2019/01/23-02

WORKERS' COMPENSATION BOARD

RESOLUTION OF THE BOARD OF DIRECTORS

RE: Surveillance Policy

WHEREAS:

Pursuant to section 82 of the *Workers Compensation Act,* R.S.B.C. 1996, c. 492 ("*Act*"), the Board of Directors of the Workers' Compensation Board ("WorkSafeBC") 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:

In April 2018, WorkSafeBC's Board of Directors received the compensation policy review entitled *Restoring the Balance: A Worker-Centred Approach to Workers' Compensation Policy* ("CPR");

AND WHEREAS:

The CPR contains a number of recommendations regarding policies in the *Rehabilitation Services & Claims Manual*, Volume II ("*RS&CM*");

AND WHEREAS:

Recommendation #41 in the CPR relates to creating policy for the appropriate use of video surveillance to meet WorkSafeBC responsibilities without causing unintended harm to the worker;

AND WHEREAS:

The Policy, Regulation and Research Division ("PRRD") developed new policy to address Recommendation #41 in the CPR;

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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. The addition of policy item #97.70, *Surveillance* to the *RS&CM*, as set out in Appendix 1 attached to this resolution, is approved and applies on or after March 1, 2019.

2. Consequential changes to the *RS&CM*, as set out in Appendix 2 attached to this resolution are approved.

3. This resolution is effective March 1, 2019.

4. 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 January 23, 2019.

_____

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

APPENDIX 1

REHABILITATION SERVICES & CLAIMS MANUAL, VOLUME II

#97.70 Surveillance

Section 96 of the *Act* provides the Board with authority to investigate claims for compensation. Under section 88 of the *Act*, the Board has authority to make necessary inquiries and to appoint others to make such inquiries.

The Board is required to gather the evidence necessary to adjudicate claims, and surveillance is one method to obtain such evidence. Surveillance is the discreet observation of a worker, and includes video-recording, audio-recording, and photographing the worker.

The Board conducts surveillance and uses surveillance evidence in compliance with applicable legislation, including the *Freedom of Information and Protection of Privacy Act* and the *Canadian Charter of Rights and Freedoms*.

Surveillance is a tool of last resort to be used when determining if a worker has engaged in fraud or misrepresentation where there is other existing evidence of fraud or misrepresentation and a strong likelihood the surveillance evidence will assist in establishing the fraud or misrepresentation.

Director or Vice-President approval is required to approve surveillance requests.

Surveillance evidence is assessed by the Board for accuracy and relevancy to the issues being decided, and is considered in conjunction with all other evidence.

The worker is given a reasonable opportunity to view and respond to surveillance evidence before the Board finalizes any decision based on that evidence.

EFFECTIVE DATE:	**March 1, 2019**
AUTHORITY:	**Sections 88 and 96 of the *Act*.**
CROSS-REFERENCES:	**#97.00, *Evidence*;** **#99.00, *Disclosure of Information*;** **#99.23, *Unsolicited Information*;** **#99.35, *Complaints Regarding File Contents*.**
HISTORY:	**March 1, 2019 – Policy item added to address use of surveillance and treatment of surveillance evidence.**
APPLICATION:	**Applies on or after March 1, 2019.**

APPENDIX 2
CONSEQUENTIAL CHANGES

REHABILITATION SERVICES & CLAIMS MANUAL

RE:	**Section 5.1 – Mental Disorders**	**ITEM:**	**C3-13.00**

BACKGROUND

1. Explanatory Notes

This is the principal policy that sets out the decision-making principles for determining a worker's entitlement to compensation under section 5.1 of the *Act*.

