

Re: Amendments to Part 33, OH&S Regulation.

The Occupational First Aid Attendants Association of British Columbia intends to make both an oral and a written presentation, and respectfully presents the attached written presentation, along with oral arguments, with respect to the proposed amendments to the OH&S Regulation, Part 33.

The Board appears to take the position that this Regulation needs amendment.

We thank the panel for considering our arguments.

Proposed Amendments to Part 33

of the Occupational Health & Safety Regulation (B.C. Reg. 296/97, as amended)
pursuant to Sections 225 and 226 of the Workers Compensation Act of British Columbia

OCCUPATIONAL FIRST AID

The proposed amendments pertain to the following sections and schedule:

Section 33.1 - Definitions

Section 33.15 - Health Care Facilities

Section 33.16 - Municipal Fire Departments

Section 33.38 - Levels of Certification

Section 33.39 - Certification Process

Section 33.41 - Eligibility for Examination

Section 33.43 - Health Care Facilities

Section 33.47 - Program Equivalency

Section 33.48 - Instructor Certification

Section 33.52 - Courses and Examinations

Schedule 6 - Explanation of Certification Levels and Training Programs

Executive Summary

The Association questions whether regulation is needed for this issue. We say this regulation may be deleted and simply replaced with section 82 policies. These policies must include published standards for instruction, examiners and examinations. There must be an appeal process. Finally, there must be a review process for first aid policy. The Association and the Board know, all too well, the old adage "an ounce of prevention is worth more than a pound of cure", or "penny wise, but pound foolish." Having said this, the Association:

is wary of any attempt to reduce the quality of first aid by an indirect method such as regulation change, and

believes that because amendments to the Workers Compensation Act are expected within the coming week, the deadline to make further submissions should be extended by 30 days.

In terms of costs saved by individual employers, industry classes of employers, and the people of British Columbia, by simply reducing actual first aid service, equipment and materials, we know higher costs will have to be paid later.

The Association makes the following recommendations:

the creation of a committee for the purposes of developing standards in teaching, examination and appeal

the creation of appeal tribunal to adjudicate disputes between examiners and examination candidates

the enactment of a policy that acknowledges that in an appeal situation, the Board may issue certificates, endorsements, etc.,

the removal of all regulatory references that purport to constrain the Board's discretionary authority under the Act

the enactment of policy to restate discretion under the Act, and presents the Board's position with respect to instruction, certification and appeals

the enactment of policy that restricts a school and an examiner from being in a conflict of interest, and

the enactment of policy to state the Board position and method regarding review of the first aid policy changes.

A shortsighted approach will turn out to be a very costly measure.

History

The English common-law relating to duty of care in industrial workplaces of the 1850's was replaced after Confederation by the Employers Liability Act in 1891, followed by the Workplace Act of 1902, which introduced the concept of no-fault insurance. However, many employers purchased private insurance as a hedge against possible financial disaster, leaving both workers and employers locked in the court system.

In 1912, the Provincial Royal Commission on Labour Conditions was created which "recommended compulsory government insurance against industrial accidents." As a result, labour law was overhauled creating no-fault insurance, limited arbitration, and medical benefits, in a program to be called Workman's Compensation. Tabled in Victoria in 1915, it was then reviewed by the Pineo Select Committee [now called a Royal Commission] and finally passed into law on May 26, 1916. There were two basic additions to the Ontario model used to fashion the B.C. legislation. This new act included:

accident prevention administration as a responsibility of the proposed Workman's Compensation Board and

first aid and medical treatment under the scheme.

This Act was considered to be the most advanced legislation of its day.

During the 1920's, there was growing concern about the number of deaths in British Columbia's high hazard industries like mining and logging. The severity of injuries combined with the elapsed time between injury and hospital care resulted in, what was seen as, needless suffering and death. This concern translated into an advanced training course being written and taught by some able instructors as early as 1930.

