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State of Nevada
DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INDUSTRIAL RELATIONS
WORKERS' COMPENSATION SECTION

MEMO

To: Nevada Rating Chiropractors and Physicians, Industrial Insurance Insurers, Third-party Administrators, Employers, Health Care Providers, Workers' Compensation Attorneys, Injured Workers, and other interested persons

From: Charles Verre, Workers' Compensation Section Chief Administrative Officer //signed//

Re: Nevada Supreme Court Decision regarding Permanent Partial Disability Ratings utilizing Activities of Daily Living (American Medical Association's *Guides to the Evaluation of Permanent Impairment*, 5th Edition)

Date: March 4, 2010

On February 25, 2010, the Nevada Supreme Court issued its *en banc* decision REVERSING District Court Judge David Wall's June 8, 2008, order granting declaratory and injunctive relief regarding rating physicians and chiropractors assessing Activities of Daily Living (ADL) when performing permanent partial disability (PPD) evaluations under Chapter 15 (the Spine) of the American Medical Association's *Guides to the Evaluation of Permanent Impairment*, 5th edition.

The Court determined that the Nevada Legislature intended "that activities of daily living should be taken into consideration when evaluating work-related spinal injuries." *NAIW v. Nevada Self-Insurers Association*, 126 Nev. Adv. Op. No. 7 (February 25, 2010). The Court concluded that "evaluating activities of daily living is not an improper consideration of subjective pain complaints or chronic pain because, prior to assessing a person's ability to perform activities of daily living, an objectively identifiable spinal injury must be present. . ." *Id.*

Justice James Hardesty's decision ended by noting, "it is appropriate that a person's ability to perform activities of daily living be utilized as one tool in the evaluation of an impairment rating for spinal injuries. Prohibiting consideration of activities of daily living—one of several tools used to make an impairment rating—is akin to prohibiting consideration of the patient's history or diagnostic tests." *NAIW* at 18. Our Court "emphasize[d] that permitting compensation for subjective complaints of pain without any objectively identifiable spinal injury, *i.e.*, chronic pain, clearly violates [the requirements of] NRS 616C.110(2)(c) . . . and NRS 616C.490(5) . . . that only 'physical impairment[s]' be considered." *NAIW*, at 18-19.

The seven-member Court unanimously ruled:

evaluating a person's ability to perform activities of daily living is not an improper consideration of subjective pain because, in order to provide the additional range of one to three percent for spinal injuries, rating physicians and chiropractors must first establish, through objective medical evidence, that a permanent physical impairment exists. Without the presence of a identifiable spinal injury, a person's subjective and continuing complaint of pain does not warrant an impairment rating.

The entire text of the *NAIW v. Nevada Self-Insurers Association* decision may be found at:

<http://www.nevadajudiciary.us/index.php/advancedopinions/669-naiw-v-nevada-self-insurers-association->

Rating physicians and chiropractors who perform PPD evaluations involving spinal impairments are **required to follow Chapter 15 of the AMA Guides, 5th ed.**, which provides **criteria** for evaluating permanent impairments of the spine, including how they affect an individual's ability to perform **activities of daily living**. **Rating physicians and chiropractors shall make and record upwards adjustments of up to 3% in a diagnosis-related estimate (DRE) category** in appropriate cases involving ADL.

If an injured worker, whose spinal PPD evaluation was adjusted due to Activities of Daily Living, has NOT elected a lump sum, the industrial **insurer or third-party administrator shall comply with NRS 616C.490, NRS 616C.495, and NAC 616C.103 by offering the injured worker a permanent partial disability award consistent with the decision rendered in *NAIW vs. Nevada Self-Insured Association*.**