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March 2019 Update 2019 – 2

TO: HOLDERS OF THE *REHABILITATION SERVICES & CLAIMS MANUAL* – VOLUME II

This update of the *Rehabilitation Services & Claims Manual* contains amendments in the *Manual* implemented since update 2019 – 1.

The revised pages are amendments for:

- Table of Contents
- Policy item #97.70, *Surveillance* – **new policy**
- Consequential and housekeeping amendments relating to new Surveillance policy
- Housekeeping amendments to:
  - Item C10-76.00, *Physicians and Qualified Practitioners*
  - Item C10-77.00, *Other Recognized Health Care Professionals*

A summary is attached and the amended pages are included as part of the package, effective **March 1, 2019***.*

These amended pages and the complete manual are available at http://www.worksafebc.com/regulation_and_policy/default.asp.

Ian Shaw
Senior VP and General Counsel

Attachments

***Rehabilitation Services & Claims Manual,* Volume II**

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- 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 #97.70.

(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 duties, lay-offs, demotions and reorganizations.

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 C3-13.10, *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 theirclaims 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.

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 #97.70.

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.

(b) Is the Board satisfied the worker was not at fault?

Any negligent or careless act or omission of the worker is weighed against the causative significance of the worker's employment in contributing to the breakage of the eyeglasses, dentures or hearing aids.

Minor lapses of attention are reasonable to expect from the average worker in the normal course of work and will not generally outweigh the employment aspects of the situation.

After weighing all the relevant factors, if the worker's negligence is considered more than a trivial or insignificant cause of the breakage, the worker is considered to be at fault, and the Board will not assume the responsibility of replacement or repair of the broken eyeglasses, dentures or hearing aids. Alternatively, if there is no negligence, or the worker's negligence is considered trivial or insignificant, the worker is not considered to be at fault, and the Board will assume responsibility for the necessary replacement or repair of the broken item.

PRACTICE

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

EFFECTIVE DATE: July 1, 2010
AUTHORITY: Section 21(8) of the *Act*.
CROSS REFERENCES:
Item C3-12.00, *Personal Injury;*
Item C3-14.20, *Accident – Section 5(4) Presumption;*
Item C3-23.00, *Replacement and Repair of Personal Possessions – Section 21(8);*
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: Incorporates concepts from former policy items #23.20, #23.30, #23.40, #23.50, and #23.60 of the *Rehabilitation Services & Claims Manual*, Volume II.

APPLICATION: This item applies to all claims for injuries occurring on or after July 1, 2010.

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.

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 #97.70.

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.

#26.22 Additional Presumptions in the Workers Compensation Act

The *Act* provides the following additional presumptions:

- Firefighters' occupational disease or personal injury presumption (see section 6.1 of the *Act)*;
- Communicable disease presumption (see section 6.2 of the *Act)*; and
- Mental disorder presumption (see section 5.1 of the *Act*).

EFFECTIVE DATE: July 23, 2018
HISTORY: Consequential amendments arising from the Bill 9 amendments to section 5.1 of the *Act*, were made effective July 23, 2018.
May 1, 2017 – Adding to policy a reference to the firefighters' presumption and communicable disease presumption provided in the *Act*.
APPLICATION: Applies on or after July 23, 2018

#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 #97.70. 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:

> (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.

#26.30 Disabled from Earning Full Wages at Work

No compensation other than health care benefits are payable to a worker who suffers from an occupational disease (with the exception of silicosis, asbestosis, or pneumoconiosis and claims for hearing loss to which section 7 of the *Act* apply) unless the worker "is thereby disabled from earning full wages at the work at which the worker was employed". (3) No compensation is payable in respect of a deceased worker unless his or her death was caused by an occupational disease (also see section 6(11) of the *Act*).

Health care benefits may be paid to a worker who suffers from an occupational disease even though the worker is not thereby disabled from earning full wages at the work at which he or she was employed.

There is no definition of "disability" in the *Act.* The phrase "disabled from earning full wages at the work at which the worker was employed" refers to the work at which the worker was regularly employed on the date he or she was disabled by the occupational disease. This means that there must be some loss of earnings from such regular employment as a result of the disabling affects of the disease, and not just an impairment of function. For example, disablement for the purposes of section 6(1) may result from:

- an absence from work in order to recover from the disabling affects of the disease;
- an inability to work full hours at such regular employment due to the disabling affects of the disease;
- an absence from work due to a decision of the employer to exclude the worker in order to prevent the infection of others by the disease;
- the need to change jobs due to the disabling affects of the employment.

A worker who must take time off from his or her usual employment to attend medical appointments is not considered disabled by virtue of that fact alone. However, income loss payments may be made to such a worker (see Item C10-83.10).

A change of employment or lay-off from work for the purpose of precluding the onset of a disability does not amount to a disability for this purpose.

For time limits with respect to occupational disease claims see policy item #32.55.

#26.50 Natural Degeneration of the Body

It often happens that disability results from the natural aging process. At times the pace of the process and each aspect of it can be influenced by environmental circumstances and activity. Work, leisure activities, genetic factors, air purity, diet, medical care, personal hygiene, personal relations and psychological make-up are all factors that may influence the pace of many kinds of natural degeneration. Where the degeneration is of a kind that affects the population at large, it is difficult for the Board to attempt a measurement of the significance of each occupation on each kind of degeneration. It is also difficult to determine whether a particular occupation had any significant effect in advancing the pace of degeneration compared with other occupations, or compared with a life of leisure. Where a degenerative process or condition is of a kind that affects the population at large, it will not be designated or recognized by the Board as an occupational disease unless employment causation can be established.

If a worker is suffering from a kind of bodily deterioration that affects the population at large, it is not compensable simply because of a possibility that work may be one of the range of variables influencing the pace of that degeneration. For the disability to be compensable, the evidence must establish that the work activity brought about a disability that would probably not otherwise have occurred, or that the work activity significantly advanced the development of a disability that would otherwise probably not have occurred until later.

For example, osteoarthritis in the spine, rheumatoid arthritis, and degenerative disc disease have not been designated or recognized under policy items #26.01, #26.02, or #26.03 as occupational diseases. (4), (5)

#26.55 Aggravation of a Disease

Where a worker has a pre-existing disease which is aggravated by work activities to the point where the worker is thereby disabled, and where such pre-existing disease would not have been disabling in the absence of that work activity, the Board will accept that it was the work activity that rendered the disease disabling

and pay compensation. Evidence that the pre-existing disease has been significantly accelerated, activated, or advanced more quickly than would have occurred in the absence of the work activity, is confirmation that a compensable aggravation has resulted from the work.

This must be distinguished from the situation where work activities have the effect of drawing to the attention of the worker the existence of the pre-existing disease without significantly affecting the course of such disease. For example, a worker who experiences hand or arm pain due to an arthritis condition affecting that limb will not be entitled to compensation simply because they experience pain in that limb from performing employment activities. Similarly, a worker with a history of intermittent pain and numbness in a hand/wrist due to a pre-existing median nerve entrapment (carpal tunnel syndrome) will not be entitled to compensation just because their work activities also produce the same symptoms. To be compensable as a work-related aggravation of a disease, the evidence must establish that the employment activated or accelerated the pre-existing disease to the point of disability in circumstances where such disability would not have occurred but for the employment.

Where the pre-existing disease was compensable, the Board must decide if the aggravation should be treated as a new claim or as a reopening of an earlier claim.

An aggravation of a pre-existing disease which is attributed to a specific event or trauma, or to a series of specific events or traumas, will be treated as a personal injury and will be adjudicated in accordance with the policies set out in Chapter 3. For example, a worker who injures his or her back while performing a series of awkward lifts at work may suffer an aggravation to an underlying degenerative disc disease, or a worker with subacromial bursitis may strain the shoulder while completing a particular lift.

An aggravation of a pre-existing disease which is not attributed to a specific event or trauma, or to a series of specific events or traumas, will be treated as a disease. For example, a worker with a prior history of carpal tunnel syndrome may aggravate such condition to the point of requiring surgery as a result of several weeks of exposure to vibrating equipment.

Where a compensable aggravation of a pre-existing disease occurs, consideration will be given to relief of costs under section 39(1)(e) of the *Act*. If a permanent disability results, consideration is also given to proportionate entitlement under section 5(5) of the *Act*. (See policy items #114.40, *Enhancement of Disability by Reason of Pre-Existing Disease, Condition or Disability*, and #114.41, *Relationship Between Sections 5(5) and 39(1)(e)*.)

EFFECTIVE DATE: July 1, 2010
APPLICATION: Applies on or after July 1, 2010

6. PODIATRISTS

Registered members in good standing with the British Columbia Association of Podiatrists may provide podiatric treatment and services to injured workers. Podiatrists may provide the podiatric treatment and services authorized by the *Health Professions Act* and corresponding regulations and bylaws, and as outlined in any current Board contract and/or fee schedule in place at the time of service delivery.

The Board determines the podiatric services that it considers reasonable. The Board may pay for podiatric services such as: primary care services, referral services, and special podiatric procedures.

