Second Set

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.

[IT IS NOT SUFFICIENT TO STATE THAT A DECISION IS BEING APPEALED WITHOUT SPECIFYING THAT IT IS BEING APPEALED TO THE MRP.
-- MAOPM AT P. 8, CONFIRMED IN INTERVIEW WITH MRP DEPT. REGISTRAR, DAVID MARTIN, SEPT.18, 1997.]

A Medical Appeals Officer or the Assistant Registrar will decide whether the appeal is on time [RSCM, p.13-17 to 13-21] [AND WHETHER [THE LETTER FROM THE APPELLANT EXPRESSES AN INTENT TO APPEAL.
-- MAOPM AT P. 8, CONFIRMED IN INTERVIEW WITH MRP DEPT. REGISTRAR, SEPT.18, 1997.]

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].
4.1 ["The Board has established a policy that where there has been substantial compliance with the requirements of s.58(3), they will exercise their discretion under s.58(5) to refer the worker for examination by a medical review panel. The Board considers that there has been substantial compliance if the worker’s request for examination is received within the 90 day period referred to in s.58(3) and an acceptable physician’s certificate is received within a reasonable period of time (90 days) thereafter. Therefore, at the expiry of the 90 day time allowed by s.58(#) or (4), a letter will be written advising the appellant that he has a further 90 days to submit a certificate under s.58(5)."

-- MAOPM at p. 6, confirmed in interview with MRP Dept. Registrar, Sept.18, 1997.]

4.2 ["When both appeal documents have been received and have met the time restrictions provided in the Act, the Medical Appeals Officer determines whether the decision under appeal is a medical decision, and if so, whether the physician has provided an acceptable certificate, i.e. whether sufficient particulars have been provided to define the medical question in issue. Sections 58(3) and 58(4) require that the appellant submit "a certificate from a physician certifying that in the opinion of the physician ..." It is therefore a legal requirement that a physician’s certificate be provided for the purpose of initiating a medical Review panel appeal under s.58(3) or (4)."

-- MAOPM at p. 21, confirmed in interview with MRP Dept. Registrar, Sept.18, 1997.]

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].

5.1 ["Where both the request and the physician's certificate are received within 90 days of the medical decision of the Board and the certificate is rejected [on the basis that it is not a medical issue] within this initial 90 days, the appellant will be given:

(A) The remaining time in the initial 90 day period to submit a second medical certificate for consideration under s.58(3) or s.58(4), and
(B) A further 90 days (following the first 90 days) to submit a further certificate(s), or clarification from his physician under s.58(5)"

-- MAOPM at p. 6, confirmed in interview with MRP Dept. Registrar, Sept.18, 1997.]
5.2 "When an appeal to a Medical Review Panel is not accepted, the decision letter should state all reasons which support the decision to deny the appeal."

5.3 "Pursuant to Decision #368 (of the Commissioners) of the Workers' Compensation Reporter Series, a Medical Appeals officer has the authority to reconsider a previous decision. If a request for reconsideration is received, a copy of the request is provided to the interested parties, who are given an opportunity to respond. The Medical Appeals Officer has the authority to grant an extension of time for a submission. The right of a Medical Appeals Officer to change a decision on a Medical Review Panel appeal is not limited to the correction of errors, but includes a substitution of judgement decisions irrespective of whether or not there is new evidence to consider. Where a Medical Appeals Officer's decision is made to modify or reverse a decision on a Medical Review Panel matter, the Officer will advise all concerned in writing. The letter will state that the decision on appeal has been reviewed and will outline the reasons for the change. The decision of the Medical Appeals Officer is appealable to the Worker's Compensation Review Board."
-- MAOPM at p. 6, confirmed in interview with MRP Dept. Registrar, Sept.18, 1997.

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, RSCM, p.13-10, AI, p.76]. 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 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. 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].

7.1 "On completion of the statement of Foundational Non-Medical Facts and Issues (where one has been prepared), the claim files are sent to the Registrar to ask for review and advice as to the appropriate medical specialty or specialties...(See S.58(2) of the Act)
THE DECISION WITH RESPECT TO THE CHOICE OF APPROPRIATE MEDICAL SPECIALTY IS CONVEYED BY THE MEDICAL APPEALS OFFICER AND IS APPEALABLE TO THE WCRB.”
--MAOPM AT P.50, CONFIRMED IN INTERVIEW WITH MRP DEPT. REGISTRAR, SEPT.18, 1997.]

8. Section 58 of the Act empowers the Lieutenant Governor in Council (LGC) to appoint chairs (and acting chairs) of medical review panels (MRP’s). In 1995 there were 16 physicians serving in this capacity [AI, p.76.] [CURRENTLY THE ARE 13, 5 OR 6 FULL-TIME - INTERVIEW WITH MRP DEPT. REGISTRAR, SEPT.18, 1997.]. 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, send 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.

