

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK  
TRIAL DIVISION  
JUDICIAL DISTRICT OF MONCTON

B E T W E E N :

**DARRELL TIDD AS LITIGATION GUARDIAN OF  
DEVAN TIDD and REID SMITH AS LITIGATION  
GUARDIAN OF AARON SMITH**

Plaintiffs

- and -

**PROVINCE OF NEW BRUNSWICK and REGIONAL  
HEALTH AUTHORITY A C/O VITALITÉ HEALTH  
NETWORK**

Defendants

Proceeding Under the *Class Proceedings Act, RSNB 2011, c. 125*

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**SETTLEMENT AGREEMENT  
(AS AGREED UPON ON JUNE 14, 2023 AND AMENDED ON JUNE 28, 2023)**

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**WHEREAS** the Plaintiffs brought this class action under the *Class Proceedings Act, RSNB 2011, c. 125* (the “Act”) for alleged negligence, breach of fiduciary duty and breaches of the *Canadian Charter of Rights and Freedoms* in respect of the Defendants’ operation and management of the Restigouche Hospital Centre (“RHC”) resulting in alleged physical and sexual harm to some Class Members;

**AND WHEREAS** the Defendants have denied the allegations in the Plaintiffs’ pleadings;

**AND WHEREAS** counsel for the Parties to this Settlement Agreement (the “**Agreement**”) have conducted a thorough analysis of the claims, and have taken into account the extensive burdens and expense of litigation, including the risks of going to trial;

**AND WHEREAS** in consideration of all the circumstances and after extensive arm's length negotiations, both directly and with the assistance of a mediator, the Parties to this Settlement

Agreement wish to settle any and all issues among themselves in any way relating to the Action (hereinafter defined);

**AND WHEREAS** the Parties executed a term sheet on March 31, 2023 ("**Term Sheet**") setting out the main terms of agreement between the Parties subject to the execution of this Agreement;

**AND WHEREAS** after their investigation, the Plaintiffs and Class Counsel have concluded that this Agreement provides substantial benefits to the Class Members and is fair, reasonable and in the best interests of the Class Members;

**NOW THEREFORE** the Parties to this Agreement agree to settle all matters related to the Action (as herein defined) on the following terms and conditions:

### **Definitions**

1. For the purposes of this Settlement Agreement and attached Schedules (hereinafter collectively the "**Agreement**"), the following definitions apply:
  - (a) "**Action**" means the class proceeding, including all amendments thereto, commenced by Darrell Tidd as litigation guardian of Devan Tidd, and Reid Smith as litigation guardian of Aaron Smith in the New Brunswick Court of King's Bench against The Province of New Brunswick and Regional Health Authority A c/o Vitalité Health Network, having Court File No.: MC-76-21, and certified as a class proceeding by Order of the Court on October 1, 2021;
  - (b) "**Administration Costs**" means all costs to administer the Claims Process and distribute the Settlement Fund, including the costs of the Claims Administrator and the Claims Supervisor, and the costs of implementing the Notice Plan;
  - (c) "**Approval Hearing**" or "**Settlement Approval Hearing**" means the Court hearing to approve the Settlement of the Action;
  - (d) "**Approval Order**" means the Order of the Court approving the Settlement;

- (e) **“Approved Claims”** means Claims assessed by the Claims Administrator and/or Claim Supervisor pursuant to the Claims Process and, approved by the Claims Administrator and/or Claims Supervisor for payment from the Settlement Fund;
- (f) **“Certification Order”** means the Certification Order of Chief Justice DeWare dated October 1, 2021;
- (g) **“Claim”** means a claim made by a Claimant by filing a Claim Form with the Claims Administrator in accordance with the Claims Process;
- (h) **“Claimant”** means any Settlement Class Member who files a Claim Form in accordance with the Claims Process;
- (i) **“Claims Administrator”** means the persons or entities agreed upon by the Parties or appointed by the Court to administer the Claims Process;
- (j) **“Claims Deadline”** means the date by which all Claims must be submitted to the Administrator in order to be entitled to compensation pursuant to the Claims Process, and as defined in Schedule “A” hereto;
- (k) **“Claims Process”** means the procedure for the submission, review and determination of Claims set out in Schedule “A” hereto;
- (l) **“Claims Supervisor”** means the person agreed to by the Parties and/or appointed by the Court to perform such roles as specified by the Claims Process;
- (m) **“Class”, “Class Member” or “Class Members”** is defined as all persons who were admitted to or resided at the RHC between January 1, 1954 and the present who were alive as of May 24, 2017, including any person who is not a resident of New Brunswick and validly

opts into the Action pursuant to this Agreement and excluding any person who validly opts out of the Action pursuant to this Agreement;

(n) “**Class Counsel**” means Koskie Minsky LLP;

(o) “**Class Period**” means the time period from January 1, 1954 and October 1, 2021 in respect of Class Members who claim that they were sexually assaulted and the time period from May 24, 2004 to October 1, 2021 for all other Class Members;

(p) “**Counsel Fees**” means the fees, disbursements and all applicable taxes awarded to Class Counsel as determined and approved by the Court at the Approval Hearing and pursuant to s. 40 of *The Class Proceedings Act*;

(q) “**Court**” means the Court of King's Bench of New Brunswick;

(r) “**Court Approval Date**” means the date that the Court issues an Order approving this Settlement;

(s) “**Defendants**” means the Defendant, the Province of New Brunswick and the Defendant, Regional Health Authority A c/o Vitalité Health Network;

(t) “**Eligible Claimant**” means a Claimant determined to be eligible for compensation pursuant the Claims Process and as determined by the Claims Administrator;

(u) “**Excluded Claim**” means a Claim by a person who has validly opted out of the Action in writing or who has previously settled claims against one or both of the Defendant and has executed a release, or consent judgment dismissing in favour of one or both of the Defendants in relation to matters that are the subject of this Action, or that otherwise presents a bar to recovery in the Action;

