

2003/02/11-05

THE WORKERS' COMPENSATION BOARD OF BRITISH COLUMBIA
RESOLUTION OF THE BOARD OF DIRECTORS

Re: Consequential Policy Amendments in Regard to Governance Changes

WHEREAS:

Pursuant to section 82 of the *Workers Compensation Act*, RSBC 1996, Chapter 492 and amendments thereto ("*Act*"), 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;

AND WHEREAS:

The Workers' Compensation Board's ("Board") policy manuals contain references to former governing bodies of the Board and require updating;

AND WHEREAS:

The Board of Directors has enacted a bylaw that sets out the policies of the Board of Directors as of February 11, 2003;

AND WHEREAS:

The Board's policy manuals require updating to ensure consistency with the Board of Directors' bylaw;

AND WHEREAS:

The Policy and Regulation Development Bureau ("Bureau") has developed consequential policy amendments to reflect the changes in governance at the Board;

THE BOARD OF DIRECTORS RESOLVES THAT:

1. The consequential amendments to the *Rehabilitation Services & Claims Manual*, Volume I, attached as Appendix "A", are approved.
2. The consequential amendments to the *Rehabilitation Services & Claims Manual*, Volume II, attached as Appendix "B", are approved.
3. The consequential amendments to the *Prevention Manual*, attached as Appendix "C", are approved.
4. This resolution is effective on February 11, 2003.

DATED at Richmond, British Columbia, on February 11, 2003.

By the Workers' Compensation Board

**DOUG ENNS, CHAIR
BOARD OF DIRECTORS**

APPENDIX "A"

#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 Governors of the Board consist of one governor who is the Chairman, five governors representative of workers, five governors representative of employers, and two governors representative of the public interest. In addition, the Chief Appeal Commissioner and the President/C.E.O. are non-voting governors. (15) Both the Chief Appeal Commissioner, who is responsible for the operation of the Appeal Division, and the President/C.E.O., who is responsible for the day-to-day operation of the Board, are appointed by the Governors of the Board. The use of the word "Governors" throughout this *Manual* means the Governors of the Board.~~

~~The Governors approve and superintend the policies of the Board, including policies respecting compensation, assessment, rehabilitation and occupational safety and health. (16)~~

The Board of Directors of the Workers' Compensation Board sets and revises as necessary the policies of the Board, including policies respecting compensation, assessment, rehabilitation and occupational health and safety. The Board of Directors also sets and supervises 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*. ~~This jurisdiction is primarily exercised through the Board's Claims Adjudicators, Claims Officers, Disability Awards Officers, and Adjudicators in Disability Awards, (18) with appeals being available to the review board, the Appeal Division, and, in cases where a medical decision is made, to a Medical Review Panel. (19)~~

~~The *Act* authorizes the Board to issue rules, regulations, orders, and directives for its due administration. These rules, regulations, orders, and directives are promulgated by the Governors, and they constitute the working rules of the system. These rules are reviewed from time to time by the Governors.~~

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
- (4) Chapter 4
- (5) Chapters 3 and 4
- (6) Chapter 3
- (7) Chapter 5
- (8) Chapter 6
- (9) Chapter 8
- (10) Chapter 10
- (11) Chapter 11
- (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**

#4.00 EXEMPTIONS AND EXCLUSIONS FROM COVERAGE

The ~~Governors'~~ criteria for the exemption of employers or workers may be found ~~at 20:10:20 in the Policy in Item AP1-2-1 of the Assessment Policy Manual~~ **Assessment Manual** along with ~~three~~ general exemptions which are described in detail. ~~The Governors also recognize at 20:10:20~~ **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.

#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

Chicken Pox

Cubital Tunnel Syndrome

Disablement from Vibrations

Emphysema

Epicondylitis (Lateral and Medial)

Food Poisoning

Giardia Lamblia Infestation

Head Lice (Pediculosis Capitis)

Heart Disease

Herpes Simplex

Hypothenar Hammer Syndrome

Infectious Hepatitis

Legionellosis

Lyme Disease

Meningitis

Mononucleosis

Mumps

Plantar Fasciitis

Radial Tunnel Syndrome

Red Measles (Rubeola)

Ringworm

Rubella

Scabies

Serum Hepatitis

Shigellosis

Staphylococci Infections

Stenosing Tenovaginitis (Trigger Finger)

Streptococci Infections

Thoracic Outlet Syndrome

Toxoplasmosis

Typhoid

Vinyl Chloride Induced Raynaud's Phenomenon

Whooping Cough

Yersiniosis

It is important to distinguish between designation or recognition of an occupational disease under ~~S~~section 6(4)(b) or by regulation of general application, and the addition of a disease to Schedule B under ~~S~~section 6(4)(a). 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 ~~S~~section 6(4)(b) 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~~ **Act** to designate or recognize a disease under ~~S~~sections 6(4)(a), 6(4)(b) or by regulation of general application rests with the ~~Governors~~ **Board of Directors**.

