

## No-Fault Medical Insurance: Be Careful What You Wish For

October 14, 2015— Dalhousie University law professor Elaine Gibson, who recently called for a sweeping overhaul of the system and a move to a no-fault medical insurance system, should be careful what she wishes for: it might come true.

Professor Gibson, who this June completed a review of Canada's medical liability system, expressed support for moving away from the current, taxpayer-subsidized, medical insurance-like model. Currently, the vast majority of Canadian physicians facing claims of negligence turn to the [Canadian Medical Protection Association \(CMPA\)](#), a not-for-profit professional organization whose members, Canadian doctors, pay a fee in return for, among other things, legal defense when required. A substantial portion of these fees are then returned to the physicians through reimbursement by their provincial governments.

Ms. Gibson's assertion that no-fault medical insurance is a better alternative fails to take into account the significant advantages of the current model. Despite the criticism the CMPA has received, patients actually enjoy a major benefit in that they have the potential to recover 100% of their losses if a physician is found negligent. This is because the CMPA has no financial limit on how much it will pay out to plaintiffs who successfully plead their case. Under a traditional insurance scheme, payouts would be limited to the size of the policy held by the insured. Any damages over and above that amount would have to be collected from the physician personally. Given the huge life-long costs associated with caring for someone who is catastrophically injured, there is a good chance that the doctor at fault may simply not have the means and resources to pay up. In that case, the patient is out of luck.

The fundamental benefit of no-fault insurance is that it streamlines the system. The basic tenet is that regardless of fault, insurance companies quickly and efficiently



settle claims by compensating those involved for damages and injuries. In doing so, the parties involved forgo litigation and are saved from expensive and lengthy court battles.

When applied to the world of motor vehicle accidents, no-fault insurance most effectively addresses the common “fender bender”, preventing this type of claim from tying up legal resources and bogging down the court system. When applied to medical malpractice and the realm of medicine however, no-fault insurance comes with serious flaws. Here, no-fault insurance means everyone gets a little something at the expense of those who need more than a little, the patients who have been catastrophically injured due to a physician’s negligence. In other words, no-fault insurance plans prejudice those who really need real damages to support the many who probably do not.

One of the main criticisms of the CMPA is that it has deep-pockets and the ability to pay high-priced lawyers who are out to win at any cost. By contrast, the average plaintiff usually doesn’t have the resources to compete. What is rarely, if ever, expressed however is that these plaintiffs don’t typically have to fund their claim unless they win. In most cases, the high-costs of doing battle doesn’t rest on the patient but on their legal counsel, the medical malpractice lawyers who, if they believe a case to be meritorious, will take it on on a contingency basis; the lawyer assumes the financial risk and the plaintiff doesn’t pay legal fees unless they are successful. While it’s true that these legal battles can be long and drawn out, if a decision is in your favour, you will get the damages you deserve. Under a no-fault system, patients wouldn’t even qualify to make a claim unless they meet a certain level of criteria.

There are two sides to everything and while no-fault medical malpractice insurance may sound good in theory, we should think twice and be careful what we wish for.