

**2005/01/18-01**

**THE WORKERS' COMPENSATION BOARD OF BRITISH COLUMBIA**

**RESOLUTION OF THE BOARD OF DIRECTORS**

**RE: Relief of Costs for a Pre-Existing Disease, Condition or Disability**

**WHEREAS:**

Pursuant to section 82 of the *Workers Compensation Act*, R.S.B.C. 1996, Chapter 492 and amendments thereto ("*Act*"), the Board of Directors ("BOD") must set and revise as necessary the policies of the BOD, including policies respecting compensation, assessment, rehabilitation, and occupational health and safety;

**AND WHEREAS:**

Section 39(1) of the *Act* authorizes the Workers' Compensation Board ("WCB") to collect assessments for the accident fund from independent operators and employers;

**AND WHEREAS:**

Section 39(1)(e) directs the WCB to ensure that enough money is collected to maintain a reserve of funds to pay for the portion of a worker's disability that is enhanced as a result of the worker having a pre-existing disease, condition or disability;

**AND WHEREAS:**

Policy related to cost relief for a pre-existing disease, condition or disability is currently located in three sources: Decision No. 271, *Re Subsection 37(1)(e) – Charging of Costs for Enhanced Disabilities*, 4. W.C.R. 10 ("Decision No. 271"); the *Rehabilitation Services & Claims Manual*, Volume II ("*RS&CM*"); and Panel of Administrators' Resolution No. 1998/04/23-03 *Re: Section 39(1)(e)* ("Panel Resolution"), which creates potential complexity and confusion for decision-makers;

**AND WHEREAS:**

Amendments are required to the *RS&CM* to consolidate the various sources of policy, retire Decision No. 271 and update the policies to ensure consistency and remove ambiguity;

**AND WHEREAS:**

The Policy and Research Division has undertaken stakeholder consultation on this issue;

**THE BOARD OF DIRECTORS RESOLVES THAT:**

1. Decision No. 271 of Volume 4 of the *Workers' Compensation Reporter* is retired.
2. Policy items #114.40A, #114.40B and #114.43 of the *RS&CM* are deleted and replaced by a new policy item #114.40, as set out in Appendix A.
3. Policy item #114.50 of the *RS&CM* is deleted, and the principles from it are incorporated into policy items #114.30 and #114.40, as set out in Appendix A.
4. Policy items #114.41 and #115.30 of the *RS&CM* are amended, as set out in Appendix A.
5. This resolution is effective March 1, 2005 and applies to all decisions made on or after that date.

DATED at Richmond, British Columbia, January 18, 2005.

**By the Workers' Compensation Board**

---

**DOUGLAS J. ENNS, CHAIR  
BOARD OF DIRECTOR**

## APPENDIX A

### **#114.30 Disasters or Other Circumstances which Unfairly Burden a Rate Group Class**

Section 39(1)(d) requires the Board to “provide a reserve ... to meet the loss arising from a disaster or other circumstances which the Board considers would unfairly burden the employers in a class.”

Costs will not be charged to the fund created by section 39(1)(d) because there is an unfair burden on an individual employer. The unfair burden must be on a **rate group class** or **industry group subclass** of employers.

Each deposit account employer forms a **classification unit, which is treated as a self-funded rate group class** by itself. This does not automatically mean that a burden on the **deposit account employer individual** is a burden on the **rate group class**. The relief available to deposit accounts under section 39(1)(d) is limited to the same sorts of situations as for other employers.

**The Federal Government does not contribute to the Accident Fund, therefore no relief of costs under this section can be made where the Federal Government is recorded as the injury employer.**

---

**EFFECTIVE DATE:** March 1, 2005

**HISTORY:** Updates language, consistent with rate-making system in *Assessment Manual*; incorporates portions of, and replaces, policy item #114.50, *Sections 39(1)(d), 39(1)(e) and Federal Government Claims* of this *Manual*.

This policy continues the substantive requirements as they existed prior to the effective date.

**APPLICATION** Applies to all decisions on and after March 1, 2005

## APPENDIX A

### #114.40 Enhancement of Disability by Reason of Pre-Existing Disease, Condition or Disability

#### 1. Overview

Section 39(1)(e) requires the Board to “provide and maintain a reserve for payment of that portion of the disability enhanced by reason of a pre-existing disease, condition or disability”. Under this section, eligible claims costs are redirected from an employer’s experience rating and rate group to the section 39(1)(e) reserve.

