



Province of Alberta

## INSURANCE ACT

# MINOR INJURY REGULATION

### **Alberta Regulation 123/2004**

With amendments up to and including Alberta Regulation 73/2018

### Office Consolidation

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(Consolidated up to 73/2018)

**ALBERTA REGULATION 123/2004**

**Insurance Act**

**MINOR INJURY REGULATION**

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#### **Definitions**

**1(1)** For the purpose of section 597(1) of the Act and this Regulation,

- (a) “accident” means an accident arising from the use or operation of an automobile;
- (b) “Act” means the *Insurance Act*;
- (c) “certified examiner” means a physician who is entered in the certified examiners register in accordance with Division 2 of Part 3;
- (d) “certified examiners register” means the register of certified examiners established under section 15;
- (e) “claimant” means a person injured as a result of an accident;
- (f) “council” means the council of the College of Physicians and Surgeons of the Province of Alberta;
- (g) “defendant” means a person against whom an accident claim is made or may be made and includes, without limitation,
  - (i) that person’s insurer,
  - (ii) any insurer made a third party to the claim by the Court under section 579(14) of the Act, and
  - (iii) the Administrator of the *Motor Vehicle Accident Claims Act* when the Administrator is added as a party to an action in respect of the claim by order under section 4(5) of that Act;
- (h) “minor injury”, in respect of an accident, means
  - (i) a sprain,
  - (ii) a strain, or

(iii) a WAD injury

caused by that accident that does not result in a serious impairment;

- (h.1) “minor injury amount” means the total amount recoverable under section 6 as damages for non-pecuniary loss for all minor injuries sustained by a claimant as a result of an accident;
- (i) “prescribed” means established by the Minister under section 803 of the Act;
- (j) “serious impairment”, in respect of a claimant, means an impairment of a physical or cognitive function
- (i) that results in a substantial inability to perform the
- (A) essential tasks of the claimant’s regular employment, occupation or profession, despite reasonable efforts to accommodate the claimant’s impairment and the claimant’s reasonable efforts to use the accommodation to allow the claimant to continue the claimant’s employment, occupation or profession,
- (B) essential tasks of the claimant’s training or education in a program or course that the claimant was enrolled in or had been accepted for enrolment in at the time of the accident, despite reasonable efforts to accommodate the claimant’s impairment and the claimant’s reasonable efforts to use the accommodation to allow the claimant to continue the claimant’s training or education, or
- (C) normal activities of the claimant’s daily living,
- (ii) that has been ongoing since the accident, and
- (iii) that is expected not to improve substantially;
- (k) “sprain” means an injury to one or more tendons or ligaments, or to both;
- (l) “strain” means an injury to one or more muscles;
- (m) “Superintendent” means the Superintendent of Insurance appointed under the Act;
- (n) “WAD injury” means a whiplash-associated disorder other than one that exhibits one or both of the following:

- (i) objective, demonstrable, definable and clinically relevant neurological signs;
- (ii) a fracture to or a dislocation of the spine.

(2) For the purposes of this Regulation, an injury in respect of an accident involving or surrounding the temporomandibular joint is a sprain, strain or WAD injury unless the injury involves

- (a) damage to bone or teeth, or
- (b) damage to or displacement of the articular disc.

(3) Subsection (2) applies only in respect of an injury described in that subsection that occurs on or after June 1, 2018.

AR 123/2004 s1;260/2006;73/2018

## **Part 1 Assessment of Injuries and Determination of Minor Injury**

### **Injuries must be assessed separately**

**2** If a claimant sustains more than one injury as a result of an accident, each injury must be assessed separately to determine whether the injury is or is not a minor injury.

### **Physical or psychological condition or symptom**

**2.1(1)** A physical or psychological condition or symptom that arises from a sprain, strain or WAD injury and resolves with the sprain, strain or WAD injury is deemed not to be an injury separate from the sprain, strain or WAD injury.

(2) Subsection (1) applies only in respect of a sprain, strain or WAD injury that occurs on or after June 1, 2018.

AR 73/2018 s3

### **Injury must be primary contributing factor**

**3** For a sprain, strain or WAD injury to be considered to have resulted in a serious impairment, the sprain, strain or WAD injury must be the primary factor contributing to the impairment.