2. The Act

Section 5.1:

(1) Subject to subsection (2), a worker is entitled to compensation for a mental disorder that does not result from an injury for which the worker is otherwise entitled to compensation, only if the mental disorder

(a) either

(i) is a reaction to one or more traumatic events arising out of and in the course of the worker's employment, or

(ii) is predominantly caused by a significant work-related stressor, including bullying or harassment, or a cumulative series of significant work-related stressors, arising out of and in the course of the worker's employment,

(b) is diagnosed by a psychiatrist or psychologist as a mental or physical condition that is described in the most recent American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders at the time of the diagnosis, and

(c) is not caused by a decision of the worker's employer relating to the worker's employment, including a decision to change the work to be performed or the working conditions, to discipline the worker or to terminate the worker's employment.

(2) The Board may require that a psychiatrist or psychologist appointed by the Board review a diagnosis made for the purposes of subsection (1)(b) and may consider that review in determining whether a worker is entitled to compensation for a mental disorder.

(3) Section 56(1) applies to a psychiatrist or psychologist who makes a diagnosis referred to in this section.

(4) In this section:

"correctional officer" means a correctional officer as defined by regulation of the Lieutenant Governor in Council;

"eligible occupation" means the occupation of correctional officer, emergency medical assistant, firefighter, police officer, sheriff or, without limitation, any other occupation prescribed by regulation of the Lieutenant Governor in Council;

"emergency medical assistant" means an emergency medical assistant as defined in section 1 of the *Emergency Health Services Act*;

"firefighter" means a member of a fire brigade who is

(a) described in paragraph (c) of the definition of "worker" or employed by the government of Canada, and

(b) assigned primarily to fire suppression duties whether or not those duties include the performance of ambulance or rescue services;

"police officer" means an officer as defined in section 1 of the *Police Act*;

"psychiatrist" means a physician who is recognized by the College of Physicians and Surgeons of British Columbia, or another accredited body recognized by the Board, as being a specialist in psychiatry;

"psychologist" means a person who is

(a) a registrant of the college responsible for carrying out the objects of the *Health Professions Act* in respect of the health profession of psychology, or

(b) entitled to practise as a psychologist under the laws of another province.

"sheriff" means a person lawfully holding the office of sheriff or lawfully performing the duties of sheriff by way of delegation, substitution, temporary appointment or otherwise.

POLICY

The complexity of mental disorders gives rise to challenges in the adjudication of a claim for a mental or physical condition that is described in the most recent American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders* ("DSM"). The mental disorder may be the result of a number of contributing factors, some of which are work-related and some of which are not.

This policy provides guidance on the adjudication of claims for mental disorders where the mental disorder either:

- is a reaction to one or more traumatic events arising out of and in the course of the worker's employment; or
- is predominantly caused by a significant work-related stressor, or a cumulative series of significant work-related stressors, arising out of and in the course of the worker's employment.

Section 5.1 of the *Act* sets out that a worker may be entitled to compensation for a mental disorder that does not result from an injury. This is distinct from a worker's entitlement under section 5(1) for psychological impairment that is a compensable consequence of an injury.

A. Does the worker have a DSM diagnosed mental disorder?

Section 5.1 requires more than the normal reactions to traumatic events or significant work-related stressors, such as being dissatisfied with work, upset or experiencing distress, frustration, anxiety, sadness or worry as those terms are widely and informally used.

It requires that a worker's mental disorder be diagnosed by a psychiatrist or a psychologist as a condition that is described in the most recent DSM, at the time of diagnosis.

As set out in the DSM, a DSM diagnosis generally involves a comprehensive and systematic clinical assessment of the worker.

The Board is responsible for the decision-making process, and for reaching the conclusions on the claim. Under section 5.1(2) of the *Act*, the Board may obtain expert advice to review the diagnosis and where required, may obtain additional diagnostic assessment.

In reviewing the diagnosis, the Board also considers all of the relevant medical evidence, including prior medical history, attending physician reports and expert medical opinion. The findings of this additional information are considered in determining whether there is a DSM diagnosed mental disorder.

B. Was there one or more events, or a stressor, or a cumulative series of stressors?

In all cases, the one or more events, stressor or cumulative series of stressors, must be identifiable.

