant complained of headaches on a daily basis and suffered dizzy spells with the headache. Dr. Oshidari further noted that the applicant experiences constant neck and shoulder pain with numbness and tingling in the arms. Dr. Oshidari notes that range of motion of the cervical spine is a major aggravating factor. **Despite these complaints and findings, he concluded that due to the fact the applicant had received extensive treatment without any long-term benefit, he has reached maximum medical recovery and the treatment plan is not reasonable and necessary.** Dr. Oshidari's findings in his report of the applicant's ongoing complaints are contradictory to his conclusions that he had reached maximum medical recovery.

On Tue, Dec 17, 2024 at 10:16 AM CPSO wrote:

Dear Ms. DesRoches,

Thank you for your letter dated December 4, 2024. We have reviewed your concerns relating to Dr. Alborz Oshidari and his work as an independent medical examiner (IME). The CPSO is committed to supporting transparency and accountability in all areas of medical practice.

As you may know, CPSO's *Third Party Medical Reports policy* sets expectations for physicians who prepare third party medical reports, act as IMEs, or provide testimony in court proceedings. While CPSO expects all physicians to comply with the provisions of the *Third Party Medical Reports policy*, it is the court's role to determine whether someone will be qualified as an expert witness and to assess the evidence the witness puts forward once qualified as an expert. The College will be managing your correspondence as a report and we will contact you only if we need further information.

We appreciate your concerns and thank you for bringing them to our attention.