

1 **THE BOARD FOR ADMINISTRATION OF THE**
2 **SUBSEQUENT INJURY ACCOUNT**
3 **FOR THE ASSOCIATIONS OF**
 SELF-INSURED PUBLIC OR PRIVATE EMPLOYERS

4 * * * * *

5 In re: Subsequent Injury Request for Reimbursement

6 Claim No.: C143-07-02558-01
7 Date of Injury: November 30, 2007
8 Association Name: Public Agency Compensation Trust
9 Association Member: North Lake Tahoe Fire Protection District
10 Association Administrator: Public Agency Risk Management Services
11 Third-Party Administrator: Alternative Service Concepts
12 Application Submitted by: Robert Balkenbush, Esq.

13 **BOARD'S DECISION ON REMAND**

14 This matter came on for hearing before the Board for the Administration of the
15 Subsequent Injury Account for the Associations of Self-Insured Public or Private Employers (the
16 Board) on Thursday, May 16, 2019. The Association for this case is Public Agency
17 Compensation Trust. The employer for this matter is the North Lake Tahoe Fire Protection
18 District (the District). The Board rejected the Association's application for reimbursement and
19 the Association and District took the matter up on appeal eventually to the Nevada Supreme
20 Court, after the District Court affirmed the Board's rejection of this claim for reimbursement.
21 The case is back before the Board upon remand from the Nevada Supreme Court through an
22 order of the District Court. The Nevada Supreme Court overturned the decision of the District
23 Court, dated May 2, 2016, wherein the District Court had affirmed the decision of the Board
24 reached March 18, 2014.

25 Bryan Wachter, Board Chairman, called the meeting to order on May 16, 2019. He
26 participated by teleconference from Carson City, Nevada. Vice-Chairman Joyce Smith and Allen
27 Walker participated by telephone. Rebecca Fountain participated in person from the Las Vegas
28 office of the Division of Industrial Relations (DIR), 3360 West Sahara Avenue, Suite 250, Las
29 Vegas, Nevada 89102. There is one unfilled position on the Board. As four Board members
30 participated in the meeting throughout, a quorum of the Board was present to conduct business.

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1 Additionally, Robert Balkenbush, Esq., of Thorndal, Armstrong, Delk, Balkenbush &
2 Eisinger, appeared in person in the Las Vegas offices of the DIR on behalf of the employer, the
3 District. Vanessa Skrinjaric, liaison to the Board of the Administrator, DIR, and Chris Eccles,
4 deputy legal counsel to the Administrator, DIR, participated in person from the Las Vegas offices
5 of the DIR, as did Charles R. Zeh, Esq., The Law Offices of Charles R. Zeh, Esq., Board legal
6 counsel.

7 The Nevada Supreme Court's disposition of the case on appeal was not an outright
8 reversal of the Board. Rather, the Nevada Supreme Court remanded the matter back to the Board
9 to revisit the existing record in light of the legal standard enunciated by the Nevada Supreme
10 Court concerning the quantum and nature of the knowledge that a self-insured employer must
11 have and be able to prove this knowledge by written record of the preexisting permanent
12 impairment required by NRS 616B.578(3) ("permanent physical impairment) and NRS
13 616B.578(4)(the proof by written record requirement). Both are cited, below.¹

14 As stated by the Nevada Supreme Court, a position held by the Board, itself,

15 [t]o qualify for reimbursement, the associations of self-insured public or private
16 employers [here, the District] must establish by written record 'either that the
17 employer (1) had knowledge of the permanent physical impairment at the time the
18 employee was hired or (2) retained its employee after it acquired knowledge of the
19 permanent physical impairment.' [internal citation omitted.] In the second
20 scenario, 'an employer must acquire knowledge of an employee's permanent
21 physical impairment before the subsequent injury occurs to qualify for
22 reimbursement.' [Internal citation omitted.]. See, Decision, p. 7. See also,
23 *Holiday Ret. Corp. v. State, DIR*, 128 Nev. 150, 154-155, 274 P.3d 759 (2012).

