

PAEDIATRIC HEAD INJURY CLAIMS: LITIGATE OR SETTLE?

**Ontario Bar Association
Civil Litigation/Insurance Law**

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Bill 198 and CAT Impairment

- If under 16
- If none of the GCS, GOS or AMA Guides can be applied by reason of the age of the insured person,

Then

Take into consideration the developmental implications of the impairment.

- If can reasonably believe impairment is Catastrophic

Then

Impairment shall be deemed to be the impairment that is most analogous to the clause 1.2 definitions of catastrophic impairment.

Effect of Alcohol on GCS

➤ Holland v. Pilot

- DAC set aside GCS readings of 7, 8 and 4 because “presence of alcohol would make the GCS reading unreliable”.
- Court accepted GCS scores on their face, Plaintiff found to be CAT.
- If GCS not accepted on its face, studies suggest alcohol effect is to depress GCS by 1-2 points.

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AMA Guides – Mental and Behavioural Disorders

➤ Marked or Extreme Impairment

- Four domains assessed:
 - adl’s
 - social functioning
 - concentration
 - persistence/pace, decompensation in work (?Play)
- If person has marked impairment in two domains:
 - CAT

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Key concerns for counsel in dealing with clients and family in an acute care setting

- Lawyer's role:
- Advocacy?
 - Rehab facilitator?
 - Form-filler?
 - Ensure discharge needs will be met?
 - Preserve family financial integrity?
 - Notice in 7 days

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Attendant Care in Hospital

- Form 1 in Hospital
 - Whose O.T.?
 - insured's choice
 - How calculate?
 - take nursing care into consideration
 - Isn't care OHIP's responsibility?
 - insurer is "First Payor" for care
 - How does the family "incur" an expense for attendant care?
 - incurred if service provided
 - What can the insurer ask for above the Form 1?
 - ID the service provider, dates and approximate times service provided
 - When does the insurer pay if it disputes claim?
 - SAB s. 39(6): pay the Form 1 until report from DAC

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Case Management

- Not only for CAT
 - “shall pay...” if CAT does not mean: Shall not pay if non-CAT
 - reasonable and necessary
 - IBC supported case management for paediatric claims
- Paediatric non-CAT brain injury: reasonable and necessary

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Documenting needs in Acute Care:

- Team meetings
- case manager
- assessments in hospital
- discharge notes from OT, PT, Speech, Social work and Nursing
- Accident Benefit, CAT, Form 1 and Disability applications

...Case Scenario...

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