James J. Campbell
Commissioner

The Commonwealth of Massachusetts

Department of Industrial Accidents
600 Washington Street
Boston, Mass. 02111

CIRCULAR LETTER NO. 265

TO: ALL INTERESTED PARTIES

FROM: JAMES J. CAMPBELL, COMMISSIONER

DATE: APRIL 28, 1992

RE:
- NEW SECTION 15 GUIDELINES EFFECTIVE JUNE 1, 1992;
- GUIDELINES FOR DISFIGUREMENT AND LOSSES-OF-FUNCTION UNDER SECTION 36 EFFECTIVE IMMEDIATELY;
- FORM 124A: ARBITRATION AWARD COVER SHEET;
- FORM 125: HEALTH CARE COMPLAINT FORM FOR EMPLOYERS, EMPLOYEES AND INSURERS; AND
- FORM 126: (REVISED) EMPLOYEE EARNINGS REPORT.

James J. Campbell
Commissioner

The Commonwealth of Massachusetts

Department of Industrial Accidents
600 Washington Street
Boston, Mass. 02111

TO: ALL INTERESTED PARTIES

FR: WILLIAM A. MCCARTHY, ADMINISTRATIVE LAW JUDGE

SUBJECT: NEW SECTION 15 GUIDELINES EFFECTIVE JUNE 1, 1992

Because § 39 of c. 398 of the Acts of 1991 amended G.L. c. 152, § 15, a further revision of the format for preparation of petitions for approval of settlement under § 15 is necessary. Since the statutory revision is procedural, it affects all cases regardless of the date of injury.

The new guidelines are attached hereto. After June 1, 1992, petitions which do not conform to the new format will be returned to the petitioner for revision. Effective immediately, all petitions should be directed to:

William A. McCarthy
Administrative Law Judge
Department of Industrial Accidents
600 Washington Street
Boston, Ma. 02111

INSTRUCTIONS FOR PREPARATION OF PETITION FOR APPROVAL OF SETTLEMENT UNDER GENERAL LAWS, CHAPTER 152, SECTION 15

1. SET OUT **EACH** QUESTION FOLLOWED BY YOUR ANSWER. IF A QUESTION IS NOT APPLICABLE, PLEASE SO INDICATE.

2. IN ADDITION TO THE ORIGINAL, PLEASE FILE A **SUFFICIENT** NUMBER OF COPIES SO THAT EACH INTERESTED PARTY WILL RECEIVE ONE. SEND ONE COPY ONLY OF THE DOCUMENTS REQUIRED BY QUESTION #14.

3. THE PETITIONER MUST ALSO SUBMIT AN ENVELOPE **WITH SUFFICIENT POSTAGE** ADDRESSED TO THE ATTORNEY WHO FILED THE PETITION. THE APPROVED COPIES WILL BE RETURNED IN THE ENVELOPE PROVIDED AND THE FILING ATTORNEY WILL BE RESPONSIBLE FOR DISTRIBUTING THE APPROVED COPIES TO THE PARTIES.

4. IF THE PETITION IS ACCEPTED IN THE FORM SUBMITTED, THE REVIEWING BOARD WILL APPROVE AND RETURN ALL COPIES TO THE FILING ATTORNEY, USUALLY WITHIN FOURTEEN DAYS.

5. SUBMIT THE ORIGINAL AND COPIES OF THE PETITION TO:

WILLIAM A. MCCARTHY
ADMINISTRATIVE LAW JUDGE
DEPARTMENT OF INDUSTRIAL ACCIDENTS
600 WASHINGTON STREET
BOSTON, MA. 02111

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF
INDUSTRIAL ACCIDENTS

BOARD NO.

PETITION FOR APPROVAL OF
THIRD PARTY SETTLEMENT UNDER G.L. c. 152, §15

_____ Plaintiff/Employee

_____ Employer

_____ Workers' Compensation Insurer

_____ Third Party

_____ Third Party Insurer

The above-named parties request the reviewing board to approve a third party settlement under G.L. c.152, §15. Following are the terms and conditions of the settlement.

