

PRACTICE DIRECTIVE # C12-1

DISCLOSURE OF PERSONAL INFORMATION

Effective March 3, 2003

On June 11, 1996, the Panel of Administrators approved amendments to the *Rehabilitation Services and Claims Manual* ("RSCM") to implement recommendations by the Information and Privacy Commissioner concerning the Board's practices with respect to disclosure of personal information about workers to employers. The amendments became effective July 1, 1996.

As well, on March 3, 2003, the *Workers Compensation Act* (the "Act") was amended by Bill 63, the *Workers Compensation Amendment Act (No.2), 2002*. As a result, the Board of Directors approved amendments to the RSCM and this practice directive was amended on March 3, 2003.

The following discussion seeks to draw your attention to the key amendments and explain the practical effect of the amendments.

RSCM Vols. I & II, Policy item #99.00, *Disclosure of Information*, provides that before a review or appeal is initiated, the Board must apply the *Freedom of Information and Protection of Privacy Act* ("FIPPA") to requests for claims information. This requirement applies to requests from both workers and employers.

RSCM Vols. I & II, Policy item #99.00 indicates that a copy of records related to a matter under review or appeal must be provided to the parties to a review or appeal. This reflects sections 96.2(6) and 245(3) of the *Act*. An application from the parties is not required prior to such disclosure. It is anticipated that the Review Division and the Workers' Compensation Appeal Tribunal ("WCAT") will automatically relay to the Disclosure Department the identification of the Review Division parties and WCAT appeal parties. The Disclosure Department will then provide appropriate disclosure, with no involvement from the Case Manager.

Where an employer requests information about a worker prior to an appeal or review, disclosure is limited to that information necessary for the adjudication or administration of the claim, that is on a "need to know" basis. "Need to know" has been defined by the Information and Privacy Commissioner as including the following: what the injury is, what caused the injury, when the worker is expected back to work, and whether the worker will need light duties upon return to work. This list is not exhaustive and care should be taken to ensure that the disclosure of other information is limited to information necessary for the adjudication or administration of the claim.

Board officers should also be mindful of RSCM Vols. I & II, Policy items #99.10 and #99.20. When discussing a claim which appears to be valid with an employer who has protested the claim, the Board officer, before making the decision, should contact the employer to ensure that the employer is aware of the issues relevant to the protest and has an opportunity to comment. When notifying an employer of the allowance of a claim which has been protested, only personal information about the worker which is relevant to the claim and the issues involved will be provided to the employer.

RSCM Vols. I & II, Policy item #99.00 includes provisions found in section 95(1.1) of the *Act*. This restricts the ability of recipients of information about a worker to in turn disclose it to other parties. Should a Board officer become aware of inappropriate disclosure, he or she should advise a Manager who in turn will advise Legal Services.

RSCM Vols. I & II, Policy items #99.23A, #99.23B and #99.30 implement the recommendation that the Board develop a policy for destroying or returning sensitive personal information, including medical information, that it receives which has not been specifically requested and which is determined not to be relevant to the adjudication of a specific claim.

The Commissioner expects this recommendation to be applied prospectively not retrospectively. This means it applies to documents received by the Board on or after July 1, 1996. Documents received prior to that date are subject to the pre-July 1, 1996 policy.

The effect of RSCM Vols. I & II, policy item #99.30 is that Board officers should carefully review reports and documents as they arrive at the Board. Where documents contain sensitive personal information, including medical information, that has not been specifically requested and which is determined not to be relevant to the adjudication of a specific claim, officers will ensure through blacking out and photocopying or cutting and pasting that the offending information is not legible.

Board officers should consider returning the original document to the sender in cases where the sender has made a grievous error in sending the material to the Board. Such an error would occur where the information sent to the Board includes the health records of the worker's spouse or children. In all cases where the document is returned to the sender the Board officer will advise the sender in a letter that relevant information has been retained by the Board but that irrelevant information has not been retained. The letter will identify the irrelevant information. This letter is required as the Board has accepted another of the Commissioner's recommendations which provides that the Board should educate information providers about the requirements of *FIPPA*, particularly with respect to the provision of unnecessary personal information about workers or third parties to the Board.

RSCM Vols. I & II, Policy item #99.35 permits workers or other parties to request the deletion or removal of irrelevant information from claim files. This applies to documents received by the Board on or after July 1, 1996. Documents received prior to that date are subject to the pre-July 1, 1996 policy.

Board officers may wish to discuss these requests with their Managers before reaching a decision. Where a worker objects to the officer's decision, the worker should be advised to review the issue with a Manager. The worker should not be advised to initiate a review. The Board considers that the decision as to whether to modify the file records is an administrative one, which is not reviewable by the Review Division, as it does not affect a worker's entitlement to benefits under Part I of the *Act*.

Another amendment provides that workers or other parties objecting to the accuracy of file information will be permitted to place on file rebutting material. (This does not mean that parties have a right of rebuttal before a decision is rendered.) A further amendment changes the "irrelevant and pejorative" provisions. The President will now review objections that a comment is pejorative. Concerns about relevancy are dealt with via the amendments noted above.

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