- (v) "**Honorarium**" means an honorarium, if any, to be paid to the Plaintiffs in an amount determined by the Court at the Approval Hearing or thereafter;
- (w) "**Litigation Funder**" means Augusta Pool 1 Canada Limited;
- (x) "**Notice of Approval Hearing**" means the bilingual Court-approved notice to the Class Members of the Approval Hearing;
- (y) "**Notice of Settlement Approval**" means the bilingual Court-approved notice to the Class Members advising that the Court has approved the Settlement and advising of the Claims Process;
- (z) "**Notice Plan**" means the plan to disseminate the Notice of Certification, Settlement Approval and Notice of Approval Hearing to the Class approved by the Court based on the plan agreed to by the Parties;
- (aa) "**New Brunswick**" means the Defendant, the Province of New Brunswick;
- (bb) "**Medical Evidence Fees**" means reasonable fees, up to a maximum of \$1,000.00 per Claimant, charged by a professional providing the medical evidence necessary for a Level 4 Sexual Assault (as defined in the Claims Process);
- (cc) "**Releasees**" means individually and collectively New Brunswick and Regional Health Authority A C/O Vitalité Health Network, and each of its past, present and future officers and directors, employees, representatives, administrators, insurers, volunteers, agents and their respective heirs, successors, executors and assigns;
- (dd) "**Settlement**" or "**Settlement Agreement**" means this Agreement, as executed by the Parties or their representatives, including the attached Schedules;

(ee) **“Settlement Fund”** means the sum of \$17,000,000.00 which the Defendants have agreed to pay to settle the Action, inclusive of compensation for Approved Claims, Honorarium, legal costs and disbursements, Counsel Fees, and Administration Costs;

(ff) **“Settlement Class”** means

(i) All persons who were admitted to or resided at the RHC between May 24, 2004 and October 1, 2021, and who were alive as of May 24, 2017; and

(ii) All persons who were admitted to or resided at the RHC between January 1, 1954 and October 1, 2021, and who were alive as of May 24, 2017, and claim that they were sexually assaulted;

and shall include any persons who is not a resident of New Brunswick and validly opts into the Action pursuant to this Agreement and excludes any person who validly opts out of the Action pursuant to this Agreement;

(gg) **“Sexual Assault Subclass”** means persons who meet the definition set out in paragraph 1(ff)(ii) above;

(hh) **“Vitalité”** means the Defendant, Regional Health Authority A c/o Vitalité Health Network.

### **Settlement Fund**

2. As defined herein, the Settlement Fund will be used to pay the Approved Claims, Counsel Fees, Litigation Funder’s entitlements, and Honorarium, in accordance with this Settlement Agreement in full and final settlement of the Action. New Brunswick shall hold the Settlement Fund from the Court Approval Date until such time as all payments required by this Settlement Agreement have been made.

3. The Settlement Fund shall be paid out as follows:

(a) First to pay all of Augusta Pool 1 Canada Limited's entitlements under the Litigation Funding Agreement approved by the Court on August 4, 2020;

- (b) Second to satisfy Counsel Fees, disbursements, HST and Honoraria;
  - (c) Third to cover all Administration Costs;
  - (d) Fourth to satisfy Medical Evidence Fees;
  - (e) Fifth to satisfy the payment of the amounts set out in Schedule "B" according to the terms therein;
  - (f) Any amounts remaining in the Settlement Fund after the payments in clause 3(a) through (e) inclusive have been made will revert to New Brunswick. Any interest accrued on the Settlement Fund will revert to New Brunswick.
4. New Brunswick shall pay to Class Counsel the Counsel Fees and Honorarium in trust, as approved by the Court, within thirty (30) days of the Court Approval Date.
  5. New Brunswick shall pay the Litigation Funder's entitlements to the Litigation Funder as set out in the Litigation Funding Agreement approved by the Court on August 4, 2020, within thirty (30) days of the Court Approval Date.
  6. The Claims Administrator, along with their cost estimate, will be mutually agreed upon by the Parties and approved by the Court.
  7. The Claims Supervisor will be mutually agreed upon by the Parties and approved by the Court.
  8. The Notice Plan will be mutually agreed upon by the Parties and approved by the Court. Any disputes relating to the design, content or dissemination of the Notice Plan shall be resolved by the Court. Neither party will appeal the Court's decision on the Notice Plan.
  9. The Claim Form will be mutually agreed upon by the Parties and approved by the Court. Any disputes relating to the design or content of the Claim Form shall be resolved by the Court. Neither party will appeal the Court's decision on the design or content of the Claim Form.
  10. The Claims Administrator may pay Medical Evidence Fees, which shall not exceed \$1,000.00 total per Claimant, and may be paid by the Claims Administrator out of the Settlement Fund in the following two scenarios:

- (a) Upon presentation of receipt(s) of payment issued by the professional for payment already made by a Claimant, the Medical Evidence Fees shall be payable by the Claims Administrator directly to the Claimant; and
  - (b) Where payment has not yet been rendered by the Claimant, upon receipt by the Claims Administrator of a written confirmation from the professional indicating that a request for medical evidence has been made and the amount required for payment, the Medical Evidence Fees shall be paid directly by the Claims Administrator to the professional.
- 11. In either circumstance set out in paragraph 10 herein, the Claims Administrator shall provide to New Brunswick and Vitalité a monthly accounting of amounts requested and paid for the Medical Evidence Fee.
- 12. New Brunswick shall pay to the Claims Administrator amounts for payment of Approved Claims and Medical Evidence Fees from time to time as the Claims Administrator requests.
- 13. The Parties agree, and New Brunswick confirms that, subject to operation of applicable provincial law, it is intended that there be no deduction or clawback from social or income assistance programs as a result of payments to Eligible Claimants on account of Approved Claims. New Brunswick confirms that payment of Approved Claims will be deemed not to be a form of income replacement, or compensation for loss of income. New Brunswick confirms that payment of Approved Claims will not affect the eligibility for or duration of social assistance or other benefits available to Eligible Claimants in New Brunswick.
- 14. The Parties agree that when commenting publicly on the Action or this Settlement, they shall:
  - (a) Inform the inquirer that the Action has been settled to the satisfaction of all parties;
  - (b) Inform the inquirer that it is the view of the Parties that the settlement of the Action is fair, reasonable and in the best interests of the Settlement Class; and
  - (c) Decline to comment in a manner that casts the conduct of any party in a negative light or reveals anything said during the settlement negotiations.



