

# Practice Directive 26

## Part 3 Violations - Guidelines for Claims Staff

Date: December 17, 2001

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### 1. BACKGROUND

Bill 14, the *Workers Compensation (Occupational Health and Safety) Amendment Act, 1998* generally came into force on October 1, 1999. It replaced the current occupational health and safety provisions of the *Workers Compensation Act* (the "Act") with a new Part 3 -- Occupational Health and Safety.

While the changes primarily deal with Occupational Health and Safety issues relating to the Board's Prevention Division, there are some provisions that impact on the Compensation Services and Rehabilitation Division. It was recently brought to the Division's attention that some staff may be unclear regarding the effect of these provisions.

### 2. LAW AND POLICY

Section 13(1) of the *Act*, which remains unchanged, states, in part that:

*"A worker may not agree with his or her employer to waive or to forego any benefit to which the worker or the worker's dependants are or may become entitled under this Part, and every agreement to that end is void.*

Section 13(2) of the *Act* was replaced by Section 177, which states, in part that:

*"An employer or supervisor must not, by agreement, threat, promise, inducement, persuasion or any other means, seek to discourage, impede or dissuade a worker of the employer, or a dependant of the worker, from reporting to the board*

- (a) an injury or allegation of injury, whether or not the injury occurred or is compensable under Part 1,*
- (b) an illness, whether or not the illness exists or is an occupational disease compensable under Part 1,*
- (c) a death, whether or not the death is compensable under Part 1, or*
- (d) a hazardous condition or allegation of hazardous condition in any work to which this Part applies."*

Rehabilitation Services and Claims Manual (“RSCM”) Policy items #47.10, *Agreements to Waive or Forego Benefits* and #94.20, *Obligation Not to Discourage Worker from Reporting to Board*, provide further guidance in this regard and will be updated at a future date.

### **3. PROCEDURES**

Investigations of complaints arising under Sections 13(1) and 177 of the *Act* are the responsibility of the Board’s Special Investigations Branch.

Adjudication of section 177 complaints is the responsibility of the Prevention Investigations Section. All other provisions under Part III are the responsibility of the Prevention Division.

Where Board Officers encounter situations that may involve an infraction of one of these sections they should, in keeping with the intent of RSCM item #47.10, refer details of the alleged infraction to their Director. If it appears to the Director that there may be a potential violation of one these sections, he or she will so note and forward the material to:

- the Director, Special Investigations Branch for potential Section 13(1) and Section 177 violations
- the Director, Investigations, Prevention Division, for all other potential Part III violations

who will decide whether an investigation should proceed and who will, when appropriate, advise the Compensation Services Director and referring officer of the commencement of any investigation and the eventual disposition.