7. NATUROPATHIC PHYSICIANS

Registered members in good standing with the College of Naturopathic Physicians of British Columbia may provide naturopathic treatment and services to injured workers. Naturopathic physicians may provide the naturopathic treatment and services authorized by the *Health Professions Act* and corresponding regulations and bylaws, and as outlined in any current Board contract and/or fee schedule in place at the time of service delivery.

7.1 Duration of Treatment

The Board determines the duration of naturopathic treatment and services that it considers reasonable. The Board considers up to eight weeks of naturopathic treatment reasonable for most compensable personal injuries, occupational diseases or mental disorder. The Board may pay for extensions of treatment beyond eight weeks based on a review of the evidence.

7.2 Scope of Coverage

The Board does not pay health care accounts for naturopathic remedies, treatments, or dietary supplements without prior Board approval of the naturopathic physician's proposed remedy, treatment, or supplement.

Following approval, the Board may pay health care accounts submitted by a naturopathic physician, medical laboratory, or a radiologist, for tests and services performed by or on behalf of the naturopathic physician, as they relate to the worker's compensable personal injury, occupational disease or mental disorder.

8. NURSE PRACTITIONERS

Nurse practitioners in good standing with the British Columbia College of Nursing Professionals may provide nursing treatment and services to injured workers. Nurse practitioners may provide the nursing treatment and services authorized by the *Health*

Professions Act and corresponding regulation and bylaws, and as outlined in any current Board contract and/or fee schedule in place at the time of service delivery.

EFFECTIVE DATE:	January 1, 2015
AUTHORITY:	Sections 1, 21 and 56 of the *Act*.
CROSS REFERENCES:	Sections 12 and 15 of the *Health Professions Act*, RSBC 1996, c 183; Item C3-23.00, *Replacement and Repair of Personal Possessions – Section 21(8)*; Item C3-23.20, *Section 21(8)(b) − Eyeglasses, Dentures and Hearing Aids*; Item C10-73.00, *Direction, Supervision, and Control of Health Care*; Item C10-75.00, *Health Care Accounts – General*; Item C10-78.00, *Health Care Facilities*; Item C10-79.00, *Health Care Supplies and Equipment*; Policy item #95.00, *Responsibilities of Physicians/Qualified Practitioners*; Policy item #95.10, *Form of Reports*; Policy item #95.20, *Reports by Specialist*; Policy item #95.30, *Failure to Report*; Policy item #95.40, *Obligation to Advise and Assist Worker*; and Appendix 6, *Maximum Fines for Committing Offences Under the Act.*
HISTORY:	Housekeeping changes made on March 1, 2019 as a result of amendments to various regulations under the *Health Professions Act*, effective September 4, 2018, creating name of British Columbia College of Nursing Professionals. Housekeeping changes made on January 1, 2018 as a result of the amendment of section 15(1) of the *Health Professions Act*, effective November 2, 2017. January 1, 2015 – Policy amended to include nurse practitioners as qualified practitioners in accordance with change to the *Act* resulting from Bill 17. This policy consolidates and replaces former policy items #74.00, #74.10, #74.20, #74.21, #74.22, #74.24, #74.27, #74.30, #74.40, #78.22 and #78.23 of the *Rehabilitation Services & Claims Manual,* Volume II, and includes new policy on podiatrists. June 1, 2009 – deleted references to Board officer, Medical Advisor, Board Medical Advisor, Board's Chiropractic Consultant, Health Care Services Department, and claimant. October 1, 2007 – deleted references to memos and memorandums. December 31, 2003 – this policy was amended to reflect the amendment of section 5.1(1) of the *Act* and the introduction of section 5.1(2) to (4) of the *Act.* March 3, 2003 – consequential changes as to references to review.
APPLICATION:	This Item applies to health care expenses incurred and health care provided on or after January 1, 2015.

services authorized by the *Health Professions Act* and corresponding regulations and bylaws, and as outlined in any current Board contract and/or fee schedule in place at the time of service delivery.

The Board determines whether it will pay for dietetic services as part of an injured worker's claim. The Board pays health care accounts for dietetic services according to any current Board contract and/or fee schedule in place at the time of service delivery.

9. MASSAGE THERAPISTS

Registered members in good standing with the College of Massage Therapists of British Columbia may provide massage therapy treatment and services to injured workers. Massage therapists, registered massage therapists, massage practitioners, and registered massage practitioners may provide the massage therapy treatment and services authorized by the *Health Professions Act* and corresponding regulations and bylaws, and as outlined in any current Board contract and/or fee schedule in place at the time of service delivery.

In most cases, the Board limits payment to a maximum of three treatment visits per week up to five weeks from the date of the injured worker's first visit, unless otherwise stated in any current Board contract and/or fee schedule in place at the time of service delivery. The Board may pay for extensions of massage therapy treatments beyond five weeks based on a review of the evidence.

The Board does not pay for more than one massage therapy treatment per day.

10. NURSES

Registered nurses in good standing with the British Columbia College of Nursing Professionals, and licensed practical nurses in good standing with the British Columbia College of Nursing Professionals, may provide nursing treatment and services to injured workers. Nurses may provide the nursing treatment and services authorized by the *Health Professions Act* and corresponding regulations and bylaws, and as outlined in any current Board contract and/or fee schedule in place at the time of service delivery.

For workers who need nursing services while in a hospital, the necessary nursing service is determined and provided by the hospital. If the worker or the worker's family desires to have an additional or one-on-one nurse in attendance, the worker pays the cost of such nursing services.

Where appropriate, the Board may pay health care accounts for nurses to provide injured workers with treatments such as home wound care services or home intravenous therapy services. The Board administers these services pursuant to any current Board contract and/or fee schedule in place at the time of service delivery.

The Board accepts reports received from nurses in remote locations as medical reports if there is no physician in the immediate area.

11. OCCUPATIONAL THERAPISTS

Registered members in good standing with the College of Occupational Therapists of British Columbia may provide occupational therapy treatment and services to injured workers. Occupational therapists may provide the occupational therapy treatment and services authorized by the *Health Professions Act* and corresponding regulations and bylaws, and as outlined in any current Board contract and/or fee schedule in place at the time of service delivery.

The Board determines whether it will pay for occupational therapy treatment and services as part of an injured worker's claim. The Board pays health care accounts for occupational therapy treatment and services according to any current Board contract and/or fee schedule in place at the time of service delivery.

12. OPTICIANS

Registered members in good standing with the College of Opticians of British Columbia may provide opticianry services to injured workers. Opticians, dispensing opticians and contact lens fitters may provide the opticianry services authorized by the *Health Professions Act* and corresponding regulations and bylaws, and as outlined in any current Board contract and/or fee schedule in place at the time of service delivery.

The Board determines whether it will pay for opticianry services as part of an injured worker's claim. The Board pays health care accounts for opticianry services according to any current Board contract and/or fee schedule in place at the time of service delivery.

13. OPTOMETRISTS

Registered members in good standing with the College of Optometrists of British Columbia may provide optometry treatment and services to injured workers. Optometrists may provide the optometry treatment and services authorized by the *Health Professions Act* and corresponding regulations and bylaws, and as outlined in any current Board contract and/or fee schedule in place at the time of service delivery.

The Board determines whether it will pay for optometry treatment and services as part of an injured worker's claim. The Board pays health care accounts for optometry treatment and services according to any current Board contract and/or fee schedule in place at the time of service delivery.

HISTORY:

Housekeeping changes made on March 1, 2019 as a result of amendments to various regulations under the *Health Professions Act*, effective September 4, 2018, creating name of British Columbia College of Nursing Professionals.
Housekeeping changes made on January 1, 2018 as a result of the amendment of section 15(1) of the *Act*, effective November 2, 2017.
January 1, 2015 – Policy amended to remove reference to nurse practitioners as other recognized health care professionals.
This policy incorporates the concepts from and replaces former policy items #75.00, #75.10, #75.12, #75.20, #75.30, #75.40 and #78.14 of the *Rehabilitation Services & Claims Manual,* Volume II, and includes new policy on audiologists, community health workers, dieticians, massage therapists, occupational therapists, opticians, optometrists, pharmacists, prosthetists and orthotists, and psychologists and counsellors.
June 1, 2009 – deleted references to Board officer, Unit or Area Office Medical Advisor, and Board Medical Advisor and Consultant.

APPLICATION:

This Item applies to health care expenses incurred and health care provided on or after January 1, 2015.

EFFECTIVE DATE:	June 1, 2009 – Delete references to officers in Disability Awards and officer.
HISTORY:	January 1, 2003 – References to prior Subjective Complaints policy removed. Applies to new claims received and all active claims that are currently awaiting an initial adjudication.
APPLICATION:	Applies on or after June 1, 2009.

#97.50 Rumours and Hearsay

Hearsay must only be used very cautiously as evidence, and rumour must not be used as evidence at all. But even rumour is often valuable as a lead to investigation.

#97.60 Lies

A lie may be ground for drawing an adverse inference with regard to the facts to which it relates. But it is not in itself ground for denying compensation, particularly when it relates to something not relevant to the claim at all.

#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.

