

2018/03/29-01

**WORKERS' COMPENSATION BOARD
("WorkSafeBC")**

RESOLUTION OF THE BOARD OF DIRECTORS

RE: Prior Shoulder Dislocations

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:

Section 5 of the *Act* sets out where personal injury arising out of and in the course of the employment is caused to a worker, compensation must be paid by the Workers' Compensation Board ("WorkSafeBC") out of the accident fund;

AND WHEREAS:

Item C3-16.00, *Pre-Existing Conditions or Diseases*, of the *Rehabilitation Services & Claims Manual*, Volume II ("*RS&CM*"), provides guidance on distinguishing between injuries or death that arise out of and in the course of the employment, and injuries or death that result from pre-existing conditions or disease;

AND WHEREAS:

Item C3-16.10, *Pre-Existing Conditions – Specific Injuries*, of the *RS&CM* ("Item C3-16.10"), provides guidance on the adjudication of claims for prior shoulder dislocations;

AND WHEREAS:

The Policy, Regulation and Research Division ("PRRD") identified policy on prior shoulder dislocations in Item C3-16.10 as requiring review;

AND WHEREAS:

The PRRD has undertaken stakeholder consultation on this issue, and has advised the Board of Directors on the results of the consultation;

THE BOARD OF DIRECTORS RESOLVES THAT:

1. Amendments to Item C3-16.10, attached as Appendix A to this resolution, are approved.
2. This resolution is effective May 1, 2018 and applies to all claims for injuries occurring on or after May 1, 2018.
3. This resolution constitutes a policy decision of the Board of Directors.

I, Ralph McGinn, hereby certify for and on behalf of the Board of Directors of WorkSafeBC that the above resolutions were duly passed at a meeting of the Board of Directors held in Richmond, British Columbia, on March 29, 2018.

RALPH MCGINN, P. ENG
Chair, Board of Directors
Workers' Compensation Board

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RE: Pre-Existing Conditions – Specific Injuries

ITEM: C3-16.10

BACKGROUND

1. Explanatory Notes

This policy provides guidance on the adjudication of claims for certain specific injuries that may originate from pre-existing conditions and be aggravated by something in the employment relationship.

2. The Act

Section 5(1):

Where, in an industry within the scope of this Part, personal injury or death arising out of and in the course of the employment is caused to a worker, compensation as provided by this Part must be paid by the Board out of the accident fund.

Section 96(2):

Despite subsection (1), at any time, on its own initiative, or on application, the Board may reopen a matter that has been previously decided by the Board or an officer or employee of the Board under this Part if, since the decision was made in that matter,

- (a) there has been a significant change in a worker's medical condition that the Board has previously decided was compensable, or
- (b) there has been a recurrence of a worker's injury.

POLICY

Item C3-14.00, *Arising Out of and In the Course of the Employment*, is the principal policy that provides guidance in deciding whether or not an injury or death arises out of and in the course of the employment.

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Item C3-16.00, *Pre-Existing Conditions or Diseases*, distinguishes between injuries or death resulting from the employment (which are compensable), and injuries or death resulting simply from a pre-existing condition or disease (which are not compensable).

Though the following injuries may originate from a pre-existing condition, a worker's employment may have causative significance in aggravating or producing the injury such that it is considered to arise out of and in the course of the employment.

A. Ganglia

Ganglia are generally not considered to be of traumatic origin and are normally not considered to arise out of and in the course of the employment.

Exceptions may be made when:

1. a ganglion first appears between six weeks and six months following a deep penetrating wound or a contusion involving deep tissue damage at the site where the ganglion appears, or
2. a ganglion appears within six weeks of commencing work which is both unaccustomed and involves repetitive movements of joints or tendons at the site of the ganglion. The Board considers this to be an aggravation of the ganglion in a pre-disposed individual.

B. Herniae

i. General

There are two main types of herniae, inguinal (groin) herniae, and non-inguinal herniae (e.g., femoral, incisional, and umbilical herniae).