1. The plaintiff/employee and the workers' compensation insurer are entitled to a hearing before the board or the reviewing board acts on the petition. Do the parties: (please check one)

   _____ Request such a hearing?

   _____ Waive their right to a hearing?

2. Describe in detail the accident, event, incident or series of incidents which form the basis for the workers' compensation claim and the third party claim.

3. Briefly describe the injuries and the course of medical treatment.

4. Set out the periods of disability.

5. Set out the amounts paid by the workers' compensation insurer and identify the secttions of c. 152 under which payment was made, i.e. § 31, 34, 35, etc.

6. Evaluate the liability of the third party in the tort claim and state why settlement is advisable.

7. What is the total amount of the proposed third party settlement?

8. For purposes of § 15, "excess" means the amount by which the gross tort settlement exceeds the total amount of compensation paid.
What, if any, is the amount of the "excess"?

9. How much of the "excess", if any, will be subject to offset against any future compensation which might be due?

10. How much of the "excess", if any, is to be allocated to the spouse or other family members who may have claims arising from the injury which is the subject of the settlement?

11. How will the third party settlement be apportioned among the plaintiff/employee, plaintiff's spouse, or other family members, the workers' compensation insurer, and counsel for the parties?

12. How will counsel fees and expenses in the third party claim be apportioned among the plaintiff/employee, plaintiff's spouse or other family members, and the workers' compensation insurer?

13. If the workers' compensation case will remain open after the third party settlement, set out the agreement between plaintiff/employee and the workers' compensation insurer respecting reallocation of the legal fee as required by Hunter v. Midwest Coast Transport, Inc. et al., 400 Mass 779 (1987).

14. a. If expenses are being reimbursed attach receipted bills or other appropriate proof of payment. **Send one copy only.**

    b. If the workers' compensation case has been settled, or is proposed for settlement, attach a copy of the lump sum agreement. **Send one copy only.**

    c. Attach a copy of the contingent fee agreement or explain the absence of such an agreement. **Send one copy only.**

15. List any amounts paid or payable to the plaintiff/ employee by the Workers' Compensation Trust pursuant to the provisions of G.L. c. 152, § 65 subsections:

(2)(d) (payment of vocational rehabilitation benefits pursuant to G.L. c. 152, § 30H)
(2)(e) (payment of approved claims to employees of uninsured employers)
(2)(f) (payment of approved fellow-worker claims pursuant to G.L. c. 152, § 26)

16. List any amounts paid or payable to the workers' compensation insurer by the Workers' Compensation Trust Fund pursuant to G.L. c. 152, § 65 subsections:

(2)(a) (reimbursement of cost-of-living adjustments pursuant to G.L. c. 152, §§ 31, 34A)
(2)(b) (reimbursement of adjustments to weekly benefits pursuant to G.L. c. 152, § 35C)
(2)(c) (reimbursement of payments relating to second injuries pursuant to G.L. c. 152, § 37)
(2)(g) (reimbursement of payments relating to second injuries pursuant to G.L. c. 152, § 37A)

Signed under the penalties of perjury this _____ day of _____, 19____.

/s/
Plaintiff/Employee

NAME
ADDRESS
TEL. #

/s/
Attorney/Representative for Workers' Compensation Insurer

NAME
ADDRESS
TEL. #

/s/
Attorney for Plaintiff/Employee

NAME
ADDRESS
TEL. #

/s/
Attorney/Representative for Third Party Insurer

NAME
ADDRESS
TEL. #

/s/
Attorney for the Workers' Compensation Trust Fund
(Only if amounts are listed in Question #15 or #16)

NAME
ADDRESS
TEL. #

The foregoing petition adequately recites the terms, allocations and reasons for the settlement of the third party claim. Accordingly, the reviewing board approves the petition.

If the insurer recovers previously paid workers' compensation benefits as a result of this settlement, it shall submit a revised statistical unit report to the appropriate rating bureau within sixty (60) days of recovery, pursuant to General Laws Chapter 152, Section 53A (4).