C. Was the event "traumatic" or the work-related stressor "significant"?

All workers are exposed to normal pressures and tensions at work which are associated with the duties and interpersonal relations connected with the worker's employment.

The Board recognizes that workers may, due to the nature of their work, be exposed to traumatic events or significant stressors as part of their employment. An event may be traumatic or a stressor significant even though the worker has previous work-related exposure to traumatic events or significant stressors.

In determining whether the event is traumatic or the stressor is significant, the worker's subjective statements and response to the event or stressor are considered. However, this question is not determined solely by the worker's subjective belief about the event or stressor. It involves both a subjective and objective analysis.

For the purposes of this policy, a "traumatic" event is an emotionally shocking event. In most cases, the worker must have experienced or witnessed the traumatic event.

A work-related stressor is considered "significant" when it is excessive in intensity and/or duration from what is experienced in the normal pressures or tensions of a worker's employment.

Interpersonal conflicts between the worker and his or her supervisors, co-workers or customers are not generally considered significant unless the conflict results in behavior that is considered threatening or abusive.

Examples of significant work-related stressors include exposure to workplace bullying or harassment.

D. Causation

(i) Was the mental disorder a reaction to one or more traumatic events arising out of and in the course of the worker's employment?

The *Act* requires that the mental disorder be a reaction to one or more traumatic events arising out of and in the course of the worker's employment. This requires the Board to determine the following:

- Did the one or more traumatic events arise in the course of the worker's employment?

  This refers to whether the one or more traumatic events happened at a time and place and during an activity consistent with, and reasonably incidental to, the obligations and expectations of the worker's employment.

- Did the one or more traumatic events arise out of the worker's employment?

  This refers to the cause of the mental disorder. Both employment and non-employment factors may contribute to the mental disorder. However, in order for the mental disorder to be compensable, the one or more traumatic events have to be of causative significance, which means more than a trivial or insignificant cause of the mental disorder.

In making the above determinations, the Board reviews the medical and non-medical evidence to consider whether:

- there is a connection between the mental disorder and the one or more traumatic events, including whether the one or more traumatic events were of sufficient degree and/or duration to be of causative significance in the mental disorder;

- any pre-existing non-work related medical conditions were a factor in the mental disorder; and

- any non-work related events were a factor in the mental disorder.

The Board is required to determine whether there is sufficient evidence of one or more traumatic events that are of causative significance in the mental disorder.

The gathering and weighing of evidence generally is covered in policy items #97.00 through #~~97.60~~**97.70**.

(ii) Was the mental disorder predominantly caused by a significant work-related stressor, or a cumulative series of significant work-related stressors, arising out of and in the course of the worker's employment?

The *Act* requires that the mental disorder be predominantly caused by a significant work-related stressor, or a cumulative series of significant work-related stressors, arising out of and in the course of the worker's employment. There are two parts to this requirement as set out below.

The first part is the determination of whether the significant stressor or cumulative series of significant stressors arose out of and in the course of employment. This requires the Board to determine the following:

- Did the significant stressor or cumulative series of significant stressors arise in the course of the worker's employment?

  This refers to whether the significant stressor, or cumulative series of significant stressors, happened at a time and place and during an activity consistent with, and reasonably incidental to, the obligations and expectations of the worker's employment.

- Did the significant stressor or cumulative series of significant stressors arise out of the worker's employment?

A significant stressor or a cumulative series of significant stressors may be due to employment or non-employment factors. The *Act* requires that the significant stressors be work-related.

The second part is the determination of whether the significant work-related stressor, or cumulative series of significant work-related stressors, was the predominant cause of the mental disorder.

Predominant cause means that the significant work-related stressor, or cumulative series of significant work-related stressors, was the primary or main cause of the mental disorder.

Both parts of this requirement must be met in order for the mental disorder to be compensable.

