CHART #4,  APPEAL TO A MEDICAL REVIEW PANEL

NOTES

1. Act, s.63(1). An Inquiry under this section can only deal with the cause of death. There is no 90 day time limit and no physician’s certificate is necessary. An MRP certificate issued pursuant to this section is conclusive and binding on the WCB. [RSCM, p.13-18].

2. Under s.58(3), a worker is entitled to be examined by an MRP where the worker is aggrieved by a medical decision of "the board" (a WCB adjudicator or the Appeal Division), or by a medical decision of the WCRB, and there is a bona fide medical dispute to be resolved. The worker has 90 days from the finding or decision to appeal the decision. The worker may do so by writing to the WCB and sending a sufficiently detailed certificate from a physician certifying that there is a bona fide medical dispute to be resolved. A Medical Appeals Officer or the Assistant Registrar will decide whether the appeal is on time. [RSCM, p.13-17 to 13-21].

3. Under s.58(4), an employer is entitled to have a worker examined by an MRP where the employer is aggrieved by a medical decision of "the board" (a WCB adjudicator or the Appeal Division), or by a medical decision of the WCRB, and there is a bona fide medical dispute to be resolved. The employer has 90 days from the finding or decision to appeal the decision. The employer may do so by writing to the WCB and sending a sufficiently detailed certificate from a physician certifying that there is a bona fide medical dispute to be resolved. A Medical Appeals Officer or the Assistant Registrar will decide whether a valid physician’s certificate has been provided in support of the appeal [RSCM, p.13-17 to 13-21].

4. Under s.58(5) of the Act, "the Board may decide that the worker shall be examined by a Medical Review Panel, in which case he shall be so examined in the manner provided by this section." Under s.103.30 of the RSCM, no time limit for such a referral is applicable and there is no requirement that there be a bona fide medical dispute to be resolved. This section may be used by the WCB in "some situations to ensure that procedural difficulties related to the commencement of a MRP [e.g. missing the 90 day time limit] do not preclude access to the MRP process for purely technical reasons." [see RSCM, p.13-20 & 13-27 for additional guidelines].

5. Act, s.58(5). The physician’s certificate is evaluated by a WCB Medical Appeals Officer, who either accepts it or gives the worker further opportunity to prove a good faith medical dispute. [RSCM, p.13-10, AI, p.76].

6. A WCB determination that there is no bona fide medical dispute or that the decision is not a "medical decision" may be appealed to the WCRB. [S.90(1) Act,
Judicial review for an order in the nature of mandamus is also possible [RSCM, p.13-22, PLTC, p.31].

7. A WCB Medical Appeals Officer in the Appeals Administration office prepares the file for the MRP. [RSCM, p.13-16 &13-17, Act, s.64]. [It no longer necessarily contains a statement of foundational non-medical facts] [Verify whether it still contains x-rays, & medical reports from the WCB file]. The WCB also provides a list of questions (sometimes referred to as "statement of issues") , with instructions to the MRP that they limit their response to those issues exclusively. [Act s.61] The RSCM states that disputes regarding the statement of issues are to be resolved by the Medical Appeals Officer or the Registrar and are not appealable to the WCRB (being "administrative decisions") [AI, p.76 Section.61(1) of the Act , RSCM, p.13-26 & 13-27, PLTC, p.31, AI, p.76].

8. Section 58 of the Act empowers the Lieutenant Governor in Council (LGC) to appoint chair (s and acting chair (s) of medical review panels (MRP's). In 1995 there were 16 physicians serving in this capacity [AI, p.76] [SJS: currently the same?]. The LGC is also empowered to appoint a medical committee which prepares a list of specialists in particular classes of injuries and disabilities. A joint medical committee of the College of Physicians and Surgeons of B.C. and of the B.C. Medical Association appoints the specialists [RSCM p.13-23]. The appropriate specialty for each appeal is designated by the registrar [RSCM 13-23]. MRP's are composed of three physicians, none of whom are WCB employees. The chair of an MRP is a general practitioner appointed from a rotating list, while the other two physicians are specialists (one nominated by the worker and the other nominated by the employer, chosen from a list supplied by the WCB). Under s.59(1) of the Act, no specialist can sit on an MRP who has treated the worker, acted as a consultant in the worker's treatment, or is a partner or practices together with a specialist who has treated the worker. Partners who practice medicine together are also restricted from sitting on the same panel. 
Under s.59(1) of the Act, the WCB must, within a reasonable amount of time, sent a notice by registered mail to the worker and the employer requiring each to nominate a specialist from the list provided by the WCB under s.58(2) of the Act, within 8 days of receipt of the notice. If the party who commenced the appeal fails to do so, no further proceedings will be taken. If the other party fails to do so, the Minister will appoint a specialist. [RSCM, p.13-23] Under s.59(3), the WCB must appoint the specialists nominated as members of the MRP (provided the specialists accept) within 18 days of the receipt of the nominations. If the specialist does not accept, or if he or she is unable to participate, another specialist must be nominated. [s.59(4)]. Under s. 59(3), The WCB will appoint the chair of the MRP [RSCM, p.13-24, Act, s.59(5)].