[THE WORKER AND EMPLOYER ARE ASKED TO PICK THEIR TOP 4 CHOICES IN DESCENDING ORDER (AND ARE TOLD THAT THEY NEED ONLY ULTIMATELY PICK ONE CHOICE). THIS IS DONE FOR SCHEDULING PURPOSES. INTERVIEW WITH MRP DEPT. REGISTRAR, SEPT.18, 1997.]

If the party who commenced the appeal fails to nominate a specialist, 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)].

8.1 ["A COVERING LETTER (SF1) AND A COPY OF THE STATEMENT (WHERE ONE HAS BEEN PREPARED) ARE SENT TO THE WORKER, WITH A COPY TO ANY REPRESENTATIVE, REQUESTING THAT THE WORKER ADVISE THE BOARD OF ANY DISAGREEMENTS TO THE STATEMENT WITHIN THREE WEEKS. A REQUEST FOR AN EXTENSION OF TIME TO RESPOND TO THE STATEMENT FROM EITHER THE WORKER OR REPRESENTATIVE WILL BE PROVIDED ON REQUEST.

[INTERVIEW WITH MRP DEPT. REGISTRAR, SEPT.18, 1997.]"
...A COVERING LETTER (SF2) AND A COPY OF THE STATEMENT (WHERE ONE HAS BEEN PREPARED) ARE SENT TO ALL EMPLOYERS, AND ANY REPRESENTATIVES, WHO HAVE BEEN ITEMIZED IN THE STATEMENT, REQUESTING THAT THE EMPLOYER(S) ADVISE THE BOARD OF ANY DISAGREEMENTS TO THE STATEMENT WITHIN THREE WEEKS. ON REQUEST, AN EXTENSION TO THE THREE WEEKS CAN BE PROVIDED....

IF OBJECTIONS TO THE STATEMENT ARE RECEIVED, THE MEDICAL APPEALS CLERK WILL PROVIDE THE OTHER PARTY WITH A COPY OF THE OBJECTIONS AND ALLOW A 3 WEEK PERIOD FOR REPLY...

AFTER REVIEWING THE OBJECTIONS, IF THE STATEMENT IS AMENDED, THE MEDICAL APPEALS OFFICER WILL PROVIDE THE APPROPRIATE PARTIES WITH THE AMENDMENT. THE MEDICAL APPEALS OFFICER'S DECISION TO AMEND A STATEMENT OF FACT IS APPEALABLE TO THE WCRB....

THE ORIGINAL STATEMENT REMAINS ON THE FILE, IS NOTED TO BE AMENDED AND CROSSED THROUGH WITH RED PEN."

--MAOPM AT p.55, CONFIRMED IN INTERVIEW WITH MRP DEPT. REGISTRAR, SEPT.18, 1997.

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 [Alp.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.

11.1. [may occur at various stages throughout the process):

"THE MEDICAL APPEAL OFFICERS MAY DETERMINE THAT A MEDICAL REVIEW PANEL MAY NO LONGER PROCEED. FOR EXAMPLE, THIS CASE WOULD APPLY
WHERE A MEDICAL REVIEW PANEL WAS INITIATED, AND A SUBSEQUENT DECISION ON THE FILE RESOLVED THE MEDICAL ISSUE IN DISPUTE. THE MEDICAL APPEALS OFFICER WOULD THEN CONTACT THE APPELLANT TO ADVISE THAT AS THE ISSUE HAD BEEN RESOLVED, THE APPEAL WAS CONSIDERED WITHDRAWN. THE MEDICAL APPEAL OFFICER WOULD POINT OUT TO THE APPELLANT THAT IF HE IS DISSATISFIED WITH ANY FURTHER MEDICAL DECISION MADE BY THE BOARD, IT IS OPEN TO HIM TO APPEAL THAT FURTHER DECISION WITHIN THE STATUTORY TIME LIMITS.

EXAMPLES:

1. MEDICAL ISSUE IN DISPUTE HAS BEEN RESOLVED.
2. WORKER PROCEEDS WITH ALTERNATIVE AVENUE OF APPEAL.
3. WORKER DIES PRIOR TO A MRP EXAMINATION. IF THIS IS THE CASE, A LETTER IS SENT ADVISING THAT THE APPEAL IS CONSIDERED WITHDRAWN AS THE ACT REQUIRES THAT THE WORKER BE EXAMINED...
4. WORKER DOES NOT WISH TO BE EXAMINED, WHERE THE WORKER IS THE APPELLANT. THIS WOULD NOT APPLY IN AN EMPLOYER'S APPEAL."

--MAOPM AT P.37, CONFIRMED IN INTERVIEW WITH MRP DEPT. REGISTRAR, SEPT.18, 1997.]

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].