The value of this advanced care was seen by industry as a direct cost saving. Industry invested by giving their first aid attendants this advanced training. The Board eventually recognized the cost savings realized in reduced hospital care, lower rehabilitation requirements and fewer and lower pension expenses in the long term; in turn, the collective liability of all employers decreased. Over the next three decades, the Board subsequently assumed the role of curriculum development, teaching course material, and examining and certifying first aid attendants. This direct involvement allowed the Board to make changes in first aid protocol and consequently maximize the dollar savings to the employer, particularly the long-term cost of pensions.

Over the years, this content matured into that which we see in this province today, and is considered by some to be the most advanced workplace care available anywhere. Industrial First Aid, a Reference and Training Manual has been accepted in Europe as their standard for workplace training.

A review of the Workers Compensation Act appears to indicate that the proposed changes to the OHSR falls far short of the fiduciary responsibility that the Board has to the people of British Columbia. Deleting the regulation in its entirety and installing an appropriate policy, including

standards, may better serve this responsibility. Should the Board feel that regulation is, in fact, necessary to accomplish this responsibility, the Board must specify the standards in all phases.

In terms of costs saved by individual employers, industry classes of employers, and the people of British Columbia, by simply reducing actual first aid service, equipment and materials, we argue higher costs will have to be paid later. An economics question to ask ourselves:

What is the value of an educated first aid attendant?

at the time of purchase, and
at the time of need?

The Law

The Workers Compensation Act [Act] in British Columbia, section 111(1), gives the Workers' Compensation Board of British Columbia [Board] "... the mandate to be concerned with occupational health and safety generally, and with the maintenance of reasonable standards for the protection of the health and safety of workers in British Columbia ... ". (Underline added.)

Further, the Board has a fiduciary responsibility to fulfil the requirements of the Act set out in the next subsection, section 111(2) "In carrying out its mandate, the Board has the following functions, duties and powers: ...

to ensure that persons concerned with the purposes of this Part are provided with information and advice relating to its administration and to the occupational health and safety and occupational environment generally;

to encourage, develop and conduct or participate in conducting programs for promoting occupational health and safety and for improving the qualifications of persons concerned with occupational health and safety and occupational environment;

...

to prepare and maintain statistics relating to occupational health and safety and occupational environment, either by itself or in conjunction with any other agency; (underlines added)

As well as their duties under section 111, the Board is required to provide an annual report under section 69, which section 112(a) states must include:

"a review of its activities under this Part for the year, including financial, statistical and performance information,..."

Section 159 says, "the Board may:

supervise the training of and train occupational first aid attendants and instructors,
appoint examiners and conduct examinations for the purposes of this section,
issue, renew and amend certificates to occupational first aid attendants and instructors,
enter into arrangements by which other persons provide training, give examinations and issue certificates for the purposes of this section, and
establish fees for the purposes of this section.

Discussion

Section 111 of the Act mandates the Board to:

be concerned with Occupational Health & Safety [OH&S] generally, and establish reasonable standards for the protection of the health and safety of workers in British Columbia and the occupational environment in which they work.

The Association is concerned about standards. There are no published standards by which first aid should be delivered to the workers in British Columbia. This is an issue that is absolutely key to the Board relinquishing any of its responsibilities under the Act to anyone else, including the private sector. This privatisation process has already been started some 3 or 4 years ago with one agency outside of the Board providing OFA Level 1 certification. The Association questions the appropriateness of this move without published standards to which to compare their performance.

Examinations Leading to Certification in Occupational First Aid.

There are no published standards to which the examination process may be compared. The Association argues that, on the whole, most of the examinations conducted under the present process result in a reasonable evaluation of the candidate. But, as in any system, there are some inconsistencies. The instructor, who is a designated examiner, presently accomplishes OFA level 1 certification. The OFA level 2 and OFA level 3 examinations are conducted by Board Officers. However, should certification be outside of the Board [as in the case of some OFA 1 currently] without published standards, the certification process could easily be called into question.