The intent of section 39(1)(e) is to give reassurance to potential employers that in employing workers with pre-existing diseases, conditions or disabilities, they will not incur undue costs in respect of possible future injuries that are enhanced as a result of the pre-existing diseases, conditions or disabilities.

Where a claim is accepted under the *Act* for a personal *injury*, mental stress or occupational disease, the Board provides cost relief under section 39(1)(e) for any portion of a compensable *disability* that is enhanced by reason of a pre-existing disease, condition or disability. Section 39(1)(e) cost relief decisions do not impact a worker’s entitlement to compensation.

The Board is responsible for initiating section 39(1)(e) cost relief considerations with or without a specific request or application by an employer, and to decide upon the applicability of the section on a claim.

This policy applies to all employers, including deposit class employers, except for the Federal Government. As the Federal Government does not contribute to the Accident Fund, no relief of costs under this section can be made where the Federal Government is recorded as the injury employer.

#### 2. Eligibility

Cost relief consideration does not occur on claims where wage loss ended and/or a permanent disability award was established on or before December 31, 1993.

Where benefits were paid between January 1, 1994 and September 27, 2002, an employer was eligible for cost relief consideration under section 39(1)(e) in two situations:

- a) on all claims where there had been 13 or more weeks of temporary total and/or temporary partial disability benefits paid;
- b) a permanent disability award had been granted.

## APPENDIX A

Where benefits are paid on or after September 28, 2002, an employer is eligible for cost relief consideration under section 39(1)(e) in two situations:

- a) on all claims where there has been 10 or more weeks of temporary total and/or temporary partial disability benefits paid;
- b) a permanent disability award has been granted.

Cost relief can be considered on claims where the pre-existing disease, condition or disability arose from an earlier compensable injury or disease with the same employer, where the date of injury or disease, for the injury or disease on which relief is sought, is on or after July 1, 1998. The date of the disease, for the purpose of this paragraph, is the date that the first claim document is registered at the Board.

### 3. Evaluation Process

Any impact of the pre-existing disease, condition or disability on the occurrence of the compensable *injury* is irrelevant to the question of whether cost relief will be granted for the enhanced *disability*.

Three questions are considered when evaluating the application of section 39(1)(e).

1. *Was there a pre-existing disease, condition or disability, and if so, to what extent?*

A “pre-existing” disease, condition or disability is one that exists before the compensable injury and is established by a confirmed diagnosis or medical opinion. It does not have to be symptomatic prior to the compensable incident, nor does there have to be previous medical treatment or disability related to the pre-existing disease, condition or disability, for it to be considered for the purposes of relief of costs under section 39(1)(e).

If a worker suffers a compensable personal injury (including mental stress or occupational disease), and there is no evidence of any pre-existing disease, condition or disability, section 39(1)(e) does not apply. The fact that a disability has been enhanced by factors other than a pre-existing disease, condition or disability is not a ground for relief under section 39(1)(e).

2. *How severe was the incident initiating the claim in question?*

Where there is confirmation of a pre-existing disease, condition or disability of a minor degree, but the incident which precipitated the compensable claim was of a severe nature, cost relief under section 39(1)(e) will not normally be applicable.

## APPENDIX A

### **3. Was the worker's compensable disability enhanced by reason of a pre-existing disease, condition or disability, and if so, to what extent?**

“Enhanced” can mean either the prolongation of recovery or the extent to which the compensable disability is made worse, due to the pre-existing disease, condition or disability.

Evidence that may be considered in determining the degree of prolongation or worsening of a disability includes:

- medical opinion regarding the “normal” recovery time for the particular type of injury;
- medical opinion regarding the “normal” post-surgical recovery time;
- the requirement of additional health care services (physiotherapy, hospitalization, etc.); and
- medical evidence contained on the claim.

All relevant factors are considered in the decision-making process.

Where the severity of the compensable accident, incident or exposure was relatively minor, but there is evidence that the recovery period was prolonged, or the temporary or permanent disability was made worse, by reason of a pre-existing disease, condition or disability, cost relief under section 39(1)(e) will clearly be applicable.

Since section 39(1)(e) specifically refers to the enhancement of “disability”, it has no application in fatal cases or in cases where only health care benefits are payable.

