TO: HOLDERS OF THE REHABILITATION SERVICES AND CLAIMS MANUAL – VOLUME II

This update of the Rehabilitation Services and Claims Manual contains amendments to the Manual approved by the Board of Directors since update 2002-8.

This amendment includes consequential amendments to reflect the changes in governance at the Board. A list of amendments has been included as part of the package.

If you have any questions regarding receipt of this update or the Rehabilitation Services and Claims Manual, please call Publications and Video Distribution at 1-866-271-4879.

DOUGLAS ENNS
Chair, Board of Directors

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the case of fatalities, the current provisions are the same effect as
the former provisions. Indexing of retroactive awards payable
before June 30, 2002, will be based on the former provisions.

The former provisions are found in Volume I of this Manual.

Volume II of this Manual covers the major issues discussed below.

EFFECTIVE DATE: October 16, 2002
APPLICATION: To all adjudication decisions made on or after the
effective date.

#1.10 The Persons Covered by the Act

Not everyone is entitled to compensation under the Act, even if injured at work.
To qualify for compensation, a person must be a "worker" employed by an
employer covered by the Act. (1) Where a compensable injury or disease
results in the worker's death, certain of the worker's relatives are entitled, but
they must usually have been "dependants" during the worker's lifetime. (2)

#1.20 The Conditions under which Compensation is Payable

Not all injuries or diseases are compensable. The Act prescribes the type of
injuries (3) and diseases (4) and the circumstances in which they are
compensable. (5) Thus, for example, in the case of injuries, compensation is
limited to personal injuries arising out of and in the course of employment. (6)

#1.30 The Type and Amount of Compensation

There are a variety of types of compensation provided under the Act:

1. payments to compensate the injured worker for loss of earnings
   caused by a temporary disability; (7)

2. permanent disability awards for actual or estimated loss of
   earnings; (8)

3. pensions to dependants for loss of support by a deceased worker;
   (9)

4. health care benefits; (10)

5. rehabilitation assistance. (11)
### #1.40 Charging of Claims Costs

The cost of compensation is normally charged to the employer rate group to which the worker's employer belongs. The cost may also affect the employer's experience rating. There are special provisions which relieve the rate group and/or the employer in certain situations. (12)

### #2.00 WORKERS' COMPENSATION BOARD

The Workers' Compensation Board is a corporation set up under the Act to administer the provisions of the Act. (13) The Act defines the word “Board” as the Workers’ Compensation Board. (14) The use of the word “Board” throughout this Manual means the Workers’ Compensation Board.

The Board of Directors must set and revise as necessary the policies of the board of directors, including policies respecting compensation, assessment, rehabilitation and occupational health and safety. The Board of Directors must set and supervise the direction of the Board.

**EFFECTIVE DATE:** February 11, 2003 (as to deletion of references to the Appeal Division and the former Governors)

**APPLICATION:** Not applicable.

### #2.10 Jurisdiction over Claims Adjudication

The Board has exclusive jurisdiction to inquire into, hear, and determine all matters and questions of fact and law arising under the Act, and the action or decision of the Board thereon is final and conclusive and is not open to review in any Court. (17) Thus, the Board has sole jurisdiction over the adjudication of claims for compensation under the Act.

**EFFECTIVE DATE:** February 11, 2003 (as to deletion of references to the Appeal Division and the former Governors)

**APPLICATION:** Not applicable.
NOTES

(1) Chapter 2
(2) Chapter 8
(3) Chapter 3
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(5) Chapters 3 and 4
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(7) Chapter 5
(8) Chapter 6
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(12) Chapter 17
(13) S.1   S.80
(14) S.1
(15) S.81 DELETED
(16) S.82 DELETED
(17) S.96(1)
(18) Chapter 12 DELETED
(19) Chapter 13 DELETED
CHAPTER 2

WORKERS AND EMPLOYERS COVERED BY THE ACT

#3.00 INTRODUCTION

Section 2(1) of the Act states as follows:

“This Part applies to all employers, as employers, and all workers in British Columbia except employers or workers exempted by order of the board.”

The employers and workers who are covered and those who are exempted are the subject of this chapter.