Should there be consideration given to designating the OFA 2 & OFA 3 examination process to the private sector, written and published standards for examination conditions and performance would be an absolute necessity as these same standards should be in place already for OFA level 1 today.

Examination Appeals

On occasion, examination candidates dispute their examination results. Because the Board is a government agency whose decisions affect the livelihood of an individual, they are obligated under the Rules of Natural Justice to hear the examination candidate's complaint and give an explanation for its findings. When our members have asked the Association to intervene on their behalf, the Association contacts the Board's former First Aid Section directly, and has usually reached a resolution. On other occasions, the Association has assisted candidates in resolving the dispute on their own.

However, private examiners are under no obligation to hear an appeal, or give reasons for their decision. Therefore, examination candidates will lose the right to be heard by an impartial arbitrator. Without an obligation to the attendant, the private agencies, in all probability, will not allocate resources for the appeal process. The integrity of the first aid system will obviously be impugned with such arbitrary decisions.

To illustrate the volume of the problem, in 2002, there were over 86,000 examinations by Board officers and Level 1 designated examiners. Examining these numbers shows that there could be dozens, if not hundreds of incidents of injustice. Even at one tenth of one percent, there will be 86 disputes not receiving a fair hearing.

Therefore, the Association argues that the Board must establish a tribunal to create standards for certification and to adjudicate disputes arising from the examination process. It follows that such a tribunal is given the authority to issue certificates.

Designated Examiner for Examination Leading to Certification in First Aid

There are several problems here.

The lack of standards in the training and examination process. Currently, one training agency uses their examiners to teach their own first aid course, but is enabled to issue an OFA level-1 certificate by the Board. The Board does not examine these examiners. The Association disagrees with this approach without a comparative standard in place.

There is a conflict of interest because examiners will have a vested interest in the school's customer, which is the examination candidate. The higher the percentage of "successful" examination candidates the greater the competitive advantage that particular school has in the marketplace.

The above problem is further exacerbated when the school is an in-house training agency. The employer who is in highly competitive markets will feel the economic pressure to certify marginal first aid candidates. The Board must prohibit any in-house training school from examining its examination candidates.

Therefore, there should be no attempt to privatize the Level 2 or 3 examinations. In the alternative, there must be standards for certification written, published and reviewed by a broad cross-sectional committee responsible for maintaining those standards.

Regulating Statutory Discretion

The question that must be asked is, why is it necessary to attempt to embody in regulation that which is clearly discretionary under the Act? The Association challenges the notion that the proposed changes to the Regulation are in fact appropriate. We note that the Board does not derive its authority from the Regulation; rather, it derives it from the Act itself. To suggest that amending, deleting and adding regulation is necessary for the Board to issue certificates is to fetter the statutory discretion in section 159.

Section 159 says

The Board may

supervise the training of and train occupational first aid attendants and instructors, appoint examiners and conduct examinations for the purposes of this section, issue, renew and amend certificates to occupational first aid attendants and instructors, enter into arrangements by which other persons provide training, give examinations and issue certificates for the purposes of this section, and establish fees for the purposes of this section.

It does not say that clause (a), (b), (c) and (d) must be in regulation in order to exercise these powers. In fact, we see that the Board uses published policy to establish fees under clause (e). See Prevention Manual Item R33.52-1.

While the Association does not dispute that the Board should publicly announce the position it takes with respect to its discretion, it must not remain fixed by using the argument that a regulation holds them to that position. Therefore, the Board must publicly recognize that it has the authority delegated to it by the Legislature. Therefore, the Association asks where is the Board's statutory authority to regulate under section 159?

Policy and Regulation Development Bureau Questions

The Policy and Regulation Development Bureau questions refocus the discussion toward the economic issues posed by the government.

A) Should the Board adopt a role similar to that of other Canadian jurisdictions with respect to training, examining and certifying OFA attendants?