#98.00 INVESTIGATION OF CLAIMS

In the majority of claims the issues are decided by reference to the information received in the worker's application and the employer's and medical reports. Any insufficiency in the information is usually made good by telephone, correspondence, or by informal interview. In a minority of claims, a more formal inquiry, or medical examination, may be necessary.

#98.10 Powers of the Board

Section 87 of the *Act* provides as follows:

> (1) The Board has the like powers as the Supreme Court to compel the attendance of witnesses and examine them under oath, and to compel the production and inspection of books, papers, documents and things.
>
> (2) The Board may cause depositions of witnesses residing in or out of the Province to be taken before a person appointed by the Board in a similar manner to that prescribed by the Rules of the Supreme Court for the taking of like depositions in that court before a commissioner.

Usually, the Board receives the willing cooperation of all concerned, and the power of subpoena is not used as a normal routine.

EFFECTIVE DATE:	March 3, 2003 (as to new wording of section 87)
APPLICATION:	Not applicable.

#98.11 Powers of Officers of the Board

Section 88(1) provides that "The Board may act on the report of any of its officers, and any inquiry which it is considered necessary to make may be made by an officer of the Board or some other person appointed to make the inquiry, and the Board may act on his or her report as to the result of the inquiry."

The officer and every other person appointed to make an inquiry has for the purposes of an inquiry under subsection (1) all the powers conferred upon the Board by section 87. (30)

Every officer or person authorized by the Board to make examination or inquiry under this section may require and take affidavits, affirmations or declarations as to any matter of the examination or inquiry, and take affidavits for the purposes of this *Act*, and in all those cases to administer oaths, affirmations, and declarations and certify that they were made. (31)

The Board has ruled that, for the purpose of section 88, employees of the Board, who, in the performance of their prescribed duties, do those things which are reserved to be done by an officer of the Board, are, and have been, for matters arising out of Part 1 of the *Act*, appointed officers of the Board.

EFFECTIVE DATE: March 3, 2003 (as to new wording of section 88)
APPLICATION: Not applicable.

#98.12 Examination of Books and Accounts of Employer

Section 88(3) provides that "The board, an officer of the board or a person authorized by it for that purpose, may examine the books and accounts of every employer and make any other inquiry the board considers necessary to ascertain . . . whether an industry or person is within the scope of this Part. For the purpose of the examination or inquiry, the board or person authorized to make the examination or inquiry may give to the employer or the employer's agent notice in writing requiring the employer to bring or produce before the board or person, at a place and time to be mentioned in the notice, which time must be at least 10 days after the giving of the notice, all documents, writings, books, deeds and papers in the possession, custody or power of the employer touching or in any way relating to or concerning the subject matter of the examination or inquiry referred to in the notice, and every employer and every agent of the employer named in and served with the notice must produce at the time and place required all documents, writings, books, deeds and papers according to the tenor of the notice."

An employer and every other person who obstructs or hinders the making of an examination or inquiry mentioned in subsection (3), or who refuses to permit it to be made, or who neglects or refuses to produce the documents, writings, books,

deeds, and papers at the place and time stated in the notice mentioned in Subsection (3), commits an offence. (32) The maximum fine for committing this offence is set out in Appendix 6.

#98.13 Medical Examinations and Opinions

The authority of the Board to require a worker to be medically examined is dealt with in Item C10-73.00, *Direction, Supervision, and Control of Health Care*.

The medical resources of the Board cannot be used to provide a medical opinion to anyone on request. The Board will, therefore, decline to provide a medical opinion if the request does not come from someone authorized to make the request. Those authorized are Board staff whose duties require an input of medical advice.

A Workers' Adviser and an Employers' Adviser have access to medical opinions already on file, but have no right to require any further medical opinions to be produced.

EFFECTIVE DATE:	June 1, 2009 – Delete references to Medical Advisors and officers.
HISTORY:	Consequential amendments arising from changes to Chapter 10, *Medical Assistance, Rehabilitation Services and Claims Manual*, were made effective January 1, 2015. March 3, 2003 – Deletion of references to Review Division and Appeal Division.
APPLICATION:	Applies on or after June 1, 2009.

#98.20 Conduct of Inquiries

The Board operates on an inquiry as opposed to an adversary system. It does not, like a court operating under the adversary system, decide between the arguments and evidence submitted by two opposing parties at a hearing and limit itself to the material presented at that hearing. While the judge under the adversary system has little or no authority to carry out investigations, the Board is obliged by section 96 of the *Act* both to investigate and to adjudicate claims for compensation. Oral hearings or interviews are not always conducted before a decision is reached and, when they are conducted, provide only part of the information relied on by the Board. The other written reports on the file will also be considered. Such hearings are informal in nature and not subject to the formal rules of evidence and procedure followed in court hearings.

#98.21 Place of Inquiry

For the purposes of claims adjudication, an officer of the Board may enter premises and make such inspections as considered necessary, notwithstanding that another agency may have inspection jurisdiction for accident prevention purposes. Where an inspection is of a technical nature and can only be carried out by someone technically qualified, perhaps an Occupational Hygiene Officer, such technical personnel may be used to make an inspection for the purposes of claims adjudication.

Where appropriate, the worker should be offered the opportunity to accompany the Board officer on the workplace visit.

EFFECTIVE DATE: June 1, 2009 – Delete references to Adjudicators and Claims Adjudicators.
APPLICATION: Applies on or after June 1, 2009.

#98.22 Failure of Worker to Appear

If the worker fails or refuses to appear at an inquiry, her or his claim may be suspended, or decided in her or his absence, or a further appointment may be arranged.

#98.23 Representation

A worker has a right to bring a representative to any enquiry, both at first instance and on appeal.

If the worker is unable to communicate effectively in English, an interpreter is arranged.

#98.24 Presence of Employer

If a worker is unrepresented, and the employer or employer's representative appears, it must be determined whether the employer is appearing on behalf of the worker. If the employer is appearing on behalf of the worker, the worker will be asked (but not in the presence of the employer) whether he or she has any objection to the employer being present. If there is no objection, the employer can be invited to attend the interview. If the worker does object, the employer will be asked to wait outside, and can be interviewed separately.

If appearing against the worker, the employer is not allowed to be present at the interview with the worker and must be interviewed separately. If there is any

doubt as to the employer's intentions, the employer will be interviewed separately.

If a worker is represented, an employer may be permitted to be present even if the employer is appearing against the worker.

#98.25 Oaths

The oath is not administered as a normal routine in every inquiry, but is used when considered appropriate.

If:

1. a person called to give evidence objects to taking an oath, or is objected to as incompetent to take an oath, and the Board is satisfied of the sincerity of the objection of the witness from conscientious motives to be sworn or that the taking of an oath would have no binding effect on his or her conscience;

2. or the Board is satisfied that the form of oath which a person called to give evidence declares to have a binding effect on his or her conscience is not such that it can be taken in the place where the inquiry is being held, or that it is not fitting so to do, and the Board so directs,

the person shall, instead of taking an oath, make an affirmation. (33) An employer or representative or a worker's representative need not be placed under oath unless they have something specific or pertinent to contribute to the inquiry.

#98.26 Witnesses and Other Evidence

A worker may bring to an inquiry such witnesses, and may submit such verbal and documentary evidence, as she or he thinks will be of assistance.

Wherever possible, witnesses will be interviewed separately without the worker being present. They will not be present while the worker is being interviewed.

#98.27 Cross-examination

Under the inquiry system (contrary to the adversary system), there is no right of cross-examination of the parties or witnesses. If, in the process of an inquiry, one of the parties wishes to ask a question of the person whose evidence is being taken, the question should be referred to the interviewer conducting the inquiry who, in turn, can relay the question if it is felt it would be helpful.

Cross-examination may, however, sometimes be permitted.

#99.00 DISCLOSURE OF INFORMATION

The Board, for the purposes of administering the *Act*, collects and maintains information for the purpose of adjudication and managing claims for workers or their dependants. In order to carry out all aspects of this activity, the Board in a variety of situations discloses information contained in claim files.

Provincial legislation, known as *Freedom of Information and Protection of Privacy Act ("FIPPA")* provides access for the public to the information maintained by the Board while at the same time protecting personal privacy.

FIPPA differentiates among "personal information", information relating to third party business interests and other types of information in the possession of a Public Body such as the Board. Personal information means recorded information about an identifiable individual.

Freedom of information and protection of privacy can be competing principles in many situations. Which principle is to be paramount in any particular case is sometimes difficult to determine. Until advised otherwise by the Information and Privacy Commissioner appointed under section 37 of *FIPPA* openness prevails as far as possible in the area of compensation services. Exceptions to access should be narrowly construed. Since claim files deal with an identifiable individual, they contain personal and sensitive information. The privacy provisions of *FIPPA* will, therefore, prevail other than for the specific exceptions contained in *FIPPA*. Examples of such exceptions include the rights in section 3(2) of a party to a proceeding to access information, or the variety of exceptions listed in sections 33.1 and 33.2 such as the need to comply with the requirements of a specific *Act*. The *Act* requires a copy of records related to a matter under review or appeal to be provided to the parties to a review or appeal.