21 ¹NRS 616B.578

22 ...

23 3. As used in this section, "permanent physical impairment" means any permanent condition,
24 whether congenital or caused by injury or disease, of such seriousness as to constitute a hindrance or
25 obstacle to obtaining employment or to obtaining reemployment if the employee is unemployed. For the
26 purposes of this section, a condition is not a "permanent physical impairment" unless it would support a
27 rating of permanent impairment of 6 percent or more of the whole person if evaluated according to the
28 American Medical Association's Guides to the Evaluation of Permanent Impairment as adopted and
supplemented by the Division pursuant to NRS 616C.110.

29 4. To qualify under this section for reimbursement from the Subsequent Injury Account for
Associations of Self-Insured Public or Private Employers, the association of self-insured public or private
employers must establish by written records that the employer had knowledge of the "permanent physical
impairment" at the time the employee was hired or that the employee was retained in employment after
the employer acquired such knowledge.... See, NRS 616B.578(3)and (4).

1 This is a retention case. Hence, the controlling issue, here, is did the District have
2 knowledge of a qualifying permanent physical impairment as defined by NRS 616B.578(3)
3 which can reasonably and fairly inferred from the written record, and was this knowledge of a
4 qualifying permanent impairment acquired, as shown by written record, before the occurrence of
5 the subsequent industrial injury to which it must combine to substantially increase the
6 compensation paid? *See*, NRS 616B.578(1). Decision, pp. 10, 11. That is to say, what can be
7 reasonably and fairly inferred from the written record about the employer's knowledge of a
8 qualifying impairment and whether that knowledge may be shown by written record to exist
9 before the date of the subsequent injury.

10 The Board also had this case before it on remand on May 21, 2019. During the course of
11 the hearing on that date, the Board concluded that the remand from the Nevada Supreme Court
12 did not require an additional evidentiary hearing. Rather, the remand required only that the
13 Board apply the new legal standard enunciated by the Nevada Supreme Court to the existing
14 record in this case. The matter was then set over for hearing on the merits of the remand.

15 In this case, the applicant, the District, identified spondylolisthesis as the preexisting
16 permanent impairment. In its decision, the Nevada Supreme Court concluded that the applicant
17 had no other recourse than to rely upon spondylolisthesis as the preexisting condition because
18 none of the other impairments suffered by the injured worker which are in the record met the 6%
19 rule required of a preexisting permanent impairment by NRS 616B.578(3). "Spondylolisthesis
20 was the employee's only permanent physical impairment recognizable under the statute.(footnote
21 2 omitted)." *See*, Decision, p. 10.

22 The Board, however, went askew, according to the Nevada Supreme Court because it
23 required the applicant to have knowledge of "...the employee's specific medical condition prior
24 to his subsequent injury." Decision, p. 8. This was in error, according to the Nevada Supreme
25 Court "...because NRS 616B.578(3) plainly requires a showing of 'any permanent condition' that
26 hinders employment ... [and will also support a rating of 6% or more, whole person
27 impairment.]" (Emphasis in the original.). *See*, Decision p. 9. *See also*, Decision, p. 6, 7 ("we
28 [the Court] also agree with respondents [the Board] that NRS 616B.578(3) requires a condition

1 to amount to at least 6% WPI to be considered a permanent impairment.”). The Board’s
2 understanding of the term permanent physical impairment as found in NRS 616B.578(3), was,
3 therefore, affirmed by the Nevada Supreme Court in its decision in this case. According to the
4 Nevada Supreme Court, for an impairment to qualify as a permanent physical impairment under
5 NRS 616B.578(3), it must constitute both a hindrance to employment AND support a rating of
6 6% or more, WPI. *See*, Decision, pp. 7,8.

