

PRACTICE DIRECTIVE #39

MENTAL STRESS

Effective Date: December 31, 2003

Amended: February 27, 2004

The Legislature has enacted the *Skills Development and Labour Statutes Amendment Act, 2003* ("Bill 37"), which amends section 5.1 *Mental Stress* of the *Workers Compensation Act* (the "*Act*"). As a result, this practice directive and *Rehabilitation Services and Claims Manual* ("RSCM") Vol. II, Policy item #13.30, *Mental Stress*, have each been amended, effective December 31, 2003. As a result of the Bill 37 amendments, psychologists may diagnose a worker's mental stress condition and the Board may appoint a physician or psychologist to review a diagnosis of a worker's mental stress condition.

BACKGROUND

On June 30, 2002, the *Act* was amended by the *Workers Compensation Amendment Act, 2002* ("Bill 49"). Section 5.1, which describes the circumstances under which a worker is entitled to compensation for mental stress, was added to the *Act*. As a result, the Panel of Administrators approved related amendments to the Board's policies. RSCM Policy item # 32.20, *Physical and Emotional Exhaustion*, was deleted and RSCM Policy item #13.30, *Mental Stress*, was added to RSCM Volume II.

On March 3, 2003, the *Act* was amended by the *Workers Compensation Amendment Act (No.2), 2002* ("Bill 63"). Bill 63 contained amendments to the *Act* in relation to a new review/appeal structure and the Board's authority to reopen matters previously decided or to reconsider previous decisions.

EFFECTIVE DATES AND TRANSITION RULES

The effective date of Bill 37 in relation to the mental stress provision in the *Act*, is December 31, 2003. A physician or psychologist may diagnose a worker's mental stress condition with respect to **an acute reaction to a sudden and unexpected traumatic event which occurs on or after December 31, 2003**. Also, the Board may appoint a physician or psychologist to review a diagnosis of a worker's mental stress condition where the acute reaction occurs on or after December 31, 2003. The amendments contained in Bill 37 apply where a worker experiences an acute reaction on or after December 31, 2003, even if the traumatic event which triggered the acute reaction occurred prior to December 31, 2003.

The effective date of Bill 49 was June 30, 2002. Therefore, where a worker experiences an acute reaction to a sudden and unexpected traumatic event on or after June 30, 2002, any resulting claim for mental stress is adjudicated in accordance with the provisions of Bill 49.

Where a worker experienced an acute reaction to a sudden and unexpected traumatic event before June 30, 2002, any resulting claim is adjudicated under the legislation and policies that existed prior to June 30, 2002.

Where a worker experiences a psychological impairment which is a sequela to an accepted personal injury or occupational disease, it is adjudicated under section 5(1) of the *Act*. See RSCM Policy item #13.20.

Reopenings

Where, on or after June 30, 2002, there is a reopening of a **mental stress claim** that was considered compensable prior to June 30, 2002, existing benefits are not impacted. However, **in order to be compensable, the reopening criteria** under section 96 (2) & (3) of the *Act* must be met, **as well as the criteria outlined in section 5.1** of the *Act*.

The above reopening criteria should be distinguished from the following situation. Where, on or after June 30, 2002, there is a reopening of a worker's claim for a previously compensable psychological impairment which was a **sequela to an accepted personal injury or occupational disease**, the reopening of the claim is adjudicated under **section 5(1)** of the *Act*.

For example, a worker may have been awarded a \$200.00 permanent disability award many years ago for a mental stress claim (i.e., a claim that was considered compensable prior to June 30, 2002). If one of the reopening grounds has been met (e.g., there has been a significant change in the worker's compensable medical condition) on or after June 30, 2002, the next step would be to determine whether the criteria outlined in section 5.1 of the *Act* have been met. If the criteria in section 5.1 have not been met, existing benefits would not be affected. The worker would continue to receive a \$200.00 permanent disability award and no additional compensation would be payable. However, if the criteria in section 5.1 have been met the worker may be eligible for additional benefits (to be calculated in accordance with the current *Act* as outlined in Practice Directives #32, 33, 38 & 40).