In essence, the answer would be no. It has been suggested that the OHSR should move more toward a performance-based approach. Alberta believed this to be a viable option, and throughout the 1990's moved in this direction. They discovered that performance-based regulation made enforcement much more difficult, if not impossible, and increased costs in a number of areas. Alberta has since reviewed their move toward a performance-based approach to workers compensation and amended their Code with a view toward returning to a more regulatory or prescriptive approach, effectively reversing their previous trend. We have been informed recently that Alberta has just hired hundreds of OSO's to complement the 30 or so fully trained and functioning safety officers currently working within the province.

This is not to say that there should be no change. With published standards for both the course content and examination expectations, the examinations could be delegated to the private sector, although not recommended. Some fifteen years ago, there was a presentation based on the federal Department of Transport system made to the First Aid Section of the Board with a view toward accomplishing this very end. At present, Alberta appears to be belatedly following British Columbia's lead by newly employing hundreds OSO's and appearing to move from an attitude of simply paying a claim toward a more preventative mode..

Considering the improvements in both the pre- and post-hospital care, if the standards are lowered, then fewer treatments will be completed in the field. This will put more pressure on the Ambulance Service [a direct cost to the employer] and on the clinics/hospitals [a cost to the provincial health budget off-loaded to the collective liability of all employers].

Apart from the increased pressure on the hospital system, this will put an increased demand on the ambulance system. An increase in demand will further stretch an emergency transport service which recent history demonstrates is overtaxed already. The unnecessary cost of one ambulance transport and emergency hospital admission could pay for the training and certification of one OFA attendant.

Reduction in the level of training goes hand in hand with a reduction in confidence in the attendant. A lower level of attendant confidence and education will translate directly into more medical referrals, which will increase the direct costs to all employers. Lower standards will raise the volume of doctor/clinic/hospital visits.

B) Apart from the issue of the role of the Board, what is the appropriate format for the OFA provisions in the Occupational Health & Safety Regulation [OHSR] consistent with the need for reasonable standards for worker protection?

There are a number of available formats. The development of proper standards would retain the Board approval for schools, courses of study [including content and delivery], instructors, examinations and examiners. If examinations are privatized, then standards must be set for the examination, for the people conducting the examination, and for the conditions of the examinations.

It has been suggested that the Board completely remove itself from direct involvement in first aid by putting curriculum development, instructor training, examinations, certification, as well as records and statistics into the private sector. This would be akin to "throwing the baby out with the bathwater." We have a system in place that has developed over seventy years and has proven effective. If the costs need to be brought into line, so be it. Let us work toward that end. As a reminder, the Board has an obligation under section 111(2)(g) to prepare and maintain statistics that can be used later to evaluate the effectiveness and efficiency of any changes, including examinations and standards.

The Association recognizes that a revision may be necessary, but revision should be made with overall, long-term considerations, not simply the short-term cost reduction being paramount.

It is the Association's position that these regulations should be replaced by policy. But regardless of how standards are accomplished, there does need to be standards for the examination, the examiner and the appeal published to allow comparison.

Lastly, the Provincial Government has decreed that regulation should be cut by one third. It's not clear whether measurable public policy obligations should be cut by one third, or simply the volume of written regulation should be reduced by one third. In any event, the Association suggests that the Board consider the elimination of regulation on certification issues in favour of policy, which may be complementary to the governmental objective.

C) Apart from the issue of the role of the Board and the format of the provisions of OFA in the OHSR, how may these provisions be streamlined to realize a cost saving to the employer while retaining the high quality and efficiency of workers compensation in British Columbia?