7 From the Decision, then, it is clear that proof by written record of knowledge of any
8 qualifying condition, *e.g.*, one that is a hindrance to employment AND supports a rating of 6% or
9 more, is required under NRS 616B.578. *See*, Decision, p. 9. The applicant, however, must be
10 able to show that the knowledge of a qualifying permanent impairment must be fairly and
11 reasonably inferred from the written record which, in turn, must exist to prove knowledge prior
12 to the date of the subsequent industrial injury, in a retention case and at the time of hire,
13 otherwise. *See*, Decision, pp. 7, 10, 11, *see also*, *Holiday, supra* at 152.²

14 Taking these elements in concert, the standard enunciated by the Nevada Supreme Court
15 for the Board raises the following questions:

16 1. What does the written record establish the self-insured employer knew about any
17 preexisting qualifying condition?

18 2. Is there proof of a written record from which it might be fairly and reasonably
19 inferred that the District knew prior to the date of the subsequent injury of any qualifying
20 impairment, *e.g.*, one that is both a hindrance to employment and ultimately proves to rate out at
21 6% or more, WPI?

22 3. Here, in this case, is there proof by written record from which it might be fairly
23 and reasonably inferred that prior to the date of the subsequent injury, the District knew of the
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25 ²The Board needs to make clear, here, that the knowledge requirement is of the preexisting
26 permanent impairment or conditions referable to the preexisting impairment. An applicant need not know
27 at the time of hire or prior to the subsequent injury that the injured worker’s preexisting condition would
28 support a rating of 6 percent or more. Indeed, inasmuch as a preexisting condition could be congenital in
nature, *see*, NRS 616B.578(1) it might very well be the case that the congenital condition might not have
been rated until the condition is apportioned when the subsequent industrial injury is rated. There must
be an awareness of the congenital condition, however, before the subsequent industrial injury occurs.
See, Transcript on Remand, 5/16/19 (TOR), pp. 41;11-25, 41;1-10.

1 injured worker's spondylolisthesis, since spondylolisthesis is the condition relied upon by the
2 applicant to justify an award? The knowledge, here, of conditions from which inferences may
3 reasonably and fairly be drawn must be shown by written record in existence prior to the date of
4 the subsequent industrial injury. NRS 616B.578(4). *See, Holiday, supra* at 152.

5 These questions are derived from the Nevada Supreme Court's statement that "[a]lthough
6 appellants [North Lake Tahoe Fire Protection] were not required to show that employer knew of
7 the employee's spondylolisthesis specifically, knowledge of a qualifying permanent impairment
8 had to be fairly and reasonably inferred from the written record." *See, Decision, pp. 10, 11.* A
9 permanent physical impairment, the Court held, is a condition that would support at least a 6%
10 WPI rating. *See, Decision, p. 8.* The Court then wondered whether it can be "...fairly and
11 reasonably inferred from the written record that the employer knew of the employee's
12 spondylolisthesis." *See, Decision, p. 11.*

13 Applying this standard, the Board concludes that its decision to deny this claim may be
14 affirmed. The North Lake Tahoe Fire Protection District failed to adduce any testimony or
15 evidence during the course of the hearing from which its appeal was taken, or upon remand that
16 established a written record from which it might reasonably and fairly be inferred that the District
17 knew of the injured worker's spondylolisthesis prior to the date of the subsequent industrial
18 injury. The condition was not discovered until after the date of the subsequent knowledge injury.
19 There could be no written record of spondylolisthesis due to the timing of its discovery, and the
20 record is clear, on remand, as well, that no written record exists from which it could reasonably
21 and fairly inferred that the District knew of or even suspected that the injured worker suffered
22 from spondylolisthesis.

23 Broadening the scope, the same holds for "any" conceivable qualifying permanent
24 impairment. To succeed, here, the employer must be able to prove the existence of a written
25 record from which it might fairly and reasonably be inferred that the District had knowledge of
26 any other qualifying permanent impairment and that it possessed, according to the written record,
27 this knowledge prior to the subsequent industrial injury. If the written record is devoid of proof
28 of knowledge from which it may reasonably and fairly inferred that the District knew of a

1 qualifying permanent impairment, *e.g.*, one that is both a hindrance to employment AND would
2 support a rating of 6% or more, WPI, reimbursement may not be had.