9. [1995 MRP Annual Report, flow chart, p.3, RSCM, p.13-28 ]. This may also include examination by specialists.

10. The panel is authorized to determine its own procedure [Act, s.61(5)]. [See s.61(4), Act] MRP Annual Report, flow chart, p.130].
11. Under s.60 of the Act, the chair of the MRP is required to arrange for examination of the worker within a reasonable time after the appointment of the specialists. [RSCM, p.13-28] The WCB may provide support staff to assist in the examinations of the workers by the panels, but has no authority to instruct the panel, which operates independently [RSCM, p.13-16 & 13-28]

MRPs are responsible for making their own procedures. [Act, s.61(5). The MRP has the same powers as the WCB under s.87 to compel examination of witnesses and production of documents, etc. [Act, s.61(6)]. Normally, the worker is brought in for a full medical examination and the panel asks questions. In most cases the panel decides the issue immediately after the examination (however, in 1995 MRP appeals took an average of 1.5 years to resolve, with most of the time spent waiting due to backlogs). [PLTC, p.31].

The MRP usually takes a medical history and may request that other tests be taken. After the panel discusses their findings, a report is written and a certificate (with answers to the 10 questions) drafted by the Chair. [Act, s.61 [AI,p.76-77]. The certificate is conclusive as to the matters certified and is binding on the WCB. [s.65. Also, see s. 61 of the Act for further detail. Under s.61 of the Act, the decision of the majority of the panel is a decision of the panel.

12. [Section 61(7)]. The MRP Registrar is an officer of the WCB and reports directly to the Governors of the WCB through the Chair. The Registrar reviews the certificate to ensure that the MRP has not exceeded its jurisdiction. If the MRP has not exceeded its jurisdiction and all questions put to the MRP have been answered, the matter is considered resolved [AI, p.77, RCSM, 13-16 &13-34].

Under s.61(2) of the Act, the Panel may also report on any matter arising out of the examination (the "narrative report of the panel"). Recommendations arising out of such reports are not binding on the WCB [RSCM, p.13-34].

13. Section.61(7) of the Act, which provides that:

"within 18 days or the further time that the board considers necessary of the receipt of the certificate from the chairman of the medical review panel, the board shall review the claim and send a true and complete copy of the certificate to the worker, to the physician whose certificate accompanied the request under s.58(3) or (4) and to the employer." [See also RCSM, p.13-30].

14. [RSCM, p.13-34 &13-35] Note also that:

"Disputes related to the certificate which arise in the course of the Board’s re-adjudication of the claim in light of the certificate’s findings will be resolved through the normal appeal process. For example, a decision by a Board adjudicator to sever a finding on the basis that the finding was not binding on the Board because it was not a medical
finding, is a decision affecting a worker and could be appealed to the Review Board in accordance with the provisions of s.90 of the Act.”
[RSCM, 103.88]

14.1 Partial authority for this procedure is found in Decision #368 of the Commissioners (published policy), which gives the administrator of MRPs (i.e. the Registrar) authority to change decisions where an error or new evidence is pointed out by a worker, employer or representative in respect of the substance of a decision. Decision #368 does not specify that the Registrar has authority to reconvene a panel for this purpose (as is provided for in the MAOPM at p.74)

15. Section 65 of the Act proves that the certificate of the MRP is "conclusive as to the matters certified and is binding on the Board. The certificate is not open to question or review in any court, and no proceedings by or before the panel shall be restrained by injunction, prohibition or other proceeding in any court or be removable by certiorari or otherwise in any court." Because of the privative clause in s.65, the WCB cannot reopen an MRP decision under 96(2)).