The Act does not apply to workers of the Federal Government of Canada. However, by section 4(2) of the Government Employees Compensation Act, an "employee" who is usually employed in this province is given the same rights to compensation as workers under the provincial Act. The persons considered "employees" are dealt with in this chapter.

#4.00 EXEMPTIONS AND EXCLUSIONS FROM COVERAGE

The criteria for the exemption of employers or workers may be found in policy in Item AP1-2-1 of the Assessment Manual along with general exemptions which are described in detail. The policy in Item AP1-2-1 also recognizes that some workers and employers are excluded from coverage under the Act as a matter of constitutional law or because they have no attachment to B.C. industry.

EFFECTIVE DATE: February 11, 2003 (as to deletion of references to the former Governors)

APPLICATION: Not applicable.

#5.00 COVERAGE OF WORKERS

It is a well established principle of workers' compensation that where an employer comes within the scope of the Act, all workers of that employer are covered for compensation. The coverage is not limited to those engaged in the manual part of the operation. Thus, in a wholesale establishment, for example, workers’ compensation coverage extends to clerical and bookkeeping staff, and to corporate presidents, as well as those engaged in the receiving, handling, storage and transmission of goods. All of these functions are part of wholesaling.
This position is not changed where an employer divides up the manual and clerical parts of his operation and attaches a separate corporate identity to each. Nor does it depend on whether the clerical and manual staff are employed by affiliated corporations. The result would be the same if there were no corporate affiliation.

A worker's claim is not prejudiced by the fact that the employer has not complied with the obligation to register with the Board. This is subject to the principles set out in *Workers' Compensation Reporter* Decision No. 335 and Policy No. 20:30:30 of the *Assessment Policy Manual*.

**#6.00  DEFINITIONS OF "WORKER" AND "EMPLOYER"**

The basic definitions of "worker" and "employer" in section 1 of the *Act* are as follows:

"'Employer' includes every person having in their service under a contract of hiring or apprenticeship, written or oral, express or implied, a person engaged in work in or about an industry;"

"'Worker' includes

(a) a person who has entered into or works under a contract of service or apprenticeship, written or oral, express or implied, whether by way of manual labour or otherwise;"

Detailed discussions concerning the definitions of worker and employer may be found at Policy No. 20:10:30 of the *Assessment Policy Manual*.

**#6.10  Nature of Employment Relationship**

Where a person contracts with another to provide labour in an industry covered by the *Act*, the Board considers that the contract may create one of three types of relationship. The persons doing the work may be independent firms, labour contractors, or workers.

Very detailed registration rules concerning independent firms, labour contractors, and workers are outlined at Policy Nos. 20:10:30 and 20:30:20 of the *Assessment Policy Manual*. 
There are a great many diseases to which the general public are subject, many of which can be considered ordinary diseases of life. Available medical and scientific understanding about the causes of disease and about the role that employment may play covers a wide range from very good to very poor. Not every disease contracted by every worker is compensable. Deciding when they are is key to the operation of the Act and to adjudicating individual disease claims. It is within this context that decisions must be made as to the compensability of diseases, suffered by workers who are covered by the Act.

To assist in adjudicating the merits of occupational disease claims, to facilitate efficiency and consistency in the decision-making process and to establish an institutional memory (with the additional benefit of providing the working community with confirmation that the Board is aware that a disease may arise as a result of employment activities), the Act provides a means by which the Board may designate or recognize a disease as an “occupational disease”.

There are levels of designation or recognition based on the available medical and scientific evidence and on the Board’s experience in dealing with these diseases. The manner in which a disease is designated or recognized is primarily based on the strength of medical and scientific knowledge about the role employment may have in its causation. The following are the various ways in which an occupational disease may be designated or recognized.

#26.01 Recognition by Inclusion in Schedule B

Any disease listed in the first column of Schedule B is by definition designated or recognized as an occupational disease. This is the highest level of designation or recognition.

The Board lists a disease in Schedule B in connection with a described process or industry wherever it is satisfied from the expert medical and scientific advice it receives that there is a substantially greater incidence of the particular disease in a particular employment than there is in the general population. The questions to be addressed include: is the disease common in that particular employment, and not common amongst the general public? Is it something specific to the employment?