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

APPLICATION: Not applicable.

~~#26.70 Occupational Diseases Standing Committee (ODSC)~~

~~As a standing (or permanent) committee of the Governors, the mandate of the ODSC is to review the occupational disease policies of the Workers' Compensation Board and to make recommendations for change to the Governors. (6)~~

~~Among its primary roles, the committee is to determine whether a probable relationship exists between a disease and an occupational activity in British Columbia and, if so, to make recommendations to the Governors regarding the circumstances in which claims for compensation for that disease should be afforded the presumption provided for under Section 6(3) and Schedule B of the *Workers Compensation Act*. It is also to determine which diseases are to be designated or recognized as occupational diseases other than by inclusion in Schedule B.~~

~~The ongoing mandate of the committee also includes the responsibility to:~~

- ~~(a) Consider new policy issues which may be brought to the committee's attention by members of the committee, the Governors, WCB personnel or stakeholders in the workers' compensation system and make recommendations to the Governors.~~
- ~~(b) Conduct periodic reviews of Schedule B to ensure that the Schedule remains consistent with the intent of the Act and advances in medical knowledge, industries and industrial processes and make recommendations to the Governors.~~
- ~~(c) Conduct periodic reviews of the list of diseases designated or recognized by the Board as occupational diseases under Section 6(4)(b) or by regulation of general application to ensure that the list remains consistent with the intent of the Act and advances in medical knowledge, industries and industrial processes and make recommendations to the Governors.~~
- ~~(d) Undertake any other responsibilities which the committee may be directed to undertake by resolution of the Governors.~~

~~The ODSC shall meet at least six times in each calendar year, and at least once every three months. Minutes are kept of all meetings of the ODSC and after being signed and initialed by the Chair are retained by the Office of the Governors. The Chair of the ODSC makes an annual report of accomplishments and works in progress to the Governors for each calendar year.~~

~~It is not a responsibility of the ODSC to make determinations with respect to individual claims.~~

Notes

- (1) Decision No. 231, 3 W.C.R. 87
- (2) Decision No. 3, 1 W.C.R. 11
- (3) S.6(1)(a)
- (4) Decision No. 99, 2 W.C.R. 15
- (5) Decision No. 205, 3 W.C.R. 16
- ~~(6) ODSC Charter, 8 W.C.R. 135~~ **Deleted**
- (7) Decision No. 207, 3 W.C.R. 21
- (8) An agreement entered into pursuant to Section 8.1 of the Act may supersede
- (9) S.6(10)
- (10) Decision No. 232, 3 W.C.R. 91
- (11) Decision No. 267, 3 W.C.R. 188
- (12) See #93.24
- (13) See Chapter 6
- (14) See #13.20 and #22.33-34
- (15) Decision No. 348, 5 W.C.R. 127
- (16) Decision No. 102, 2 W.C.R. 25
- (17) *Government Employees Compensation Act*, S.8(1)(a)

~~#83.21 — Position Prior to August 10, 1992~~

~~The Board's policy formerly contained two alternative systems of paying subsistence.~~

~~The first alternative applied where a worker was required to attend for a medical examination at the Board's request or with the Board's approval, or was requested to attend for an inquiry, and this would require the worker to stay away from home for one or more nights. In these cases, the Board paid actual accommodation costs plus the standard per diem meal allowance set out in #83.20.~~

~~The second alternative covered other longer term absences. The Board paid one daily rate to cover meals and accommodation. For the first two weeks, the Board paid an additional daily amount. The rates that were paid are set out in the table below. This alternative was abolished by a Governors' decision on August 10, 1992. From that date, all situations are covered by the first alternative discussed above.~~