On the basis of the Board's present understanding of the biologic characteristics of herniae, the following principles are followed in the adjudication of hernia claims.

1. There must be increased intra-abdominal pressure, or evidence of severe direct trauma, resulting from the work or employment preceding the appearance of the hernia. Symptoms will generally appear shortly after the incident.
2. Given the preponderance of medical information indicating that herniae are multi-factorial in development, herniae will be considered an aggravation of a pre-existing condition, and surgery will be recognized as an attempt to correct the aggravation.

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3. There is usually no urgency to the hernia operation, except where there are threatening complications, such as a bowel obstruction or inability to reduce the hernia. In most cases, there is no need to stop working while awaiting surgery.

Given the above, pre-operative wage-loss will not normally be paid unless medical information is provided by the attending physician indicating the complication which restricts the worker's ability to continue working. Where an attending physician's report certifies that a worker is disabled pre-operatively, other objective evidence, such as a medical opinion, regarding the worker's condition may be sought to either verify or dispute the attending physician's opinion.

4. Where a worker suffers bilateral herniae, it is extremely unlikely that both will have resulted from the same incident. However, where a claim for one of those hernia is acceptable in accordance with the principles set out above, the Board will accept responsibility for both herniae if the evidence is such that it is not possible to determine which of the two herniae did result from the employment.
5. Usual recovery times for hernia surgical repair are based on medical protocols and procedures adopted by the Board.

ii. **Prior Compensable and Non-Compensable Herniae**

a. **Prior Compensable Herniae**

- Under 18 Months Since Surgery Date

If no new incident is reported, the Board may reopen the decision of a prior compensable hernia(e) where less than 18 months have passed since the surgery date for the prior compensable hernia and a ground for reopening is met. If a significant new trauma is reported, it is usually adjudicated as a new claim.

- Over 18 Months Since Surgery Date

A hernia claim that occurs 18 months or more after the surgery date for the worker's prior compensable hernia(e) is generally adjudicated as a new claim. This consideration, however, also includes evaluating the question of reopening the old claim. The claim can only be reopened where a ground for reopening is met.

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b. Prior Non-Compensable Herniae

- Under 18 Months Since Surgery Date for Prior Herniae

There is a greater potential for recent hernia(e) repairs to break down in the first 18 months after a repair. For this reason a hernia claim that occurs less than 18 months after the worker's surgery date for a prior non-compensable hernia(e) is more likely to be a repair breakdown than a new injury. As a result, for the hernia claim to be accepted, there must be clear evidence to establish a relationship of the breakdown to the worker's employment.

- Over 18 Months Since Surgery Date for Prior Herniae

A hernia claim that occurs more than 18 months after the worker's surgery date for a prior non-compensable hernia(e) is more likely to be a new injury than a breakdown of the prior non-compensable hernia(e) repair.

All claims are adjudicated on the merits and justice of the case.

~~C. Prior Shoulder Dislocations~~

~~i. Prior Non-Compensable Shoulder Dislocations~~

~~If a worker has previously had a non-compensable primary shoulder dislocation and sustains a further or recurrent dislocation at work, the Board adjudicates the further or recurrent dislocation as a new claim. Acceptance of the claim depends on whether there was a work incident of causative significance to induce a further dislocation. Health care expenses (e.g. for surgery) solely attributable to the treatment of the pre-existing non-compensable primary shoulder dislocation are not compensable.~~

~~If many years have passed since the worker's previous non-compensable primary shoulder dislocation, and there is evidence showing that the shoulder had been stable for many years without any recurrent dislocation, health care expenses may not be limited to the same extent and could include surgical repair.~~

~~ii. Prior Compensable Shoulder Dislocations~~

~~If a worker has previously had a compensable primary shoulder dislocation, the Board adjudicates the further or recurrent dislocation under the original claim unless the condition has been stable for many years with no intervening difficulty. In such circumstances, the dislocation may be dealt with as a new claim.~~