### **Determination of minor injury**

**4(1)** The determination as to whether an injury sustained by a claimant as a result of an accident is or is not a minor injury must be based on

- (a) a determination as to whether the injury is a sprain, strain or WAD injury, and
- (b) if the injury is determined to be a sprain, strain or WAD injury, a determination as to whether the sprain, strain or WAD injury results in a serious impairment.

**(2)** For the purpose of subsection (1)(a), the determination as to whether an injury is a sprain, strain or WAD injury must be based on an individual assessment of the claimant in accordance with the diagnostic protocols established under the *Diagnostic and Treatment Protocols Regulation*.

**(3)** For the purpose of subsection (1)(b), the determination as to whether a sprain, strain or WAD injury results in a serious impairment must take into account

- (a) the claimant's pre-existing medical history, and
- (b) the matters referred to in section 1(j)(i) that relate to the claimant.

#### **Protocols not followed**

**5(1)** If

- (a) a claimant sustains a sprain, strain or WAD injury as a result of an accident,
- (b) the claimant is, without reasonable excuse, not diagnosed and treated in accordance with the diagnostic and treatment protocols established under the *Diagnostic and Treatment Protocols Regulation*, and
- (c) the sprain, strain or WAD injury results in a serious impairment,

the sprain, strain or WAD injury shall be considered to be a minor injury unless the claimant establishes that the sprain, strain or WAD injury would have resulted in a serious impairment even if the claimant had been diagnosed and treated in accordance with the protocols referred to in clause (b).

**(2)** Subsection (1) does not apply to a claimant who is a person described in provision (2) of the Special Provisions, Definitions and Exclusions of Section B under the *Automobile Accident Insurance Benefits Regulations* (AR 352/72).

## Part 2

### Damages Recoverable for Non-pecuniary Loss

#### Damages recoverable for non-pecuniary loss for minor injuries

**6(1)** In this section, “Alberta CPI” means the Consumer Price Index for Alberta published by Statistics Canada.

**(2)** Subject to this section and section 7(2)(a), for the purposes of section 597(2) of the Act, the total amount recoverable as damages for non-pecuniary loss for all minor injuries sustained by a claimant as a result of an accident is \$4000.

**(3)** For the 2007 and subsequent calendar years, the minor injury amount shall be increased annually, with effect from January 1, by an amount equal to

(a) the minor injury amount for the previous calendar year,

multiplied by

(b) the annual change in the Alberta CPI, determined in accordance with subsection (4) and rounded to 1/10 of a percentage point.

**(4)** For the purposes of subsection (3)(b), the change in the Alberta CPI is the amount determined by the formula

$$X = \frac{(A - B)}{B}$$

where

X is the annual change in the Alberta CPI;

A is the sum of the 12 individual monthly Alberta CPI indexes for the 12-month period ending on September 30 of the calendar year that ended before the commencement of the calendar year for which the increase is being calculated;

B is the sum of the 12 individual monthly Alberta CPI indexes for the 12-month period immediately preceding the 12-month period referred to in A.

**(5)** If the annual change is a negative number, that negative number shall be treated as if it were zero.

**(6)** The minor injury amount for a calendar year after 2006 applies only in respect of accidents that occur during that calendar year.



(7) The Superintendent shall publish the following information in The Alberta Gazette before the end of each calendar year:

- (a) the minor injury amount for the following calendar year;
- (b) the Superintendent's calculation of that amount.

AR 123/2004 s6;260/2006;73/2018

**Damages recoverable for non-pecuniary loss for minor and non-minor injuries**

**7(1)** In this section, "non-minor injury" means an injury other than a minor injury.

(2) If a claimant sustains one or more minor injuries and one or more non-minor injuries as a result of an accident, the assessment of damages for non-pecuniary loss for all injuries sustained by the claimant is subject to the following rules:

- (a) if the non-minor injury or injuries, when assessed separately from the minor injury or injuries, would result in an award for non-pecuniary loss of not more than the minor injury amount, the total amount recoverable as damages for non-pecuniary loss for all injuries sustained by the claimant shall not exceed the minor injury amount;
- (b) if the non-minor injury or injuries, when assessed separately from the minor injury or injuries, would result in an award for non-pecuniary loss of more than the minor injury amount, the total amount recoverable as damages for non-pecuniary loss for all injuries sustained by the claimant shall be calculated as the total of
  - (i) the amount of damages assessed for non-pecuniary loss for the non-minor injury or injuries, and
  - (ii) subject to section 6, the amount of damages assessed for non-pecuniary loss for the minor injury or injuries.