Administrative Law Judge
For The Reviewing Board

or

Administrative Judge
For The Board

DATE:

James J Campbell
Commissioner

The Commonwealth of Massachusetts

Department of Industrial Accidents
600 Washington Street
Boston, Mass. 02111

TO: INSURERS, SELF-INSURERS, WORKERS' COMPENSATION AGENTS OF DEPARTMENTS OF THE COMMONWEALTH AND COUNTIES, CITIES, TOWNS AND DISTRICTS SUBJECT TO CHAPTER 152 OF THE MASSACHUSETTS GENERAL LAWS, AND OTHER INTERESTED PARTIES

FROM: JAMES J. CAMPBELL, COMMISSIONER

RE: GUIDELINES FOR DISFIGUREMENT AND LOSSES-OF-FUNCTION UNDER CHAPTER 152, §36.

DATE: APRIL 24, 1992

Attached are the updated Departmental Guidelines for calculating benefits for disfigurement and losses-of-function under M.G.L. c. 152, §36. Specifically, guidelines for **"disfigurements other than scars"** are reinserted in this edition.

The Department will use these Guidelines, effective immediately, for all injuries occurring on or after December 24, 1991. **These Guidelines supercede those distributed in Circular Letter No. 263 on February 7, 1992.**

If you have any questions or comments, please contact the conciliation manager or my office.

GUIDE FOR CALCULATING LOSS-OF-FUNCTION BENEFITS FOR INJURIES OCCURING ON OR AFTER DECEMBER 24, 1991

EYES

SECTION 36, PARAGRAPHS (a), (b) & (c)

a.	Total loss of vision, or reduction to 20/70 of one eye with glasses. Loss of single binocular vision.	SAWW x 39
b.	Total loss of vision, or reduction to 20/70 of both eyes with glasses.	SAWW x 96
c.	For any correctible permanent but partial reduction in acuity or field of vision, an amount in proportion to the total loss of use or the reduction to 20/70 of normal vision.	
	20/30	SAWW x 10
	20/35	SAWW x 12.5
	20/40	SAWW x 14.5
	20/45	SAWW x 19.5
	20/50	SAWW x 24.5
	20/60	SAWW x 34.5
	20/70	SAWW x 39

EARS

Section 36, paragraph (d)

d.	Total loss of hearing of one ear	SAWW x 29
	Total loss of hearing of both ears	SAWW x 77

ARMS

Section 36, paragraph (e)

For amputation or permanent loss of use - major arm.	SAWW x 43
For amputation or permanent loss of use - minor arm	SAWW x 39
For amputation or permanent loss of use - both arms.	SAWW x 96

Elbow joint - 65% of arm shoulder - 60% of arm

HANDS & WRIST

Section 36, Paragraph (f)

For amputation or permanent loss of use - major hand. SAWW x 34

For amputation or permanent loss of use - minor hand. SAWW x 29

For amputation or permanent loss of use - both hands. SAWW x 77

FINGERS

Thumb-40% of hand
Index-25% of hand
Middle-20% of hand
Ring-10% of hand
Little-5% of hand
One phalanx of thumb-75%
One phalanx of finger-45%
Two phalanges of finger-80%

LEGS

Section 36, Paragraph (g)

For amputation or permanent loss of use - either leg. SAWW x 39

For amputation or permanent loss of use - both legs. SAWW x 96

Knee - 50% of leg
Hip - 25% of leg

FEET & ANKLES

Section 36 Paragraph (h)

For amputation or permanent loss of use - either foot at any point above ankle joint. SAWW x 29

For amputation or permanent loss of use - both feet at any point above ankle joints. SAWW x 68

Large toe - 18% of foot (first joint - 13.5% of foot)
other toes - 5% of foot (first joint - 2% of foot)

GUIDE FOR CALCULATING LOSS-OF-FUNCTION BENEFITS FOR INJURIES ON OR AFTER DECEMBER 24, 1991

VARIOUS LOSSES OF FUNCTION

Section 36, Paragraph (j)

