

Practice Directive 8

Disclosure of Personal Information

Date: August 27, 1996

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

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

1. Item **#99.00** has been amended to provide that before an appeal is initiated, the Board must apply the *Freedom of Information and Protection of Privacy Act* to requests for claim information. This requirement applies to requests from both workers and employers.

Where a worker requests his or her file prior to an appeal, an officer in the Service Delivery Location, will review the claim file, looking for privacy issues, and provide the worker with a copy of the file save for documents which the Board must withhold under the *Freedom of Information and Protection of Privacy Act*. The worker will be advised of any documents withheld and will be directed to the Board's FIPP Department should the worker desire disclosure of the withheld documents.

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

This new limit on the release of information about workers also results in changes to **#99.10** and **#99.20**. When discussing a claim which appears to be valid with an employer who has protested the claim, the Adjudicator, before making the decision, should contact the employer to ensure that the employer is aware of the issues relevant to the protest and has an opportunity to comment. When notifying an employer of the allowance of a claim which has been

protested, only personal information about the worker which is relevant to the claim and the issues involved will be provided to the employer.

2. Item #99.00 has also been amended to include the new provisions found in section 95(1.1) of the Act . This amendment restricts the ability of recipients of information about a worker to in turn disclose it to other parties. Should an officer become aware of inappropriate disclosure, he or she should advise a Manager who in turn will advise Legal Services.

3. Items #99.23A, 99.23B and 99.30 have also been amended to accord with the recommendation that the Board develop a policy for destroying or returning sensitive personal information, including medical information, that it receives which has not been specifically requested and which is determined not to be relevant to the adjudication of a specific claim.

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

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

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

4. Item #99.35 has been amended to permit workers or other parties to request the deletion or removal of irrelevant information from claim files. This amendment applied to documents received by the Board on or after July 1, 1996. Documents received prior to that date are subject to the pre-July 1, 1996 policy.

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

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