Diagnosis of Mental Stress

Bill 37 amends section 5.1 of the *Act* to provide that either a physician or a psychologist may diagnose a worker's mental stress condition. "Psychologist" is defined as a person who is registered as a member of the College of Psychologists of British Columbia established under section 15(1) of the *Health*

Professions Act, or a person who is entitled to practise as a psychologist under the laws of another province.

Review of Mental Stress Diagnosis

Bill 37 further amends section 5.1 of the *Act* to provide that the Board may appoint a physician or psychologist to review a diagnosis of a worker's mental stress condition. The Board may consider such a review in determining whether a worker is entitled to compensation for mental stress. A mental stress diagnosis will not be reviewed in every case but a review may be undertaken where, for instance, the Board receives medical evidence that conflicts with the diagnosis and which the diagnosing physician or psychologist may not have possessed or been aware of when making the diagnosis.

ADJUDICATIVE GUIDELINES

- It is possible that the effects of a traumatic event may not be immediately evident. A worker's psychological impairment may be delayed by a short period of time before it surfaces. For example, RSCM Vol. II, Policy item #13.30 *Mental Stress*, states that there is likely entitlement to compensation for mental stress in the following situation:

"A worker directly witnesses a very serious accident to a co-worker. The worker suffers no apparent symptoms for the first two weeks after the accident, but then calls in one morning to say he/she is unable to work because he/she is haunted by the images of the event. A diagnosis by a physician or psychologist confirms that the worker suffers from post-traumatic stress disorder as described in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders."

Policy item #13.30 also states that:

"...an 'acute' reaction means 'coming to crisis quickly', it is a circumstance of great tension, an extreme degree of stress. It is the opposite of chronic. The reaction is typically immediate and identifiable..."

The above quoted example from RSCM Policy item #13.30 makes it clear that a two-week delayed onset with "no apparent symptoms" (i.e., where the reaction is not immediately evident) may fall within the meaning of "coming to crisis quickly".

- In such cases, the evidence must demonstrate that the mental stress is due to a sudden and unexpected traumatic event, which arose out of and in the course of employment.
- A distinction should be drawn between the legislative/policy criteria necessary for the diagnosis of a worker's mental stress condition, and the diagnostic

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criteria related to a stress disorder. The criterion that a worker's reaction be "acute" is a legislated requirement under section 5.1 of the *Act*, not a diagnostic requirement. Therefore, a worker may meet the diagnostic criteria for post-traumatic stress disorder but fail to meet the criteria for a compensable mental stress condition.

- These types of claims will be adjudicated by Case Managers in the SDLs and will not be referred to Occupational Disease Services for a separate decision under section 6 of the *Act*.
- The Board may require a worker to attend a psychological assessment to assist in clarifying etiology and diagnosis of a mental stress condition. While it is rare that a worker would be traumatized by a psychological assessment, there are sometimes extenuating circumstances that make this a legitimate concern.

In such cases, the issue can often be resolved by explaining the purpose and process of the assessment to the worker and providing reassurance. In the rare circumstance that the assessment should not proceed, the Psychology Advisor may attempt to obtain the required information from a current counsellor, or other sources.

- A request for review of a physician's or psychologist's diagnosis should be obtained through a Board Medical Advisor or a Board Psychologist respectively.
- It is not necessary for Medical Advisors to vet or review a psychologist's diagnosis of a worker's mental stress condition, where the worker has suffered an acute reaction to a sudden and unexpected event on or after December 31, 2003.

RSCM Policy item #13.30 is self-explanatory and provides clear guidance. Additional direction to Board officers is therefore not felt to be required at this time. However, further directives may be issued at a later date based on adjudicative experience.

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