Spine	dorsal, lumbar sacrum total loss	SAWW x 32
	cervical - 75% of maximum	SAWW x 24
Equilibrium	Total loss of ability to stand	SAWW x 21
Lung	Loss of one lung	SAWW x 16
Kidney	Loss of one kidney	SAWW x 16
Language comprehension	Total loss	SAWW x 32
Sexual function	Total loss	SAWW x 10
Taste or smell	Total loss of either	SAWW x 16 (both = 32x)
Spleen	Loss of spleen	SAWW x 10
Urinary or bowel	Total loss of either	SAWW x 29
Teeth	Loss of each	SAWW x 1

Note: This list is not intended to be exhaustive of the functional losses compensable under § 36(1)(j).

THE AGGREGATE PAYMENT FOR ALL LOSSES OF FUNCTION UNDER SECTION 36(1)(J) MAY NOT EXCEED SAWW X 80

GUIDE FOR CALCULATING PURELY SCAR-BASED DISFIGUREMENTS
FOR INJURIES OCCURRING ON OR AFTER DECEMBER 24, 1991
MAXIMUM DISFIGUREMENTS AWARD = $15,000

Section 36, Paragraph (k)

FACE (Maximum $15,000)

Linear scar, no disc.	-	2 X SAWW per inch
Linear scar, with disc.	-	3.25 X SAWW "
Wide scar, no disc.	-	3.5 X SAWW "
Wide scar, with disc.	-	6.5 X SAWW "

HAND (22x SAWW)

Linear scar, no disc.	-	1 X SAWW per inch
Linear scar, with disc.	-	1.75 X SAWW "
Wide scar, no disc.	-	2 X SAWW "
Wide scar, with disc.	-	2.5 X SAWW "

(In no instance shall amount for disfigurements to fingers exceed allowances for amputations.)

NECK OTHER THAN FACE (22x SAWW)

Linear scar, no disc.	-	1 X SAWW per inch
Linear scar, with disc.	-	1.5 X SAWW "
Wide scar, no disc.	-	1.75 X SAWW "
Wide scar, with disc	-	2 X SAWW "

GUIDELINES FOR DISFIGUREMENTS OTHER THAN SCARS FOR INJURIES OCCURRING ON OR AFTER DECEMBER 24, 1991. MAXIMUM DISFIGUREMENTS AWARD= $15,000

	FACE	ARM (OTHER THAN HAND OR WRIST)	HAND & WRIST
VERY SLIGHT	1x - 6x	½x - 2x	1x- 4x
SLIGHT	6½x - 12½x	2½x - 4½x	4½x - 8½x
MODERATE	13x - 19x	5x - 7x	9x - 13x
SEVERE	19½x - 26½	7½x - 10½x	13½ - 17½x
VERY SEVERE	27x - (Maximum)	11x - 13x	18x - 22x (In no instance shall amounts for disfigurements to fingers exceed allowances listed for amputations listed on page 7)

	NECK & HEAD (OTHER THAN FACE)	CHEST & STOMACH	BACK
VERY SLIGHT	1x - 4x	½x - 2½x	½x - 2½x
SLIGHT	4½x - 8½x	3x - 5x	3x - 5½x
MODERATE	9x - 13x	6x - 8½x	6x - 8½x
SEVERE	13½x - 17½x	9x - 11½x	9x - 11½x
VERY SEVERE	18x - 22x	12x - 15x	12x - 15x

	LEG (OTHER THAN FOOT)	FOOT
VERY SLIGHT	1x - 3x	1x - 3x
SLIGHT	3½x - 6½x	3½x - 6½x
MODERATE	7x - 10x	7x - 10x
SEVERE	10½x - 14x	10½x - 14x
VERY SEVERE	14½x - 18x	14½x - 18x (In no instance shall amounts for disfigurements to toes exceed allowances for amputations listed below.)