### **4. Determining Amount of Cost Relief**

After it has been determined that a pre-existing disease, condition or disability has enhanced the compensable disability, the Board then determines the amount of cost relief to be granted to an employer.

The grid below is one tool that may be used to determine the amount of cost relief to be granted to an employer. It plots the medical significance of the pre-existing disease, condition or disability against the severity of the accident, incident or exposure resulting in the compensable disability.

## APPENDIX A

Medical Significance of Pre-existing Disease, Condition or Disability	Severity of Accident, Incident or Exposure	Percentage of Cost Relief
<b>Minor</b>	<b>Minor</b>	<b>50%</b>
	<b>Moderate</b>	<b>25%</b>
	<b>Major</b>	<b>0%</b>
<b>Moderate</b>	<b>Minor</b>	<b>75%</b>
	<b>Moderate</b>	<b>50%</b>
	<b>Major</b>	<b>25%</b>
<b>Major</b>	<b>Minor</b>	<b>90-100%</b>
	<b>Moderate</b>	<b>75%</b>
	<b>Major</b>	<b>50%</b>

### ***Medical Significance***

A determination of the medical significance of the pre-existing disease, condition or disability is based on a review of the medical evidence and, where applicable, an opinion from a Board Medical Advisor.

### ***Severity***

The severity of the accident, incident or exposure is generally determined by a review of the factual evidence, including the mechanics of the injury, the activity the worker was undertaking at the time of the injury and the conditions of the worksite.

The following definitions will assist in assessing the severity of the accident, incident or exposure:

**“Minor”** severity is expected to cause either no disability or a minor disability.

**“Moderate”** severity is expected to cause a disability.

**“Major”** severity is expected to cause serious disability or probable permanent disability.

### ***Percentage***

How much disability stems from the compensable injury and how much from the enhancement of the disease, condition or disability and, therefore, to what extent costs should be charged under section 39(1)(e) can never be more than an estimate and will always be difficult to determine.

## APPENDIX A

There may be circumstances where the evidence points to a different percentage being relieved than those suggested in the grid. It is more likely that the grid would be used where the distinction between the effects of the pre-existing disease, condition or disability and the compensable injury are not easily made.

In cases of continuing wage-loss and health care benefits, it may be appropriate for the Board officer to determine that after a particular point in time, all the costs are charged under section 39(1)(e). Alternatively, it may also be determined that a percentage is relieved from a certain time onwards.

A decision on cost relief related to the payment of temporary disability wage loss benefits is distinct and separate from a decision on cost relief for a permanent disability award arising out of the same claim.

No minimum period of temporary disability is required in order for cost relief to be considered on a permanent disability award.

In respect of permanent disability awards, it is necessary for the Disability Awards officer, using his or her own best judgment and having reference to applicable medical evidence, to establish a percentage of cost relief to be granted. It is noted that 100% cost relief cannot be granted for a permanent disability award, as this would imply that no portion of the permanent disability resulted from the work-related injury.

### 5. Timing of Cost Relief Decisions

Where an employer is eligible for cost relief consideration on a claim, the decision is made at the earliest of:

- a) there being sufficient evidence to make a determination on whether the compensable disability was enhanced by reason of a pre-existing disease, condition or disability; or
- b) the conclusion of temporary disability compensation; or
- c) after six months of wage loss has been paid.

Cost relief decisions may be deferred beyond six months of wage loss payment when the impact of the pre-existing disease, condition or disability on the compensable disability is not yet clear, or major diagnostic procedures have been scheduled that would clarify the existence, and/or extent of any pre-existing disease, condition or disability.

### 6. Communication of Cost Relief Decisions

The Board notifies the eligible employer of all section 39(1)(e) cost relief decisions.

## APPENDIX A

If there is a disagreement with such a decision, the employer may request a review by the Review Division. Unexercised appeal rights on relief of cost decisions made before March 3, 2003 are appealed directly to the WCAT and not to the Review Division.