["THE NARRATIVE REPORT IS COMPILED AND PREPARED BY THE CHAIRMAN OF THE MRP. IT ACCOMPANIES THE MRP CERTIFICATE. IT IS A DETAILED DOCUMENT SUMMARIZING AND FOCUSSING ON THE DATA PROVIDED BY THE BOARD WITH REGARD TO THE FILE INFORMATION, THE DETAILED FINDINGS OF THE HISTORY-TAKING AND PHYSICAL INFORMATION. IT WILL SOMETIMES CONTAIN SENSITIVE PERSONAL MEDICAL INFORMATION RECOMMENDING A FORM OF ACTION BENEFICIAL TO THE WORKER'S CONDITION."

--FROM JENKINS REPORT, P.6, CONFIRMED IN INTERVIEW WITH MRP DEPT. REGISTRAR, SEPT.18, 1997.]

12.1 ["ON REVIEWING THE CERTIFICATE AND ACCOMPANYING NARRATIVE REPORT, THE MAO MAY DETERMINE THAT THE PANEL HAS MADE A DIFFERENT FINDING OF NON-MEDICAL FACT THAN THAT FOUND BY THE BOARD. ANY QUESTION REGARDING NON-MEDICAL FACT(S) SHOULD BE RETURNED TO THE MAO FOR FINAL DECISION PRIOR TO THE ISSUING OF THE FINAL CERTIFICATE FROM THE PANEL."

--MAOPM AT P.71, CONFIRMED IN INTERVIEW WITH MRP DEPT. REGISTRAR, SEPT.18, 1997.]
13. Section 61(7) of the Act, which provides that:

"[w]ithin 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 RSCM, 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 MRP(s) (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)]

14.2 ["THERE ARE TWO TYPES OF NEW EVIDENCE RELATING TO MATTERS WHICH AN MRP HAS CERTIFIED. The first type is which indicates that the Panel made a fundamental mistake concerning the worker's medical condition or status at the time the certificate was issued. The second type is evidence which indicates the worker's condition or status may have changed since the certificate was issued, so that the compensable consequences of the certificate are no longer applicable. AS A RESULT OF S.65, THE BOARD, ITSELF, IS UNABLE TO ACT ON THE FIRST TYPE OF EVIDENCE. THAT DOES NOT NECESSARILY MEAN THAT THERE IS NOTHING WHICH CAN BE DONE IF IT IS DETERMINED THAT A FUNDAMENTAL MISTAKE WAS MADE BY AN MRP. IF, WITHIN A REASONABLE PERIOD AFTER A CERTIFICATE IS ISSUED, PERHAPS ONE YEAR, NEW EVIDENCE BECOMES AVAILABLE INDICATING A FUNDAMENTAL MISTAKE HAS BEEN MADE AND IF IT IS POSSIBLE FOR THE BOARD TO RECONVENE THE MRP WHICH ISSUED THE CERTIFICATE THE BOARD MAY AT ITS DISCRETION DO SO. WHERE THE PANEL DETERMINES THAT, AS A RESULT OF ITS MISTAKE, ITS PREVIOUS CERTIFICATE WAS WRONG, THE CERTIFICATE WILL BE CONSIDERED NULL AND VOID AND THE PANEL WILL ISSUE A NEW CERTIFICATE TO BE SUBSTITUTED FOR IT. WHERE, HOWEVER, A LONGER PERIOD HAS ELAPSED BEFORE THE MISTAKE BECOMES EVIDENT, OR THE ORIGINAL PANEL MEMBERS CAN NO LONGER BE RECONVENED, THE BOARD WILL, IF IT CONCLUDES THAT FURTHER ACTION IS NECESSARY, CONVENE A NEW MRP. IN THIS CASE, THE CERTIFICATE OF THE ORIGINAL PANEL WOULD BE BINDING UP TO THE DATE OF ANY CERTIFICATE ISSUED BY THE NEW PANEL.

THE SECOND TYPE OF NEW EVIDENCE, MAY BE TREATED DIFFERENTLY. THE PANEL CERTIFICATE IS BINDING ON THE BOARD ONLY AS TO MATTERS AS THESE STAND AT AND PRIOR TO THE DATE OF THE CERTIFICATE. AS TO THE EXTENT AND NATURE OF DISABILITY AFTER THE DATE OF THE CERTIFICATE, IT IS OPEN TO THE BOARD TO MAKE A DECISION WITHOUT REFERENCE BACK TO THE ORIGINAL PANEL OR TO A NEW PANEL, AS LONG AS THAT DECISION IS NOT INCONSISTENT WITH THE PANEL CERTIFICATE."

(QUALIFICATION BY REGISTRAR, 1997: IT IS NO LONGER THOUGHT TO BE NECESSARY TO RECONVENE THE SAME PANEL)--MAOPM AT P.74-75, CONFIRMED IN INTERVIEW WITH MRP DEPT. REGISTRAR, SEPT.18, 1997.]

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).