AR 123/2004 s7;260/2006

**Part 3  
Certified Examiner**

**Division 1  
Assessment by Certified Examiner**

**Disagreement as to whether injury is or is not a minor injury**

**8(1)** If a claimant and a defendant disagree as to whether an injury sustained by the claimant as a result of an accident is or is not a

minor injury, either party may give notice to the other party in the prescribed form

- (a) stating that the party giving notice desires to have a certified examiner assess the claimant for the purpose of giving an opinion as to whether the injury is or is not a minor injury, and
  - (b) specifying the name of the proposed certified examiner.
- (2)** If, on receipt of a notice under subsection (1), the other party
  - (a) accepts the certified examiner proposed under subsection (1)(b), that party must, within 14 days, so notify the party giving notice under subsection (1), or
  - (b) does not accept the certified examiner proposed under subsection (1)(b), that party must, within 14 days, so notify the party giving notice under subsection (1) and provide the name of a certified examiner that the party is willing to accept.
- (3)** If a party fails to provide notice under subsection (2), that party is considered to have accepted the certified examiner proposed under subsection (1)(b).
- (4)** If the parties cannot agree on a certified examiner to assess the claimant, either party may apply to the Superintendent in the prescribed form to select a certified examiner to assess the claimant.
- (5)** The Superintendent must, within 5 business days after receiving an application under subsection (4), select a certified examiner from the certified examiners register.
- (6)** The Superintendent may not select a certified examiner who was proposed by either party under this section.
- (7)** Notwithstanding anything in this section,
  - (a) neither the claimant nor the defendant may give notice under subsection (1) until at least 90 days have passed since the accident;
  - (b) only one assessment of the claimant in respect of the accident may be carried out under this section;
  - (c) a certified examiner is not eligible to assess a claimant under this section if the certified examiner
    - (i) has diagnosed or treated the claimant, or

- (ii) has been consulted with respect to the diagnosis or treatment of the claimant

in respect of any injury arising from the accident.

#### **Scheduling of assessment**

**9(1)** The certified examiner must make reasonable efforts to schedule the assessment of the claimant for a time that is convenient for the claimant and that is within 30 days of the referral to the certified examiner.

**(2)** For the purpose of subsection (1), the certified examiner must give notice in writing to the claimant of the date, time and location of the assessment.

#### **Assessment by certified examiner**

**10(1)** For the purpose of giving an opinion as to whether the claimant's injury is or is not a minor injury, the certified examiner must assess the claimant to determine in accordance with section 4

- (a) whether the claimant's injury is a sprain, strain or WAD injury, and
- (b) if the claimant's injury is determined to be a sprain, strain or WAD injury, whether the sprain, strain or WAD injury results in a serious impairment.

**(2)** For the purpose of conducting an assessment of the claimant, the certified examiner may

- (a) request the claimant to authorize in writing the release of any relevant diagnostic, treatment or care information in respect of the claimant that is in the possession of a physician or other person, including a regional health authority, and
- (b) receive from the claimant or the defendant any information that either party considers relevant to the assessment.

**(3)** If the claimant, without reasonable excuse,

- (a) fails to attend an assessment for which notice has been given under section 9 or 11(3),
- (b) refuses to answer any relevant questions of the certified examiner about

- (i) the claimant's medical condition or medical history, or
- (ii) matters referred to in section 1(j)(i) that relate to the claimant,
- (c) fails to authorize the release of any relevant diagnostic, treatment or care information in respect of the claimant pursuant to subsection (2)(a), or
- (d) in any other way obstructs the certified examiner's assessment,

the claimant's injury shall be considered to be a minor injury.

#### **Opinion of certified examiner**

**11(1)** The certified examiner must, within 30 days of the certified examiner's assessment of the claimant, prepare an opinion in the prescribed form as to whether the claimant's injury is or is not a minor injury and provide a copy of that opinion to each party.

