

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

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6 **In re: Subsequent Injury Request for Reimbursement**

7                                   **Claim No.: C143-11-05516-01**  
8                                   **Date of Injury: January 6, 2011**  
9                                   **Association Name: Public Agency Compensation Trust**  
10                                   **Association Member: Elko County**  
11                                   **Association Administrator: Public Agency Risk Management Service**  
12                                   **Third-Party Administrator: Alternative Service Concepts**  
13                                   **Application Submitted by: Robert Balkenbush, Esq.**

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14                                   **FINDINGS OF FACT**  
15                                   **CONCLUSIONS OF LAW**  
16                                   **AND DETERMINATION OF THE BOARD**

17                                   This matter came on for hearing before the Board for the Administration of the  
18                                   Subsequent Injury Account for the Associations of Self-Insured Public or Private Employers on  
19                                   April 12, 2018. The association name for this matter is the Public Agency Compensation Trust.  
20                                   The association member for this matter is Elko County. The association administrator for this  
21                                   matter is the Public Agency Risk Management Services. The third party administrator for this  
22                                   matter is Alternative Service Concepts. This case was originally received from Robert  
23                                   Balkenbush, Esq., Thorndal Armstrong Delk Balkenbush & Eisinger, on December 26, 2017.  
24                                   Tr., p. 2;17-18. The total amount requested for reimbursement was \$117,657.36. Tr. p. 2;14-16.  
25                                   The amount of reimbursement after verified costs was the sum of \$9,049.43. Tr. p. 2;16-17.

26                                   Board legal counsel advised that this matter had previously been continued for 60 days to  
27                                   give the applicant's legal counsel, Mr. Balkenbush, the opportunity to locate and submit  
28                                   additional evidence, Tr., p. 16;20-24. In a letter dated April 9, 2018, received by Board Legal  
counsel's office the afternoon of April 11, 2018, the day before the hearing, Mr. Balkenbush  
advised that he was submitting no further information beyond that already a part of the case.  
Board legal counsel also advised that Mr. Balkenbush had called Board legal counsel's office,

1 apologizing for the tardy delivery of his letter, but due to a personal family matter, it was not  
2 possible to give notice any earlier, Tr., p. 17;1-6.

3 The Board members participating in person at the meeting were Chairman Brian Wachter  
4 and members Rebecca Fountain, Allen Walker and Deborah Collins, Vice-chairman Joyce Smith  
5 attended the meeting *via* telephone. As all five members of the Board were participating, either  
6 in person or by telephone, a quorum was present to hear and decide this matter.

7 Appearing by telephone on behalf of Mr. Balkenbush and the applicant was John Hooks,  
8 Esq., of Thorndal Armstrong Delk Balkenbush & Eisinger, Tr., p. 17;16-20. Mr. Hooks advised  
9 the Board that: "We will submit on the record as filed." Tr., p. 17;21-22.

10 Board counsel pointed out that in this matter, there was no request for a hearing in the  
11 first place submitted by the applicant. Consequently, the case falls under NAC 616 B.7781(1)(a)  
12 which provides that when there has been no request for a hearing by the applicant, the Board will  
13 proceed to hear the matter and approve or disapprove in whole or in part the recommendation of  
14 the Administrator without allowing additional evidence, testimony, argument or rebuttal. Tr., p.  
15 17;7-15.

16 Chairman Wachter nevertheless stated that he always gives everybody an opportunity just  
17 to say something on a case. Consequently, without adjudicating the matter, he gave Mr. Hooks  
18 the opportunity to say anything that he would like to add to the record. Tr., p. 18;1-3. Mr. Hooks  
19 responded that he had nothing further to add. "I think we're going to rely basically on the  
20 application as submitted with the recommendation of Jay Betz." Tr., p. 18;5-7. Mr. Hooks then  
21 explained further,

22 I think there is a preexisting condition here that has been identified to the extent  
23 that they have found and addressed the condition and it was 95-100 percent  
24 closed. If they didn't address the event then, they didn't really have an option. So I  
think Betz clearly identifies a preexisting condition and will submit on the record.  
Tr., p. 18;7-12.

25 The hearing proceeded with the Administrator making a recommendation to deny this  
26 request pursuant to NRS 616B.578 (1)(3)and(4) for the heart. The Board's Findings of Fact,  
27 Conclusions of Law and Decision follow.

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1 **FINDINGS IN FACT**

2 1. As the applicant submitted this case on the entire record consisting of the staff  
3 report from the Division of Industrial Relations with a recommendation from the Administrator  
4 and the attached exhibits, DIR 1 through 137. The Administrator's staff report was read into the  
5 record unopposed. It is attached hereto and incorporated herein as unopposed Findings of Fact in  
6 this case. *See*, Exhibit A, Staff Report (SR) 1-6. *See also*, Tr., pp. 2;12-12;1-19.