Schedule B is set out in Appendix 2. The application of Schedule B is covered in policy item #26.21. The amendment of Schedule B is covered in policy item #26.60.
Section 6(4.2) provides that:

... the Board may designate or recognize a disease as being a disease that is peculiar to or characteristic of a particular process, trade or occupation on the terms and conditions and with the limitations set by the Board.

This provision gives the Board substantial flexibility in its designation or recognition of an occupational disease other than by listing it in Schedule B.

The Board may designate or recognize a disease as being a disease that is peculiar to or characteristic of a particular process, trade or occupation with respect to future claims in a broad sense, or it may impose a much more limited designation or recognition by specifying whatever terms or conditions or limitations it deems appropriate.

For example, the Board has recognized osteoarthritis of the first carpometacarpal joint of both thumbs as being applicable to a physiotherapist who was involved in deep frictional massage which placed particular strain on those joints. (1) This recognition is limited to factual situations substantially the same as those that applied to the worker in that decision.

This section may be used to designate or recognize a disease where the expert medical and scientific information is insufficient to cause the Board to include it in Schedule B (with the benefit of the rebuttable presumption that the Act provides), but is sufficient to cause the Board to state for decision-makers (thus establishing an institutional memory) that there is a recognized possibility that the employment contributed to the causation of the disease where the worker was employed in a specific process, trade, or occupation. In these circumstances there is no presumption that this is the case.

#26.03 Recognition by Regulation of General Application

The Board may designate or recognize a disease as an occupational disease “by regulation of general application” (section 1). In these circumstances, the Board designates or recognizes a disease as an occupational disease but without specifying that it is peculiar to or characteristic of a particular process, trade or occupation. The desired institutional memory is thus less specific. The Board has designated or recognized the following as occupational diseases by regulation:

- Bronchitis
- Campylobacteriosis (Diarrhea caused by Campylobacter)
- Carpal Tunnel Syndrome
It is important to distinguish between designation or recognition of an occupational disease under section 6(4.2) where a particular process, trade or occupation is specified or by regulation of general application, and the addition of a disease to Schedule B under section 6(4.1). Where the Board concludes that a disease is more likely to occur in connection with a particular employment covered by the Act than elsewhere, it may be added to Schedule B (see policy item #26.01). On the other hand, where the Board concludes that a disease is sometimes due to the nature of a particular employment covered by the Act, but it does not appear that the disease is more likely to occur in connection with that employment than elsewhere (it is not something specific to that employment), the Board may designate or recognize the disease under section 6(4.2) where a particular process, trade or occupation is specified, or by regulation of general
application without the rebuttable presumption afforded by inclusion in Schedule B.

Several of the above contagious diseases are not likely to be “. . . due to the nature of any employment in which the worker was employed . . .” except for hospital employees, or workers at other places of medical care.

The authority under the Act to designate or recognize a disease by regulation under sections 6(4.1) and 6(4.2) rests with the Board of Directors.

EFFECTIVE DATE: February 11, 2003 (as to deletion of reference to the former Governors)

APPLICATION: Not applicable.

#26.04 Recognition by Order Dealing with a Specific Case

The lack of prior designation or recognition by the Board of a disease as an occupational disease by any of the means specified in policy items #26.01, #26.02, or #26.03, does not mean a claim for such disease will not be considered on its merits. Such disease may not have been previously designated or recognized due to weak or a complete absence of medical and scientific information which causally associates such disease with employment. If the merits and justice of an individual claim for such a disease warrant its recognition as an occupational disease, the Board may do so “by order dealing with a specific case” (section 1).

The effect of such an order is to accept the claim for compensation purposes without establishing an institutional memory for decision-makers or an expectation for others who may suffer from that disease that the disease may be due to the nature of some employment. In other words, the disease will be recognized as an occupational disease limited to the specific facts of that individual claim.

This allows an avenue of recognition for unique, meritous, individual disease claims. As the Board repeatedly encounters such claims for a particular disease, it may determine that a higher level of designation or recognition is warranted for that disease.