## **COURT APPROVAL**

15. The Parties agree to adjourn all steps in the Action pending a determination by the Court on whether to approve the Settlement.
16. It is understood and agreed that Court Approval of this Settlement Agreement and Claims Process is required. The Parties will arrange for the Settlement Approval Hearing to be heard as soon as possible following the execution of this Settlement Agreement. Prior to the Approval Hearing, the Notice of Approval Hearing is to be ordered and directed by the Court. The Parties shall move before the Court with dispatch to have the Settlement and all necessary advance steps approved by the Court at the earliest possible opportunity.
17. The Parties agree to file motion materials, as necessary, with respect to the motion to approve the Settlement and counsel shall act reasonably and in good faith on the content of such motion materials.
18. Class Counsel shall bring a motion for approval of their requested Counsel Fees by the Court at the time of the Settlement Approval Hearing. The Defendants shall take no position on Class Counsel's motion to approve their requested Counsel Fees.
19. On the Court Approval Date, each Settlement Class Member, whether or not he or she or they submits a Claim or otherwise receives compensation in accordance with the Claims Process, will be deemed by this Settlement Agreement to have completely and unconditionally released, remised and forever discharged the Releasees of and from any and all actions, counterclaims, causes of action, claims, whether statutory or otherwise and demands for damages, indemnity, contribution, costs, interest, loss or harm of any nature and kind whatsoever, known or unknown, whether at law or in equity, and howsoever arising which they may heretofore have had, may now have or may hereafter have whether commenced or not in connection with all claims relating to the matters raised in the Action, except for any Claimant's entitlement to be paid in respect of an Approved Claim pursuant to the terms hereof. In respect of the Sexual Assault Subclass, this release shall only apply to claims of sexual assault relating to the matters raised in the Action.

20. On the Court Approval Date, each Settlement Class Member will be forever barred and enjoined from commencing, instituting or prosecuting any action, litigation, investigation or other proceeding in any Court of law or equity, arbitration, tribunal, proceeding, governmental forum, administrative forum or any other forum, directly, representatively, or derivatively, asserting against the Releasees any claims relating to the matters raised in the Action. In respect of the Sexual Assault Subclass, this provision shall only apply to claims of sexual assault relating to the matters raised in the Action. Upon completion of the administration of the settlement, The Plaintiffs will seek a Consent Order for Discontinuance, along with the Defendants, to discontinue the action.
21. On and after the Court Approval Date, in the event that a Class Member commences, institutes or prosecutes any action, litigation, investigation or other proceeding in any Court of law or equity, arbitration, tribunal, proceeding, governmental forum or any other forum, directly, representatively, or derivatively, relating to the matters raised in the Action, against any person, firm, corporation, or administrative entity or regulator who may claim contribution or indemnity from the Releasees under the provision of any statute or otherwise, and the Releasees or any of them are added to such proceeding in any manner whatsoever, whether justified in law or not, such Class Member will immediately discontinue the proceedings and claims or otherwise narrow the proceedings and claims to exclude the several liability of the Releasees. This Settlement Agreement shall operate conclusively as an estoppel in the event of any claim, action, complaint, or proceeding which might be brought in the future by such Class Member with respect to the matters covered herein. This Agreement may be pleaded in the event that any such claim, action, complaint or proceeding is brought, as a complete defence and reply, and may be relied upon in any proceeding to dismiss the claim, action, complaint or proceeding on a summary basis and no objection will be raised by such Class Member in any subsequent action that the parties in the subsequent action were not privy to the formation of this Agreement.

**No Admission, No Use**

22. This Settlement Agreement, whether or not approved by the Court, and any proceeding taken pursuant to this Settlement Agreement are for settlement purposes only. Neither the fact of, nor any provision contained in this Settlement Agreement or the schedules hereto, or any action

taken hereunder, shall be construed as, offered in evidence as, and/or deemed to be evidence of a presumption, concession, or admission of any kind by the Parties of the truth of any fact alleged or the validity of any claim or defence that has been, could have been in the future might be asserted in any litigation, court of law or equity, proceeding, arbitration, tribunal, government action, administrative forum, or any other forum, or of any liability, responsibility, fault, wrongdoing or otherwise of any Parties except as may be required to enforce or give effect to the settlement and this Settlement Agreement. For greater clarity, the Defendants deny the truth of the allegations in the Action and deny any and all liability whatsoever. This settlement is agreed to with an express denial of liability.

### **Termination**

23. This Settlement Agreement shall, without notice, be automatically terminated if the Court does not approve this Settlement Agreement. In the event of termination, this Settlement Agreement shall be deemed to be a without prejudice settlement discussion and shall have no further force or effect, save and except for this paragraph and paragraph 22, which shall survive termination.

### **General**

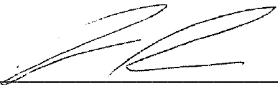
24. This Settlement Agreement shall be governed, construed and interpreted in accordance with the laws of the Province of New Brunswick.
25. This Settlement Agreement constitutes the entire agreement between the Parties and may not be modified or amended except in writing, on consent of the Parties, and with Court approval.
26. This Settlement Agreement may be signed (including electronic signatures) by the Parties in counterpart, and delivered electronically, which shall have the same effect and enforceability as a single executed document.

IN WITNESS WHEREOF, each of the Parties has caused this Settlement Agreement to be executed on his/her/their behalf by his/her/their duly authorized counsel of record, effective as of  
June 28, 2023  
\_\_\_\_\_.

**KOSKIE MINSKY LLP**

June 28, 2023

Date

  
\_\_\_\_\_

James Sayce/ Adam Tanel/ Sue Tan, KOSKIE MINSKY LLP

Counsel for the Plaintiffs and the Class

**COX & PALMER**

June 28, 2023

Date

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Talía C. Profit K.C./Véronique Guitard, COX & PALMER,

Counsel for the Defendant, Regional Health Authority A C/O Vitalité Health Network

**PROVINCE OF NEW BRUNSWICK**

June 28, 2023

Date

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Denis G. Thériault/Karine Arseneault, Office of the Attorney General

Counsel for the Defendant, Province of New Brunswick

**KOSKIE MINSKY LLP**

June 28, 2023

Date

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James Sayce/ Adam Tanel/ Sue Tan, KOSKIE MINSKY LLP

Counsel for the Plaintiffs and the Class

**COX & PALMER**

June 28, 2023

Date



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Talia C. Profit K.C./Véronique Guitard, COX & PALMER,

Counsel for the Defendant, Regional Health Authority A C/O Vitalité Health Network