Section 3(2) of *FIPPA* states that the *Act* does not limit the information available by law to a party to a proceeding. A proceeding does not take place until either the worker or the employer has initiated a formal review or appeal.

Before a review or appeal is initiated, the Board must apply *FIPPA* to requests for claim information. Before a review or appeal is initiated, an employer is not entitled to a copy of the worker's claim file. Disclosure to an employer in such circumstances, is limited to that information necessary for the adjudication or administration of the claim, that is on a "need to know" basis. Once a review or appeal has been initiated, full disclosure is available to either a worker or an employer. These disclosure rules are considered to be in accordance with *FIPPA* and the rules of natural justice.

Requests for disclosure for information in a situation not covered by the policies in this Manual should be directed to the FIPP Department of the Board. These requests will be considered on an individual basis in accordance with *FIPPA.*

Dispute Resolution

A request for a review of the FIPP Department's decision by the Information and Privacy Commissioner may be made within 30 days of the date the person asking for the review is notified of the latest decision.

The Chair of the board of directors has ultimate responsibility within the Board for implementation of *FIPPA* for the purposes of workers' compensation.

EFFECTIVE DATE:	June 1, 2009 – Delete references to Manager and Service Delivery Locations.
HISTORY:	March 3, 2003 – Reference to the provision of copies of records related to a matter under review or appeal.
APPLICATION:	Applies on or after June 1, 2009.

#99.10 Disclosure of Issues Prior to Adjudication

Where a claim is protested by an employer, the Board is required to investigate the matter. In most cases this investigation involves contact with the worker. Normally, most workers at that time become aware of the protest. In some situations a protested claim may be quickly resolved and the claim accepted. In such cases workers may not be aware of the protest.

As part of the investigation which precedes a decision to disallow a claim, the Board in virtually every case will have communicated with the worker. These communications may be by telephone, in person or in writing. Through the medium of these communications the worker is made aware of the nature of the problem and has an opportunity for input and comment. If, however, for some reason the Board concludes that a claim may not be acceptable, the worker is contacted before a decision is reached. The contact provides the worker with an opportunity for input and comment. In situations involving serious cases or complex issues where no prior contact has been made with the worker, the details should be communicated in writing. Where this is done, the possibility of obtaining assistance from a union official or other adviser may be brought to the worker's attention.

Written authorization is required in order to release information to any advocate, representative or other person designated by the worker or employer. Once received, the Board will cooperate with and notify workers' or employers' advocates or representatives of any decisions which have been made and communicated to the worker or employer.

Where an employer has protested a claim which, upon investigation, appears to be valid, the Board should, before making the decision, phone the employer to ensure that the employer is aware of the issues relevant to the protest and has an opportunity to comment.

EFFECTIVE DATE:	June 1, 2009 – Delete references to Adjudicator.
HISTORY:	January 1, 2005 – Housekeeping amendment to require written authorization for disclosure.
APPLICATION:	Applies on or after June 1, 2009.

#99.20 Notification of Decisions

1. Definitions

A “decision” is a determination of the Board to award, deny, reconsider or limit entitlement to benefits and services, or impose or relieve an obligation, pertaining to compensation or rehabilitation matters under Part 1 of the *Act* or policy.

An “affected person” is a worker, employer or a deceased worker’s dependant, or a person who claims to be an affected person, who is directly affected by a decision and may request a review or appeal of that decision.

2. Communicating Decisions

A decision is made, for the purpose of triggering the timelines for reconsiderations and reviews, on the date the decision is communicated to the affected person.

If the decision is communicated to affected persons on different dates, the statutory timelines commence on the date the decision is first communicated to an affected person.

The Board also communicates decisions to an affected person’s advocate or representative if valid authorization is in place.

In occupational disease claims, where there are a number of different employers identified, but none of the employers are responsible for 20% of the exposure or more, decision letters and review and/or appeal information are sent to the employers' association that best represents the appropriate sector and rate group of that industry.

A. Written Communication

The Board will communicate the following decisions through a decision letter:

- Decisions on whether a claim is accepted, denied or rejected;
- Decisions on initial entitlement to temporary disability benefits, a permanent disability award, benefits for a fatality and vocational rehabilitation assistance;
- Decisions on initial and long-term average earnings;
- Decisions that deny or limit benefits to a worker;
- Decisions regarding the re-opening of a matter previously decided;
- Decisions resulting from the reconsideration process;
- Decisions regarding the acceptance of a compensable consequence;
- Decisions that have been protested by the employer; and
- Decisions on whether an employer may be granted a relief of costs.

The communication of the above decisions in writing triggers the timelines for reconsideration and review. The fact that a decision was not communicated in writing does not void the decision.

If one of the above decisions is not communicated in writing, the Board will determine whether the decision was satisfactorily communicated through other means, for example, verbally, through the payment or termination of compensation, or the referral of a worker for medical treatment or examination, in order to determine the timelines for reconsideration and review.

A decision letter will include an explanation of the relevant rights of review and/or appeal, and should, where appropriate, include the following elements:

1. The matter being adjudicated;
2. The evidence that was considered;
3. An explanation of the weight apportioned to the evidence and the reasons for the weighting;
4. Review of on-going communication with the worker where the relevant issues were discussed and details of the worker's response.
5. Reference to any relevant sections of the *Act* or Board policy;
6. The formal decision; and

7. An explanation of the impact of the decision on payment of compensation or entitlement to other benefits or services.

Decision letters are provided to persons directly affected by the decision.

Before a review or appeal is initiated, the type of information from a worker's claim that can be disclosed to the employer and/or authorized advocates and representatives is limited. Disclosure of personal and medical information is limited to information that is relevant to the claim and the issues involved, and that the employer has a need to know. The same approach applies for notification of decisions to healthcare providers, such as physicians and pharmacists.

Where a decision is provided in writing and mailed to an affected person, the decision is deemed to have been communicated on the 8th day after it was mailed. Therefore, the reconsideration timeline starts at the end of the 8-day mailing period.

B. Verbal and Other Communication

The Board may also communicate decisions such as health care decisions or administrative actions, verbally. Examples of the types of decisions the Board may communicate verbally include:

- a decision to award an additional two weeks of physiotherapy benefits beyond the initial entitlement period; or
- a referral to a specialist.

When a decision is communicated verbally, an explanation of the rights of review and/or appeal will be verbally provided to the affected person. The verbal communication also should, where appropriate, include an explanation of the decision in accordance with the elements of a decision letter.

Documentation on the claim is sufficient evidence that verbal communication of the decision, including the reasons for the decision and notice of review and appeal rights, has occurred.

A copy of the written record of the decision is provided upon request following the verbal communication of a decision; however, it does not constitute a new decision. The statutory timelines for reconsiderations and reviews commence from the date of the verbal communication.

The Board may communicate decisions through the ongoing payment of temporary or permanent disability benefits, the payment of health care invoices, or the final payment of temporary disability or health care benefits, where the decision is uncontested and/or is in favour of the worker.

For example, where a claim is allowed for ongoing wage-loss benefits and there has been no protest from the employer, the Board does not provide a letter outlining the reasons for the continued payment of benefits.

3. Finding of Facts

A finding of fact is not a decision. It is the factual basis on which a decision is made.

Findings of fact may change based on new information and are not subject to the 75-day time limit on the Board's reconsideration authority.

A finding of fact may not be reviewed or appealed in the absence of an expressed or implied decision under review or appeal.

4. Rejected Claims

The term "reject" is different than a "disallow" and refers to a claim where:

1. a self-employed worker has no personal optional protection;

2. the worker was employed by an employer not covered under the *Act*;

3. a report was submitted in error. Normally, this occurs when a physician, on the basis of a misunderstanding, submits a report in error.

If a claim is rejected, notification of the review and/or appeal procedures is provided to the person making the claim.

EFFECTIVE DATE:	April 1, 2010
HISTORY:	June 1, 2009 – Delete reference to send a cheque and replace with may make a payment. January 1, 2005 – Housekeeping amendment to require written authorization for disclosure, and to clarify appropriate disclosure principles. March 3, 2003 – Insert references to evenly weighted evidence and the rights of review and/or appeal.
APPLICATION:	Applies to all decisions made on or after April 1, 2010.

#99.22 Procedure for Handling Complaints or Inquiries About a Decision

The Board frequently receives letters, telephone calls and visits from workers, employers and their representatives concerning the decisions they make on claims. Generally, the party in question will be either asking for further

explanation of the decision or expressing dissatisfaction with the substance of the decision.

Where the worker or employer is requesting further explanation, this should be given. In the case of advocates and representatives, disclosure of information will only be provided where proper written authorization is in place. Where, however, dissatisfaction is expressed with the substance of the decision, the procedure outlined in C14-103.01 is followed. This procedure is intended only to cover situations where the worker, employer or representative is dissatisfied with the substance of a decision on a claim. It is not intended to cover complaints concerning the general administration of the claim, for example, delays in processing.

At no time is a letter expressing dissatisfaction with the substance of a decision to be simply committed to the claim with no further action taken.

