



Financial Services
Commission
of Ontario

Commission des
services financiers
de l'Ontario

July 2003

**CODE OF CONDUCT FOR STATUTORY ACCIDENT
BENEFIT REPRESENTATIVES**

Issued by the Superintendent of Financial Services
Effective November 1, 2003

Preamble

The purpose of the *Code of Conduct for Statutory Accident Benefit Representatives* (Code) is to set out the standards of conduct that must be met by those who advise and represent persons injured in automobile accidents concerning the entitlement of such persons to benefits under the *Statutory Accident Benefits Schedule* (SABS).

The Code is issued by the Superintendent of Financial Services of the Financial Services Commission of Ontario (FSCO) under the authority of the *Insurance Act* (Act) and subsection 4(1) of Ontario Regulation 7/00, as amended. The effective date is November 1, 2003.

The Code governs the conduct of SABS representatives, whether or not they appear in dispute resolution proceedings at FSCO.

The legislative requirements that apply to SABS representatives are set out in sections 398 and 284.1 of the Act, and in regulations made under the Act. They prohibit a person, other than a lawyer acting in the usual course of the practice of law, from engaging in various functions on behalf of a claimant, including representing a claimant in dispute resolution proceedings, unless the representative has met the conditions established by regulations. These functions are commonly undertaken by persons known as “paralegals” who, for purposes of this Code, are referred to as “SABS representatives” or “representatives.”

SABS representatives perform a wide variety of services on behalf of claimants. These include, for example, the following activities concerning a claim for statutory accident benefits:

- advising another person about his or her rights under the SABS;
- completing or assisting in completing application forms;
- discussing and negotiating with an insurer or adjuster;
- attending dispute resolution proceedings at FSCO, in Small Claims Court or private arbitration; or
- negotiating the settlement of SABS claims.

The Code recognizes that SABS representatives have obligations and responsibilities that must be met. Some of these responsibilities are broad, conduct-based “Standards of Conduct” as set out under the headings: *Honesty, Competence, Courtesy, and Representation Obligations*. Other responsibilities are specific regulatory requirements. These are set out under the headings: *Errors and Omissions Insurance, Catastrophically Impaired Claimants, Unfair or Deceptive Acts or Practices and Obligations to FSCO*.

Code of Conduct for Statutory Accident Benefit Representatives

The Code does not apply to persons who provide advice or representation without compensation, such as a friend or family member who assists a claimant in an informal and unpaid manner.¹

Nor does the Code apply to insurers' representatives or to lawyers acting in the usual course of the practice of law and their employees, if certain conditions apply.² Although these persons are not governed by this Code, it is nonetheless expected that they will observe the Standards of Conduct.

SABS representatives who fail to act in a manner consistent with this Code will be subject to administrative action taken by the Superintendent and to prosecution under the Act.

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¹ A person is considered to be representing another person for compensation if he or she receives or is entitled to receive, directly or indirectly from any source, a financial benefit in connection with the representation of the person, whether the financial benefit is wages, fees or another form of consideration or remuneration. See Ontario Regulation 664, as amended, s. 19(2).

² The person must be an employee of a lawyer, or firm of lawyers, and in respect of any claim for benefits under the SABS, act only under the direct supervision and direction of a lawyer. The lawyer must be a member in good standing of, and carry professional liability insurance required by, the Law Society of Upper Canada. The lawyer or the law firm must have been retained in respect of the claim. See Ontario Regulation 664, as amended, s. 18(b).

Part 1: Definitions

- 1.1 “Claimant” refers to a person who is seeking advice, assistance or representation concerning his or her entitlement to statutory accident benefits.
- 1.2 “Conflict of interest” of a representative relating to a claim for statutory accident benefits means that,
- (1) the representative could receive, directly or indirectly, a financial benefit that arises out of the claim, other than compensation for providing a service referred to in subsection 398(1) of the *Insurance Act* or for representing a claimant; or
 - (2) anyone related to the representative may receive, directly or indirectly, a financial benefit that arises out of the claim.

For the purpose of clause (1), a financial benefit arises out of a claim for statutory accident benefits where the benefit is related to the claim and would not have arisen if the claim had not been made.

For the purpose of clause (2),

- (a) a person is related to another person if,
 - (i) one person is the spouse or same-sex partner of the other person,
 - (ii) one person is connected with the other person by blood relationship or adoption, or
 - (iii) one person is connected by blood relationship to the spouse or same-sex partner of the other person;
- (b) persons are connected by blood relationship if,
 - (i) one is the child or other descendant of the other person, or
 - (ii) one is the brother or sister of the other person; and
- (c) persons are connected by adoption if one has been adopted, either legally or in fact, as the child of,
 - (i) the other person, or
 - (ii) a person who is connected by blood relationship to the other person but is not the brother or sister of the other person.

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- 1.3 “Contingency fee arrangement” includes an agreement under which a fee or other compensation is paid for the provision of services in an amount that is contingent, in whole or in part, on the successful disposition or completion of the matter in respect of which the services are provided.
- 1.4 “FSCO” refers to the Financial Services Commission of Ontario.
- 1.5 “Representative” refers to a person who engages in the activities described under subsection 398(1) of the *Insurance Act* on behalf of a claimant or provides representation for compensation to someone in a proceeding under sections 279 to 284 of the *Insurance Act*, but does not include,
- (a) a barrister and solicitor acting in the usual course of the practice of law, or
 - (b) an employee of a barrister and solicitor, or a firm of barristers and solicitors, who, in respect of any claim for statutory accident benefits, acts only under the direct supervision and direction of a barrister and solicitor who,
 - (i) is a member in good standing of the Law Society of Upper Canada,
 - (ii) carries such professional liability insurance as the Law Society of Upper Canada requires, and
 - (iii) is retained in respect of the claim or is a member of a firm that is retained in respect of the claim.
- 1.6 “Superintendent” refers to the Superintendent of Financial Services.