	GROIN	LIMP
VERY SLIGHT	½x - 1½x	1x - 6x*
SLIGHT	2x - 2½x	6½x - 12x*
MODERATE	3x - 4½x	13x - 19x*
SEVERE	5x - 6½x	19½x - 26½x (crutches or walker)
VERY SEVERE	7x - 8x	$15,000/Maximum (wheelchair) *Permanent need of a cane entitles one to 1½x

* Amount payable is not exceed $15,000.00

SCHEDULE OF PAYMENTS FOR DISFIGUREMENT
FOR THE AMPUTATION OF A HAND, FINGERS,
OR PARTS THEREOF

The numerals 1, 2, 3, 4, 5 shall designate respectively the following:

1. Thumb
2. Second or Index
3. Third or Middle
4. Fourth or Ring
5. Fifth or Little

Fingers and Combinations						TOTAL HAND 22 X SAWW
2	1	2	3	4	5	22 X SAWW
3	1	2	3	4		22 X SAWW
4	1	2	3		5	22 X SAWW
5	1	2		4	5	22 X SAWW
6	1		3	4	5	22 X SAWW
7	1	2	3			22 X SAWW
8	1	2		4		22 X SAWW
9	1	2			5	22 X SAWW
10	1		3		5	22 X SAWW
11	1		3		5	22 X SAWW
12	1			4	5	22 X SAWW
13	1	2				22 X SAWW
14	1		3			22 X SAWW
15	1			4		22 X SAWW
16	1				5	22 X SAWW
17	1					16.5 X SAWW
18		2	3	4	5	22 X SAWW
19		2	3	4		22 X SAWW
20		2	3		5	22 X SAWW
21		2		4	5	22 X SAWW
22		2	3			16.5 X SAWW
23		2		4		16.5 X SAWW
24		2			5	16.5 X SAWW
25		2				7.5 X SAWW
26			3	4	5	22 X SAWW
27			3	4		16.5 X SAWW
28			3		5	16.5 X SAWW
29			3			7.5 X SAWW
30				4	5	16.5 X SAWW
31				4		7.5 X SAWW
32					5	7.5 X SAWW

APPLICABLE TO INJURIES OCCURRING
ON AND AFTER DECEMBER 24, 1991
MAXIMUM DISFIGUREMENTS AWARD = $15,000

Disfigurement Awards For Partial Loss of Fingers

One phalanx of 2nd, 3rd, 4th or 5th finger = 50% of finger.
Two phalanges of 2nd, 3rd, 4th or 5th finger = 90% of finger.
One phalanx of thumb = 90% of thumb.

Three Examples

EX. 1. If someone loses half a thumb and all of 2nd and 3rd fingers, then 90% + 100% + 100% divided by 3 = 96.7% of 22 X SAWW (from line 7 on the following page)

EX. 2. If someone loses one phalanx of 2nd finger, 2 phalanges of a 3rd finger and all of 4th finger, then 50% + 90% + 100% = 240% divided by 3 = 80% of 22 X SAWW (from line 19)

EX. 3. If someone loses one phalanx of each of 2nd and 3rd fingers, then 50% + 50% = 100% divided by 2 = 50% of 16.5 X SAWW (from line 22).

Disfigurement Awards for Amputations of Toes or Parts Thereof

Large toe	SAWW x 3
One phalanx thereof	SAWW x 2
Other toes	SAWW x 2
One phalanx thereof	SAWW x 1

THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF INDUSTRIAL ACCIDENTS
600 WASHINGTON STREET, 7TH FLOOR, BOSTON, MASSACHUSETTS 02111

TO BE FILED BY ARBITRATOR WITH AWARD PURSUANT TO SECTION 10B

ARBITRATION AWARD COVER SHEET

Instructions are on the reverse side. Please print or type:

1. Employee Name (Last, First, MI)	2. Employee Home Address (No. & Street, City, State, Zip Code)
3. Social Security Number*	4. Home Phone ( ) -
5. DIA Board Number	6. Employee's Attorney Name
7. Employer's Name	8. Insurer's Name
9. Arbitrator's Name	10. Arbitrator's Business Address
11. Arbitrator's Firm Name	12. Firm's Address
13. Start Date of Arbitration	14. Date Award Filed
15. Is this insurer liable for payment of compensation on this case?	___ Yes ___ No