**(2)** Notwithstanding subsection (1), if the certified examiner is not able to provide an opinion under subsection (1) without further assessing the claimant, the certified examiner may, on written notice to the parties, require the claimant to attend a further assessment, in which case the certified examiner must provide an opinion under subsection (1) within 30 days of that further assessment.

**(3)** A notice under subsection (2) must contain

- (a) the reason for the further assessment of the claimant, and
- (b) the date, time and location of the further assessment.

**(4)** A further assessment of the claimant under subsection (2) must be completed within 6 months of the first assessment of the claimant.

#### **Prima facie evidence**

**12** The opinion of the certified examiner is prima facie evidence that the claimant's injury is or is not a minor injury, as the case may be.

#### **Cost of assessment and opinion**

**13(1)** An assessment conducted and opinion provided by a certified examiner under this Division are to be at the expense of the party requesting the assessment and opinion.

(2) The Superintendent may establish specific fees and disbursements or the maximum fees and disbursements that a certified examiner may charge for conducting an assessment and providing an opinion under this Division.

(3) The fees and disbursements or maximum fees and disbursements established under subsection (2) must be published in The Alberta Gazette.

#### **Manner of giving notice**

**14** Where this Division requires or permits a notice or other document to be given to a person, it may be given

- (a) by sending it to that person by mail to the last known address of that person,
- (b) by personal service, or
- (c) by means of a facsimile or an e-mail if both parties have agreed to either of those methods of sending and receiving notices or other documents.

## **Division 2 Certified Examiners Register**

#### **Register established**

**15(1)** The Superintendent must establish, maintain and administer a register of certified examiners.

(2) The Superintendent must ensure that the certified examiners register is published in a form and manner so that the register is accessible to the public.

#### **Eligibility requirements**

**16(1)** A physician is a certified examiner under this Regulation if, in accordance with this Division,

- (a) the council notifies the Superintendent that the physician meets the requirements set out in subsection (2), and
- (b) the Superintendent enters the physician's name on the certified examiners register.

(2) A physician is eligible to be a certified examiner if the physician

- (a) is an active practising member under the *Health Professions Act*,

- (b) has successfully completed an examination approved by the council for admission as a certified examiner,
  - (c) has demonstrated to the satisfaction of the council that the physician
    - (i) is knowledgeable with respect to the biopsychosocial model,
    - (ii) is knowledgeable with respect to assessing acute and chronic pain,
    - (iii) is knowledgeable in the application of the International Classification of Diseases,
    - (iv) is experienced in rehabilitation and disability management,
    - (v) is competent in conducting independent assessments and providing third party opinions, and
    - (vi) uses evidence-based decision-making in the physician's practice,
- and
- (d) meets any additional qualifications established by the Superintendent and approved by the council.

**(3)** For the purpose of subsection (2)(iii), “International Classification of Diseases” means the most recent edition of the publication titled the *International Statistical Classification of Diseases and Related Health Problems*, Canada, published by the Canadian Institute of Health Information, based on a publication issued from time to time titled the *International Statistical Classification of Diseases and Related Health Problems*, published by the World Health Organization.

AR 123/2004 s16;73/2018

#### **Ceasing to be a certified examiner**

**17** A physician ceases to be a certified examiner if

- (a) the council notifies the Superintendent that the physician's name is to be removed from the certified examiners register, and
- (b) the Superintendent removes the physician's name from the certified examiners register.

**Transitional**

**18(1)** Notwithstanding section 16, the Superintendent may enter the name of a physician on the certified examiners register when the council notifies the Superintendent that the physician

- (a) is an active practising member under the *Health Professions Act*, and
- (b) in the opinion of the council is able to perform the functions of a certified examiner.

**(2)** A physician whose name is entered on the certified examiners register under subsection (1) ceases to be a certified examiner

- (a) on the date the physician becomes a certified examiner under section 16(1),
- (b) 2 years from the date this section comes into force or such later date as the Superintendent determines, or
- (c) on the date the physician ceases to be a certified examiner under section 17,

whichever occurs first.

AR 123/2004 s18;73/2018

## **Part 4 Coming into Force**

**19** Repealed AR 73/2018 s7.

**Coming into force**

**20** This Regulation comes into force on October 1, 2004.



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