(iii) Pre-existing Mental Disorders

Where a worker has a pre-existing mental disorder and claims that a traumatic event or significant work-related stressor aggravated the pre-existing mental disorder, the claim is adjudicated with regard to section 5.1 of the *Act* and the direction in this policy.

E. Section 5.1(1)(c) Exclusions

There is no entitlement to compensation if the mental disorder is caused by a decision of the worker's employer relating to the worker's employment. The *Act* provides a list of examples of decisions relating to a worker's employment which include a decision to change the work to be performed or the working conditions, to discipline the worker or to terminate the worker's employment. This statutory list of examples is inclusive and not exclusive.

Other examples may include decisions of the employer relating to workload and deadlines, work evaluation, performance management, transfers, changes in job

PRACTICE

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

APPENDIX 2
CONSEQUENTIAL CHANGES

WORK SAFE BC

REHABILITATION SERVICES & CLAIMS MANUAL

EFFECTIVE DATE: July 23, 2018
AUTHORITY: Section 5.1 of the *Act.*
CROSS REFERENCES: Item C3-13.10, *Section 5.1(1.1) – Mental Disorder Presumption*;
Item C3-22.30, *Compensable Consequences – Psychological Impairment*;
Policy item #97.00, *Evidence*;
Policy item #97.10, *Evidence Evenly Weighted*;
Policy item #97.20, *Presumptions*;
Policy item #97.30, *Medical Evidence*;
Policy item #97.31, *Matter Requiring Medical Expertise*;
Policy item #97.32, *Statement of Worker about His or Her Own Condition*;
Policy item #97.33, *Statement by Lay Witness on Medical Question*;
Policy item #97.34, *Conflict of Medical Opinion*;
Policy item #97.35, *Termination of Benefits*;
Policy item #97.40, *Disability Awards*;
Policy item #97.50, *Rumours and Hearsay*;
Policy item #97.60, *Lies*~~.~~**;**
Policy item #97.70, *Surveillance*.

HISTORY:
Consequential amendments arising from addition of policy item #97.70, *Surveillance* were made effective March 1, 2019.
Amendments to C3-13.00 to reflect changes to the *Act* resulting from the *Workers Compensation Amendment Act, 2018* **were made effective July 23, 2018**.
Housekeeping changes made on January 1, 2018 to the definition of "psychologist" as amended by the *Act* effective November 2, 2017.
Housekeeping changes made on July 17, 2013 to remove references to multi-axial diagnostic assessment in accordance with DSM-5.
New Item C3-13.00 to reflect changes to the *Act* resulting from the *Workers Compensation Amendment Act, 2011.*
This policy replaces former Item C3-13.00 of the *Rehabilitation Services & Claims Manual*, Volume II, in its entirety.
Former Item C3-13.00 had replaced former policy item #13.30 by putting it into the new format.
Effective April 30, 2009, former policy item #13.30 was amended to delete references identified by the British Columbia Court of Appeal as being contrary to section 15(1) of the *Canadian Charter of Rights and Freedoms*.
On April 1, 2007, former policy item #13.30 was amended to delete the paragraph requiring workers with a recurrence of mental stress to meet the requirements of section 5.1, if their claims had initially been allowed prior to June 30, 2002. On December 31, 2003, former policy item #13.30 was amended to reflect the amendment of section 5.1(1) of the *Act*, to include a reference to a psychologist's diagnosis of mental stress, and the introduction of sections 5.1(2) to (4) of the *Act*. The amended

policy applied to acute reactions to traumatic events that occur on or after December 31, 2003. Former policy item #13.30 had been created on June 30, 2002 to set out the scope of coverage for mental stress claims. It applied to all injuries on or after June 30, 2002; permanent disabilities where the permanent disability first occurred on or after June 30, 2002, irrespective of the date of the injury; and recurrences, where the recurrence occurred on or after June 30, 2002, irrespective of the date of the injury.