EFFECTIVE DATE:	June 1, 2009 – Delete references to officers and manager in the Compensation Services Division.
HISTORY:	January 1, 2005 – Housekeeping amendment to require written authorization for disclosure of information. March 3, 2003 – Insert reference to C14-103.01 and delete references to Review Board.
APPLICATION:	Applies on or after June 1, 2009.

#99.23 Unsolicited Information

Unsolicited information will not be placed on the worker's claim until it has been assessed for relevancy and accuracy.

Where the Board receives unsolicited information about a worker, the following principles apply:

1. Unsolicited information that is clearly irrelevant to the administration of the worker's claim will be destroyed.

2. Unsolicited information that appears to be relevant or potentially relevant to the administration of the worker's claim will be investigated for accuracy.

3. Where, after investigation, the information is determined to be inaccurate or its accuracy is unknown, the information will be destroyed, including any record that initiated the investigation, the investigation report and any documentation obtained in connection with the investigation.

4. Where, after investigation, the information is determined to be accurate, a final assessment as to relevancy will be made.

5. Where accurate information is considered to be irrelevant to the administration of the worker's claim, the information will be destroyed, including any record that initiated the investigation, the investigation report and any documentation obtained in connection with the investigation.

6. Where accurate information is considered to be relevant or potentially relevant to the administration of the worker's claim, the information is placed on the worker's claim as follows:

   (a) anonymous information — The investigation report and any documentation obtained in connection with the investigation will be placed on the claim. The record that initiated the investigation will be destroyed and the claim will state that the investigation was initiated on the basis of information received.

   (b) information from identified source — The record that initiated the investigation, the investigation report and any documentation obtained in connection with the investigation will be placed on the claim.

   An identified source will be advised that the information may be disclosed to the worker. If the identified source wishes to become anonymous at any time, the information will be treated as anonymous information under (a) above. If the identified source wishes to remain identified, this will be recorded on the worker's claim.

7. If only some of the information is accurate and only some of the accurate information is relevant or potentially relevant to the administration of the worker's claim, the record that initiated the investigation will be destroyed and reference will only be made on the worker's claim to information that is both accurate and relevant or potentially relevant.

8. If, during the investigation, accurate information is discovered that is unrelated to the subject matter of the unsolicited information, butis relevant to the administration of the worker's claim, that information will be recorded separately on the worker's claim.

9. Where unsolicited information is found to be accurate and relevant or potentially relevant to the administration of the worker's claim, the worker will be advised of the information and given an opportunity to comment. Complaints about the accuracy and relevancy of unsolicited information will be dealt with according to policy item #99.35 - Complaints Regarding File Contents.

#99.24 Notification of Permanent Disability Awards

When a permanent disability award is granted, the letter advising of the award will include the permanent functional impairment evaluation report on which the award has been based. It will also contain the percentage rate of disability assessed. Where the case is one of Proportionate Entitlement, the letter will state the nature and extent of the pre-existing disability and the nature and extent of the further disability. A copy of the letter is sent to the employer. This letter will include information regarding the relevant rights of review and/or appeal.

Other than to the employer or the worker, the amount being paid per month for a permanent disability award will only be disclosed to public or private agencies in accordance with the criteria for disclosure as set out in policy item #99.50.

The amount of the capital reserve is disclosed to the employer when notified of the award. The reserve amounts will be given to the worker on request.

EFFECTIVE DATE: March 3, 2003 (as to references to review and appeal)
APPLICATION: Not applicable.

#99.30 Disclosure of Claim Files

The claim file is the master file for recording information used in the adjudication and administration of a claim. Information may exist outside of the claim file. However, all evidence used in the adjudication of the claim is contained in the claim file. Medical opinions, as well as any further comments, are all recorded on, and become part of, the claim file.

Sensitive personal information that is received, which has not been specifically requested and which is not relevant to the adjudication or administration of the claim will not become part of the claim file. It will normally be destroyed. However, where the original document is still in the Board's possession, it will be returned to the sender when requested by the worker or sender.

Discretion is necessary in documenting the file to ensure that rumour or innuendo is not mistakenly reported as fact where it is unsupported or cannot be verified. Comments regarding claimants, employers and other persons involved in the claim are confined to relevant matters which have been observed personally or for which there is other supporting evidence. Observations should be confined to the particular circumstances of the claim or other matter and should not make general comments about an individual's personality. Comments should be worded in the least offensive way possible and avoid derogatory terms.

In recognition of the sensitive nature of sexual assault claims where the employer is alleged to be the perpetrator of the assault, all such cases, regardless of the residence of the worker, are assigned to the Sensitive Claims Area. Disclosure

of these claim files for review or appeal and other legal purposes is administered by the Sensitive Claims Area.

EFFECTIVE DATE: June 1, 2009 – Delete references to Adjudicator, Board officers, physicians, Board Medical Advisers, Manager and Board staff.
HISTORY: March 3, 2003 – Insert reference to review.
APPLICATION: Applies on or after June 1, 2009.

#99.31 Eligibility for Disclosure

Disclosure of their claim files is provided to a worker or dependant on request. Only one copy is provided and no fee is charged for this disclosure.

After a review or appeal has been initiated, an employer may obtain disclosure. An employer may obtain disclosure even though the worker has not requested disclosure.

Disclosure will be provided to the representative of the employer or worker if authorized in writing.

Where there is a valid review or appeal in process regarding a matter arising under a claim to which another claim is also relevant, disclosure to the employer will also be allowed of the other claim. However, there must be a request for disclosure of that particular claim. The Board will not accept requests of a general nature for any files which may be relevant to the reviewable or appealable decision or the issue under review or appeal.

A worker may submit a request for update disclosure where information has been added to the file since the previous disclosure. Where disclosure has been granted to a worker, dependant or employer in situations involving a review or appeal, file updates are automatically provided up to the time the review or appeal is heard. The file may be inspected if it is so desired.

EFFECTIVE DATE: March 3, 2003 (as to reference to review)
APPLICATION: Not applicable.

#99.32 Provision of Copies of File Documents

A copy of all the documents on the claim file will be sent out automatically on receipt of a request for disclosure from a worker or an authorized representative.

Where an employer has a right to receive disclosure of a claim file, that disclosure will consist of the same disclosure which would be granted to the worker.

Only one copy of each claim file is provided. The person entitled to disclosure must decide whether the copy is to go to them or to an authorized or a

designated advocate or representative or, if there is more than one, which of them should receive the copy.

File copies may be mailed out or picked up at a Board office.

Effective May 1, 1993, no fees are charged workers for the copy of their claim files. Fees are also not charged employers for a copy of claim files where they are entitled to disclosure.

#99.33 Personal Inspection of Files

If the recipient of the copies wishes, an appointment may be made to inspect the file in person.

Personal inspection of the file may take place at the Board's Richmond office or at any other Board office outside the Richmond area by prior appointment only. The office used in each case will be the one closest to the requestor's residence, unless another office is specifically named.

Any person attending at a Board office to view a file in person or to pick up copies will normally be required to provide personal identification containing the person's photograph (e.g. driver's licence) and a social insurance card.

Explanations about what is in the file must be sought from the person or body dealing with the matter, a Workers' Adviser, an Employers' Adviser, or the person's own representative.

EFFECTIVE DATE: June 1, 2009 – Delete references to Board officers.
APPLICATION: Applies on or after June 1, 2009.

#99.34 Disclosure

As soon as practicable, after a request for a review has been filed, the Board must provide the parties to the review with a copy of its records respecting the matter under review.

As soon as practicable after the Board has been notified by the Workers' Compensation Appeal Tribunal that an appeal has been filed, the Board must provide the parties to the appeal with a copy of its records respecting the matter under appeal.

If it is not a review or appeal situation, a worker may obtain disclosure from the Board. Where disclosure is available pursuant to the disclosure policies and it is desired simply to inspect the original file in person at an office of the Board, without receiving a copy of the file or after the receipt of a copy, the request may be made directly to the Board office concerned.

Requests for disclosure involving information relating to sexual assault claims where the employer is alleged to be the perpetrator of the assault will be referred to the Sensitive Claims Area (see policy item #99.30).

EFFECTIVE DATE:	June 1, 2009 – Delete references to Client Service Managers of the appropriate Service Delivery Location and outside the Richmond area.
HISTORY:	March 3, 2003 – Addition of provision for disclosure after request for review and after appeal filed to WCAT. Deletion of reference to address where requests for disclosure must be submitted by employers and workers. Applies to all decisions made on or after March 3, 2003.
APPLICATION:	Applies on or after June 1, 2009.

#99.35 Complaints Regarding File Contents

Only where it is personal information which is irrelevant to the claim, does the Board permit the deletion or removal from claim files of statements or documents to which a worker, employer or other person referred to on the file objects. A person making an objection as to the accuracy of file information will be allowed to place on the file statements or material to rebut the statements to which there is an objection. However, the Board will not make a ruling on a dispute over the accuracy of file information save when it is necessary in the normal course of events for the purpose of reaching a decision on the merits of the claim or other matter. Where the person making the objection is the worker, anyone who had access to the file in the one-year period prior to the annotation to the record will be informed.