---

<b>EFFECTIVE DATE:</b>	March 1, 2005
<b>CROSS-REFERENCES</b>	Medical Evidence (policy item #97.30) Appeal and Review Rights (section 41(1)(a)(i), <i>Workers Compensation Amendment Act (No. 2), 2002</i> , S.B.C. 2002, c. 66)
<b>HISTORY:</b>	<p>Combines and replaces policy items #114.40A, <i>Enhancement of Disability by Reason of Pre-Existing Disease, Condition or Disability</i>, #114.40B, <i>Enhancement of Disability by Reason of Pre-Existing Disease, Condition or Disability</i>, #114.43, <i>Procedure Governing Applications under Section 39(1)(e)</i>, and #114.50, <i>Sections 39(1)(d), 39(1)(e) and Federal Government Claims</i> of this <i>Manual</i>.</p> <p>Incorporates policy previously set out in Panel of Administrators' Resolution No. 1998/04/23-03 <i>Re: Section 39(1)(e)</i>. Section 39(1)(e) cost relief consideration does not occur on claims where wage loss ended and/or a permanent disability award was established on or before December 31, 1993. On or after July 1, 1998, section 39(1)(e) cost relief consideration is available for claims in which the pre-existing disease, condition or disability arises from an earlier compensable injury or disease with the same employer as the compensable injury or disease for which relief is sought.</p> <p>Incorporates portions of, and retires from policy status, <i>Workers' Compensation Reporter Decision No. 271, [1971] 4 W.C.R. 10</i>.</p> <p>Further amendments clarify the evaluation process for allocating cost relief.</p> <p>This policy continues the substantive requirements as they existed prior to the effective date.</p>
<b>APPLICATION</b>	Applies to all decisions on and after March 1, 2005

## APPENDIX A

### ~~#114.40A — Enhancement of Disability by Reason of Pre-Existing Disease, Condition or Disability~~

~~This policy is effective until September 27, 2002.~~

~~Section 39(1)(e) requires the Board to “provide and maintain a reserve for payment of that portion of the disability enhanced by reason of a pre-existing disease, condition or disability.”~~

~~The section is applied most frequently in cases where a permanent disability award has been made. There are, however, claims where temporary total or temporary partial disability can be said to have been protracted by reason of a pre-existing disease, condition or disability. In such cases, no consideration will be given to the application of section 39(1)(e) until the worker has been temporarily disabled for a minimum period of 13 weeks following the injury. All of the costs of a claim cannot be charged under section 39(1)(e).~~

~~Since the section specifically refers to the enhancement of “disability”, it has no application in fatal cases or in cases where only health care benefits are payable.~~

~~Two questions are considered when evaluating the application of section 39(1)(e):~~

- ~~1. — Was there a pre-existing disease, condition or disability and, if so, to what extent?~~
- ~~2. — How severe was the incident initiating the claim in question?~~

~~Obviously, if a worker suffers an injury and there is no evidence of any pre-existing disease, condition or disability, the subsection is inapplicable. Similarly, where there is confirmation of a pre-existing disease, condition or disability of a minor degree, but the incident which precipitated the instant claim was of a severe nature, the section may be considered but will normally not be applicable. However, the section will clearly be applicable to those situations where a worker suffered a relatively minor injury at the time the instant claim was initiated, but there is evidence that the recovery period was prolonged, or a permanent disability was enhanced, by reason of a pre-existing disease, condition or disability. The fact that a disability has been prolonged or enhanced by other factors than a pre-existing condition is not a ground for relief under section 39(1)(e).~~

~~How much disability stems from the injury and how much from the enhancement of the disease, condition or disability and, therefore, to what extent costs should be charged under section 39(1)(e) can never be more than an estimate and will always be difficult to determine. In cases of continuing wage loss and health care benefits, it will be appropriate for the Board officer to determine that all of the costs of these benefits after a particular point in time should be charged under section 39(1)(e). In some instances, it may be appropriate for the Board officer to charge such costs on a percentage, rather than a time basis. In respect of permanent partial or permanent total disabilities, it will be necessary for the Board officer in Disability Awards, using her or his own best judgment and having~~

## APPENDIX A

~~reference to the advice of the Disability Awards Medical Advisor, to establish a percentage applicable to the pre-existing condition and to charge the relevant costs accordingly.~~

## APPENDIX A

### ~~#114.40B — Enhancement of Disability by Reason of Pre-Existing Disease, Condition or Disability~~

~~This policy is effective September 28, 2002.~~

~~Section 39(1)(e) requires the Board to “provide and maintain a reserve for payment of that portion of the disability enhanced by reason of a pre-existing disease, condition or disability.”~~

