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Section A - Rules of Procedures

PART 2 – MEDIATION

12. APPLICATION FOR MEDIATION

12.1 An insured person or an insurer may apply for mediation of any dispute about an insured person's entitlement to accident benefits or the amount of those benefits where a claim has been denied or the prescribed time period for the insurer to respond to the claim has elapsed.

12.2 A party who applies for mediation must file, in duplicate, a completed **Application for Mediation** in **Form A**, which includes:

(a) a description of each issue in dispute;

(b) a list of available documents to which the applicant intends to refer in the mediation;

(c) a list of existing documents that the applicant wishes to obtain from other sources, including the other party, which are required for the purpose of discussing settlement of the dispute;

(d) if the applicant is the insurer, the name, address, telephone number, facsimile number and e-mail address of its company representative; and

(e) if the applicant is the insured person:

(i) the name, address, telephone number, and (if any) the e-mail address of the insured person; and

(ii) the name, address, telephone number, facsimile number and e-mail address of the insured person's representative (if any).

If available, the applicant should file a copy of the insurer's written explanation of denial or the **Explanation of Benefits Payable by Insurance company** form.

For additional guidance on the exchange of documents between the parties, see **Practice Note 4** found in **Section C** of the **Code**.

12.3 If it appears that an **Application for Mediation** is incomplete, has been received after the time required for commencing the proceeding has elapsed, exceeds the jurisdiction of the dispute resolution process under the *Act* and its Regulations, or is frivolous, vexatious or an abuse of process, the Dispute Resolution Group will:

(a) deliver written notice of the jurisdictional concerns or deficiencies in the **Application** to the applicant and his or her representative; and

(b) hold the **Application** in abeyance for **20 days** from the delivery of the notice

12.4 Where the applicant does not satisfy the jurisdictional concerns or rectify the deficiencies set out in the written notice within the **20 days** provided under **Rule 12.3(b)**, the Dispute Resolution Group may reject the **Application**.

12.5 A party may not reapply for mediation of any dispute that has been mediated and, according to the Report of Mediator, the dispute was not resolved.

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http://www.fSCO.gov.on.ca/en/drs/DRP-Code/Pages/sectiona-part2.aspx#applicationmediation[17/01/2012 11:41:12 AM]

13. APPOINTMENT OF A MEDIATOR

13.1 On receipt of a completed **Application for Mediation**:

- (a) the Dispute Resolution Group will deliver a copy of the completed Application and a **Response to the Application for Mediation** in **FORM B** to the other party; and
- (b) a mediator will be appointed promptly.

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14. RESPONSE TO APPLICATION FOR MEDIATION

14.1 The party responding to the **Application for Mediation** must, within **10 days** of receiving the **Application**, file a completed **Response to an Application for Mediation** in **FORM B**, which must include:

- (a) a response to each issue raised in the **Application**;
- (b) details of any additional issues which are to be mediated;
- (c) If the respondent is the insurer, a copy of the insurer's written explanation of denial or **Explanation of Benefits Payable by Insurance Company** form if it was not included in the **Application**;
- (d) a list of available documents to which the responding party intends to refer in the mediation;
- (e) a list of existing documents that the responding party wishes to obtain from other sources, including the other party, which are required for the purpose of discussing settlement of the dispute; and
- (f) if the responding party is represented, the name, address, telephone number, facsimile number and e-mail address of the representative.

14.2 The Dispute Resolution Group may reject an incomplete **Response** which may result in delay or a failed mediation.

14.3 The responding party must deliver the completed **Response** to every other party in the dispute.

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15. COMBINING APPLICATIONS AND ADDING NEW ISSUES

15.1 Where two or more **Applications for Mediation** have been filed involving the same parties or the same accident, the Dispute Resolution Group may:

- (a) combine the **Applications**;
- (b) schedule any mediation meetings to take place one immediately after the other; or
- (c) on the consent of all parties, conduct any mediation meetings with all parties present.

15.2 Where either party wishes to add an additional issue to a mediation, they must provide a written request identifying the new issue to the mediator and the other party at least **10 days** prior to the scheduled date of the mediation meeting. Thereafter, issues may be added on the consent of all parties.

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16. THE MEDIATION PROCESS

16.1 The Dispute Resolution Group shall notify the parties when the dispute is ready to be scheduled for mediation and assigned to a mediator.

16.2 The Dispute Resolution Group may also notify the parties that they are to endeavour to agree, within **20 days** of the date of the notice, to a date and time for the mediation that is no later than **60 days** after the date of the notice and for which the Dispute

Resolution Group confirms a mediator is available.

16.3 If the parties do not notify the Dispute Resolution Group, within the **20-day** time period provided for in a notice delivered under Rule 16.2, that they have agreed to a date and time for the mediation in accordance with that Rule, the Dispute Resolution Group may proceed to schedule a date and time for the mediation without the agreement of the parties, and such date and time shall be binding on the parties unless the Dispute Resolution Group or the mediator permit otherwise.

16.4 At least **10 days** before the scheduled mediation meeting, the parties shall exchange with the other parties and provide the appointed mediator with the key documents required to discuss the settlement of any issue in dispute.

See **Practice Note 4** "Exchange of Documents" found in **Section C** of the **Code**.

16.5 Mediation may be conducted in person, by telephone, or by any other means that the mediator considers appropriate.

16.6 The mediator will look into all the issues in dispute which are identified on the **Application for Mediation** or the **Response to an Application for Mediation** or by written request under Rule 15.2 and will help the parties settle as many of the issues as possible.

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17. **PARTICIPATION IN MEDIATION**

17.1 Parties to the mediation and their representatives (if any) must participate in good faith in the mediation process and provide all relevant documents within the time frames set out in these Rules.

