

August 11, 2021

Financial Services Regulatory Authority
Consultation Submission

Re: Proposed Rule (2020-002) Unfair or Deceptive Acts or Practices (UDAPs)
Consultation deadline: August 11, 2021

I am writing with regard to the aforementioned proposed rule changes to the UDAPs. I note that the initial draft of changes sent out August 4, 2021, our initial concern regarding section 5 (4) of the UDAPS (O reg. 7/00). The proposed and draft 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.”

Again, much greater clarity in the UDAPs regarding insurer examinations is required to protect the consumer. Again, professional peer review is the only sensible way to address this issue. We are calling for the regulation to state that the insurer must utilize an assessor who is qualified by education, training and experience. This is the only way of addressing this deficiency.

Failure to promote professional peer review potentially places the patient/examinee at risk. The assessor must be familiar with indications and contraindications for a particular proposed treatment or intervention. If, for example, a general medical practitioner approves a proposal for cervical spinal manipulation in someone who has rheumatoid arthritis, this would be contraindicated and places the patient at risk.

Any reasonable principles-based UDAPs would promote expert peer review assessments. To do otherwise is not principle-based. Again, it will lead to instances where the insured perceives the insurer to be engaging in unfair discrimination, and not acting in good faith. The current draft proposal also fails to focus on the needs of the consumer for stronger protections by clearly defining outcomes that are unfair or otherwise harmful, as specifically stated as a goal in your communications. The current runs counter to the goal of strengthening consumer protection (Section 9 (1)). Much greater prescriptive language is required.

Thank you for your consideration of our concerns on this matter. I can be reached at ddos.david@gmail.com and by phone 416.737.4842. I would welcome the opportunity to discuss this matter further with you.

Sincerely,

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

Dr. D. Dos Santos, B.Sc.,D.C., FCCPDR, FCCOS
President, CSCE
Practice Lead, MSK Low Back Pain Rapid Access Program, Hamilton General Hospital

DDS/