~~The section is applied most frequently in cases where a permanent disability award has been made. There are, however, claims where temporary total or temporary partial disability can be said to have been protracted by reason of a pre-existing disease, condition or disability. In such cases, no consideration will be given to the application of section 39(1)(e) until the worker has been temporarily disabled for a minimum period of 10 weeks following the injury. All of the costs of a claim cannot be charged under section 39(1)(e).~~

~~Since the section specifically refers to the enhancement of “disability”, it has no application in fatal cases or in cases where only health care benefits are payable.~~

~~Two questions are considered when evaluating the application of section 39(1)(e):~~

- ~~1. — Was there a pre-existing disease, condition or disability and, if so, to what extent?~~
- ~~2. — How severe was the incident initiating the claim in question?~~

~~Obviously, if a worker suffers an injury and there is no evidence of any pre-existing disease, condition or disability, the subsection is inapplicable. Similarly, where there is confirmation of a pre-existing disease, condition or disability of a minor degree, but the incident which precipitated the instant claim was of a severe nature, the section may be considered but will normally not be applicable. However, the section will clearly be applicable to those situations where a worker suffered a relatively minor injury at the time the instant claim was initiated, but there is evidence that the recovery period was prolonged, or a permanent disability was enhanced, by reason of a pre-existing disease, condition or disability. The fact that a disability has been prolonged or enhanced by other factors than a pre-existing condition is not a ground for relief under section 39(1)(e).~~

~~How much disability stems from the injury and how much from the enhancement of the disease, condition or disability and, therefore, to what extent costs should be charged under section 39(1)(e) can never be more than an estimate and will always be difficult to determine. In cases of continuing wage loss and health care benefits, it will be appropriate for the Board officer to determine that all of the costs of these benefits after a particular point in time should be charged under section 39(1)(e). In some instances, it may be appropriate for the Board officer to charge such costs on a percentage, rather than a time basis. In respect of permanent partial or permanent total disabilities, it will be necessary for the Board officer in Disability Awards, using her or his own best judgment and having~~

## APPENDIX A

~~reference to the advice of the Disability Awards Medical Advisor, to establish a percentage applicable to the pre-existing condition and to charge the relevant costs accordingly.~~

## APPENDIX A

### #114.41 *Relationship Between Sections 5(5) and 39(1)(e)*

It is important to distinguish between the provisions of section 5(5) ~~discussed in policy item #44.00~~ and section 39(1)(e), **as discussed in policy items #44.00 and #114.40.**

Section 5(5) deals with the situation where a disability resulting from a work injury is superimposed on a pre-existing disability in the same part of the body and increases that disability. (As outlined in policy item #44.31, section 5(5) can also apply if a permanent disability award is being assessed on a loss of earnings basis under section 23(3) of the *Act* and the disability is deemed to be partly the result of a disability in another part of the body.) It may result in a reduction in the amount of compensation paid to the worker.

Section 39(1)(e) is concerned only with the **rate group class** to which the costs of the claim are to be charged and cannot affect the entitlement of the worker. It can apply in cases where section 5(5) does not apply and the whole of the worker's disability results from the injury or, if section 5(5) does apply, to the portion of disability for which the Board is responsible. It provides relief for the **rate group class** of the worker's employer when the disability or portion of disability accepted under the claim is worse because of a pre-existing disease, condition or disability than it otherwise would be. That condition might well be in a different part of the worker's body.

---

<b>EFFECTIVE DATE:</b>	<b>March 1, 2005</b>
<b>HISTORY:</b>	<b>Updates language, consistent with rate-making system in <i>Assessment Manual</i>.</b> <b>This policy continues the substantive requirements as they existed prior to the effective date.</b>
<b>APPLICATION</b>	<b>Applies to all decisions on and after March 1, 2005</b>

## APPENDIX A

### ~~#114.43 — Procedure Governing Applications under Section 39(1)(e)~~

~~The Board has the responsibility to initiate consideration with or without a specific request or application by an employer, and to decide upon the applicability of the subsection on a claim. If a decision is made to apply this subsection, the employer will be notified. If relief has been requested, the employer will be advised if it has been denied. If there is a disagreement with such a decision, the employer may request a review by the Review Division.~~

~~**EFFECTIVE DATE:** March 3, 2003 (as to reference to review)~~

~~**APPLICATION:** Not applicable.~~

## APPENDIX A

### ~~#114.50 Sections 39(1)(d), 39(1)(e) and Federal Government Claims~~

~~The Federal Government does not contribute to the Accident Fund, therefore no relief of costs can be made where the Federal Government is recorded as the injury employer, i.e. Class 19 Claims.~~

## APPENDIX A

### #115.30 Experience Rating Cost Exclusions

Section 42 provides as follows.