Cost is always a sore point. What it boils down to is who pays for the cost of service? Under the current system, the examination costs are subsidized by the allocation of the Certification Section and Regional Service budgets. Therefore, all of the employers share the costs of this subsidy. It follows that if the subsidy is removed, the true costs will be born by the first aid attendants' employers, whether directly or indirectly. The result will be that employers who have a higher demand for first aid attendants will have higher costs. In BC, it is largely agreed that the forest industry is the largest employer of first aid attendants. Therefore, in this economy the proposed Board policy will raise costs in the forest industry.

If the policy of the Board is to have the marketplace set the equilibrium price of a first aid examination, then the Board should be mindful of the amount of competition that would exist in forest industry dependant communities. In other words, there may be only one or two examiners in any region. Therefore, there will not be the free market competition the Board hopes for. Rather, this may create a monopoly or duopoly. The Association argues that there will not be cost savings to an employer. Even if there were true competition, the Board has no way of controlling prices for first aid examinations. Those would be subject to the laws of supply and demand. Again, costs may increase.

From a political point of view, the government will not pay for occupational accidents. This means, that wherever possible, any costs will be downloaded to a source outside of the provincial government coffers. This presently occurs with respect to ambulance service. Medical care [including the hospital stay, surgery, medication, and rehabilitation], as well as lost wages are covered by the Board and are borne by the subclass. So the cost of pre-hospital care services remains at the foot of the employer.

However, the Provincial Government has also promised the business community a reduction in the cost of doing business in this province. If this means a reduction of the so-called standards in Part 33 of the OHSR, this move may only have the effect of off-loading the costs of industry onto the taxpayer as opposed to actually reducing the costs. Alternatively, the actual costs will be born by individual employers and attendants. Therefore, the question of cost reduction is speculative.

The Association will argue that if the Board privatizes and deregulates the certification process, employers will find themselves in the same position as the predecessors in 1920. That is, the quality of first aid service will decrease, resulting in higher costs for the individual employer because of transportation costs of injured workers. Furthermore, the collective liability of all employers will increase because of higher hospital cost arising from poorer treatments.

In the end, the Association argues that this exercise at the least will be cost neutral over the long term. Sadly, only injured workers will needlessly suffer.

Conclusion

Occupational First Aid Attendants recognize that re-evaluation is a valuable tool that creates an efficient, economic and effective environment. We recognize that everyone suffers if there is regulation that constrains our abilities to improve. We are mindful that privatization has a role.

However, there must be a level and Board-supervised playing field in the world of first aid examinations and accreditation. Furthermore, there must be published standards. We see the benefits in examining how other jurisdictions administer their systems. However, the Board should not fetter its discretion by simply adopting a "cut and paste" approach. British Columbia has been a leader in first aid, and others have adopted our standards of training. The Association believes the approach must be to examine B.C.'s experience, and if necessary question the efficiency, economics and effectiveness of other standards.

A review of the Workers Compensation Act appears to call into question some of the Board's past practice of hurriedly composing regulation without giving its own responsibility under the Act due consideration. It is important to consider the section 107 purpose of Act. The Board should delete regulation relating to examinations and replace it with policy to cover standards for the examination, the examiner and an appeal process.

Let us not taint our future by allowing our descendants to point back at the history that we are about to create and ask why we were so short sighted? We must consider carefully what we do now with the long-term benefits in mind, particularly our future costs. We must consider carefully and make wise choices.

Re: Amendments to Part 33, OH&S Regulation.

Addendum

Dear Sir or Madam,

We thank the Panel of Administrators for considering our oral and written submission of April 30, 2002. The Association draws the Panel's attention to the Throne Speech in this sitting of the Legislature, where the government announced its intention to make changes to the Workers Compensation Act. Recent media reports suggest that changes are to be tabled in the Legislature as early as May 6, 2002. Therefore, because the statutory premise upon which we are relying may change, we respectfully request an extension to the deadline for submissions. We ask for an additional 30 days.

Following the oral presentation phase of the Public Hearings on April 30, 2002 in Richmond, the Association would like to add to, and reinforce its written submission with the following summary.