APPLICATION: This Item applies to all decisions made by the Board and the Workers' Compensation Appeal Tribunal respecting claims that involve section 5.1 of the *Act* made on or after July 23, 2018, including all decisions made, but not finally adjudicated, before July 23, 2018**.**

APPENDIX 2
CONSEQUENTIAL CHANGES

REHABILITATION SERVICES & CLAIMS MANUAL

RE: Section 5.1(1.1) – Mental Disorder Presumption	ITEM: C3-13.10

BACKGROUND

1. Explanatory Notes

This policy provides guidance on the adjudication of claims for a mental disorder where the presumption in section 5.1(1.1) of the *Act* applies.

2. The Act

Section 5.1:

(1) Subject to subsection (2), a worker is entitled to compensation for a mental disorder that does not result from an injury for which the worker is otherwise entitled to compensation, only if the mental disorder

…

(b) is diagnosed by a psychiatrist or psychologist as a mental or physical condition that is described in the most recent American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders at the time of the diagnosis, and

…

(1.1) If a worker who is or has been employed in an eligible occupation

(a) is exposed to one or more traumatic events arising out of and in the course of the worker's employment in that eligible occupation, and

(b) has a mental disorder that is recognized, in the most recent American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, at the time of the diagnosis of the mental disorder under subsection (1)(b) of this section, as a mental or physical condition that may arise from exposure to a traumatic event,

the mental disorder must be presumed to be a reaction to the one or more traumatic events arising out of and in the course of the worker's employment in that eligible occupation, unless the contrary is proved.

(2) The Board may require that a psychiatrist or psychologist appointed by the Board review a diagnosis made for the purposes of subsection (1)(b) and may consider that review in determining whether a worker is entitled to compensation for a mental disorder.

(3) Section 56(1) applies to a psychiatrist or psychologist who makes a diagnosis referred to in this section.

(4) In this section:

"correctional officer" means a correctional officer as defined by regulation of the Lieutenant Governor in Council;

"eligible occupation" means the occupation of correctional officer, emergency medical assistant, firefighter, police officer, sheriff or, without limitation, any other occupation prescribed by regulation of the Lieutenant Governor in Council;

"emergency medical assistant" means an emergency medical assistant as defined in section 1 of the *Emergency Health Services Act*;

"firefighter" means a member of a fire brigade who is

(a) described in paragraph (c) of the definition of "worker" or employed by the government of Canada, and

(b) assigned primarily to fire suppression duties whether or not those duties include the performance of ambulance or rescue services;

"police officer" means an officer as defined in section 1 of the *Police Act*;

"psychiatrist" means a physician who is recognized by the College of Physicians and Surgeons of British Columbia, or another accredited body recognized by the Board, as being a specialist in psychiatry;

"psychologist" means a person who is

(a) a registrant of the college responsible for carrying out the objects of the *Health Professions Act* in respect of the health profession of psychology, or

(b) entitled to practise as a psychologist under the laws of another province;

"sheriff" means a person lawfully holding the office of sheriff or lawfully performing the duties of sheriff by way of delegation, substitution, temporary appointment or otherwise.

POLICY

Section 5.1(1.1) of the *Act* provides a mental disorder presumption. The presumption applies where a worker is:

- exposed to one or more traumatic events arising out of and in the course of the worker's employment in an eligible occupation; and
- diagnosed by a psychiatrist or psychologist with a mental disorder that is recognized in the most recent American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders ("DSM") as a mental or physical condition that may arise from exposure to a traumatic event.

Where the mental disorder presumption does not apply, a worker's claim for compensation for a mental disorder will be adjudicated under section 5.1(1) of the *Act.*

A. What is an eligible occupation?

The mental disorder presumption applies to a worker who is or has been employed in an eligible occupation as defined in the *Act* or prescribed by regulation of the Lieutenant Governor in Council. Eligible occupations are correctional officers, emergency medical assistants, firefighters, police officers and sheriffs.

B. Was the worker exposed to a "traumatic" event?

The *Act* requires the worker is exposed to one or more traumatic events. In all cases, the one or more events must be identifiable.