3 The District showed it knew, only, of a host of preexisting conditions including HNP,
4 radiculopathy, back spasm and lumbar disc abnormalities. TOR, pp. 34;22-25, 35;7-11. As the
5 Supreme Court found, however, none of these conditions rose to the level of a permanent
6 impairment under NRS 616B.578(3), because none rated out at 6% or more, WPI. *See*, Decision
7 p. 10, fn. 2. These are, however, the only “other conditions” known in the written record by the
8 District.

9 Moreover, the District concedes that these conditions are different from spondylolisthesis.
10 And, there is no testimony or opinion in the written record, establishing that these conditions are
11 reasonably and fairly referable to spondylolisthesis, such that it could be said that knowledge of
12 HNP is the same as knowledge of spondylolisthesis.

13 The Board sees no reason, therefore, to reverse its decision to deny the application for
14 reimbursement and hereby affirms its denial as further elucidated, below.

15 FINDINGS OF FACT

16 1. Nothing occurred during the hearing on remand or on appeal to the Nevada
17 Supreme Court to alter or amend the Board’s original Findings of Fact. They are attached hereto
18 and incorporated herein.

19 SUPPLEMENTAL FINDINGS OF FACT

20 Based upon the existing record, the Board makes, however, supplemental findings in light
21 of the Nevada Supreme Court’s decision in this case, as follows:

22 1. A quorum of the Board was present on May 16, 2019, to hear and decide this
23 matter.

24 2. The Nevada Supreme Court found that:

25 ...Dr. Betz and Dr. Berg apportioned [the total disability rating given the injured
26 employee with] 10.5% WPI to preexisting conditions, and Dr. Betz further
27 specified that spondylolisthesis was the preexisting condition with 7-9% WPI.
28 This mathematically leaves the employee’s other conditions, such as HNP,
radiculopathy, back sprain, and lumbar disc abnormalities, with a maximum of
4% WPI. Consequently, because none of his other conditions could meet the 6%

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WPI requirement of the employer’s written record, spondylolisthesis was the employee’s only permanent physical impairment recognizable under the statute. *See*, Decision, p.10.

3. Substantial evidence supports the Board’s findings that none of the injured worker’s preexisting conditions, apart from spondylolisthesis, support a rating of 6% or more and do not, therefore, rise to the level of a permanent physical impairment as required by NRS 616B.578(3). *See*, Decision, p. 10, fn. 2.

4. Spondylolisthesis is the only impairment identified in the written record by the North Lake Tahoe Fire Protection District (District) that rises to the level of a permanent physical impairment. *See*, Decision, p.10, Findings of Fact 52.³

5. There is no written record from which it might be fairly and reasonably inferred that the District had knowledge of the injured worker’s spondylolisthesis prior to the date of the subsequent industrial injury. JA Vol. 1, at 158-166.⁴

6. There is no written record from which it might be fairly and reasonably inferred that the District had knowledge that the injured worker suffered from any qualifying permanent physical impairment prior to the date of the subsequent industrial injury. *See*, Decision, p.10, fn. 2, JA Vol. 2, 254;121-21. JA Vol. 1, at 86, JA Vol. 1 at 174.

7. None of the injured worker’s preexisting impairments including HNP, radiculopathy, back sprain and lumbar disc abnormalities, rose to the level of a qualifying physical impairment, *e.g.*, were both a hindrance to employment AND would support a rating of 6% or more. *See*, Decision, p. 10, fn. 2, JA Vol. 1 at 173,179. *See also*, Findings of Fact 59-62.

8. No written record, known to the District, of the injured worker’s spondylolisthesis, existed prior to November 30, 2007, the date of the subsequent industrial injury, inasmuch as spondylolisthesis, itself, was not discovered until after the date of the subsequent injury. JA Vol. 2, 254;121-21. JA Vol. 1, at 86, JA Vol. 1 at 174 (per Dr. Betz, “Imaging following the patient’s subsequent injury on 11/30/2007 revealed preexisting

³The Board’s Findings of Fact are attached from the original decision of the Board to deny the claim.

⁴The JA refers to the Joint Appendix of the record on appeal of this case when before the Supreme Court.