7 2. The injured worker's Atherosclerotic Coronary Artery Disease (CAD) was not  
8 discovered until after December 20, 2010, when the injured worker experienced difficulties while  
9 completing a treadmill test.

10 3. On January 6, 2011, Dr. Theodore B. Berndt performed a cardiac catheterization,  
11 finding normal left ventricle function but a high-grade stenosis of the proximal left anterior  
12 descending coronary artery for which he performed angioplasty with stenting. Subsequent injury  
13 analysis report of Jay E. Betz, M.D., DIR 135.

14 4. On or about March 18, 2014, Robert G. Berry, M.D., conducted a partial  
15 disability examination for the injured worker. Rating him under Table 3-6, Class 2 of the  
16 American Medical Association's *Guides to the Evaluation of Permanent Impairments*, Dr. Berry  
17 concluded that the injured worker should be given a permanent partial disability of 20 % WPI for  
18 the injured worker's coronary artery surgery, angioplasty and stent procedure, without  
19 apportionment to any other condition. DIR 133, 134.

20 5. The award was offered and the award was paid the employee as rated. *See*, DIR  
21 132-134.

22 6. When providing his subsequent injury analysis for the applicant, Dr. Betz  
23 disregarded the opinion of Dr. Berry that there should be no apportionment. Dr. Betz observed  
24 that Dr. Berry felt the injured worker qualified as a Class 2, Table 3-6a of the *Guides* with 20 %  
25 whole person impairment, without mentioning the conclusion of Dr. Berry that apportionment  
26 was not warranted.

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1           7.       Insofar as the prior injury/pathologies are concerned, Dr. Betz stated: “annual  
2 work related medical evaluations started in 2006 indicated that the [injured worker] had elevated  
3 total cholesterol, LDL, and triglycerides and was overweight.” DIR 136.

4           8.       He also found: “There is no indication of prior diagnosis of cardiovascular  
5 disease.” DIR 136.

6           9.       Nevertheless, Dr. Betz would assign a disability rating of 9 % to a preexisting  
7 condition because of his belief that there was a high grade stenosis existing prior to the discovery  
8 of the coronary artery disease, itself. DIR 137.

9           10.      As indicated, balanced against this, Dr. Berry found no basis for apportionment, a  
10 position the employer apparently agreed to at the time, having paid the claim based upon Dr.  
11 Berry’s disability rating of 20 %, WPI, without apportionment.

12          11.      Also, as indicated, Dr. Betz found no indication of prior diagnosis of  
13 cardiovascular disease, the condition for which the injured worker filed for compensation and the  
14 condition for which he was paid by the employer without apportionment. DIR 136.

15          12.      The Board finds there is no subsequent disability in this case. There is only an  
16 initial claim for a condition that developed over a period of years and was discovered in the  
17 employee’s annual physical examination following the treadmill test of December 20, 2010. As  
18 Dr. Betz stated, there is no documented heart disease prior to the January 6, 2011 claim that was  
19 filed due to CAD.

20          13.      The CAD that developed and that was treated on January 6, 2011, was a product  
21 of a deteriorating single condition that progressively worsened over the years. As Dr. Betz  
22 stated: “It is commonly understood that the development of atherosclerotic coronary artery  
23 disease, as found in this case, develops over a period of decades and remains undiagnosed until  
24 the associated stenosis becomes critical as in this case.” DIR 137.

25          14.      To the extent any of the following Conclusions of Law constitute Findings of  
26 Fact, they are incorporated herein.

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1 Association's application and as Vice-chairman Smith seconded the motion. A quorum being  
2 present, a majority voted in favor of the motion on a vote of 5-0, with no abstentions.


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

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

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

19 Dated this 30<sup>th</sup> day of September, 2019.

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21  
22 By:

  
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Rebecca Fountain, Vice-chairman

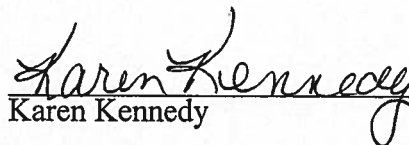
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### CERTIFICATE OF SERVICE

Pursuant to NRC 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 *Findings of Fact, Conclusions of Law and Determination of the Board*, on those parties identified below by:

√	Placing an original or true copy thereof in a sealed envelope, 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: (775) 463-9182
	Federal Express or other overnight delivery
	Reno-Carson Messenger Service
	Certified Mail/Return Receipt Requested

Dated this 20<sup>th</sup> day of October, 2019.

  
\_\_\_\_\_  
Karen Kennedy

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