

PRACTICE DIRECTIVE # C1-2

BINDING NATURE OF POLICY

Effective Date: March 3, 2003

Amended: April 22, 2003

A. BACKGROUND

On March 3, 2003, the *Workers Compensation Act* (the "Act") was amended by Bill 63, the *Workers Compensation Amendment Act (No.2), 2002*.

Prior to March 3, 2003, the former section 99 stated as follows:

The Board is not bound to follow legal precedent. Its decision must be given according to the merits and justice of the case and, where there is doubt on an issue and the disputed possibilities are evenly balanced, the issue must be resolved in accordance with that possibility which is favourable to the worker.

Bill 63 has substantially changed the Board's authority in this regard. As a result, the Panel of Administrators has approved amendments to the Board's policies concerning the binding nature of policy.

For convenience, in this Practice Directive:

- Law and policies as they read immediately before March 3, 2003 are called the "former provisions".
- Law and policies relating to the binding nature of policy as they read after March 3, 2003, are called the "current provisions."

B. EFFECTIVE DATE & TRANSITION RULE

On and after March 3, 2003 the current section 99(2) of the *Act* must be applied.

C. LAW AND POLICY

The current section 99(2) of the *Act* specifies that policy is binding on the Board:

(2) The Board must make its decisions based upon the merits and justice of the case, but in doing so the Board must apply a policy of the board of directors that is applicable in that case.

The current section 250(2) of the *Act* specifies that policy is binding on the Workers' Compensation Appeal Tribunal (WCAT):

(2) The appeal tribunal must make its decision based on the merits and justice of the case, but in so doing the appeal tribunal must apply a policy of the board of directors that is applicable in that case.¹

Rehabilitation Services & Claims Manual (RSCM) Vol. I & II, Policy item #2.20 states in part:

If there are specific directions in the Act that are relevant to those facts and circumstances, Board officers are legally bound to follow them.

*Board officers also must apply a policy of the Board of Directors that is applicable to the case before them. Each policy creates a framework that assists and directs Board officers in their decision-making role when certain facts and circumstances come before them. If such facts and circumstances arise and there is an applicable policy, the **policy must be followed**. [emphasis added]*

All substantive and associated practice components in the policies in this Manual are applicable under section 99(2) of the Act and must be followed in decision-making. The term "associated practice components" for this purpose refers to the steps outlined in the policies that must be taken to determine the substance of decisions. Without these steps being taken, the substantive decision required by the Act and policies could not be made.

References to business processes that appear in policies are only applicable under section 99(2) of the Act in decision-making to the extent that they are necessary to comply with the rules of natural justice and procedural fairness. The term "business processes" for this purpose refers to the manner in which the Board conducts its operations. These business processes are not intrinsic to the substantive decisions required by the Act and the policies.

D. ADJUDICATIVE GUIDELINES

1. Board officers must apply a policy of the Board of Directors that is applicable to the case before them (including the *RSCM*, the *Assessment Manual* and the *Prevention Manual*).
2. In the event of a conflict between the policies of the Board of Directors, the following guidelines apply:

¹ The current section 251 of the *Act* states the manner in which WCAT will address the lawfulness of a policy. Under subsection 251(1), WCAT may refuse to apply an applicable policy of the Board of Directors only if the policy is so patently unreasonable that it is not capable of being supported by the *Act* and regulations. Subsections 251(2) to (9) outline procedures that must be followed in such an event

- If the policies were approved on the same date, the policy most consistent with the *Act* is paramount.
 - If the policies were approved on the different dates, the most recently approved policy is paramount.
3. In the event that no policy exists that is applicable to the case or if policy is ambiguous, or if policy exists but does not exactly cover the particular situation:
- Board officers should seek guidance from Practice Directives or other procedure manuals.
 - If no Practice Directive or procedure manual has been issued that is applicable to the case, and the ambiguity, gap in policy or absence of policy is significant, Board officers should seek guidance from their Manager, who may in turn seek advice from the Manager, Policy & Practice. When the practical implications of the ambiguity, gap in policy or absence of policy are inconsequential, it is unnecessary to seek such guidance.

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