Subsistence Rates

Date	Basic Rate	Additional Rate for First Two Weeks
July 1, 1983 — December 31, 1983	\$25.22	\$ 9.36
January 1, 1984 — September 30, 1989	25.96	9.63
October 1, 1989 — February 28, 1991	32.45	12.04
March 1, 1991 — August 9, 1992	34.96	12.97

~~If required, earlier figures may be obtained by contacting the Board.~~

#96.10 Precedent and Policy Policy of the Board of Directors

~~Section 82 provides that the Governors shall approve and superintend the policies of the Board. This means that the Governors are required to set the policies of the Board. While Board officers, the review board, the Appeal Division, and Medical Review Panels may make decisions in individual cases, only the Governors have the responsibility and authority to set the policies of the Board.~~

~~Decision #3 of the Governors provides as follows:~~

~~The published policies of the Governors as of June 3, 1991, consist of the following:~~

- ~~1. Assessment Policy Manual~~
- ~~2. Occupational Safety and Health Division Policy and Procedure Manual~~
- ~~3. Rehabilitation Services & Claims Manual~~
- ~~4. Workers' Compensation Reporter Series Decision Nos. 1-423.~~

~~After proclamation of the *Workers Compensation Amendment Act, 1989*, the published policies of the Governors shall consist of the documents listed above, amendments to the three policy manuals, any new or replacement manuals issued by the Governors and all decisions of the Governors declared to be policy decisions.~~

~~In the event of a conflict between the Act or Regulations and the published policy of the Governors, the Act and Regulations are paramount.~~

~~In the event of an internal conflict in published policy of the Governors, the interpretation of the policy most consistent with the intention of the Act or Regulations is to be applied.~~

~~Decision #3 of the Governors also provides that the Chairman of the Governors will supervise the continuation of the Workers' Compensation Reporter Series. The Reporter Series will include decisions of the Governors and selected decisions of the Appeal Division. It may also include key decisions of the review board and the courts on matters affecting the interpretation and administration of the Act or other matters of interest to the community.~~

~~The publication of a decision or finding in the Workers' Compensation Reporter Series does not make that decision or finding a published policy of the Governors. Only the documents outlined above are the published policy of the Governors. While decisions of the courts and the Appeal Division and findings of the review board may be published in the Workers' Compensation Reporter~~

~~Series, their publication does not turn them into published policy of the Governors.~~

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.

APPENDIX "B"

#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 Governors of the Board consist of one governor who is the Chairman, five governors representative of workers, five governors representative of employers, and two governors representative of the public interest. In addition, the Chief Appeal Commissioner and the President/C.E.O. are non-voting governors. (15) Both the Chief Appeal Commissioner, who is responsible for the operation of the Appeal Division, and the President/C.E.O., who is responsible for the day-to-day operation of the Board, are appointed by the Governors of the Board. The use of the word "Governors" throughout this *Manual* means the Governors of the Board.~~

~~The Governors approve and superintend the policies of the Board, including policies respecting compensation, assessment, rehabilitation and occupational safety and health. (16)~~

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*. ~~This jurisdiction is primarily exercised through the Board's Claims Adjudicators, Claims Officers, Disability Awards Officers, and Adjudicators in Disability Awards, (18) with appeals being available to the review board, the Appeal Division, and, in cases where a medical decision is made, to a Medical Review Panel. (19)~~

~~The *Act* authorizes the Board to issue rules, regulations, orders, and directives for its due administration. These rules, regulations, orders, and directives are promulgated by the Governors, and they constitute the working rules of the system. These rules are reviewed from time to time by the Governors.~~

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
- (4) Chapter 4
- (5) Chapters 3 and 4
- (6) Chapter 3
- (7) Chapter 5
- (8) Chapter 6
- (9) Chapter 8
- (10) Chapter 10
- (11) Chapter 11
- (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~~

#4.00 EXEMPTIONS AND EXCLUSIONS FROM COVERAGE

The ~~Governors'~~ criteria for the exemption of employers or workers may be found at ~~Policy No. 20:10:20~~ **in Policy in item AP1-2-1** of the *Assessment Policy Manual* along with ~~three~~ general exemptions which are described in detail. ~~The~~ ~~Governors also recognize at Policy No. 20:10:20~~ **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.