1 spondylolysis with spondylolisthesis at the L4-5 and L5-S1 levels.”). According to Dr. Berg,
2 spondylolisthesis was not first noted until April 3, 2008. JA Vol. 1, at 158-166. *See also*,
3 Findings of Fact 40, 56.

4 9. None of the injured worker’s preexisting impairments, including HNP,
5 radiculopathy, back sprain and lumbar disc abnormalities, were precursors of or reasonably
6 referable to spondylolisthesis and, therefore, provided no source of knowledge of
7 spondylolisthesis or any other qualifying permanent physical impairment prior to the date of the
8 subsequent industrial injury. *See*, Decision, p. 10, fn. 2. *See also*, JA Vol.2 at 443;7-9, 333;4-8,
9 JA Vol. 1, at 96, JA Vol. 2, 353;22-25, 353;23-25, 354;1-2, Findings of Fact 59-62.

10 10. Prior to the date of the subsequent industrial injury, the District’s knowledge of
11 the injured worker’s preexisting impairments was limited to HNP, radiculopathy, back sprain,
12 somatic dysfunction, myofascial pain and lumbar disc abnormalities and none of these conditions
13 rose to the level of a qualifying condition as required by NRS 616B.578(3) or were referable to
14 spondylolisthesis or any other qualifying permanent physical impairment. *See*, Decsion, p.10,
15 fn. 2. None of these conditions were considered by the District to be a precursor to
16 spondylolisthesis, *see*, JA Vol. 2, at 332;7-9, 333;4-8, or any other qualifying preexisting
17 permanent physical impairment. Findings of Fact 27, 28, Tr. pp., 71;19-25, 73;8-9, 74;23-25,
18 75;1-2. None of these conditions prevented the injured worker from returning to work, full duty.
19 *See*, JA Vol. 2, at 333;12-14, 334; 1-7. The radiating pain was noted as secondary to the HNP
20 (herniated nucleus pulposus). *See*, JA Vol. 1, at 96, 104.

21 11. The Board sees no reason to change on remand its original finding the injured
22 worker’s preexisting conditions documented prior to the subsequent injury such as HNP,
23 radiculopathy, back sprain, and lumbar disc do not rise to the level of a qualifying permanent
24 physical impairment, *e.g.*, one that is a hindrance to employment AND would support a rating of
25 6% or more, as not one of these conditions would support a rating of 6% or more, WPI, as the
26 Nevada Supreme Court affirmed. *See*, Decision, p. 10, including footnote 2.

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1 12. On remand, the District identified no information from the written record, to alter
2 the Supreme Court's finding that "...spondylolisthesis was the employee's only permanent
3 physical impairment recognizable under ...[NRS 616B.578(3)]." *See*, Decision, p. 10.

4 13. On remand, the District identified no written record from which it could be fairly
5 and reasonably inferred that the District knew of a qualifying permanent impairment, including
6 spondylolisthesis prior to November 30, 2007, the date of the subsequent industrial injury.

7 14. On remand, the District identified no written record which would require the
8 Board to alter or amend its Findings of Fact and Decision in this case. Instead, the District
9 claimed that the Board, without the qualifications or credentials, attempted to impeach, *see*,
10 TOR, pp. 27;12-25, 28;1-24, 29;30, 31, with its findings, the opinions of Dr. Berg and Dr. Betz,
11 the District's rating and subsequent injury reporting physicians, respectively. *See*, Findings of
12 Fact 37. In truth, as did the Supreme Court, the Board embraced their findings, TOR 9;31;10-25,
13 32, 33;1-10, and, as did the Supreme Court, arrived at the conclusion that none of the injured
14 worker's other preexisting conditions, including HNP, radiculopathy, back sprain and lumbar
15 disc abnormalities, combined, supported a rating of no more than 4% and, therefore, did not rise
16 to the level of a permanent physical impairment as required by NRS 616B.578(3). *See*, Decision,
17 p. 10, fn. 2.