**PROVINCE OF NEW BRUNSWICK**

June 29, 2023

Date



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Denis G. Thériault/Karine Arseneault, Office of the Attorney General

Counsel for the Defendant, Province of New Brunswick

## SCHEDULE "A" – CLAIMS PROCESS

### Definitions

1. The following definitions apply in this Schedule:
  - (a) **“Claim Form”** means the Claim Form as described herein, which shall be in the form of a solemn declaration, by oath either sworn or affirmed;
  - (b) **“Claims Deadline”** means twelve (12) months after the Court Approval Date;
  - (c) **“Class List”** means a list of Settlement Class Members that the Defendants shall generate and provide to Class Counsel and the Claims Administrator after the opt-out period, which shall be kept in the strictest of confidence and shall only be used for the purpose of administering the Claims Process;
  - (d) **“Compensation Grid”** means the grid of compensation to be allocated to each Claimant for the harms as set out at Schedule “B” hereto;
  - (e) **“Major Psychological Injury”** means prolonged major psychological trauma symptoms resulting in a diagnosis by a psychiatrist or psychologist of a mental illness/disorder recognized by the Diagnostic and Statistical Manual of Mental Disorders. The diagnosis must occur after the alleged Level 3 Sexual Assault incident(s) in question as per the Compensation Grid. Where a pre-existing diagnosis exists, medical evidence is required to show exacerbation of the pre-existing diagnosis;
  - (f) **“RHC Resident File”** means Settlement Class Members' individual files as retained by the Defendants;
  - (g) **“SDM”** means a Claimant's authorized Substitute Decision Maker, who is:
    - (i) appointed as a Committee by the Court, pursuant to *The Infirm Persons Act*, RSNB 1973, c I-8, or
    - (ii) appointed by the Court, pursuant to the *Personal Health Information Privacy and Access Act*, SNB 2009, c. P-7.05, or
    - (iii) granted a power of attorney pursuant to the *Enduring Powers of Attorney Act*, SNB 2019, c. 30.

This provision shall be modified accordingly to include decision-making assistants, decision-making supporters, or representatives, as the case may be, pursuant to the *Supported Decision-Making and Representation Act*, SNB 2022, c. 60 following its entry into force;

(h) “**Serious Physical Injury**” means physical injury that led or should have led to hospitalization or serious medical treatment by a physician; permanent or demonstrated long-term physical injury, impairment or disfigurement; loss of consciousness; broken bones; or a serious but temporary incapacitation such that bed rest or infirmary care of several days duration was required;

(i) “**Serious Sexual Assault**” means non-consensual oral, vaginal or anal penetration;

(j) “**Sexual Touching**” means non-consensual touching of another individual’s body, with a body part or an object, for sexual purposes; and

(k) “**Non-Consensual Sexual Behaviour**” means conduct involving sexual activity or behaviour that is performed without express and voluntary consent.

2. All other capitalized terms used in this schedule have the same meaning as in the Settlement Agreement.

### **Resident Files**

3. While the Settlement Class Member's RHC Resident File may not be required to make a Claim, it may be that a Settlement Class Member, or their SDM, will wish to obtain a copy of their RHC Resident File to assist in completing or supporting the Settlement Class Members' Claim. Any RHC Resident File requests made on or after the date of the Approval Order and within three (3) months after the Court Approval Date will be considered a request under the Resident File request process as follows (“**Resident File Request Process**”):

(a) Settlement Class Members’ requests for their RHC Resident File pursuant to this Resident File Request Process must be made to New Brunswick and Vitalité by the Settlement Class Member, or their SDM, to a mailing and email address to be specified in the Claim Form;

- (b) For this Resident File Request Process to apply, the request must be made to New Brunswick and Vitalité within three (3) months after the Court Approval Date;
- (c) If a Settlement Class Member requests their RHC Resident File within the timeframe set out in subparagraph (b), New Brunswick or Vitalité will produce the Resident File to the Settlement Class Member, or their SDM if appropriate, within three (3) months from the date of the request or such other time frame as New Brunswick and Vitalité and Class Counsel may agree or by Order of the Court;
- (d) If a Settlement Class Member or their SDM (if applicable) requests their RHC Resident File, New Brunswick or Vitalité may refuse to produce a portion or the entirety of the RHC Resident File should disclosure not be permitted by virtue of any applicable legislation;
- (e) Any request made for a RHC Resident File that is received by New Brunswick and/or Vitalité before the date of the Approval Order shall be treated as having been made outside of the Resident File Request Process and the timelines specified herein shall not apply;
- (f) Requests for RHC Resident Files received by New Brunswick and/or Vitalité after the deadline set out in subparagraph (b) shall be addressed outside the Resident File Request Process, and the timelines specified herein shall not apply;
- (g) The Parties hereto and the Settlement Class Members understand and acknowledge that applicable privacy legislation will apply to all requests for a RHC Resident File and therefore some information contained in that file may be redacted. New Brunswick and/or Vitalité will comply with all applicable legislation when responding to a Resident File Request; and
- (h) The Resident File Request Process is not intended to impact any individual's ability to request his/her/their RHC Resident File outside of this proceeding.

#### **Claims for Compensation**

4. There are two categories of compensation that may be payable to an Eligible Claimant. These are: Section A Claims and Section B Claims. A Claimant is only entitled to compensation for one category of compensation. In other words, a Claimant may not receive both Section A and Section B compensation and must identify the category of compensation they seek at the time the Claim Form is submitted.



