



Q.: WHAT CONSTITUTES AN UDAP (UNFAIR AND DECEPTIVE ACT OR PRACTICE)?

Section 438 of the *Insurance Act* states that no person should engage in any unfair or deceptive act or practice in the business of insurance. The following actions, if done on or after March 1, 2006, are prescribed in the O. Reg. 547/05 as an unfair or deceptive act or practice:

- Conduct resulting in unreasonable delay or in resistance to the fair adjustment and settlement of claims.
- The failure or refusal of an insurer without reasonable cause to pay a claim for goods or services or for the costs of an assessment within the time prescribed for payment in the *Schedule*.
- The determination by an insurer that a person is not entitled to a statutory accident benefit or that a person does not have a catastrophic impairment if (i) the insurer makes the determination before obtaining a report of an examination in respect of the person under section 42 of the *Schedule*; (ii) the *Schedule* does not authorize the insurer to make the determination without having obtained the report.
- Making a statement by or on behalf of an insurer for the purposes of an adjustment or settlement of a claim if the insurer knows or ought to know that the statement misrepresents or unfairly presents the findings or conclusions of a person who conducted a s.42 examination.
- A requirement by an insurer that an insured person attend for a s.42 examination conducted by a person whom the insurer knows or ought to know is not reasonably qualified to conduct the examination.
- A requirement by an insurer that an insured person attend for a s.42 examination that the insurer knows or ought to know is not reasonably required for the purposes authorized under the *Schedule*.
- The failure of an insurer to obtain the written and signed consent of an insured person in the approved form before a pre-claim examination under section

32.1 of the *Schedule* is conducted in respect of the insured person.

Where a person has engaged in an unfair or deceptive act or practice, the FSCO Ombudsman should

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be placed on notice.

Further information on the changes made to the *Schedule* as of March 1, 2006 can be found on the FSCO website at www.FSCO.gov.on.ca.

To discuss your case, please contact information@ztgh.com.

