October 27, 2023

Sent Via Email: policy@worksafebc.com

[Total pages: 5]

Policy, Regulation and Research Department
WorkSafeBC
P.O. Box 5350, Stn. Terminal
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Attention: Mark Levesque, Senior Policy Advisor

Re: Discussion Paper: Chronic Pain

Thank you for the opportunity to comment on the above noted Discussion Paper. The BC Nurses' Union represents more than 48,000 members in the British Columbia healthcare industry. As the unified voice of nurses working in healthcare, significant weight should be attached to our position and recommendations on this issue.

Issue

The PRRD has proposed amendments to Chronic Pain policies C3-22.20 and C6-39.10.

Recommended Action

The BC Nurses' Union asks that Board of Directors reject the proposed policy set out in the June 26, 2023 Discussion Paper.

The BC Nurses' Union makes the extraordinary recommendation of rejecting the proposed policy because the recommendations do not include recognition of chronic pain as a disease in its own right and fails to provide a scheduled rating scale based on severity of the condition is unacceptable. The BOD should return the policy item to the PRRD with instructions to include a ratings schedule in the PDES with ranges of impairment based on condition severity.

The BC Nurses' Union does not take the extraordinary measure of recommending BOD rejection of policy change proposal lightly. Changes to Chronic Pain policy are grossly overdue. The delay in changes to CP policy has negative impacts to BCNU members and other workers who suffer from chronic pain. Workers suffering from chronic pain have waited much too long for changes to CP policy. Further delay is harmful. Nevertheless, the proposed CP policy is grossly inadequate. It would perpetuate the injustices of the flawed CP policy.

Background

Workers' Compensation Chronic Pain policy in Canada initiated with findings that policies in Nova Scotia that compensated for CP only while the worker was in treatment for the condition infringed workers Charter protections and a comprehensive paneled (scientific and stakeholder panels) review in Ontario that put in place a scale for CP disability benefits. Supreme Court of Canada (SCC) decisions Martin and Lasseur 2003 SCC 504 October 3, 2003 dealt with the issue of,

> *Workers' compensation legislation excluding chronic pain from purview of regular workers' compensation system and providing in lieu of benefits normally available to injured workers four-week functional restoration program beyond which no further benefits are available — Whether legislation infringes s. 15(1) of Canadian Charter of Rights and Freedoms*

The Court found that the treatment of injured workers suffering from chronic pain under the Act[1] is not based on an evaluation of their individual situations, but rather on the indefensible assumption that their needs are identical. In effect, the Act stamps them all with the "chronic pain" label, deprives them of a personalized evaluation of their needs and circumstances, and restricts the benefits they can receive to a uniform and strictly limited program.

In BC prior to CP provisions in policy in June 2002, there was policy item #39.01 Subjective Complaints that allowed an Adjudicator in Disability Awards to consider a range of factors to determine on an objective basis whether an additional award should be made on a judgement basis. The policy did not provide ratings for subjective complaints but where awards were made for subjective complaints they were usually in the range of 1 to 2.5%.

Alan Winter's Core Review of March 11, 2002 in Chapter 10: Pensions section G: Disabilities related to Chronic Pain (pages 221 – 231) examines in detail the then current BC approach to chronic pain, approaches in other jurisdictions including Ontario and Nova Scotia, the AMA Guides approach, and the medical science at the time. Mr. Winter recommended the Board compensate for permanent chronic pain under 4 levels proposing the following percentages of impairment for each level,

Mild	1-5%
Moderate	10%
Moderately Severe	15%
Severe	20%

The cover page of the Winter Core Review identified Compensation for Chronic Pain as an item requiring further consultation.

Ontario through a process that included two panels including an expert review panel put in place a schedule for Chronic Pain that rates impairment from 0-80%.

The BC WCB issued a Discussion Paper on Chronic Pain on October 16, 2002. The deadline for submissions in response to this Discussion Paper was November 1, 2002, a mere 16 calendar days. The Discussion Paper presented the following options,

1. Status quo
2. Adopt the Core Reviewer Recommendations
3. Focus on early intervention and section 23(1) consideration for non-specific chronic pain only
4. Focus on early intervention and section 23(1) consideration for specific chronic pain only
5. Nova Scotia Model (Limit entitlement to the duration of chronic pain treatment)

The Panel of Administrators approved resolution 2002/11/19-04 RE: Chronic Pain November 19, 2002. This was only 18 calendar days after the due date for Discussion Paper submissions.

This CP policy was enacted by the Board Panel of Administrators effective January 1, 2003 replacing #39.01 Subjective Complaints with #39.01 Chronic Pain.