COMPENSATION TYPES AND AMOUNTS AWARDED

SECTION OF LAW	ONE TIME PAYMENT	OR WEEKLY AMOUNT	FROM	TO
	$	$	/ /	/ /
	$	$	/ /	/ /
	$	$	/ /	/ /

15. Preparer's Name	
16. Preparer's Signature	17. Date

* Disclosing Social Security Number is voluntary. It will assist in the processing of your report.

FORM # 124A (4/92)

James J. Campbell
Commissioner

The Commonwealth of Massachusetts

Department of Industrial Accidents

600 Washington Street
Boston, Mass. 02111

HEALTH CARE COMPLAINT FORM FOR EMPLOYERS, EMPLOYEES, AND INSURERS

M.G.L. c. 152, §13 (3) requires the Health Care Services Board to receive and investigate complaints from employees, employers and insurers regarding health care providers who provide services under this chapter who are alleged to have engaged in patterns of:

(i) discrimination against compensation claimants,
(ii) overutilization of procedures,
(iii) unnecessary surgery or other procedures, or
(iv) other inappropriate treatment of compensation recipients.

Where the Health Care Services Board finds a pattern of abuse, it refers its findings to the appropriate board of registration.

* * * * * * * * * * *

TO FILE A COMPLAINT, COMPLETE THE FOLLOWING:

Name of Health Care Provider; type of provider: _____

Address of Health Care Provider: _____

_____

(Telephone Number) _____

Description of complaint including treatment(s) or procedure(s) and relevant dates (attach additional sheets if necessary)

_____

_____

_____

_____

Attach any and all documentation to support the complaint.

Signature _____
Printed Name _____
Address _____
Telephone _____

Send to:
Complaints / Health Care Services Board
C/O Donna Ward, R.N., O.H.N.
Department of Industrial Accidents
600 Washington Street
Boston, Ma. 02111

4/92-B.N.
Form 125

The Commonwealth of Massachusetts

Department of Industrial Accidents

600 Washington Street
Boston, Mass. 02111

James J. Campbell
Commissioner

EMPLOYEE EARNINGS REPORT — FORM 126 (Revised 4/92)

PLEASE TYPE OR PRINT:

Employee Name	Social Security #	Date of Injury
		/ /

Employee Mailing Address	Employee Residential Address (If diff. from mailing address)

Employee's Attorney's Name and Address	DIA Board #	Date of Birth
		/ /

In accordance with M.G.L. ch 152 Sec. 11D

Any employee entitled to receive weekly compensation shall have an affirmative duty to report to the insurer all earnings, including wages or salary from self-employment.

Failure to report any earnings may subject the employee to civil or criminal penalties.

Failure to return this form within 30 days of the insurer's request may result in the insurer's suspension of the employee's weekly benefits.

Week No	Year: Week Ending Month	Day	Gross Amount Before Taxes; or Unemployment Insurance Payment
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			

Week No	Year: Week Ending Month	Day	Gross Amount Before Taxes; or Unemployment Insurance Payment
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			
	TOTAL:		

Name/Address of Employer or Other Payor of Wages, Commissions, U.I. Benefits, Etc.

☐ (X If Appropriate) I have not received earnings for any period I was entitled to receive Workers' Compensation Benefits.

If more than one payor please list additional names and addresses on back.

Any incarcerations pursuant to a felony or misdemeanor conviction during time period claiming Workers' Compensation Benefits?

☐ Yes ☐ No If Yes, please specify dates: / / - / /

If more than one incarceration please list additional dates on back.

Employee's Signature: Date (MM/DD/YY): / /

ABOVE INFORMATION PRESENTED AND SIGNED UNDER PAINS AND PENALTIES OF PERJURY.

Disclosing social security number is voluntary. It will assist in the processing of your report.