A complaint that a comment on a Board file is pejorative may be forwarded to the President. If it is concluded that the comment is pejorative, the comment will be stamped, or annotated electronically where appropriate, to identify the comment as pejorative and to refer the reader to the correcting documentation.

#99.40 Tape Recordings of Interviews

Where an enquiry interview has been conducted by the Board, a copy of the tape recording of the interview will be supplied upon request to the worker or their authorized or designated representative. If a review has been requested or an appeal has been filed, a copy may also be provided to the employer or their authorized representative.

A person being interviewed, or any other person entitled to be present at an enquiry, may, if desired, record the proceedings.

EFFECTIVE DATE:	June 1, 2009 – Delete reference to officer.
HISTORY:	March 3, 2003 – Insert reference to review.
APPLICATION:	Applies on or after June 1, 2009.

#99.50 Disclosure to Public or Private Agencies

Where a public or private agency requests disclosure of all or part of a claim file, the Board will only comply with the request in keeping with the provisions of the *Freedom of Information and Protection of Privacy Act* (FIPPA). The following are the more common examples where disclosure will be provided in response to such a request:

(a) Where an appropriate signed consent has been received from the worker.

(b) To any agency having statutory authority allowing access to personal information.

(c) To comply with a subpoena, warrant or order issued or made by a court, person or body with jurisdiction to compel the production of the information.

(d) To a member of the Legislative Assembly who has been requested by the worker to assist in resolving a problem.

(e) If the Board determines that compelling circumstances exist which affect the health or safety of an individual.

#99.51 Legal Matters

If a staff member is directly served with a subpoena, the Board's General Counsel or delegate must be advised immediately. If a request is received from a lawyer for information from a claim file, the request is forwarded to the Legal Disclosure Clerk.

At the request of the Board's General Counsel, a Director or designate will be asked to respond to a subpoena or other request for information from a lawyer.

EFFECTIVE DATE: June 1, 2009 – Delete references to Compensation Services Division, Adjudicator and Board officer.
APPLICATION: Applies on or after June 1, 2009.

#99.52 Other Workers Compensation Boards

The Board has authorized the exchange of copy documents with other Boards. The Board will also inform other Boards of the amount of any permanent disability award being paid to a worker by this Board.

#99.53 Government of Canada

In referring workers to a department of the Government of Canada for assistance in job placement, the Board may, with the worker's signed consent, furnish that department with a brief description of their physical limitations.

#99.54 Canada Pension Plan

The Board will take all reasonable steps to assist a disabled worker in obtaining benefits to which she or he may be entitled. The Board will provide the Canada Pension Plan, on request and with the worker's release, a report setting out the facts pertaining to the claim, a report to include the date and nature of the accident, the nature of the injury, a very brief resume of the medical findings and the medical assessment of the remaining permanent disability. The Plan is provided with the names of practicing doctors who had been involved in the case. There is no charge for this information.

Effective September 3, 1996, the F.I.P.P. Office of the Board will handle requests from the Canada Pension Plan for information. Where the Board receives a request authorized by the worker or by statute, the F.I.P.P. Office will provide Canada Pension Plan with copies of documents specified in the request. Any charge for this service is paid by CPP.

EFFECTIVE DATE: June 1, 2009 – Delete reference to Medical Services Department and update reference to F.I.P.P. Office.
APPLICATION: Applies on or after June 1, 2009.

#99.55 Ministry of Housing and Social Development

If the Ministry of Housing and Social Development has a debt owing to them, the Board will disclose to the Ministry the amount of any compensation being paid by the Board.

EFFECTIVE DATE: June 1, 2009 – Update reference to Ministry of Housing and Social Development.
APPLICATION: Applies on or after June 1, 2009.

#99.56 Police

Information may be disclosed to police departments for the purpose of contacting a next of kin or for the purposes of a law enforcement proceeding.

#99.57 Government Employees Compensation Act

Where an election form signed by the worker is on file, information contained in third party claims for employees covered under the *Government Employees Compensation Act* may be released to the Government of Canada in order to properly pursue the right of action to which it is subrogated.

#99.60 Information to Other Board Departments

For inspection and prevention purposes, the details of any claims received where there is a potential to prevent further recurrences of the situation are referred to the Prevention Division. Examples of this would be scaffolding collapses, explosions, excavation cave-ins, dangerous work practices, etc. Referral is also made in every case where a worker complains about work safety conditions. Where the Board becomes aware of an excessive number of injuries of the same type or even of a different type with one employer, a notification of this observation is also sent to the Prevention Division.

EFFECTIVE DATE: June 1, 2009 – Delete references to Claims Adjudicators and Claims Officers.
APPLICATION: Applies on or after June 1, 2009.

#99.70 Media Enquiries or Contacts

Unless designated as a media spokesperson, staff at the Board are to refer all media enquiries or contacts to the Communications Department.

EFFECTIVE DATE: June 1, 2009 – Update reference to the Communications Department.
APPLICATION: Applies on or after June 1, 2009.

#99.80 Insurance Companies

On receipt of a signed consent from the worker or dependant, information from a claim file to which the worker or dependant would have access may be disclosed to an insurance company. The signed consent must be directed specifically to the Board and clearly state the information which may be released. It should also refer to a specific claim or specific claims, and must have been signed within 24 months of its date of receipt. See also policy item #48.20.

#99.90 Disclosure for Research or Statistical Purposes

The Board may disclose personal information for a research purpose, including statistical research, only if:

(a) the research purpose cannot reasonably be accomplished unless that information is provided in individually identifiable form or the research purpose has been approved by the Information and Privacy Commissioner.

(b) any record linkage is not harmful to the individuals that information is about and the benefits to be derived from the record linkage are clearly in the public interest.

(c) the Board has approved conditions relating to the following:

(i) security and confidentiality;

(ii) the removal or destruction of individual identifiers at the earliest reasonable times;

(iii) the prohibition of any subsequent use or disclosure of that information in individually identifiable form without the express authorization of the Board, and

(d) the person to whom that information is disclosed has signed an agreement to comply with the approved conditions, the provisions of the *Freedom of Information and Protection of Privacy Act* and any of the Board's policies and procedures relating to the confidentiality of personal information.

#100.00 REIMBURSEMENT OF EXPENSES

Set out below are the rules relating to the reimbursement of expenses for people attending at the Board or elsewhere in connection with claims or Review Division inquiries.

The principles relating to expenses incurred in connection with medical examinations and treatment and vocational rehabilitation programs are dealt with in Item C10-83.00 and Item C10-83.10.

The Board may be ordered by the Workers' Compensation Appeal Tribunal to pay certain expenses. Section 7 of the *Workers Compensation Act Appeal Regulation* (B.C. Reg. 321/2000) provides that the Board may be ordered by the Workers' Compensation Appeal Tribunal to reimburse a party to an appeal under Part 4 of the *Act* for the following kinds of expenses:

- expenses associated with attending an oral hearing or otherwise participating in a proceeding, if the party is required by the Workers' Compensation Appeal Tribunal to travel to the hearing or other proceeding;

- expenses associated with obtaining or producing evidence submitted to the Workers' Compensation Appeal Tribunal; and

- expenses associated with attending an examination required under section 249(8) of the *Act*.

However, the Workers' Compensation Appeal Tribunal may not order the Board to reimburse a party's expenses where those expenses arise from a person representing the party or the attendance of a representative of the party at a hearing or other proceeding related to the appeal.

EFFECTIVE DATE:	March 3, 2003 (as to references to the Review Division, the Workers' Compensation Appeal Tribunal and section 7 of the *Workers Compensation Act Appeal Regulation*)
HISTORY:	Consequential amendments arising from changes to Chapter 10, *Medical Assistance, Rehabilitation Services and Claims Manual*, were made effective January 1, 2015.
APPLICATION:	To adjudicative decisions on or after the effective date.

#100.10 Claimants

In addition to the specific requirements set out below, the worker must satisfy the general requirements in Item C10-83.00 and Item C10-83.10 for the payment of transportation and subsistence.

#100.12 Claims or Review Inquiries

Where a worker is attending on a claims or review inquiry, the payment of expenses is discretionary. There will be no undertaking to pay expenses and no advance.

1. Where the claims inquiry or review results in a decision for the worker, the discretion will normally be exercised in favour of payment. But payment should be refused if it is concluded that the inquiry or review was brought about unnecessarily by the worker.

   For example, payment might be refused on a review where it is concluded that the denial of the claim in the first instance resulted from misleading information supplied by the worker.

2. Where the claims inquiry or review results in a decision against the worker, payment of expenses will normally be refused. But payment may be allowed if there is special reason. An example might be, where, although the claim was unfounded, the bringing of the review resulted from misleading reasons for the decision being given in the first instance.

These provisions apply only where people are notified to come for a formal claims or review inquiry. Expenses are not reimbursed for people coming to the Board to make enquiries, or for ordinary discussions.

EFFECTIVE DATE: March 3, 2003 (as to references to review)
APPLICATION: Not applicable.

#100.13 Medical Review Panels

On an appeal to a Medical Review Panel under section 58(3) or (4) or a referral to a Medical Review Panel by the Board under section 58(5), expenses will be paid regardless of the result, unless it is concluded that the worker was misleading the Board or the doctor who completed the certificate initiating the appeal. Travel warrants may be issued, and accommodation may be offered if required. Policy item #100.15 applies where the worker resides outside the province.