A Board officer upon investigating an individual claim may find that the condition suffered by the worker is not one listed in the first column of Schedule B, nor is it one which has been previously designated or recognized by the Board as an occupational disease under section 6(4.2). If the Board officer concludes, after seeking appropriate input from both the worker (or their legal representative) and the employer (if a specific employer is identified) that the facts warrant recognition of the worker’s condition as an occupational disease, the Board officer will refer the claim with a recommendation to that effect to a panel made up of his or her Client Services Manager, (referred to in this section
#96.00 THE ADJUDICATION OF COMPENSATION CLAIMS

Section 96(1) of the Act provides that “The board has exclusive jurisdiction to inquire into, hear and determine all matters and questions of fact and law arising under this Part, and the action or decision of the board on them is final and conclusive and is not open to question or review in any court, and proceedings by or before the board must not be restrained by injunction, prohibition or other process or proceeding in any court or be removable by certiorari or otherwise into any court, and an action must not be maintained or brought against a governor, officer, appeal commissioner or employee of the board in respect of an act, omission or decision done or made in the belief that it was within the jurisdiction of the board; and, without restricting the generality of the foregoing, the board has exclusive jurisdiction to inquire into, hear and determine

(a) the question whether an injury has arisen out of or in the course of an employment within the scope of this Part;
(b) the existence and degree of disability by reason of an injury;
(c) the permanence of disability by reason of an injury;
(d) the degree of diminution of earning capacity by reason of an injury;
(e) the amount of average earnings of a worker, whether paid in cash or board or lodging or other form of remuneration, . . . for purposes of payment of compensation;
(f) the existence, for the purpose of this Part, of the relationship of a member of the family of a worker as defined by this Act;
(g) the existence of dependency;
(h) whether an industry or a part, branch or department of an industry is within the scope of this Part, . . .;
(i) whether a worker in an industry within the scope of this Part is within the scope of this Part and entitled to compensation under it; and
(j) whether a person is a worker, a subcontractor, a contractor or an employer within the meaning of this Part.”

#96.10 Policy of the Board of Directors

Section 82 provides that the Board of Directors must set and revise as necessary the policies of the Board of Directors, including policies respecting compensation, assessment, rehabilitation, and occupational health and safety. While Board officers and the Workers’ Compensation Appeal Tribunal (“WCAT”) may make decisions on individual cases, only the Board of Directors has the authority and responsibility to set the policies of the Board.

As of February 11, 2003, the policies of the Board of Directors consist of the following:

(a) The statements contained under the heading “Policy” in the Assessment Manual;
(b) The *Occupational Safety and Health Division Policy and Procedure Manual*;
(c) The statements contained under the heading “Policy” in the *Prevention Manual*;
(d) The *Rehabilitation Services & Claims Manual* Volume I and Volume II, except statements under the headings “Background” and “Practice” and explanatory material at the end of each Item appearing in the new manual format;
(e) The *Classification and Rate List*, as approved annually by the Board of Directors;
(f) *Workers’ Compensation Reporter* Decisions No. 1 – 423 not retired prior to February 11, 2003; and
(g) Policy decisions of the former Governors and the former Panel of Administrators still in effect immediately before February 11, 2003.

After February 11, 2003, the policies of the Board of Directors consist of the documents listed above, amendments to policy in the four policy manuals, any new or replacement manuals issued by the Board of Directors, any documents published by the Board that are adopted by the Board of Directors as policies of the Board of Directors, and all decisions of the Board of Directors declared to be policy decisions.

In the event of a conflict between policy in a manual identified in (a), (b), (c), or (d) above, and policy in *Workers’ Compensation Reporter* Decisions No. 1-423, policy in the manual is paramount.

In the event of any other conflict between policies of the Board of Directors:

(a) if the policies were approved by the Board of Directors on the same date, the policy most consistent with the *Act* or Regulations is paramount.

(b) if the policies were approved on different dates, the most recently approved policy is paramount.

The policies of the Board of Directors are published in print. The policies may also be published through an accessible electronic medium or in some other fashion that allows the public easy access to the policies of the Board of Directors.