The Board shall establish subclassifications, differentials and proportions in the rates as between the different kinds of employment in the same class as may be considered just; and where the Board thinks a particular industry or plant is shown to be so circumstanced or conducted that the hazard or cost of compensation differs from the average of the class or subclass to which the industry or plant is assigned, the Board must confer or impose on that industry or plant a special rate, differential or assessment to correspond with the relative hazard or cost of compensation of that industry or plant, and for that purpose may also adopt a system of experience rating.

The Board has adopted an experience rating plan (ER) under this section. The plan compares the ratio between an employer's claim costs and assessable payroll with the ratio between the total claim costs and assessable payroll of the employer's **class rate group**. Subject to maximums, discounts are assigned for favourable ratios and surcharges for unfavourable ratios. The discount or surcharge takes the form of a percentage increase or decrease in the usual assessment rate. Details of ER can be found in the policy in Item AP1-42-1 of the *Assessment Manual*.

As a general rule, all acceptable claims coded to a particular employer are counted for experience rating purposes. It makes no difference whether the injury was or was not the employer's fault. There are, however, some types of claim costs which are excluded from consideration. These are:

1. Costs recovered by way of a third party action (see policy item #111.25).
2. Investigation and/or compensation costs paid out prior to the disallow of a claim or reversal of a decision by a Board officer, the Review Division, the Workers' Compensation Appeal Tribunal or Medical Review Panel (see policy item #113.10).
3. Costs transferred to the ~~class~~ **rate group** of another employer under section 10(8) (see policy item #114.10).
4. Costs assigned to the funds created by section 39(1)(d) and (e) (see policy item #114.30 and policy item #114.40).
5. Occupational disease claims which on average require exposure for, or involve latency periods of, two or more years before manifesting into a disability. The diseases presently excluded on this ground are:

Non-traumatic hearing loss, excluding hearing loss resulting from other injuries

Silicosis

## APPENDIX A

Asbestosis

Other diagnosed pneumoconioses, for example, anthracosis and siderosis

Pneumoconioses not specifically diagnosed

Heart disease

Cancer

Hand-arm vibration syndrome, vinyl chloride induced Raynaud's phenomenon, disablement from vibrations

**(see policy item #113.20)**

6. Until September 27, 2002, costs after 13 weeks where section 5(3) applies (see policy item #16.60). Effective September 28, 2002, costs after 10 weeks where section 5(3) applies (see policy item #16.60).
7. Costs from accidents substantially due to personal illness, e.g. epilepsy (see policy item #15.30).
8. Injuries **covered by policies** during a retraining program sponsored by the Vocational Rehabilitation Department (see policy item **C11-88.10**, C11-88.40, and policy item C11-88.50).
9. The situations covered by policy item #115.31 and policy item #115.32 below.

The decision whether a claim falls within one of the exclusions will usually be made by an officer in the ~~Compensation~~ **Worker and Employer** Services Division. In the case of third party actions (Exclusion 1), a Board solicitor makes the decision.

---

**EFFECTIVE DATE:** **March 1, 2005**

~~March 18, 2003 (as to the use of the terms “discount” and “surcharge” and to reflect numerical reference to the policy in Item AP1-42-1 in the *Assessment Manual*)~~

**HISTORY:**

**Updates language as to the use of the phrase “rate group”, consistent with rate-making system in *Assessment Manual*; updates and incorporates cross-references to policy items #113.20 and C11-88.10, to make all items consistent and accurate.**

**This policy continues the substantive requirements as they existed prior to the effective date.**

**March 18, 2003 – “Discount”, “Surcharge” and the**

## APPENDIX A

numerical reference to the policy in Item AP1-42-1 in the *Assessment Manual* were incorporated.

### APPLICATION

Applies to all decisions on and after March 1, 2005

~~Not applicable.~~