Additional Submission from the Association

Corrupt and Unethical Examinations – The Association raises these unpalatable concepts for the purpose of ensuring the highest standards in First Aid examinations. This discussion is not an exercise in punishing wrongdoers nor is it a witch-hunt. Rather the Board must make regulation that would stop the wrongdoing.

Having said this, the Board must create a standard that regulates the price and conditions of a contract for examination. The goal is to create objective standards to measure an impugned

examination for corruptness or unethical behaviour. The Board must make the objective of the standard as one that says that the candidate applying for a First Aid certificate is paying for an examination and NOT paying for a certificate. Furthermore, the Board must have the staff to inspect and enforce these regulations.

Once the Board has set down in Regulation standards for examination, the Board must have penalties that are proportional to violations. They must be proportional to the individuals and schools who contravene the Regulation, and severe enough to act as a general deterrent to others. The Association points to the section 196 provision of the Act and Prevention Manual item D12-196-1 as the model to consider.

The Association argues that this is an issue for the Panel and not simply the contractual affairs of two individuals. This is because when these contracts are entered into, there is the fiduciary interest of injured workers in front of the examiner and candidate. We trust the Board would recommend to the Minister the necessary statutory amendments that would expand Board authority to impose a penalty against individuals.

Civil Liability of Examiners – The Association draws attention to the duty of care issues arising from examination. This arises when by intent or by omission, an examiner issues a certificate when otherwise one may not have been issued. Under section 10 of the Act, workers and employers are statute barred from being sued for duty of care breaches. If individuals who are neither a worker, nor an employer breach the duty of care an action could be brought before the courts. The Association argues that if the Board pursues the notion of private examinations, it must advise potential examiners of this civil liability.

Should the Board allow examiners to purchase "personal option protection" insurance, the Board must regulate, by way of standards, the entire examination process, including the setting of fees. The Association argues this is essential because if unregulated, the employers of the Province would bear the collective liability (claims) arising from poorer treatments from less competent, but otherwise certified, attendants.

Presentations Made to the Panel from Stakeholders

The majority of presenters seemed frustrated by the lack of a plan of action on the part of the WCB; and in the absence of such a plan of action were in favour of the status quo. Some of the positive aspects of the present system pointed out in oral presentations were:

Quality of training - With course material, instruction, examination and certification all under one roof, the overall quality of attendant being produced is considered excellent. Not only is the end product very good due to examiner experience but the statistical information is immediately available for both course improvement and further action within the Prevention Department.

Impartiality of examinations - Although there have been some specific concerns in the past, the examinations for OFA 2 and OFA 3 certification in this Province are all completed by Board Officers and produce the best occupational First Aid attendants in the world.

Quality Assurance with respect to certification and the certificate - With no standards in place, the only assurance of any quality is the present system, all under the one roof of a government agency. The creation of a tribunal to oversee standards and adjudicate examination disputes would be considered an improvement in the present system and a necessity in a privatized system.

Resultant quality of the service to industry - best industrial standard in the world. Privatization without the appropriate written standards would certainly result in a substantial loss of service quality to both British Columbia industry and the workforce, as well as costing more in the long run.

There were some areas under which even the WCB umbrella could stand some improvement:

Keeping pace with Provincial / National / World standards - This is one area in which the WCB has been historically slow to act. However, a tribunal overseeing standards may improve their reaction time in this area as well as improve treatments and the resultant health of the workforce and the costs to industry.

Keeping pace with technology, specifically with reference to AED's & Pulse Oximeters - Our B.C. OFA 3 has just recently lost equivalency with Alberta's AR48/2000 Advanced First Aid due primarily to the lack of AED training in the B.C. course.

We believe that there is still room for improvement, particularly in the area of published standards for all three levels of Occupational First Aid, with a priority placed on developing published OFA 1 standards since external examiners are already in place and examining candidates for this certificate.

Sincerely,

Mark Luttrell, President.