The new policy for a new condition of CP set out several parameters that are unique from other permanent conditions. CP is neither a scheduled or non-scheduled condition. It is essentially an orphan that does not fall into the two categories all other permanent compensable conditions fall under. The policy required Adjudicators to rely upon the findings in multi-disciplinary assessments. The policy required that all appropriate medical treatment and rehabilitation interventions be concluded before a permanent award is made.

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[1] *Workers' Compensation Act, S.N.S. 1994-95, c. 10, s. 10B — Functional Restoration (Multi-Faceted Pain Services) Program Regulations, N.S. Reg. 57/96.*

It is unclear how the proposed policy in the Discussion Paper evolved into the policy passed by the POA. The new policy does not match any of the options proposed in the discussion paper. In our view it is inappropriate for the Board to enact a policy that is not part of any of the discussions and consultations leading up to the policy.

We have tried to see if the policy enacted in the November 19, 2002 resolution was the product of any of the consultations including submissions on the Discussion Paper. Unfortunately stakeholder consultation input is not available going back to 2002. We have not been provided with any information on the origin of this policy.

CP was put on the compensation policy workplan in October 2007. The related Discussion Paper that cites CP review of policy items #22.35 and #39.02 as a matter scheduled for referral to the BOD in 2008. The draft workplan noted that a CP Discussion Paper was scheduled to be released in the first quarter of 2008. No CP Discussion Paper was released. The 2010-2012 policy workplan noted CP was a 2010 PRRD key priority. CP appeared again on the draft 2013-2015 compensation policy workplan that was released for comment October 22, 2012. CP was listed under items that considerable work had been undertaken for and were anticipated will be referred to the BOD for approval to consult in 2013. There was no CP Discussion Paper released in 2013. The same language appeared in the draft 2015-2017 policy workplans with the exception the dates were changed.

The draft 2016-2018 draft policy workplan simply listed CP as one of six bullet point items that were PRRD key priorities. The draft 2018-2020 policy workplan again lists CP as a key priority. The PRRD began a pre-consultation process on CP in February 2017 that included worker representatives, employer representatives and WSBC. This writer has been a worker representative of the CP pre-consultation group since inception. In the initial meeting, worker representatives requested independent expert advice on whether the CP policy is consistent with the current medical/scientific knowledge.

Dr. Owen Wilkinson, Orthopedic Surgery and Pain Medicine Specialist met with the CP pre-consultation group in December 18. 2018 and provided a September 11, 2019 report to the PRRD. Dr. Wilkinson concluded that,

- The current policy definitions of pain and chronic pain are not medically accurate/relevant.
- The definition of CP as pain that persists six months after injury and beyond usual recovery time is not consistent with current medical and scientific literature.
- There are proposed definitions and diagnoses that are in progress with the IASP (International Association for the Study of Pain) that should be considered in revisions.
- The use of the terms specific and non-specific CP results in misclassification of workers and precluding from receiving treatments.
- The terms chronic primary pain and chronic secondary pain would obviate the need for classifying into specific and non-specific categories and provide a more reasoned approach to determining entitlements.
- The composite definition of disproportionate pain is problematic as disproportionate is not defined by research or used by health professionals with specialist knowledge in the diagnosis and treatment of pain.
- The current scientific literature supports the multidisciplinary approach to the management of people with CP.

In 2020 of the IASP released comprehensive revised definitions of pain. The International Classification of Diseases [ICD-11] released new diagnostic classifications and codes for chronic pain. WorkSafeBC utilizes ICD diagnostic codes for most compensable conditions.

Mandate letters for the Minister of Labour in November 2020 from Premier Horgan, and December 2022 from Premier Eby expected prioritization and progress to,

> develop better options for chronic work-related pain, including improving pain management practices for injured workers and providing treatment on demand to those with chronic pain as a result of workplace injuries.

The Federal Health Minister established a Chronic Pain Task Force (CPTF) in 2019 with the purpose of providing advice to guide the federal government toward an improved approach for the prevention and management of chronic pain. In its May 2021 final report, the CPTF recommendations included,

- Chronic Pain should be recognized as a disease in its own right.
- Empower each Province and Territory to develop a provincial pain strategy and/or coordinated action plan to enable future activities and system improvements.
- Invest in research infrastructure to enable precision and personalized care.
- Establish National indicators and reporting.
- Ensure there is improved and equitable access to services for populations disproportionately impacted by pain.
- Integrate more comprehensive, biopsychosocial pain assessment and management into return to work assessment and planning and remove policies that incentivize return to work over employee well-being.

The worker representatives on the CP pre-consultation group had provided written and verbal input on several occasions that emphasized,

- CP should be treated as a disease in its own right.
- The CP policy should be made consistent with current medical and scientific knowledge.
- IASP and ICD definitions and diagnoses should be used for CP.
- Treatment should be individual based consistent with IASP definitions and diagnoses and current medical knowledge.
- Permanent CP should be assessed on a scale based on degree of impairment rather then the arbitrary 2.5% in all cases.