18 15. The District also offered on remand, the notion that there were two subsequent
19 injuries, the November 30, 2007 injury and the second in June 2009. TOR 15;9. There is nothing
20 in the record to support the claim that there are now, two subsequent injuries. The District's
21 application rises and falls on the opinions of Dr. Berg and Dr. Betz, whose opinions make clear
22 that the subsequent injury for this application in their opinion occurred on November 30, 2007.
23 *See*, Tr., p. 11;8-11, Tr., 18-21,⁵ Findings of Fact 37, 59-62.

24 16. Importantly, the District conceded on remand, the knowledge it possessed about
25 the injured worker's preexisting impairments was limited to the repeated injuries to the low back
26 suffered prior to November 30, 2007, the date of the subsequent industrial injury. TOR, pp.

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⁵"Tr." refers to the transcript of the hearing on September 19, 2013, when the Board first heard and decided the case.

1 34;22-25, 35;7-11. That is, the District concedes its knowledge was limited to the injured
2 worker's HNP, radiculopathy, back sprain, and lumbar disc, conditions which the Nevada
3 Supreme Court found do not rise to the level of a qualifying condition required by NRS
4 616B.578(3), *see*, Decision, p. 10, fn. 2,⁶ as well as conditions from which no fair and reasonable
5 inference may be drawn of knowledge of spondylolisthesis or any other qualifying preexisting
6 permanent physical impairment prior to the date of the subsequent industrial injury of November
7 30, 2007. *See*, Decision, p. 10, fn. 2. *See also*, JA Vol. 1, 96, JA Vol. 2, 333;4-8, 353;22-25,
8 353;23-25, 354;1-2, 443;7-9,.

9 17. That is to say by way of the District's admission, here, the District's knowledge of
10 the injured worker's preexisting impairments is insufficient to support a claim of reimbursement
11 under NRS 616B.578.

12 18. To the extent that any of the following Conclusions of Law constitute Findings of
13 Fact, they are incorporated herein.

14 CONCLUSIONS OF LAW

15 1. To the extent any of the Findings of Fact also constitute Conclusions of Law, they
16 are incorporated herein.

17 2. The burden of proof imposed upon the District on remand requires proof of a
18 written record from which inferences can fairly and reasonably be drawn that the District knew of
19 the injured worker's spondylolisthesis and that this written record from which these inferences
20 may be drawn existed prior to the date of the subsequent industrial injury.

21 3. Alternatively, the burden of proof imposed upon the District on remand requires
22 proof of a written record from which inferences may fairly and reasonably be drawn that the
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26 ⁶The District argues in an attempt to escape reality that the District need not know that the
27 preexisting condition would rate out at six percent or more, while retaining the injured worker in the
28 knowledge of a preexisting condition. TOR, p. 36;3-9. The Board does not dispute that claim. TOR, p.
40;11-14. That is not the problem for the District. Instead, as the Board and Nevada Supreme Court both
found, the injured worker's preexisting impairments never rated out at 6% or more, and never were the
kind of conditions from which it might infer from the knowledge of these preexisting conditions, that the
District knew the injured worker was also suffering at the time from spondylolisthesis. The District's
knowledge of these preexisting impairments does not help the District satisfy the knowledge requirement
of NRS 616B.578(3) and (4).

1 District knew that the injured worker suffered from “any” qualifying permanent impairment, *e.g.*,
2 one that is a hindrance to employment AND would support a rating of 6% or more, WPI, and that
3 the written record from which these inferences may fairly and reasonably be drawn existed prior
4 to the date of the subsequent industrial injury.

5 4. From the Findings of Fact, it is clear, no written record of spondylolisthesis existed
6 prior to the date of the subsequent industrial injury. The written record of the other preexisting
7 conditions reveals that none of those conditions, as the Supreme Court found, rise to the level of a
8 qualifying preexisting condition and as such, there is no written record from which inferences
9 might fairly and reasonably be drawn that these conditions constitute qualifying conditions.
10 Moreover, there is no written record from which it might be reasonably and fairly inferred that the
11 non-qualifying preexisting conditions are precursors to or the same as spondylolisthesis.