A “traumatic” event is an emotionally shocking event. In most cases, the worker must have experienced or witnessed the traumatic event.

The Board recognizes that workers employed in eligible occupations, due to the nature of their work, may be exposed to traumatic events as part of their employment.

In determining whether the event is traumatic the worker’s subjective statements and response to the event are considered. However, this question is not determined solely by the worker’s subjective belief about the event. It involves both a subjective and objective analysis.

C. DSM diagnosis

The *Act* requires a worker’s mental disorder be diagnosed by a psychiatrist or a psychologist as a condition described in the most recent DSM, at the time of diagnosis. The *Act* also requires the mental disorder be recognized in the most recent DSM as a mental or physical condition that may arise from exposure to a traumatic event.

In reviewing the diagnosis, the Board recognizes a broad range of mental disorders may arise following exposure to a traumatic event. Some mental disorders recognized in the DSM explicitly list exposure to a traumatic event as a diagnostic criterion. This means exposure to a traumatic event is required for the diagnosis, for example post-traumatic stress disorder and acute stress disorder.

The Board also recognizes there are mental disorders set out in the DSM that do not require exposure to a traumatic event but may still arise from trauma. These include, but are not limited to, depressive disorders, anxiety disorders and substance use disorders.

D. Causation

The *Act* requires that the mental disorder must be presumed to be a reaction to the one or more traumatic events arising out of and in the course of the worker’s employment in that eligible occupation, unless the contrary is proved.

The Board is not required to establish that any specific traumatic event is causative of the worker’s mental disorder.

E. Rebutting the presumption

Inclusion of the words "unless the contrary is proved" in section 5.1(1.1) means that the presumption is rebuttable. Where evidence which rebuts or refutes the presumption is available, it must be considered.

The standard of proof to be applied in determining whether the presumption has been rebutted is proof on a balance of probabilities. If the evidence is more heavily weighted in favour of a conclusion that something other than the employment caused the mental disorder, then the contrary will be considered to be proved and the presumption is rebutted. It is not sufficient to say the presumption is rebutted because there is a lack of evidence to support work causation. The gathering and weighing of evidence generally is covered in policy items #97.00 through #~~97.60~~**97.70**.

F. Pre-existing mental disorders

Where a worker who is or has been employed in an eligible occupation has a pre-existing mental disorder and claims that a traumatic event aggravated the pre-existing mental disorder, the claim is adjudicated with regard to section 5.1(1.1) of the *Act* and the direction in this policy.

For the presumption to apply, the pre-existing mental disorder must also be recognized in the most recent DSM as a mental or physical condition that may arise from exposure to a traumatic event.

PRACTICE

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

EFFECTIVE DATE:	July 23, 2018
AUTHORITY:	Section 5.1 of the *Act.*
CROSS REFERENCES:	Item C3-13.00, *Section 5.1 – Mental Disorders*; Item C3-22.30, *Compensable Consequences – Psychological Impairment*; Policy item #97.00, *Evidence*; Policy item #97.10, *Evidence Evenly Weighted*; Policy item #97.20, *Presumptions*; Policy item #97.30, *Medical Evidence*; Policy item #97.31, *Matter Requiring Medical Expertise*;

Policy item #97.32, *Statement of Worker about His or Her Own Condition*;
Policy item #97.33, *Statement by Lay Witness on Medical Question*;
Policy item #97.34, *Conflict of Medical Opinion*;
Policy item #97.35, *Termination of Benefits*;
Policy item #97.40, *Disability Awards*;
Policy item #97.50, *Rumours and Hearsay*;
Policy item #97.60, *Lies*~~.~~**;**
Policy item #97.70, *Surveillance*.