17.2 The appointment of a representative does not relieve any party of the obligation to participate in the mediation, in person, by telephone or other electronic technologies, and to provide instructions to any representative in respect of any issue in dispute or settlement offers made.

17.3 Where a party does not comply with **Rules 17.1** and **17.2** the mediator may:

- a) adjourn the mediation on such terms as he or she considers appropriate; or
- b) report to the parties that mediation did not take place.

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18. **CONFIDENTIALITY DURING MEDIATION**

18.1 All statements and offers to settle made during mediation, except those contained in the **Report of Mediator**, are deemed to be made for the purpose of settlement and shall not prejudice any position that the parties take in any subsequent arbitration or court proceeding.

18.2 A mediator shall not be required to testify or produce his or her notes or other documents in a civil proceeding or in a proceeding before any board or tribunal respecting a mediation or respecting information obtained in the discharge of the mediator's duties under these Rules.

18.3 Where a party to a mediation provides information to the mediator in confidence, the mediator will not disclose the information without the permission of the party, unless required by law to do so.

18.4 If a party provides documents to a mediator in confidence, the mediator will return the documents to the party and the documents will not form part of the mediation file.

18.5 The Dispute Resolution Group will not provide any part of the mediation file to a neutral evaluator or adjudicator, except the **Report of Mediator**.

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19. **TIME LIMITS FOR MEDIATION**

19.1 Subject to **Rule 19.2**, mediation must be concluded within **60 days** of the filing of an **Application for Mediation**, completed in accordance with the requirements of **Rule 12**.

19.2 Subject to **Rule 21.1(a)** the parties may agree to extend the **60 day** time limit for mediation.

19.3 Where the parties have agreed to extend the time limit, they must:

- (a) consult with the mediator; and
- (b) provide the mediator with written confirmation of the dates agreed upon for the extension

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20. **SETTLEMENT OF AN ISSUE**

20.1 Where the parties settle an issue on their own during the mediation process, they will advise the mediator of the terms of their settlement.

20.2 A settlement is subject to legal requirements, as applicable, including restrictions on settlements within one year of the date of the accident and completion of the appropriate Settlement Disclosure Notice.

See the **Settlement Regulation** found in **Section E** of the **Code**.

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21. **FAILURE OF MEDIATION**

21.1 Mediation has failed on an issue when:

- (a) the mediator is of the opinion that mediation will fail and notifies the parties; or
- (b) the time limit for mediation, including any extension, has expired and no settlement has been reached.

21.2 If mediation fails on any of the issues in dispute, the insurer will provide the mediator with its last offer in respect of such issue or issues.

21.3 No party may bring a proceeding in any court, refer the issues in dispute to an arbitrator, or agree to submit an issue to private arbitration unless mediation was sought and has failed.

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22. **REPORT OF MEDIATOR**

22.1 The mediator will record the following in the **Report of Mediator**:

- (a) the mediator's description of the issues that were in dispute;
- (b) if any of the issues were resolved, the terms of any settlement;
- (c) the insurer's last offer in respect of any issue that remains in dispute;
- (d) any steps the parties agree to take to help them settle any issue that remains in dispute;
- (e) a list of documents requested by the parties that have not been produced and that, in the opinion of the mediator, were required for the purpose of discussing settlement of any issue that remains in dispute; and
- (f) the mediator's recommendation whether issues that remain in dispute should be referred to neutral evaluation.

22.2 The Dispute Resolution Group will deliver a copy of the **Report of Mediator** to the parties, to a person appointed by the Director to perform a neutral evaluation, and to an arbitrator appointed by the Director.

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23. AMENDMENT OF MEDIATOR'S REPORT

23.1 If a party believes that the **Report of Mediator** is not accurate, the party must notify the mediator and the other parties in writing, with reasons, within **10 days** of receiving the **Report**.

23.2 After considering the reasons and the comments of the parties, the mediator may issue an amendment to the **Report of Mediator**, if the mediator considers it appropriate.

23.3 The Dispute Resolution Group will deliver a copy of the amendment to the **Report of Mediator** to the parties, to the person approved by the Director to perform a neutral evaluation, and to an arbitrator appointed by the Director.

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24. REFERRAL TO NEUTRAL EVALUATION

24.1 If mediation fails on any of the issues in dispute, the parties jointly or the mediator who conducted the mediation may, for the purpose of assisting in the resolution of the issues in dispute, refer the issues in dispute to a person appointed by the Director for an evaluation of the probable outcome of a proceeding in court or arbitration.

24.2 Where the mediator or the parties jointly refer the issues in dispute to neutral evaluation, the parties shall either:

- (a) jointly retain a private neutral evaluator appointed by the Director; or

See **Practice Note 5** "Mediator Referral to Private Neutral Evaluation" under **Section C** of the **Code**.

- (b) If an **Application for Arbitration** in **Form C** is filed, jointly request neutral evaluation at the Commission in accordance with the Rules under **PART 3, ARBITRATION AND NEUTRAL EVALUATION AT THE COMMISSION**.

See **Practice Note 6** "Neutral Evaluation at the Financial Services Commission" under **Section C** of the **Code**.

24.3 The Director will promptly appoint a person to conduct a private neutral evaluation under **Rule 24.2(a)** upon receipt in writing of:

- (a) the name, address, telephone number and e-mail address of the person who has been jointly retained by the parties;
- (b) confirmation from the person jointly retained that he or she has agreed to perform the neutral evaluation at the parties' expense and in accordance with the requirements of the Insurance Act; and
- (c) confirmation of the applicable mediation file number

24.4 Where the issues in dispute are referred to neutral evaluation, no party may proceed to court or arbitration unless the report of the person who performed the neutral evaluation has been given to the parties.

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