#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)
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Chicken Pox
Cubital Tunnel Syndrome
Disablement from Vibrations
Emphysema
Epicondylitis (Lateral and Medial)
Food Poisoning
Giardia Lamblia Infestation
Head Lice (Pediculosis Capitis)
Heart Disease
Herpes Simplex
Hypothenar Hammer Syndrome
Infectious Hepatitis
Legionellosis
Lyme Disease
Meningitis
Mononucleosis
Mumps
Plantar Fasciitis
Radial Tunnel Syndrome
Red Measles (Rubeola)
Ringworm
Rubella
Scabies
Serum Hepatitis
Shigellosis
Staphylococci Infections
Stenosing Tenovaginitis (Trigger Finger)
Streptococci Infections
Thoracic Outlet Syndrome
Toxoplasmosis
Typhoid
Vinyl Chloride Induced Raynaud’s Phenomenon

Whooping Cough
Yersiniosis

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 ~~Governors~~ **Board of Directors**.

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

APPLICATION: Not applicable.

#96.10 ~~Precedent and Policy Policy of the Board of Directors~~

~~Section 82 provides that the Governors shall approve and superintend the policies of the Board. This means that the Governors are required to set the policies of the Board. While Board officers, the review board, the Appeal Division, and Medical Review Panels may make decisions in individual cases, only the Governors have the responsibility and authority to set the policies of the Board.~~

~~Decision #3 of the Governors provides as follows:~~

~~The published policies of the Governors as of June 3, 1991, consist of the following:~~

- ~~1. ~~Assessment Policy Manual~~~~
- ~~2. ~~Occupational Safety and Health Division Policy and Procedure Manual~~~~
- ~~3. ~~Rehabilitation Services & Claims Manual~~~~
- ~~4. ~~Workers' Compensation Reporter Series Decision Nos. 1-423.~~~~

~~After proclamation of the *Workers Compensation Amendment Act, 1989*, the published policies of the Governors shall consist of the documents listed above, amendments to the three policy manuals, any new or replacement manuals issued by the Governors and all decisions of the Governors declared to be policy decisions.~~

~~In the event of a conflict between the Act or Regulations and the published policy of the Governors, the Act and Regulations are paramount.~~

~~In the event of an internal conflict in published policy of the Governors, the interpretation of the policy most consistent with the intention of the Act or Regulations is to be applied.~~

~~Decision #3 of the Governors also provides that the Chairman of the Governors will supervise the continuation of the Workers' Compensation Reporter Series. The Reporter Series will include decisions of the Governors and selected decisions of the Appeal Division. It may also include key decisions of the review board and the courts on matters affecting the interpretation and administration of the Act or other matters of interest to the community.~~

~~The publication of a decision or finding in the Workers' Compensation Reporter Series does not make that decision or finding a published policy of the Governors. Only the documents outlined above are the published policy of the Governors. While decisions of the courts and the Appeal Division and findings of the review board may be published in the Workers' Compensation Reporter~~

~~Series, their publication does not turn them into published policy of the Governors.~~

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:

- (h) The statements contained under the heading "Policy" in the *Assessment Manual*;**
- (i) The *Occupational Safety and Health Division Policy and Procedure Manual*;**
- (j) The statements contained under the heading "Policy" in the *Prevention Manual*;**
- (k) 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;**
- (l) The *Classification and Rate List*, as approved annually by the Board of Directors;**
- (m) *Workers' Compensation Reporter* Decisions No. 1 – 423 not retired prior to February 11, 2003; and**
- (n) 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.

APPENDIX "C"

RE: Assignment of Board Authority

ITEM: D2-111-1

BACKGROUND

1. Explanatory Notes

Section 111 sets out the Board's functions, duties and powers in matters relating to occupational health and safety. The "Board" for this purpose is the corporation known as the Workers' Compensation Board. It is necessary to determine what persons should exercise the Board's authority in various areas or provide a mechanism for making that determination. The ~~Panel~~ **Board of Directors** does this through ~~making policy~~ **policy-making** under Section 82 of the *Act*. Section 113 sets out the Board's privative clause with respect to the exercise of its authority under Part 3.

2. The Act

Section 82(1):

~~The governors must approve and superintend the policies and direction of the board, including policies respecting compensation, assessment, rehabilitation and occupational safety and health~~ **The board of directors must**

- (a) set and revise as necessary the policies of the board of directors, including policies respecting compensation, assessment, rehabilitation and occupational health and safety, and**
- (b) set and supervise the direction of the Board.**

Section 111(1):

In accordance with the purposes of this Part, the ~~board~~ **Board** has the mandate to be concerned with occupational health and safety generally, and with the maintenance of reasonable standards for the protection of the health and safety of workers in British Columbia and the occupational environment in which they work.