5. Any person who wishes to claim compensation shall deliver to, or otherwise provide, the Claims Administrator with a completed Claim Form by the Claims Deadline. If the Claims Administrator does not receive a completed Claim Form and supporting documentation (where necessary) from a Class Member by the Claims Deadline, then the Claimant shall not be eligible for any compensation whatsoever, subject to paragraph 34 herein. Any person who is not a resident of New Brunswick and provides the Claims Administrator with a completed Claim Form by the Claims Deadline shall be deemed to have opted into the Action. Any person who is a resident of the Province of New Brunswick may opt out of this Action by delivering an opt-out form to the Claims Administrator within sixty (60) days of the date of the Order approving the Notice of Certification and Notice of Approval Hearing.
6. The Claims Administrator shall review each Claim Form for completeness and shall advise a Claimant, no later than seven (7) business days after receipt of the Claim Form if their Claim Form is incomplete. The Claimant shall rectify an incomplete Claim Form within the later of (i) thirty calendar days (30) days from the date that the Claims Administrator advises them that their Claim Form is incomplete, or (ii) the Claims Deadline.
7. The Claims Form shall require the Claimant to provide their name, contact information, and other information agreed upon by the Parties and the Administrator to verify the Claimant is an Eligible Claimant.
8. The Claim Form shall provide for two types of claims for compensation: Section A Claim and Section B Claim. The Claimant must identify which category of compensation they are applying for on the Claim Form. In the event it is unclear to the Claims Administrator as to which category of claim a Claimant is making in the Claim Form, the Claims Administrator may seek such clarification from the Claimant as soon as possible after receiving the Claim.
9. Section A Claims require an affirmation from the Claimant or the Claimant's SDM that:
  - (a) The Claimant is an Eligible Claimant;
  - (b) The SDM submitting a Claim has authority to submit the Claim on behalf of the Claimant or, in the alternative, that the Claimant does not have a SDM; and
  - (c) The Claimant was a resident at the RHC during the Class Period.

10. The supporting evidence required in respect of Level 1 and Level 2 Sexual Assault and Level 1 Physical Harm Section B Claims compensation require a sworn statement or solemn affirmation from the Claimant or the Claimant's SDM that:
  - (a) The Claimant is an Eligible Claimant;
  - (b) That the Claimant experienced harm while a resident at the RHC during the Class Period for claims of Level 1 Physical Harm;
  - (c) The SDM submitting a Claim has authority to submit the Claim on behalf of the Claimant or, in the alternative, that the Claimant does not have an SDM; and
  - (d) That the Claimant experienced specified harm and the Claimant shall provide a detailed description of the physical and/or sexual assault(s) the Claimant experienced, including, to the best of the Claimant's recollection and ability: the precise or estimated date(s) on which the incident(s) were alleged to have occurred, where the incident(s) occurred, identification of parties involved, identification of witnesses (if any), description of injuries sustained and medical treatment received (if any).
  
11. The supporting evidence required in respect of Level 2 Physical Harm and Level 4 Sexual Assault Section B Claims compensation require a solemn affirmation from the Claimant or the Claimant's SDM that:
  - (a) The Claimant is an Eligible Claimant;
  - (b) That the Claimant experienced harm while a resident at the RHC during the Class Period for claims of Level 2 Physical Harm;
  - (c) The SDM submitting a Claim has authority to submit the Claim on behalf of the Claimant or, in the alternative, that the Claimant does not have an SDM; and
  - (d) That the Claimant experienced specified harm and the Claimant shall provide a detailed description of the physical and/or sexual assault(s) the Claimant experienced, including, to the best of the Claimant's recollection and ability: the precise or estimated date(s) on which the incident(s) were alleged to have occurred, where the incident(s) occurred, identification of parties involved, identification of witnesses (if any), description of injuries sustained and medical treatment received (if any).

12. Level 3 Sexual Assault Resulting in a Major Psychological Injury requires medical evidence to support the allegation that a Serious Sexual Assault resulted in a Major Psychological Injury.
13. Where possible, additional documentation from the RHC Resident File for Section B Claims may be provided along with the Claim.
14. The Claim Form will require the Claimant to provide identifying information and to specify the level of harm for which he/she/they is/are claiming. The supporting evidence required in respect of each compensation level is set out at paragraphs 10, 11 and 12 of this Claims Process. The Claim Form will instruct Claimants to attach the supporting evidence to the Claim Form. If a Claimant submitting a Level 4 Sexual Assault or Level 2 Physical Harm Claim does not provide the supporting documentation, the Claimant shall explain on the Claim Form why it was not possible to provide supporting documentation. The Claim Form shall expressly state that the failure to provide supporting documentation for a Level 4 Sexual Assault or Level 2 Physical Harm Claim may impact the quantum of an award.

### **Process for the Assessment and Determination of Claims**

#### *Assessment of Eligibility*

15. The Claims Administrator shall review each Claim Form and verify that the Claimant is eligible for compensation, as follows:
  - (a) For a Claimant claiming as a Class Member, the Claims Administrator shall:
    - (i) confirm that the Claimant is identified on the Class List;
    - (ii) confirm that the Claimant is a Settlement Class Member as defined pursuant to the Certification Order;
    - (iii) confirm that the Claimant does not have a SDM who ought to be submitting the Claim on behalf of the Claimant; and
    - (iv) confirm that the Claim is not an Excluded Claim.

(b) For a Claims being submitted by a SDM or by an authorized representative of a Class Member's estate (the "Estate"), the Claims Administrator shall;

- (i) be satisfied that the SDM or the Estate has authority to act on behalf of the Class Member in respect of financial affairs;
- (ii) the person or Estate on whose behalf the Claim submitted is identified on the Class List;
- (iii) confirm that the Claimant is a Class Member as defined pursuant to the Certification Order; and
- (iv) confirm that the Claim is not an Excluded Claim.

(c) In order to verify that a person acting as SDM has authority to act on behalf of a Claimant, the SDM must provide evidence identifying such persons as having the legal authority to act on behalf of the Claimant such as a power of attorney or court order, or such other document as the case may be, as prescribed by the applicable legislation.

(d) In order to verify that the Estate has authority to act on behalf of the deceased Claimant, the Estate must provide: (i) Letters of Administration; (ii) Letters of Administration with Will Annexed; or (iii) Letters Probate; or any other document of like import or a grant of letters of administration or other document of like import, purporting to be issued by any court or authority in Canada; or

(e) In the case of an Estate who does not have the evidence described in paragraph (d), the Estate shall submit to the following evidence that they represent the estate of the deceased Claimant, in a form acceptable to the Administrator:

- (i) If the deceased Claimant had a will:
  - (1) A copy of the will appointing the Estate to represent the estate of such deceased Claimant; and
  - (2) An attestation or declaration signed by the Estate together with one other person who knew the Claimant personally, confirming that they believe the will to be valid, do not know the will to have been revoked,

know of no later will of the deceased Claimant, and know of no executor, administrator, trustee, or liquidator that has been appointed by a court; or

(ii) If the deceased Claimant did not have a will:

- (1) An attestation or declaration signed by the Estate, together with one other person who knew the deceased Claimant personally, confirming that they do not know such deceased Claimant to have had a will and that no executor, administrator, trustee or liquidator has been appointed by a court;
- (2) Proof of the relationship of such Estate, as applicable, to the deceased Claimant in a form reasonably acceptable to the Administrator; and
- (3) An attestation or declaration signed by the Estate, together with one other person who knew the deceased Claimant personally confirming that they know of no equal or higher priority heir of such deceased Claimant in accordance with subparagraph 15(f). If there are heirs of equal priority to the Estate, the Estate shall provide all such persons' signed consent for such Estate to act for the estate of the deceased Claimant.

