Bulletin

No. A-18/03

Property & Casualty

- Auto

Filing a complaint about a Paralegal (SABS Representative)

With this bulletin, the Financial Services Commission of Ontario (FSCO) is outlining the complaint process that should be followed in order to file a complaint about a paralegal (SABS representative), beginning November 1, 2003.

Complaint process

Effective November 1, 2003, the Office of the Insurance Ombudsman (OIO) at FSCO will accept and review written complaints about the activities and conduct of SABS representatives. These complaints could include such matters as the representative has not filed the required declaration with FSCO, does not have errors and omissions insurance, or is committing an unfair or deceptive act or practice. Such acts and practices are referenced later in this bulletin. Any person who wishes to file a complaint that the activities or conduct of someone acting as a SABS representative violates the *Insurance Act*, (the "Act") or regulations made under the Act, can do so by providing the following information to the OIO, at the address noted below.

Required information

The following information has to be provided to the OIO when making a complaint:

1. the name, mailing address and telephone number of the individual making the complaint;
2. the name and contact information of the SABS representative about whom the individual is complaining;
3. the specific activity or conduct about which the individual is complaining (e.g., committing an act or omission after November 1, 2003, that is inconsistent with the Code of Conduct issued by the Superintendent); and
4. any documents or other information that supports the complaint.

The complaint should be made in writing and sent to the OIO at the following address:

Financial Services Commission of Ontario

c/o Office of the Insurance Ombudsman

5160 Yonge Street,

4th Floor, Box 85

North York ON

M2N 6L9

Complaints may also be faxed to the OIO at 416-590-8480.

Please note that any information provided to the OIO may be disclosed to the SABS representative so that he or she has an opportunity to respond fully to the complaint.

Background

As announced in Bulletin A- 04/03 (Implementing Bill 198: New and Amending Regulations), and Bulletin A- 06/03 (Filing & Other Regulatory Requirements for Paralegals (SABS Representatives)) the provisions applicable to SABS representatives come into force on November 1, 2003. (See Regulation 664, amended by O. Reg 275/03.)

As a result of these changes, no one may act as an adviser, consultant or representative on behalf of a person concerning a claim for statutory accident benefits, as of November 1, 2003, unless the representative meets the requirements set out in the regulations. This includes, for example, a person who does any of the following activities concerning a claim for statutory accident benefits:

- advises another person about his or her rights under the
- Statutory Accident Benefits Schedule (SABS);

- completes or assists in completing application forms;
- discusses and negotiates with an insurer or adjuster;
- attends dispute resolution proceedings at FSCO, in Small Claims Court or private arbitration; or
- negotiates the settlement of SABS claims.

The regulations also require SABS representatives to file information required by the Superintendent with the Financial Services Commission of Ontario (FSCO); carry errors and omissions (e & o) liability insurance coverage of $1,000,000 in respect of any one occurrence; and refrain from acting for any individual who they know, or ought reasonably to know, has a catastrophic impairment as defined in the SABS.

The regulations also amend the definition of “unfair or deceptive acts or practices” to prohibit the following conduct by SABS representatives:

- charging fees under a contingency fee arrangement;
- paying or accepting referral fees;
- committing an act or omission inconsistent with a Code of Conduct issued by the Superintendent; and
- failing to disclose any conflict of interest to the claimant and the insurer (O. Reg. 7/00 amended by O. Reg. 278/03).

Lawyers acting in the usual course of the practice of law and insurer representatives are exempt from these requirements. Lawyers’ employees are also exempt, provided they act only under the direct supervision of a lawyer who is retained, or whose law firm is retained, by the claimant.

Persons who provide representation without compensation (such as a friend or family member who assists a claimant in an informal and unpaid manner) are also exempt from these requirements. However, a person is considered to be providing representation for "compensation" if he or she receives, directly or indirectly, a financial benefit in connection with the claimant’s representation. Individuals who are paid service providers who combine the provision of health care or other services with claimant representation, must comply with these requirements.

All SABS representatives must file a declaration form with FSCO before November 1, 2003. Anyone who becomes a SABS representative after November 1, 2003, will need to file before engaging in the activities of a SABS representative. In addition, SABS representatives must re-file on or before the renewal date of their e & o liability insurance policy and any time the filed information changes (e.g. change to personal or business information, change to e & o liability insurance, or ceasing to act as a SABS representative).

Additional information is available

Further information is available through the *Paralegals / SABS Representatives* page of FSCO's web site. If you have questions about the complaint process, filing & other requirements, new regulatory changes or the Code, please contact FSCO at 416-250-7250 or 1-800-668-0128, or by e-mail at paralegalinfo@fsco.gov.on.ca

Bryan P. Davies

Chief Executive Officer and

Superintendent of Financial Services

November 4, 2003

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