

March 14, 2021

Financial Services Regulatory Authority
Consultation Submission

Re: Proposed Rule (2020-002) Unfair or Deceptive Acts or Practices (UDAPs)

I am providing this submission on behalf of the Canadian Society of Chiropractic Evaluators (CSCE). CSCE is a not-for-profit organization dedicated to maintaining and promoting high quality independent assessment services. Our members are musculoskeletal experts and serve in a variety of independent assessment capacities for workplace injury insurance boards, third party payors, the legal community, and public health systems.

I am writing with regard to the aforementioned proposed rule changes to the UDAPs. We are specifically concerned about section 5.4 of the UDAPS (O reg. 7/00). The proposed rule changes do not address a glaring deficiency in the current UDAPS. Currently, within the section 5 of the regulation it states that it is unfair and deception for “a requirement by an insurer to require an insured person to attend for an assessment that the insurer knows or ought to know is not reasonably qualified by training or experience to conduct the examination.”

This provision is open for broad interpretation (and possible abuse) and requires greater clarification. Currently, there are many instances where insurers are using generalists rather than specialists to conduct independent assessments. The insurers, in almost all instances do not ask the assessor if they have the requisite education, training and expertise to comment on the issue(s) in dispute or at hand. The scope of practice should not be the default criteria as to whether an assessor has the skill set to provide a valid opinion and be perceived by the consumer to be neutral and fair in their opinion(s). The proper terminology should read that the person be reasonably qualified by education, training and experience to conduct the examination. Other than determining reasonableness and necessity of medical/rehabilitation benefits, this is especially important for Catastrophic Impairment determination. In Ontario insurer examiners are not required to have completed a certification program on rating permanent impairment under the AMA guides to permanent impairment (4th edition) which is required to determine impairment rating levels. For those injured Ontarians who are not catastrophically injured, but whose entitlement to medical/rehabilitation benefits may be challenged, it is also extremely important that the person who is conducting the assessment be familiar with the scientific literature, and standards and guidelines of the professional who is

performing or proposing care. A principles-based UDAPs would promote expert peer review assessments where possible.

The proposed rule changes to the UDAPs also would be compromised and undermined, as the above noted concerns also relate to proposed changes under Section 9. If the independent assessment process is not strengthened to protect the consumer, it will lead to instances where the insured perceives the insurer to be engaging in unfair discrimination, and not acting in good faith, leading them to have a reasonable apprehension of bias (proposed rule change 9(1))

While we recognize the desire to move to a principles-based regulation, by its very name the Unfair or Deceptive Acts or Practices must be prescriptive enough to the point where consumers are protected. Compliance with the law should not be sole standard to be met where medical/rehabilitation benefits are concerned. The UDAPs must be strong enough for the consumer to be adequately protected and perceive an absence of bias when seeking benefits under the SABS.

Thank you for your consideration of our concerns on this matter. I am also attaching examples of bias in Insurer Examinations in Ontario. I can be reached at ddos.david@gmail.com and by phone 416.737.4842

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Dos Santos', written in a cursive style.

Dr. D. Dos Santos, B.Sc.,D.C., FCCPOR, FCCOS
President, CSCE

Practice Lead, MSK Low Back Pain Rapid Access Program, Hamilton General Hospital

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