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Practice Note 3: Participation and representation at dispute resolution ("Authority to Bind")

Anyone representing an insurance company or an insured person at mediation, neutral evaluation, or arbitration will be discussing and negotiating agreements and settlements regarding accident benefit disputes. It is essential that people claiming benefits participate in mediation, neutral evaluation or arbitration to hear and discuss settlement offers and give instructions to any representative.

A representative must be able to speak to and negotiate on all issues in dispute. The mediator, neutral evaluator or adjudicator may request written or verbal confirmation that a representative is authorized to discuss the dispute with FSCO, to negotiate, and to enter into an agreement or settlement of any and all issues in dispute. Appointing a representative does not relieve any party of their obligation to participate in the dispute resolution process, except in extenuating circumstances (for example, confinement in a hospital).

A lawyer or an employee representing an insurance company must have the authority to change the company's position based on the evidence presented by the insured at a mediation, neutral evaluation or arbitration. In the case where an insurer's representative has limited authority to enter into an agreement or settlement, an officer of the company **with the requisite authority** must attend or be available by telephone for the duration of the proceeding.

WHAT HAPPENS IF THERE IS NO AUTHORITY TO BIND?

If a party is unable to attend (for example, confinement to hospital), the mediator, neutral evaluator or adjudicator can adjourn a proceeding, with or without conditions, if the representative is not authorized to bind that party to an agreement. The adjournment can be on whatever terms the mediator, neutral evaluator or adjudicator considers appropriate.

An adjudicator has authority to make an interim order of expenses, subject to such terms and conditions as may be established by the adjudicator, should a representative attend without full authority.

WHY IS AUTHORITY TO BIND SO IMPORTANT?

If the representatives do not have authority to bind, a settlement discussion can break down into a series of statements like "I'll have to check that with my client." This can lead to drawn-out, fruitless discussions that waste the time of everyone involved.

HOW DO I GET MORE INFORMATION?

Our telephone numbers are:

from Toronto, call (416) 250-6714

from outside Toronto, phone 1-800-517-2332

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