Section 111(2):

In carrying out its mandate, the ~~board~~ **Board** has the following functions, duties and powers:

- (a) to exercise its authority to make regulations to establish standards and requirements for the protection of the health and safety of workers and the occupational environment in which they work;
- (b) to undertake inspections, investigations and inquiries on matters of occupational health and safety and occupational environment;
- (c) to provide services to assist joint committees, worker health and safety representatives, employers and workers in maintaining reasonable standards for occupational health and safety and occupational environment;
- (d) to ensure that persons concerned with the purposes of this Part are provided with information and advice relating to its administration and to occupational health and safety and occupational environment generally;
- (e) to encourage, develop and conduct or participate in conducting programs for promoting occupational health and safety and for improving the qualifications of persons concerned with occupational health and safety and occupational environment;
- (f) to promote public awareness of matters related to occupational health and safety and occupational environment;
- (g) to prepare and maintain statistics relating to occupational health and safety and occupational environment, either by itself or in conjunction with any other agency;
- (h) to undertake or support research and the publication of research on matters relating to its responsibilities under this Act;
- (i) to establish programs of grants and awards in relation to its responsibilities under this Act;
- (j) to provide assistance to persons concerned with occupational health and safety and occupational environment;
- (k) to cooperate and enter into arrangements and agreements with governments and other agencies and persons on matters relating to its responsibilities under this Part;
- (l) to make recommendations to the minister respecting amendments to this Act, the regulations under this Part or Part 1 of this Act, or other legislation that affects occupational health and safety or occupational environment;

- (m) to inquire into and report to the minister on any matter referred to it by the minister, within the time specified by the minister;
- (n) to fulfill its mandate under this Part in a financially responsible manner;
- (o) to do other things in relation to occupational health and safety or occupational environment that the minister or Lieutenant Governor in Council may direct.

Section 113(1):

The Board ~~The board~~ has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact and law arising or required to be determined under this Part, and the action or decision of the ~~board~~ **Board** is final and conclusive and is not open to question or review in any court.

POLICY

The **Board of Directors** ~~Panel of Administrators~~ will exercise the following powers and responsibilities as set out in Part 3:

- make recommendations to the minister under section 111(2)(l);
- make inquiries into matters referred by the minister under section 111(2)(m);
- comply with directions of the Lieutenant Governor in Council under section 111(2)(o);
 - enter into formal agreements and arrangements with other agencies and governments covered by section 114(2);
- make and amend Board regulations;
- grant exemptions from the application of Part 3 under section 106; and
- approve policies under Part 3. (section 82).

The President/Chief Executive Officer (CEO) has the authority to exercise the remaining powers and responsibilities described in Part 3. The President/CEO also has the authority to assign these powers and responsibilities to divisions, departments, categories of officers or individual officers of the Workers' Compensation Board. President/CEO assignments will state whether the assignee has the authority to further assign the power or responsibility or whether it must be exercised personally.

The powers and responsibilities described in Part 3 will be carried out primarily by the Board's Prevention Division and must be exercised in accordance with the policies of the **Board of Directors** ~~Panel of Administrators~~.

The authority to approve prosecutions under section 214(2) is assigned by the ~~Panel of Administrators~~ **Board of Directors** directly to the President/CEO and may not be delegated by the President/CEO without approval of the **Board of Directors** ~~Panel of Administrators~~.

PRACTICE

The assignments of the President/CEO will be in writing and publicly available.

EFFECTIVE DATE:	October 1, 1999 February 11, 2003
AUTHORITY:	ss. 82, 111 and 113(1), <i>Workers Compensation Act</i>
CROSS REFERENCES:	
HISTORY:	Item developed to implement the <i>Workers Compensation (Occupational Health and Safety) Act, 1998</i>, effective October 1, 1999. References to Panel of Administrators replaced by references to Board of Directors to implement the <i>Workers Compensation Amendment Act, 2002</i>. Effective date reflects effective date of resolution approving consequential policy changes relating to governance arising both from the <i>Workers Compensation Amendment Act, 2002</i> and the <i>Workers Compensation Amendment Act (No. 2), 2002</i>.
APPLICATION:	