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~~iii. Recurrent Shoulder Dislocations Induced by Severe Trauma~~

~~Regardless of whether the worker's previous primary shoulder dislocation was compensable or non-compensable, if the worker suffers a further, or recurrent shoulder dislocation at work that was induced by severe trauma, it is adjudicated as a new claim, and the acceptance of the claim depends on whether the work incident was of causative significance to induce a further dislocation. If accepted, health care expenses may include surgical repair.~~

~~iv. Disablement Caused by Recurrent Shoulder Dislocations~~

~~If there is a prompt reduction of the recurrent dislocation, there may be no disablement from work and consequently no need for wage-loss benefits. Where there is disablement, it is generally expected that it will not last for more than two weeks.~~

DC. Adverse Reactions to Inoculations or Injections

An injury or death that results from a worker's adverse reaction to an inoculation or injection may be considered to arise out of and in the course of the employment if:

1. the inoculation or injection is required, either as a condition of the employment or as a condition of continued employment (such as where the worker has sustained an injury or contracted a disease outside the work environment, but the employer insists on precautionary measures being taken before the worker returns to employment),
2. due to concerns of a potential outbreak of some disease on the employer's premises, an employer advises that if the worker refuses to receive an inoculation or injection and there is an outbreak, the worker will not be permitted to work until after the outbreak has passed; for example, influenza immunizations for health care workers, or
3. the worker was convinced that it was necessary to receive an inoculation or injection in spite of objective evidence from the employer that the process was not compulsory.

An injury or death that results from a worker's adverse reaction to an inoculation or injection is not likely to be considered to arise out of and in the course of the employment, if the inoculation or injection is received voluntarily by the worker, either as part of a broad program put on by the employer or in any other circumstances.

An injury or death that results from a worker's adverse reaction to a post-exposure prophylaxis ("PEP") that has been administered for a compensable exposure under

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Item C3-12.30, *Infectious Agent or Disease Exposures*, is adjudicated as a compensable consequence under Item C3-22.00, *Compensable Consequences*.

PRACTICE

For any relevant PRACTICE information please consult the WorkSafeBC website at www.worksafebc.com.

For medical protocols and procedures adopted by the Board related to herniae, see the *Simple Herniorrhaphy Post-op Rehabilitation Guidelines* in the Resources section for Health Care Providers at the www.worksafebc.com website:

http://www.worksafebc.com/health_care_providers/Assets/PDF/post-op_guidelines_hernia.pdf

EFFECTIVE DATE:	July 1, 2010May 1, 2018.
AUTHORITY:	Section 5(1) of the Act.
CROSS REFERENCES:	Item C3-12.30, <i>Infectious Agent or Disease Exposures</i> ; Item C3-14.00, <i>Arising Out of and in the Course of the Employment</i> ; Item C3-16.00, <i>Pre-Existing Conditions or Diseases</i> ; Item C14-102.01, <i>Changing Previous Decisions – Reopenings</i> ; Policy item #114.40, <i>Enhancement of Disability by Reason of Pre-existing Disease, Condition or Disability</i> .
HISTORY:	This policy was revised to delete section C, Prior Shoulder Dislocations, effective May 1, 2018. This policy replaces former policy items #15.40, #15.50, #15.51, #15.60, and #19.41 of the <i>Rehabilitation Services & Claims Manual</i> , Volume II. Housekeeping changes to correct grammar and to add practice references were made to former policy item #15.50 on December 1, 2004. Former policy item #15.50 was last revised on June 1, 2004 to delete an outdated timeframe for post-operative wage-loss benefits, extend general adjudicative principles to all types of hernia claims, and remove outdated content for various types of non-inguinal herniae, and applied to all decisions, including appellate decisions made on or after June 1, 2004. Former policy item #15.51 was last revised on March 3, 2003 as to references to re-opening.
APPLICATION:	This item applies to all claims for injuries occurring on or after July 1, 2010May 1, 2018.