HISTORY:

Consequential amendments arising from addition of policy item #97.70, *Surveillance* were made effective March 1, 2019.
New Item C3-13.10, *Section 5.1(1.1) – Mental Disorder Presumption,* to reflect changes to the *Act* resulting from the *Workers Compensation Amendment Act, 2018***, effective July 23, 2018***.*

APPLICATION:

This Item applies to all decisions made by the Board and the Workers' Compensation Appeal Tribunal respecting claims that involve section 5.1 of the *Act* made on or after July 23, 2018, including all decisions made, but not finally adjudicated, before July 23, 2018**.**

APPENDIX 2
CONSEQUENTIAL CHANGES

REHABILITATION SERVICES & CLAIMS MANUAL, VOLUME II

CHAPTER 4

#26.21 Schedule B Presumption

Section 6(3) provides:

> If the worker at or immediately before the date of the disablement was employed in a process or industry mentioned in the second column of Schedule B, and the disease contracted is the disease in the first column of the schedule set opposite to the description of the process, the disease is deemed to have been due to the nature of that employment unless the contrary is proved

The primary significance of Schedule B is with its use as a means of establishing work causation.

The fundamental purpose of Schedule B is to avoid the repeated effort of producing and analyzing medical and other evidence of work-relatedness for a disease where research has caused the Board to conclude that such disease is specific to a particular process, agent or condition of employment (see policy item #26.01). Once included in Schedule B, it is presumed in individual cases that fit the disease and process/industry description that the cause was work-related. A claim covered by Schedule B can be accepted even though no specific evidence of work relationship is produced. A review of the available medical and scientific evidence would establish a likely relationship between the disease and the employment. The listing in the Schedule avoids the effort of producing the evidence in every case. Where the research does not clearly relate the disease to particular employments, the disease is not listed in Schedule B and the issue of work-relatedness must be determined on a case-by-case basis (see policy item #26.23).

If at the time a worker becomes disabled by a disease listed in Schedule B, or if immediately before such date, such worker was employed in the process or industry described in the second column of the Schedule opposite to such disease, the worker is entitled to a presumption that the disease was caused by their employment, “unless the contrary is proved”. This presumption applies whether the disease manifests itself while the worker is at work, at home, while away on holidays, or elsewhere. The words “immediately before” used in section 6(3) are intended to deal with those situations where someone has been employed in the process or industry described in the Schedule, and has left that employment a very short time prior to the onset of the disease.

APPENDIX 2
CONSEQUENTIAL CHANGES

If a worker becomes disabled by a disease listed in Schedule B but at the relevant time had not been employed in the process or industry described in the Schedule, the claim may still be an acceptable one, however no presumption in favour of work-relatedness would apply. In this event establishing work causation follows the approach covered in policy item #26.23.

Inclusion of the words “unless the contrary is proved” in section 6(3) means that the presumption is rebuttable. Even though the decision-maker need not consider whether working in the described process or industry is likely to have played a causative role in giving rise to the disease, they must still consider whether there is evidence which rebuts or refutes the presumption of work-relatedness.

The standard of proof to be applied in determining whether the presumption has been rebutted is proof on a balance of probabilities. This is the same basic standard of proof applicable in the workers’ compensation system. If the evidence is more heavily weighted in favour of a conclusion that it was something other than the employment that caused the disease, then the contrary will be considered to have been proved and the presumption is rebutted. The gathering and weighing of evidence generally is covered in policy items #97.00 through #~~97.60~~**97.70**.

Difficulties may arise in determining whether the worker was employed in the process or industry described in the second column. This often arises because of the use of such words as “excessive” or “prolonged”. While the Board would like to define more precisely the amount and duration of exposure required instead of using these words, it is usually not possible. The exact amounts will often vary according to the particular circumstances of the work place and the worker, or may not be quantified with sufficient precision by the available research. However, while such words are of uncertain meaning, there is valid reason for inserting them. Individual judgment must be exercised in each case to determine their meaning, having regard to the medical and other evidence available as to what is a reasonable amount or duration of exposure.