#100.14 Amount of Expenses

The amount of expenses paid is calculated in accordance with the rules set out in Item C10-83.00 (transportation), Item C10-83.10 (meals and accommodation) and Item C10-83.10 (lost time from work where the worker is not already in receipt of temporary disability or vocational rehabilitation benefits from the Board).

#100.15 Worker Resides Outside the Province

The general principle stated in Item C10-83.00 is that, where the Board is paying travel costs of a worker located outside the province, it will only pay the portion attributable to travel in this province. This also applies to claims and review inquiries but there are some exceptions to this principle which apply here.

Where a worker resides outside the province and is specifically requested by the Board to attend a claims inquiry or a review by the Review Division, the full cost of the trip will be paid by the Board.

EFFECTIVE DATE: June 1, 2009 – Delete references to Medical Review Panel.
HISTORY: Consequential amendments arising from changes to Chapter 10, *Medical Assistance, Rehabilitation Services and Claims Manual*, were made effective January 1, 2015.
March 3, 2003 – Insert references to review.
APPLICATION: Applies on or after June 1, 2009.

#100.20 Employers

The expenses of an employer's representative may be reimbursed on the same basis as for a worker, except that compensation benefits for lost time from work are not payable.

Not more than one employer's representative will be eligible for reimbursement for attendance at a claims inquiry or a review by the Review Division unless the second or other representative is needed as an additional witness.

EFFECTIVE DATE: March 3, 2003 (as to references to the Review Division)
APPLICATION: Not applicable.

#100.30 Witnesses and Interpreters

The expenses of a witness or interpreter will be paid when they have been subpoenaed or have been requested to attend by the Board.

In other cases, the expenses of an independent witness will be paid where, following the claims inquiry or review by the Review Division, it appears that it was reasonable for the worker or employer as the case may be to have assumed, prior to the claims inquiry or review by the Review Division, that the attendance of the witness would be necessary. (If a worker or employer intends to bring more than two witnesses, or intends to bring any witness from a distance of more than twenty-five miles, they should check first by telephone with the Board.)

Where the expenses of a witness are payable, the amount will be the same as for a worker. Income-loss benefits under Item C10-83.10 will be paid for lost time from work. The applicable maximum and minimum will be those in effect at the time the lost time is incurred.

EFFECTIVE DATE: June 1, 2009 – Delete reference to officer or review officer.
HISTORY: Consequential amendments arising from changes to Chapter 10, *Medical Assistance, Rehabilitation Services and Claims Manual*, were made effective January 1, 2015.
March 3, 2003 – Insert reference to the Review Division.
APPLICATION: Applies on or after June 1, 2009.

#100.40 Fees and Expenses of Lawyers and Other Advocates

No expenses are payable to or for any advocate. Nor does the Board pay fees for legal advice or advocacy in connection with a claim for compensation. (36) The Board will not pay the legal costs of a worker or employer in connection with court proceedings to challenge a Board decision beyond what it may become subject to pay following the court's decision under the general law of costs.

#100.50 Expenses Incurred in Producing Evidence

Where a worker incurs expense in producing evidence of a kind which the Board would have sought had it not been produced by the worker, these expenses will be reimbursed by the Board as an item of administrative cost. In this connection, it makes no difference whether the expense was incurred directly or through a lawyer or other representative. However, confusion should not be made between the expenses incurred by the lawyer or other representative on behalf of the worker and the fees of the lawyer or representative for work done. Only the former are reimbursable.

The cost of medical reports obtained by a worker or employer will also be paid by the Board where, following the claims inquiry or review by the Review Division, it appears reasonable for them or their representative to have assumed, prior to the claims inquiry or review by the Review Division, that the provision of the report was necessary. These costs may be paid even if, after the matter is concluded, it is determined that they had not specifically served to assist in the enquiry.

The Board, in a decision on a claim, refused to pay for medical reports obtained by a worker's lawyer. Although it was a normal and prudent action on the part of a responsible lawyer to seek information in order to acquaint himself properly with his client's problem before pursuing it before the Board, the information contained in the reports could have been obtained from the worker's attending physician at no cost. A simple request to the attending physician, together with a release from the worker, would have been sufficient.

It is not the Board's intention that workers or employers should incur costs in obtaining evidence, for example, accountants' fees for producing earnings information. Rather, the general approach is that the worker or employer should advise the Board of possible sources of information and the Board should carry out the necessary inquiries. This may, for example, require the Board to request that the worker provide information considered necessary to administer the claim (see policy item #93.26).

EFFECTIVE DATE:	June 1, 2009 – Delete reference to officer.
HISTORY:	March 3, 2003 – Insert references to the Review Division.
APPLICATION:	Applies on or after June 1, 2009.

#100.60 Decision on Expenses

With regard to claims inquiries, any necessary decisions relating to expenses would be made by the Board. With regard to reviews or appeals, decisions relating to expenses are made by the Review Division or the Workers' Compensation Appeal Tribunal, respectively.

EFFECTIVE DATE: June 1, 2009 – Delete reference to officer.
HISTORY: March 3, 2003 – Insert references to the Review Division and the Workers' Compensation Appeal Tribunal.
APPLICATION: Applies on or after June 1, 2009.

#100.70 The Awarding of Costs

The provisions in policy item #100.00 to policy item #100.60 relate to the payment of expenses by the Board. An order for the payment of costs by one party to another under section 100 of the *Act* is a separate matter, and is an alternative that may be considered in an appropriate case.

Section 100 provides that "The Board may award a sum it considers reasonable to the successful party to a contested claim for compensation or to any other contested matter to meet the expenses the party has been put to by reason of or incidental to the contest, and an order of the Board for the payment by an employer or by a worker of a sum so awarded, when filed in the manner provided for the filing of certificates by section 45(2), becomes a judgment of the court in which it is filed and may be enforced accordingly."

A "contested claim", for the purposes of section 100, is one in respect of which there has been a review by the Review Division by the worker or the employer.

An award under section 100 might be made on a review but only in unusual cases. The section is limited to cases where the worker or employer abuses their respective rights under the *Act*. For instance, the worker or employer may put the opposite party to the expense of an appeal for no good reason. In other words, it may appear that a review was pursued simply because the right to request a review existed and without any substantial grounds on which the position could be argued.

An award will not likely be made under section 100 in favour of a successful appellant. The section requires that the expenses in respect of which the award is made be " . by reason of or incidental to the contest, . . ." Since the appeal will be proceeded with and resolved whether or not it is opposed by the other party, it cannot normally be said that the expenses of the appellant are due to the other party's "contest" of the review. Where the review is not opposed by the other party, the reasons for not making an award become even stronger.

Section 6 of the *Workers Compensation Act Appeal Regulation* (B.C. Reg. 321/2002) provides that the Workers' Compensation Appeal Tribunal may award costs related to an appeal under Part 4 of the *Act* to a party if the Workers' Compensation Appeal Tribunal determines that:

- another party caused costs to be incurred without reasonable cause, or caused costs to be wasted through delay, neglect or some other fault;

- the conduct of another party has been vexatious, frivolous or abusive; or

- there are exceptional circumstances that make it unjust to deprive the successful party of costs.

EFFECTIVE DATE: June 1, 2009 – Delete reference to Medical Review Panel.
HISTORY: March 3, 2003 – Insert references to review and section 6 of the *Workers Compensation Act Appeal Regulation.*
APPLICATION: Applies on or after June 1, 2009.

#100.71 Application for Costs by Dependant

On an application under former section 11 of the *Act*, the Board certified that the defendant to a third party action was not an employer under the *Act*. The plaintiff then applied for an order for costs of the proceedings before the Board to be paid by the third party defendant. The Board determined that:

". . . the authority of the Board to enforce payment of an order for costs is limited to an order for payment by an employer, or by a worker. The Third Party in this case is neither an employer nor a worker under Part I, and the Board has therefore no authority to make an order for costs against the Third Party. It may well be that this limitation under section 100 has a historical explanation that does not reflect any rational policy currently relevant. But it is a clear limitation in the *Act*, and it must therefore be followed."

The question arises whether an award under section 100 can be made in favour of the dependants of a deceased worker. Such an award would not contradict the previous determination, as the person against whom it would be made is an employer under the *Act*. However, it was considered unfair to make such an award if the employer could not get a like award against the dependant. Therefore, an award of costs will not be made in favour of a dependant of a deceased worker against an employer.

EFFECTIVE DATE: March 3, 2003 (as to reference to former section 11)
APPLICATION: Not applicable.

#100.72 What Costs May Be Awarded?

It would not be reasonable to make an order for costs against a worker or employer in respect of an expense which the Board would not allow under the rules set out in policy item #100.00 to policy item #100.50. Therefore, an award of costs will not include the fees of lawyers and other persons paid to them for advice or advocacy in connection with a claim for compensation.

#100.73 Decisions on Applications for Costs

Only in rare cases will a review by the Review Division be sufficiently without merit to justify an award under section 100.