(f) For the purposes of subparagraph 15(e)(ii)(3), the priority level of heirs from highest to lowest priority is as follows:

- (i) Surviving spouse or common-law partner;
- (ii) Children;
- (iii) Grandchildren;
- (iv) Parents;
- (v) Siblings; and
- (vi) Children of siblings.

(g) Where more than one Estate claim has been made, the Administrator shall require the Estate claimants to submit a signed agreement directing the payment of the compensation to which the deceased Claimant is entitled and provide a release in a form acceptable to the Administrator, and shall pay such compensation to the Estate in accordance with such agreement. In the event no such agreement is submitted before the Claims Deadline, the Administrator will have no further obligation to make any payment in respect of such deceased Claimant or their estate, and all Claims by or on behalf of such deceased claimant and their estate shall be deemed to be released and discharged in accordance with paragraph 19 of the Settlement Agreement.

*New Brunswick/Vitalité Documents*

16. For Claimants who submit a Section B Claim, once the Claims Administrator has verified that the Claimant is eligible for compensation pursuant to the terms herein, the Claims Administrator shall, within four (4) business days, forward a copy of the Claim Form to New Brunswick and Vitalité. New Brunswick and Vitalité may, within sixty (60) days of receiving the Section B Claim Form, submit to the Claims Administrator any documentation from the Claimant's RHC Resident File (without argument or submissions) that New Brunswick and Vitalité determine in their sole discretion is relevant to the determination of the Section B Claim. Any documents provided to the Claims Administrator shall be copied to Class Counsel at the same time as they are provided to the Claims Administrator.

*Assessment of Compensation*

17. The Claims Process is intended to be expeditious, cost effective, "user-friendly", and to minimize the burden on Class Members. The Claims Administrator shall, in the absence of reasonable grounds to the contrary, assume a Claimant to be acting honestly and in good faith.
18. Where a Claim Form contains minor omissions or errors of a typographical nature, the Claims Administrator shall correct such omissions or errors if the information necessary to correct the error or omission is readily available to the Claims Administrator.
19. The Claim Form will provide instructions as to what supporting evidence is required. The supporting evidentiary requirements are set out in the Compensation Grid at Schedule "B".

20. The Claims Administrator shall take reasonable measures to verify that the Claimant is eligible for compensation identified in the Compensation Grid and that the information in the Claim Form is accurate. The Claims Administrator may make inquiries of the Claimant, Vitalité or New Brunswick in the event of any concerns, ambiguities or inconsistencies in the Claim Form, the Claimant's supporting documents, or any documents submitted by New Brunswick or Vitalité.
21. Subject to paragraph 17 of this Schedule, the Claims Process is also intended to prevent fraud and abuse. If, after reviewing any Claim Form, the Claims Administrator believes that the Claim contains unintentional errors which would materially exaggerate the amount of compensation to be awarded to the Claimant, then the Claims Administrator may disallow the Claim in its entirety, or make such adjustments so that an appropriate amount of compensation is awarded to the Claimant. If the Claims Administrator believes that the Claim is fraudulent or contains intentional errors which would materially exaggerate the amount of compensation to be awarded to the Claimant, then the Claims Administrator shall disallow the Claim in its entirety.
22. A Claimant may not submit more than one Claim Form. A Claimant shall submit one Claim Form that comprises all claims that he or she or they may have individually. If more than one Claim Form is submitted, the Claims Administrator will treat them as one Claim Form. The Claimant will however only be eligible for either Section A or Section B compensation. If more than one Claim Form is submitted on behalf of a Claimant, which, in the opinion of the to the Claims Administrator raises inconsistencies, the Claims Administrator may seek clarification from the Claimant.
23. All Claims approved by the Administrator as Section A Claims shall be eligible for an award in accordance with paragraph 45 below.
24. The Claims Administrator shall review the Section B Claims, any supporting documentation, and the documentation submitted by either New Brunswick or Vitalité to determine the compensation level, if any, for which a Claimant is eligible pursuant to the Compensation Grid.
25. Where the Claims Administrator disallows a Claim in its entirety, the Claims Administrator shall send to the Claimant or the Claimant's SDM, or the Claimant's Estate at the Claimant's

postal and/or email address as indicated in the Claim Form, and to Class Counsel, New Brunswick Counsel and Vitalité Counsel, notice that the Claim has been denied and the basis for disallowing the Claim within five (5) business days of coming to that determination.

26. Where a Claim Form identifies facts that support a finding of a Level 4 Sexual Assault (as described in the Compensation Grid) and the Claims Administrator determines that the Level 4 Sexual Assault claim does not meet the evidentiary requirements for such claims, the Claims Administrator shall send notice of this determination to the Claimant or the Claimant's SDM or his/her Estate within five (5) business days of coming to that determination.
27. Where a Claimant is determined to be entitled to compensation, notice of that determination shall be made by the Claims Administrator. After notice of the determination is communicated to the Claimant, and subject to paragraphs 29, 30 and 31 below the Claimant may not submit any further Claim information to the Claims Administrator for consideration in the Claims Process.

#### *Estate Claims*

28. In the event an Estate is submitting a Claim Form on behalf of a Claimant, the Estate must submit medical and/or other evidence in support of the claim of sexual or physical assault. A narrative from the Estate will not be sufficient to qualify for compensation for a Section B Claim. Documentary and/or medical evidence in support of the narrative in addition to a commissioned affidavit is required.

#### *Reconsideration*

29. A Claimant may request a reconsideration by the Claims Supervisor of a decision to disallow a Claim in its entirety or of a determination of ineligibility. No other decision of the Claims Administrator relating to the application of the Compensation Grid is subject to review or reconsideration.
30. Any request for reconsideration must be received by the Claims Administrator within fourteen (14) calendar days of the date of the notice advising of the disallowance of a Claim in its entirety or the determination that the Claimant is ineligible ("**Reconsideration Deadline**"). If no request for reconsideration is received by the Claims Administrator by the Reconsideration



Deadline, the Claimant shall be deemed to have accepted the determination and the determination shall be final.