Part 2: Standards of Conduct: *Honesty, Competence, Courtesy, Representation Obligations*

Honesty

- 2.1 A representative must act honestly in dealing with the claimant, the insurer and its representatives, FSCO, and all participants in any dispute resolution process.
- 2.2 A representative must not put forward any information he or she knows is untrue, or assist or encourage a claimant to do anything that is dishonest or misrepresents the facts.

Competence

- 2.3 A representative must have a reasonable understanding of the substantive law and procedural requirements governing statutory accident benefit claims. This includes, but is not limited to, a reasonable understanding of the relevant requirements of the:
- (a) *Insurance Act*;
 - (b) *Statutory Powers Procedure Act*;
 - (c) *Statutory Accident Benefits Schedule*;
 - (d) *Dispute Resolution Practice Code*;
 - (e) application forms and other Superintendent-approved forms;
 - (f) Superintendent's Guidelines; and
 - (g) case law from arbitrators and courts.
- 2.4 A representative must possess adequate skills, attributes and abilities appropriate to each matter undertaken on behalf of a claimant. A representative must only provide services in those cases for which he or she is competent.
- 2.5 A representative must prepare adequately for each step in the claims process and any dispute resolution proceeding.
- 2.6 At the claims stage, the representative must correctly and fully complete any forms required for making a claim or for taking any step in connection with the claim.
- 2.7 At the negotiation and dispute resolution stage, the representative must have a reasonable understanding of the facts and law, and the ability to present them in a reasonable and fair manner.

Courtesy

- 2.8 A representative must treat all participants in the claims process and any dispute resolution proceedings with courtesy, respect and fair-dealing, including the claimant, the insurer and its representatives, other parties and their representatives, witnesses, interpreters, court reporters, adjudicators, FSCO staff, mediators, arbitrators and appeal delegates.

Representation Obligations

- 2.9 A representative must diligently represent the interests of the claimant.
- 2.10 A representative must demonstrate a proper understanding of and willingness to comply with the duties of a representative, including:
- advising the claimant that he or she is not a lawyer;
 - fully disclosing, in writing, the fees and any other remuneration the representative charges and payment terms and conditions, before being retained;
 - keeping information received from or concerning the claimant strictly confidential and not disclosing such information unless expressly or impliedly authorized by the claimant or permitted or required by law;
 - not misrepresenting his or her qualifications or experience; and
 - obtaining appropriate written authorization before providing representation on behalf of a claimant.
- 2.11 A representative must appear promptly for, and participate in good faith in, all dispute resolution proceedings for which he or she has received notification.
- 2.12 A representative must participate in procedural and settlement discussions in good faith at every stage in the dispute resolution process in order to resolve any issues in the proceedings early and without a formal hearing.
- 2.13 A representative must comply with all procedural requirements that apply to the proceedings, including the procedural requirements contained in the *Dispute Resolution Practice Code*, and with any orders or directions given by a mediator or adjudicator.
- 2.14 A representative must not engage in conduct that is an abuse of the claims process or dispute resolution process by instituting claims or proceedings, or taking any action in the course of a claim or proceeding, for the dominant purpose of harassing the insurer or causing expenses to be incurred without reasonable cause.

Part 3: Regulatory Requirements: *Errors and Omissions Insurance, Catastrophically Impaired Claimants, Unfair or Deceptive Acts or Practices, Obligations to FSCO*

Errors and Omissions Insurance

- 3.1 A representative must obtain and continue to maintain errors and omissions liability insurance acceptable to the Superintendent in an amount of not less than \$1,000,000 in respect of any one occurrence, with an overall policy aggregate limit of at least \$1,000,000 per person.
- 3.2 The deductible must not exceed \$5,000 in respect of any one occurrence.

Catastrophically Impaired Claimants

- 3.3 A representative must not provide services in respect of a claim by a person whom the representative knows, or ought reasonably to know, has sustained a catastrophic impairment as that term is defined in the *Statutory Accident Benefits Schedule*.
- 3.4 The representative must make appropriate inquiries to satisfy himself or herself that the claimant does not have a catastrophic impairment.

Unfair or Deceptive Acts or Practices

- 3.5 A representative must not solicit, accept or demand a fee under a contingency fee arrangement.
- 3.6 A representative must not solicit, accept or demand a referral fee, directly or indirectly, from another person who provides goods or services to or for the benefit of anyone who claims statutory accident benefits.
- 3.7 A representative must not pay a referral fee, directly or indirectly, to another person who provides goods or services to or for the benefit of anyone who claims statutory accident benefits.
- 3.8 A representative must not commit an act or omission that is inconsistent with the *Code of Conduct for Statutory Accident Benefit Representatives* issued by the Superintendent and published in *The Ontario Gazette*, as it may be amended from time to time.
- 3.9 A representative who has a conflict of interest relating to a claim for statutory accident benefits must disclose the conflict to anyone who claims the benefits and to the appropriate insurer.

Obligations to FSCO

- 3.10 A representative must file with the Superintendent such information as the Superintendent requires. This includes completing and filing an approved declaration with FSCO as often as required by the Superintendent.
- 3.11 A representative must respond to a request for information from FSCO fully and promptly, when requested to do so.
- 3.12 A representative may state, if true, that he or she has satisfied the FSCO filing requirements and is legally permitted to advise and represent persons claiming statutory accident benefits. However, a representative must not represent or hold out in any way, directly or indirectly, that FSCO has endorsed his or her services or qualifications.