12 5. As a matter of fact and law, the Board affirms on remand its original decision to
13 deny the claim as the applicant has failed to show that NRS 616B.578(3) and (4) have been
14 satisfied.

15 6. Couched in terms of the remand, the District failed to satisfy its burden of proving
16 a written record from which it can reasonably and fairly be inferred that the District knew prior to
17 the date of the subsequent injury that the injured worker suffered from spondylolisthesis or from
18 any other qualifying permanent impairment.

19 7. Furthermore, when it is apparent, as here, that NRS 616B.578(3) has not been
20 satisfied, there can be no showing that NRS 616B.578(1) can be satisfied, either, as NRS
21 616B.578(1) depends upon the presence of a preexisting permanent physical impairment defined
22 by NRS 616B.578(3)(a qualifying condition).

23 8. Upon remand, the Board affirms its decision to reject the claim for reimbursement.

24 **DECISION OF THE BOARD**

25 Accordingly, the Board reaffirms its denial of the application for reimbursement in this
26 case. It remains true that the applicant has failed to establish by a preponderance of the evidence
27 that NRS 616B.578(1),(3) and (4) have been satisfied. Therefore, the application for
28 reimbursement received on October 3, 2012, remains denied.

1 It was moved by member Joyce Smith, seconded by Rebecca Fountain, to affirm the
2 Board's denial of the District's application upon application of the new standard elucidated by the
3 Supreme Court. The vote was 4 in favor of the motion with 0 against and 0 abstentions. As a
4 quorum was present and a majority voted in favor of the motion, the motion was duly adopted.

5 Finally, on September 19, 2019, the Board met to consider adoption of this decision, as
6 written or as modified by the Board, as the decision of the Board. Those present and eligible to
7 vote on this question consisted of the three current Members of the Board, Vice-chairman
8 Rebecca Fountain, members Joyce Smith and Allen Walker. A quorum was, therefore, present
9 and eligible to vote on whether this draft decision accurately reflected the Board's rationale and
10 action taken by the Board. Upon the motion of Allen Walker, seconded by Joyce Smith, the
11 Board voted to approve this Decision of the Board Upon Remand as the action of the Board and
12 to authorize the Board Vice-Chairman, Rebecca Fountain, after any grammatical or typographical
13 errors are corrected, to execute, without further Board review, this Decision on behalf of the
14 Board for the Administration of the Subsequent Injury Account for the Associations of Self-
15 insured Public or Private Employers. The vote was 3 in favor 0 against and 0 abstentions. As a
16 majority of a quorum of the Board voted in favor of the motion, the motion was adopted.

17 **AFFIRMATION PURSUANT TO NRS 239B.030**

18 The undersigned does hereby affirm that the preceding document does not contain the
19 social security number of any person.

20 Dated this 30th day of September, 2019.

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23 By: 
24 Rebecca Fountain, Vice-Chairman
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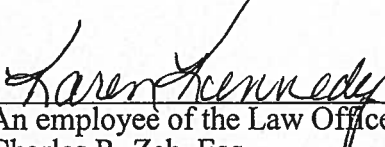
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of The Law Offices of Charles R. Zeh, Esq., and that on this date I served the attached, *Board's Decision on Remand*, on those parties identified below by:

√	Placing an original or true copy thereof in a sealed envelope, and mailed both standard U.S. mail and certified mail/return receipt requested, postage prepaid, placed for collection and mailing in the United States Mail, at Reno, Nevada: Robert F. Balkenbush, Esq. Thorndal Armstrong Delk Balkenbush & Eisinger 6590 S. McCarran Blvd., Suite B Reno, NV 89509 Donald C. Smith, Division Counsel Department of Business and Industry Division of Industrial Relations 3360 West Sahara Avenue, Suite 250 Las Vegas, NV 89102
	Personal delivery
	Telephonic Facsimile at the following numbers:
	Federal Express or other overnight delivery
	Reno-Carson Messenger Service

Dated this 2nd day of October, 2019.



 An employee of the Law Offices of
 Charles R. Zeh, Esq.

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