EFFECTIVE DATE: March 3, 2003 (as to reference to the Review Division)
APPLICATION: Not applicable.

#100.75 Implementation of Review or Appeal Decision Directing Reassessment or Redetermination

It may happen that, instead of reaching a specific finding on a matter, the Review Division or the Workers' Compensation Appeal Tribunal will direct that the Board reassess or redetermine something, for example, a permanent partial disability award. The Review Division or the Workers' Compensation Appeal Tribunal finding is properly implemented if the reassessment or redetermination is carried out even if the conclusion reached is the same as the one that was previously reviewed by the Review Division or appealed to the Workers' Compensation Appeal Tribunal. However, if the Board officer implementing the Review Division or the Workers' Compensation Appeal Tribunal finding is the same one who made the original decision against which the review or appeal was made, and if that person's decision is still negative, the matter is to be referred to a different Board officer for a second look. If a difference of opinion results from the second look, the decision of the second Board officer will prevail.

Where, in addition to directing the reassessment or redetermination, the Review Division or the Workers' Compensation Appeal Tribunal makes some specific findings of fact, for example, that the worker was unable to carry out certain jobs, the Board is bound by those findings.

Where the reassessment or redetermination results in no change in the original Board decision, a review or an appeal lies back to the Review Division or the Workers' Compensation Appeal Tribunal, respectively.

EFFECTIVE DATE: June 1, 2009 – Delete references to Compensation Services Division.
HISTORY: March 3, 2003 – This policy item was moved from Chapter 13 and amended to include references to the Review Division or the Workers' Compensation Appeal Tribunal.
APPLICATION: Applies on or after June 1, 2009.

#100.80 Payment of Claims Pending Appeals

#100.81 Appeals to the Review Division – New Claims

The general practice is that no payment is made on a new claim until there has been an adjudication that the claim is valid.

When a decision is made to allow a claim that has been protested by an employer, the employer will be advised of the decision and reasons, where possible by telephone, and given an opportunity to provide any additional information. This is similar to the requirement in policy item #99.10 that a worker be advised if the indication on a claim is that it may be disallowed. If the decision remains that the claim should be allowed, payments will be commenced immediately and a letter explaining the decision and reasons will be sent to the employer. The letter will advise the employer of their right to request a review by the Review Division.

An employer can request a review up to 90 days from the decision allowing a claim.

If the Review Division reverses the decision to allow the claim, payments are immediately terminated but no attempt is made to recover payment incorrectly made to the worker, unless there was evidence of fraud or misrepresentation. The employer's sector or rate group will be relieved of the claim costs pursuant to policy item #113.10.

EFFECTIVE DATE:	June 1, 2009 – Delete reference to Claims Department.
HISTORY:	March 3, 2003 – This policy item was moved from Chapter 13 and amended to include references to the Review Division.
APPLICATION:	Applies on or after June 1, 2009.

#100.82 Appeals to the Workers' Compensation Appeal Tribunal – Reopening of Old Claims

If a decision is made to reopen an old claim, the employer is advised in writing. If the employer objects to this decision, the employer will be advised of the right to appeal to the Workers' Compensation Appeal Tribunal.

If the Workers' Compensation Appeal Tribunal reverses the decision to reopen the claim, payments are immediately terminated. No attempt is made to recover payments incorrectly made to the worker unless there was evidence of fraud or misrepresentation. The employer's sector or rate group will be relieved of the claim costs pursuant to policy item #113.10.

EFFECTIVE DATE: June 1, 2009 – Delete reference to Claims Department.
HISTORY: March 3, 2003 – This policy item was moved from Chapter 13 and amended to include references to the Workers' Compensation Appeal Tribunal.
APPLICATION: Applies on or after June 1, 2009.

#100.83 Implementation of Review Division Decisions

Section 258 of the *Act* provides as follows:

(1) If, following a review under section 96.2, a review officer's decision requires payments to be made to a worker or a deceased worker's dependants, the Board must

(a) begin any periodic payments, and

(b) pay any lump sum due under section 17(13).

(2) In the absence of fraud or misrepresentation, an amount paid under subsection (1) to a worker or a deceased worker's dependants is not recoverable.

(3) If a review officer has made a decision described under subsection (1), the Board must defer the payment of any compensation applicable to the time period before that decision

(a) for a period of 40 days following the review officer's decision, and

(b) if the review officer's decision is appealed under section 239, for a further period until the appeal tribunal has made a final decision or the appeal has been withdrawn, as the case may be.

(4) Subsection (3) applies despite sections 19.1, 22(1), 23(1) or (3), 29(1) or 30(1).

(5) If the appeal tribunal's decision on an appeal requires the payment of compensation, all or part of which was deferred under subsection (3), interest must be paid on the deferred amount of that compensation as specified in subsection (6).

(6) Interest payable under subsection (5) must be calculated in accordance with the policies of the board of directors and begins

(a) 41 days after the review officer made his or her decision, or

(b) on an earlier day determined in accordance with the policies of the board of directors.

The procedures for implementing all Review Division decisions are as follows:

1. Any benefits payable from the date of the Review Division decision forward will be paid without delay.

2. Any benefits payable for the period of time prior to the date of the Review Division decision (retroactive benefits) will be paid after 40 days have elapsed following the date of the Review Division decision unless an appeal has been filed with the Workers' Compensation Appeal Tribunal.

3. If there is an appeal of the decision under section 239 retroactive benefits will not be paid until the Workers' Compensation Appeal Tribunal has made a final decision or the appeal has been withdrawn.

4. The decision of the Workers' Compensation Appeal Tribunal will be implemented upon its receipt by the Board. The worker's entitlement to retroactive benefits which were deferred according to #3 above will then be determined in accordance with the decision of the Workers' Compensation Appeal Tribunal.

5. Where retroactive benefits are payable, after the decision of the Workers' Compensation Appeal Tribunal, interest is to be paid in accordance with the Board's general policy on the payment of interest on retroactive benefits as set out in policy item #50.00. Where interest is payable under section 258(5), interest will be paid beginning 41 days after the date on which the Review Division made its decision. The amount of interest to be paid is to be calculated in accordance with the interest rates set out in policy item #50.00.

EFFECTIVE DATE: January 1, 2014

HISTORY: January 1, 2015 – Housekeeping change to make consequential amendment to bullet 5 of policy resulting from changes to policy item #50.00, *Interest,* of the *Rehabilitation Services & Claims Manual* Volume II made effective January 1, 2014.
June 1, 2009 – Delete reference to officer.
March 3, 2003 – This policy was moved from Chapter 13 and amended to include references to section 258 of the *Act*, the Review Division and the Workers' Compensation Appeal Tribunal and delete a reference to former policy item #45.61.

APPLICATION: This item applies to all decisions made on or after January 1, 2014.

NOTES

(1) S.53(2)

(2) S.53(3)

(3) See policy item #94.11, *Form of Report*

(4) *Workers' Compensation Board of British Columbia, W.C.B. News*, November – December, 1975, 4

(5) S.55(1)

(6) S.55(1)

(7) S.12; See policy item #49.00, *Incapacity of a Worker*

(8) S.54(2)

(9) S.54(3)

(10) S.54(6)(b)

(11) S.54(9)

(12) See policy item #34.40, *Pay Employer Claims*

(13) See Item C10-76.00

(14) S.56(1)(b)

(15) S.56(1)(c)

(16) S.56(5)

(17) S.56(1)(d)

~~(18)~~ ~~S.99~~ **DELETED**

(19) See Chapter 16, *Third Party/Out-of-Province Claims*

(20) See policy item #112.30, *Workers Also Entitled to Compensation in Place of Injury*; policy item #113.30, *Interjurisdictional Agreements*

(21) See Item C10-72.00

(22) See policy item #34.40, *Pay Employer Claims*

(23) *Workers' Compensation Board of British Columbia, W.C.B. News Bulletin*, September – October, 1973

(24) S.5(4); See Item C3-14.20, *Accident – Section 5(4) Presumption*

(25) S.6(3); See policy item #26.21, *Schedule B Presumption*

(26) S.6(11); See policy item #29.50, *Presumption Where Death Results from Ailment or Impairment of Lungs or Heart*

(26a) S.6.1; See policy item #26.22 and Firefighters' Occupational Disease Regulation, B.C. Reg. 125/2009.

(26b) S. 6.1(7); See policy item #26.22.

(26c) S.6.1(8); See policy item #26.22.

(26d) S.6.2; See policy item #26.22, Emergency Intervention Disclosure Act, S.B.C. 2012, c. 19 and Emergency Intervention Disclosure Regulation, B.C. Reg. 33/2013.

(26e) S.5.1(1.1); See policy item #26.22.

(27) See policy item #95.10, Form of Reports

(28) See policy item #97.10, *Evidence Evenly Weighted*

(29) See Item C10-73.00

(30) S.88(2)

(31) S.88(4)

(32) S.88(5)

(33) S.21, *Evidence Act*

~~(34)~~ ~~S.95(2)~~ **DELETED**

~~(35)~~ ~~See policy item #103.00~~ **DELETED**

(36) See policy item #48.10, *Solicitors' Liens*