WSBC Chronic Pain Policy (January 2003 to present)

As is described in the background of CP in BC above the origin and rationale for the BC CP policy since 2003 is unknown. The CP policy is substantially different from the recommendation of Alan Winter in his 2002 Core Review. It is dramatically different from the CP policy that was adopted in Ontario.

Representatives of workers in the compensation/appeal system, which this writer is one, have a very clear understanding of how the BC CP policy has affected workers that suffer from compensable CP. The policy has not promoted recovery or fairly compensated when the CP is a permanent disability. The CP policy is a device used to terminate claims/benefits when the worker has not recovered. This is the reason why there are so many more CP claims than other jurisdictions such as Ontario.

There is considerable pressure within the compensation system to end temporary wage loss. (TWL) When an injury is not healing under the BC system, the Board Officer may often simply deem that the injury (in many cases a sprain strain but could be any type) had resolved because there is an expectation it would resolve in that time. The original injury is declared as having resolved. It is then concluded the worker is left with disproportionate chronic pain that six months after the initial injury is deemed permanent. An award of 2.5% is then provided in every case of CP regardless of the actual degree of impairment. The Board is then essentially done with the case.

PRRD Discussion Paper Proposed Policy Changes

The June 26, 2023 Discussion paper perpetuates the old definitions of CP that are not consistent with the medical and scientific literature. There is no recognition of IASP/ICD definitions and diagnoses. The reference to treatment are reduced and diminished. Intervention/treatment is referenced in entirely discretionary language such that there would be no treatment requirements on the Board if in their discretion they chose not to treat.

CP in BC is not dealt with like any other compensable condition. It should be dealt with as a condition/disease in its own right the same as any other compensable condition. There should be better treatment specific to the individual that results in significantly better recovery and fewer cases of permanent CP. When CP is a permanent condition,

the degree of impairment should be evaluated by a physician qualified in assessing permanent chronic pain. There should be a table of ratings in the PDES with percentages of impairment based on expert advice and opinion such as the Ontario ratings.

The Discussion Paper notes in footnote 12 on page 6 that around 99% of accepted CP injuries are accepted as permanent. In our view that this supports a conclusion that in the BC system, CP policy is a device to terminate temporary benefits. CP is not treated as a condition that is treatable and which an injured worker will significantly improve from or recover. We lack even basic information on actual results in other jurisdictions such as Ontario with a progressive and rational CP policy for over two decades. We should know what the claim numbers and claim costs are in such other jurisdictions as part of this process to inform policy development.

The policy recommendation for permanent CP continues with the old definitions and descriptions of specific and non-specific CP that have been shown to be inconsistent with the medical science. The arbitrary 2.5% rating for all CP has been retained. This fixed rating is a keystone problem with the CP policy.

Conclusion

The BOD is urged to return this policy consultation to the PRRD with directions and expectations of returning with policy options that are consistent with the current medical and scientific knowledge; recognizes current definitions and diagnoses; utilizes patient-based treatment of the individual to improve recovery and quality of life; and compensates permanent CP based on professional assessment of the individuals degree of impairment utilizing a table of ratings in the PDES as a scheduled impairment.

All of which is respectfully submitted.

Yours truly,

BRITISH COLUMBIA NURSES' UNION

Jim Parker
Senior Labour Relations Officer - Workers' Compensation Specialist
BC Nurses' Union

c. T. Caridi
A. Hererra

JP/jd/MoveUp/M#94634

Jim Parker, Senior Labour Relations Officer, WCB Specialist, is the Lead Author of this submission which was developed in consultation with the other BC Nurses' Union WCB Advocacy Team members; Kerry Birch, Gregory Rabin, Zuleika Gedeon, Ming Cheng, Guinevere Loi, and Kimberly Harding.

This submission has been developed in accordance with BC Nurses' Union Strategic and Operational Plans. This submission has been reviewed and approved by Interim OH&S Department Director Theresa Caridi and Executive Councilor for OH&S Aida Herrera.

Chronic Pain - Policy Submission

Joy Dulay
To policy@worksafebc.com
Cc Jim Parker; Theresa Caridi; Aida Herrera

10/27/2023

Policy Sub - Chronic Pain (ID 94634).pdf 261 KB

Sent on behalf of Jim Parker

Attention: Mark Levesque, Senior Policy Advisor

Good Afternoon,

Please see attached a policy submission regarding Chronic Pain for your review.

Regards,

Joy Dulay
Administrative Assistant - Appeals
BC Nurses' Union
Pronouns: She, her, hers

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MoveUP