

11 February 2020

Policy Review Committee
College of Physicians and Surgeons of Ontario
80 College Street
Toronto, ON,
M5G 2E2

Dear Policy Review Committee:

Re: CPSO Review of Third Party Reports and
Medical Expert: Reports and Testimony policies
- Publication of clinical notes released to WSIB

Injured Workers Community Legal Clinic has been providing legal advice and representation without charge to injured workers in workers' compensation matters for the past 50 years. We recently learned of your review of these policies and would like to identify some concerns that we believe the CPSO will share regarding medical records that are provided to the Workplace Safety and Insurance Board (WSIB).

In recent years we have observed an increasing number of requests by the WSIB for clinical notes. For example, in every case involving a request for compensation for a work related psychiatric or psychological condition, or chronic pain condition, the WSIB will request copies of clinical notes for the previous 5 years from treating physicians. We have also noticed a growing practice by physicians of sending copies of clinical notes and test reports instead of a detailed narrative report in response to a request by the WSIB for medical information.

In your review of these policies, the College and your members should be aware of the WSIB practice regarding clinical notes and all medical records provided to the WSIB. The documents are placed into the injured workers WSIB claim file and the file is provided in its entirety to the employer on request. The practice at the Workplace Safety and Insurance Appeals Tribunal is the same. This results in years of personal confidential medical information that has no relevance to the work injury going into to the workplace where it is reviewed by other employees. For example, our clients have been very embarrassed to find their doctor's notes about treatment for sexually transmitted diseases or substance abuse in the file given to the employer when it has nothing to do with the injury and the case.

The release of unrelated clinical notes may also invite a fishing expedition by litigious employers or WSIB claims managers who would like to dispute a work injury by alleging that the worker's disability is due to pre-existing conditions.

The WSIB's practice regarding clinical notes and other medical records results in employers having access to far more medical information than they are permitted to request directly from your patients. Physicians should be aware of this and exercise caution in sending medical information to the WSIB.

One alternative to providing a copy of clinical notes is a narrative report from the physician responding to specific questions from the WSIB. This would be more beneficial to the patient and would preserve the patients right to confidentiality of medical records that are not essential for the adjudication of the WSIB claim. Another option is to carefully review clinical notes and remove or redact irrelevant information.

A report from the physician responding to specific issues for the WSIB may also help to reduce the WSIB's use of third party medical opinions. The treating physician may have no doubt that a conditions is work related but if they have only provided the WSIB with clinical notes and copies of reports on file, the WSIB will often seek an opinion from an external medical consultant. These opinions are given without the benefit of examining the patient or being familiar with the patient's medical history. This issue was the subject of the Prescription Overruled report by the Ontario Federation of Labour and Ontario Network of Injured Workers Groups. (<http://ofl.ca/wp-content/uploads/2015.11.05-Report-WSIB.pdf>)

In its review of these policies, the CPSO should also consider the analysis of the WSIB Case File Review process in the Bad Medicine Report by the Industrial Accident Victims Group of Ontario (p.51, Physician Programs <http://iavgo.org/wp-content/uploads/2013/11/Bad-Medicine-Report-Final.pdf>). This report raises questions about the independence of medical consultants employed by for-profit consulting companies under contract with the WSIB.

Thank you for considering our submission. If there are any questions, we would be pleased to discuss this further.