EFFECTIVE DATE:	May 1, 2017
HISTORY:	**March 1, 2019 – Consequential amendment made on March 1, 2019 to reflect addition of policy item #97.70, *Surveillance.***
	May 1, 2017 – Consequential amendment made on May 1, 2017 to reflect renumbering of policy item #26.23 (formerly #26.22).
	June 1, 2004 – Statements adopting a broad interpretation of the phrase “immediately before” have been deleted.
APPLICATION:	Applies on or after May 1, 2017.

APPENDIX 2
CONSEQUENTIAL CHANGES

#26.23 Non-Scheduled Recognition and Onus of Proof

In some cases a worker may suffer an occupational disease not listed in Schedule B. In other cases a worker may suffer from an occupational disease listed in Schedule B but was not employed in the process or industry described opposite to it in the Schedule. In some cases a worker may suffer a disease not previously designated or recognized by the Board as an occupational disease. Here, the decision on whether the disease is due to the nature of any employment in which the worker was employed, is determined on the merits and justice of the claim without the benefit of any presumption. The same is true if for any other reason the requirements of section 6(3) are not met.

For this purpose the Board will conduct a detailed investigation of the worker's circumstances including information about the worker, their diagnosed condition, and their workplace activities. The Board is seeking to gather evidence that tends to establish that there is a causative connection between the work and the disease. The Board will also seek out or may be presented with evidence which tends to show there is no causative connection. The gathering and weighing of evidence generally is covered in policy items #97.00 through #~~97.60~~**97.70**. The Board is to examine the evidence to see whether it is sufficiently complete and reliable to arrive at a sound conclusion with confidence. If not, the Board should consider what other evidence might be obtained, and must take the initiative in seeking further evidence. After that has been done, if, on weighing the available evidence, there is then a preponderance in favour of one view over the other, that is the conclusion that must be reached. Although the nature of the evidence to be obtained and the weight to be attached to it is entirely in the hands of the Board, to be sufficiently complete the Board should obtain evidence from both the worker and the employer, particularly if the Board is concerned about the accuracy of some of the evidence obtained.

Since workers' compensation in British Columbia operates on an inquiry basis rather than on an adversarial basis, there is no onus on the worker to prove his or her case. All that is needed is for the worker to describe his or her personal experience of the disease and the reasons why they suspect the disease has an occupational basis. It is then the responsibility of the Board to research the available scientific literature and carry out any other investigations into the origin of the worker's condition which may be necessary. There is nothing to prevent the worker, their representative, or physician from conducting their own research and investigations, and indeed, this may be helpful to the Board. However, the worker will not be prejudiced by his or her own failure or inability to find the evidence to support the claim. Information resulting from research and investigations conducted by the employer may also be helpful to the Board.

As stated in policy item #97.10, a worker is also assisted in establishing a relationship between the disease and the work by section 99 of the *Act* that provides:

APPENDIX 2
CONSEQUENTIAL CHANGES

(1) The Board may consider all questions of fact and law arising in a case, but the Board is not bound by legal precedent.

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

(3) If the Board is making a decision respecting the compensation or rehabilitation of a worker and the evidence supporting different findings on an issue is evenly weighted in that case, the Board must resolve that issue in a manner that favours the worker.

Therefore if the weight of the evidence suggesting the disease was caused by the employment is roughly equally balanced with evidence suggesting non-employment causes, the issue of causation will be resolved in favour of the worker. This provision does not come into play where the evidence is not evenly weighted on an issue.

If the Board has no or insufficient positive evidence before it that tends to establish that the disease is due to the nature of the worker's employment, the Board's only possible decision is to deny the claim.

EFFECTIVE DATE:	May 1, 2017
HISTORY:	**March 1, 2019 – Consequential amendment made on March 1, 2019 to reflect addition of policy item #97.70, *Surveillance.***
	May 1, 2017 – Renumbered from #26.22.
	June 1, 2009 – Delete references to Board officers.
	March 3, 2003 – New wording of section 99
APPLICATION:	Applies on or after May 1, 2017.