31. Where a Claimant files a timely request for reconsideration with the Claims Administrator in accordance with paragraph 29 of this Schedule, the Claims Administrator shall advise Class Counsel, New Brunswick and Vitalité of the request and conduct a review of the Claimant's request for reconsideration (a "**Reconsideration**"). The Claims Administrator must issue its decision on the Reconsideration to the Claimant, Class Counsel, New Brunswick and Vitalité within fourteen (14) calendar days of receipt of the request for reconsideration ("**Reconsideration Period**").
32. Following the Claims Administrator's determination on a Reconsideration, the Claims Administrator shall send a copy of its decision to the Claimant by mail and/or email (copied to Class Counsel, New Brunswick and Vitalité) within two (2) business days of making the decision.
33. The determination of the Claims Administrator of a Reconsideration is final and binding.

*Late Claims*

34. The Claims Administrator may consider a Claim Form submitted after the Claims Deadline ("**Late Claim Forms**") if the completed Claim Form and all necessary supporting documentation are received by the Claims Administrator within two (2) months after the Claims Deadline and if:
  - (a) the Claimant, the Claimant's SDM, or the Claimant's Estate has provided written reasons for failing to submit the Claim Form and is able to demonstrate that he/she intended to submit the Claim Form before the applicable deadline;
  - (b) the Claimant has described special circumstances that would justify the consideration of the Late Claim Form in the interests of justice;
  - (c) the Parties consent to have such Claim Form be assessed by the Claims Administrator;  
or
  - (d) the Court otherwise orders accordingly.

35. For any Late Claim Forms accepted by the Claims Administrator, in accordance with paragraph 34 above, such Late Claim Forms shall be otherwise treated as any other Claim, except as provided in this paragraph, and the Claims Administrator will make an assessment of the Late Claim Form as filed. Notwithstanding paragraph 5 of this Schedule, the Claims Administrator shall review each Late Claim Form for completeness and shall advise a Claimant and Class Counsel, no later than two (2) business days after receipt of the Late Claim Form if the Claimant's Late Claim Form is incomplete. In that event, the Claimant shall complete the Late Claim Form within ten (10) calendar days from the date of the written notice of the Claims Administrator advising the Claimant, their SDM, or their Estate, that the Claim Form is incomplete.

#### *No Appeals*

36. All determinations of the Claims Administrator and/or Claims Supervisor are final and there is no appeal or review of any decision of the Claims Administrator or Claims Supervisor except for determinations on eligibility pursuant to paragraph 10, 11 and 12 of this Schedule, and except in the case of a request for audit made by New Brunswick or Vitalité, pursuant to paragraphs 37 to 42. To be clear, except for the determination of whether an individual claim is “eligible”, all decisions of the Claims Administrator relating to *inter alia*, any claims assessment, sufficiency of a claim, sufficiency of the supporting documents, timelines, late delivery of any claim or component of a claim or supporting documentation, any matter relating to the Resident File Request process, or any other matter relating to the Claims Process are final and the Parties expressly agree that these decisions may not be appealed to or put before the Court for any review or a determination. All decisions of the Claims Supervisor shall be final.

#### **New Brunswick and Vitalité’s Right to Request Audits**

37. The Claims Administrator shall:
- (a) Provide notice to New Brunswick, Vitalité and Class Counsel when the Claims Administrator has determined and approved Section B Claims at the same time as advising the Claimant;

- (b) Provide New Brunswick, Vitalité and Class Counsel a list of all Claims determined and approved Section B Claims after the Reconsideration Period has expired for all Claims and the Claims Administrator's decision on a Reconsideration is made.
38. For greater clarity, the Potential Audit List shall be updated as Claims are conclusively determined following the expiration of the Reconsideration Period and the Claims Administrator's decision on a Reconsideration is made. The Administrator shall provide New Brunswick and Vitalité with the current Potential Audit List monthly or at such other frequency decided by New Brunswick and Vitalité. The Potential Audit List will be updated until such time as all Claims are decided, the Reconsideration Period of all Claims has expired, and the Claims Administrator has issued a decision on all Reconsideration requests.
39. New Brunswick and Vitalité shall be entitled to require an audit by the Claims Supervisor (an "Audit") of a number of claim to the following, rounded up to the next whole number:
- (a) 10% of Level 3 Sexual Assault;
  - (b) 10% of Level 4 Sexual Assault; and
  - (c) 10% of Level 2 Physical Harm.
40. New Brunswick and Vitalité may initiate an Audit at any time up to 21 days after New Brunswick and Vitalité are provided the final Potential Audit List. New Brunswick and Vitalité may make a request for an Audit at any time during this period.
41. The expenses and costs of the Audit process shall be paid for out of the Settlement Fund, and shall not exceed \$100,000.
42. The Claims Supervisor shall conduct the Audit as follows:
- (a) The purpose of the Audit is to prevent fraud and abuse by seeking to confirm the veracity of information provided in the Claim Form, while maintaining the presumption in paragraph 17 of this Schedule;

- (b) The Audit process is also intended to be trauma-informed, expeditious, cost effective and "user friendly";
  - (c) The Claims Supervisor shall take whatever steps they deem necessary to confirm the veracity of the information in the Claim Form and the veracity and source of the description of the harms experience by the Claimant as described by the Claimant, the SDM or Estate;
  - (d) As part of the Audit Process, the Claims Administrator will provide to the Claims Supervisor copies of all documents and information received, reviewed and/or relied upon by the Claims Administrator in making a determination;
  - (e) As part of the Audit process, the Claims Supervisor may conduct an in-person or remote/virtual interview of the Claimant, SDM and/or Estate, as the Claims Supervisor deems appropriate;
  - (f) The Claims Supervisor may confirm, vary, reverse, or make any other decision that, in the opinion of the Claims Supervisor, is appropriate having regard to the evidence before them, and provide written summary of their decision to the Claims Administrator, Class Counsel, New Brunswick Counsel and Vitalité Counsel;
  - (g) The Claims Supervisor may consult with the parties to establish further or specific procedures for such Audit; and
  - (h) The determination of the Claims Supervisor in such Audit is final and binding.
43. All Audits must be completed and decisions rendered within sixty (60 days) of the audit request, or such further time as the parties may agree upon, with the consent of the Supervisor (the "**Audit Deadline**").