The Chair of the Board of Directors supervises the publication of the *Workers’ Compensation Reporter*. It will include decisions of the Board of Directors and selected decisions of WCAT. It may also include key decisions of the Courts on matters affecting the interpretation and administration of the *Act* or other matters of interest to the community.

WCAT decisions do not become policy of the Board of Directors by virtue of having been published in the *Workers’ Compensation Reporter*. WCAT
decisions are published in the *Reporter* to provide guidance on the interpretation of the *Act*, the Regulations and Board policies, practices and procedures.

The Board is not bound to follow legal precedent; its decision shall be given according to the merits and justice of the case. (22)

In the adjudication of individual claims, the Board is not “bound” by either internal policy directives or by external authorities in the field of compensation, at least not in the sense of the word “bound” as understood at common law. However, in issuing internal directives, the Board gives general indications of how it will act when certain circumstances come before it. When these circumstances arise, the applicable directive will normally be followed. It is recognized that there is an infinite variety of circumstances that can arise and that it is not possible to lay down in advance policies to finally determine every conceivable situation. Furthermore, there is the obligation on the Board to decide each case in accordance with its merits and justice and the right of individual persons affected under the rules of natural justice to present argument and evidence on their own behalf. Therefore, regard must always be had to the particular circumstances of each claim to determine whether an existing policy should be applied or whether there are grounds for a change in or departure from a policy. There will also be situations arising from time to time which are not covered by existing policy.

Board officers making decisions on claims are generally required to follow Board policies which are applicable to a claim before them. If they feel that a change in, or departure from a policy would be desirable, or they can find no applicable policy, they may refer the matter, with the approval of their Manager, to the Director of their department or the Director’s delegate. They are required to exercise discretion in referring such matters to their Director when the practical implications are nominal and the “policy” issue effects only an extremely small number of potential future claims. If it is an unusual situation that is unlikely to occur again, or the administrative costs of reviewing the matter far outweigh the dollars on the claim, it is not considered that a referral for policy direction is necessary. This does not apply however when there is a serious concern over a small claim which represents a broad issue of policy, or over a large claim in financial terms which represent a relatively small issue of policy.

**EFFECTIVE DATE:** February 11, 2003 (as to references to Board of Directors policies)

**APPLICATION:** Not applicable.
#96.20 Claims Officers and Claims Adjudicators

A Claims Officer or Claims Adjudicator determines whether compensation is payable. They will decide, for instance, whether a worker was employed in an industry under Part 1 of the Act, whether a personal injury was suffered arising out of and in the course of employment, or whether the worker is suffering from an occupational disease which is due to the nature of the employment.

Following acceptance of a claim, the Claims Officer or Claims Adjudicator determines the amount and duration of compensation to be paid for temporary disability.

In a case of death, the Board officer decides whether the death is compensable and whether the members of the worker’s family are dependants and entitled to compensation.

The term “compensation” here includes, among other things, health care benefits, transportation and subsistence. For administrative purposes, and with the approval from the Claims Adjudicator or Claims Officer, Payment Clerks and other authorized staff may return to workers, with an explanatory letter, items such as transportation receipts, drug accounts, etc. which do not appear to qualify for payment on a claim. This is an interim measure only to the extent that, should a worker disagree, the Claims Adjudicator or Claims Officer must make a formal decision which, if negative, is appealable.

It is the responsibility of Claims Adjudicators and Claims Officers to determine whether a worker’s claim should be referred to the Disability Awards Department for review and possible permanent disability evaluation. This decision is generally made on the basis of information supplied by a treating physician, qualified practitioner, consulting specialist or the injured worker. Treating physicians and qualified practitioners are required to send periodic reports to the Board outlining the worker’s condition. These reports include a question which asks specifically whether there will be any permanent disability resulting from the injury.

To ensure consistent referrals of all cases where there is a potential permanent disability, the Claims Adjudicator or Claims Officer is required to refer the claim to the Disability Awards Department for further evaluation where any of the following guidelines apply:

1. Where a medical report indicates that a permanent disability exists or that there is a possibility a permanent disability exists.

2. Where a worker indicates there is a permanent disability as a result of the compensable injury, or states there is an inability to return to employment as a consequence of the injury.