#### **Compensation and Payments to Class Members**

- 44. There shall be no compensation for an Excluded Claim.
- 45. Compensation for Section A Approved Claims is set out in the Compensation Grid based on the cumulative length of stay specified therein.

46. Compensation for Section B Approved Claims is set out in the Compensation Grid based on the physical and sexual assaults specified therein.
47. If there are insufficient funds in the Settlement Fund to compensate all successful Claimants on the basis of the Claims Process, the amount of compensation for all Claimants shall be adjusted downward on a *pro rata* basis such that each Claimant receives the proportionate share of the Settlement Fund based on the relative values of each compensation level.
48. The Claims Administrator shall mail the individual compensation cheques to the Claimants at the postal addresses indicated in the Claim Forms, within ten (10) business days of receiving the necessary funds from New Brunswick, and shall provide a copy of that correspondence to Class Counsel. If, for any reason, a Claimant does not cash a cheque within six (6) months after the date of the cheque, the Claimant shall forfeit the right to compensation and the funds shall be returned to the Settlement Fund. Thirty days prior to the expiry of the six (6) month period described above, the Claims Administrator shall:
  - (a) Provide Class Counsel with a list of Claimants who have not cashed their compensation cheques; and
  - (b) Send the Claimant a further letter and/or email (copied via email to Class Counsel) advising the Claimant that they have 30 days to cash the compensation cheque.

**SCHEDULE “B” – COMPENSATION GRID<sup>1</sup>**

<b>SECTION A CLAIMS* - COMMON EXPERIENCE PAYMENT</b>	
*Based on Claimant’s cumulative length of stay at the RHC	
<b>30 days or less</b>	\$1,000
<b>31 days up to 100 days</b>	\$3,000
<b>101 days or more</b>	\$5,000

<b>SECTION B CLAIMS<sup>2</sup></b>	
<b>Sexual Abuse</b>	
<u>Level 1 Sexual Assault</u> <ul style="list-style-type: none"> <li>A single incident of non-consensual sexual touching of a Claimant by staff, or other non-consensual sexual behaviour by staff towards a Claimant that is not a Serious Sexual Assault.</li> </ul>	\$15,000
<u>Level 2 Sexual Assault</u> <ul style="list-style-type: none"> <li>More than one incident of non-consensual sexual touching of a Claimant by staff/ other patient or other non-consensual sexual behaviour that is not a Serious Sexual Assault.</li> </ul>	\$20,000
<u>Level 3 Sexual Assault</u> <ul style="list-style-type: none"> <li>One or two incidents of Serious Sexual Assault</li> </ul>	\$35,000
<u>Level 4 Sexual Assault</u> <ul style="list-style-type: none"> <li>(i) More than two incidents of Serious Sexual Assault; or</li> <li>(ii) Level 3 Sexual Assault resulting in a Major Psychological Injury. Requires medical evidence in addition to the affirmation to support allegation that a Serious Sexual Assault resulted in Major Psychological Injury.</li> </ul>	\$60,000 plus Medical Evidence Fees of up to a maximum of \$1,000 per Claimant

<sup>1</sup> Claimants must choose between making a Section A claim or a Section B claim. Claimants cannot make claims from both sections.

<sup>2</sup> Claimants are only eligible for one compensation level of each of the sexual assault or physical harm categories but can be awarded amounts in both the sexual assault and physical harm categories.

<b>Physical Abuse</b>	
<p><u>Level 1 Physical Harm</u></p> <ul style="list-style-type: none"> <li>• One or more physical assaults not causing a Serious Physical Injury, but resulting in an observable injury such as a black eye, bruise or laceration; or</li> <li>• Use of any one of the following form of restraints: <ul style="list-style-type: none"> <li>• Use of physical or mechanical restraint for: <ul style="list-style-type: none"> <li>• 12 consecutive hours or more up to 24 hours, on two occasions within a 30-day period; or</li> <li>• 24 consecutive hours or more;</li> </ul> </li> <li>• Use of chemical restraints (i.e., by administration of psychotropic medication not prescribed as part of patients' ongoing care plan) on two occasions within a 30-day period; or</li> <li>• Placement in a seclusion room for 36 consecutive hours on one occasion within a 30-day period. This excludes placement in seclusion for up to 48 hours upon admission.</li> </ul> </li> </ul>	\$10,000
<p><u>Level 2 Physical Harm</u></p> <ul style="list-style-type: none"> <li>• One or more physical assaults causing a Serious Physical Injury; or</li> <li>• Use of the following form of restraints: <ul style="list-style-type: none"> <li>• Use of physical or mechanical restraint for 24 consecutive hours or more, on two or more occasions within a 30-day period;</li> <li>• Use of chemical restraints (i.e., by administration of psychotropic medication not prescribed as part of patients' ongoing care plan) on more than two occasions within a 30-day period; or</li> <li>• Placement in seclusion rooms for 36 consecutive hours or more, on more than one occasion within a 30-day period. This excludes placement in seclusion for up to 48 hours upon admission.</li> </ul> </li> </ul>	\$25,000

**"Serious Physical Injury"** means physical injury that led or should have led to hospitalization or serious medical treatment by a physician; permanent or demonstrated long-term physical injury, impairment or disfigurement; loss of consciousness; broken bones; or a serious but temporary incapacitation such that bed rest or infirmary care of several days duration was required.

**"Serious Sexual Assault"** means non-consensual oral, vaginal or anal penetration or attempted non-consensual oral, vaginal or anal penetration.

**"Sexual Touching"** means non-consensual touching of another individual's body, with a body part or an object, for sexual purposes.

**“Non-Consensual Sexual Behaviour”** means conduct involving sexual activity or behaviour that is performed without express and voluntary consent.

**“Major Psychological Injury”** means prolonged major psychological trauma symptoms resulting in a diagnosis by a psychiatrist or psychologist of a mental illness/disorder recognized by the Diagnostic and Statistical Manual of Mental Disorders. The diagnosis must occur after the alleged Level 3 Sexual Assault incident(s) in question as per the Compensation Grid. Where a pre-existing diagnosis exists, medical evidence is required to show exacerbation of the pre-existing diagnosis.