

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

5 * * *

6
7 In re: Subsequent Injury Request for Reimbursement

8 Claim No.: 5304600164

9 Date of Injury: 11/15/96

10 Association Name: Construction Industry Workers' Comp Group

11 Association Member: Hardy Paint and Drywall

12 Association Administrator: Nevada Risk Management, Inc.

13 Third-Party Administrator: Frank Gates Service Company

14 Application Submitted by: McGroarty and Lane, Chartered

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

18 On Tuesday, April 16, 2002, the above-captioned matter came on for hearing before the
19 Board for the Administration of the Subsequent Injury Account for the Associations of Self-
20 Insured Public and Private Employers. J. Michael McGroarty, Esq., of McGroarty and Lane,
21 Chartered, appeared on behalf of Construction Industry Worker's Compensation Group, its
22 Administrator, Nevada Risk Management, Inc., and the Third-party Administrator, Frank Gates
23 Service Company. The Department of Industrial Relations ("DIR"), State of Nevada, appeared
24 by and through John Wiles, Esq., and Jacque Everhart. The Board's legal counsel, Charles R.
25 Zeh, Esq., Zeh, Saint-Aubin, Spoo & Hearne, was also present.

26 Richard Iannone, Chairperson, called this matter to be heard. Mr. Iannone then recused
27 himself because legal counsel for the Applicant, J. Michael McGroarty is the attorney for Mr.
28 Iannone's Association. Mr. McGroarty also represents Mr. Iannone in connection with his
29 personal business interest. As this was an ongoing relationship, the Chairperson designated Joyce
30 Smith as acting chairperson, who then conducted the hearing. Vice-chairperson Gordon Hutting
31 was absent. Those other members present for the meeting were members Gail Gibson and Dennis

1 Barton. Gail Gibson announced that Mr. McGroarty also represented Mr. Gibson's Association
2 and so, therefore, he would also recuse himself and would not hear the matter. Based upon NRS
3 281.501, which provides that whenever a:

4 ...public officer declares to the body or committee in which the vote is to be taken
5 that he will abstain from voting because of the requirements of this section, the
6 necessary quorum to act upon and the number of votes necessary to act upon the
7 matter, as fixed by any statute, ordinance or rule, is reduced as though the member
8 abstaining were not a member of the body or committee.

9 There are five members of this Board. A regular quorum of the Board is a majority of the
10 Board or three members. As two members of the Board were required under NRS 281.501 to
11 recuse themselves and abstain from voting, the Board then became as if it consisted of three
12 members. A majority or quorum of the Board, with only three members, is participation by two
13 members of the Board. As two members were present and able to participate in the decision on
14 this matter, a quorum was present, then, to hear the case. A unanimous vote of the remaining
15 members would be required for a decision to be made.

16 The initial issue which came before the Board on this matter was the question of whether
17 application for a contested hearing was properly made. NAC 616B.7779 (2) states that an
18 application for a contested hearing on the recommendation of the Administrator must be served
19 upon legal counsel for the Board not later than ten (10) days after the date and notification of the
20 DIR's decision is served upon the Applicant. Absent a timely request for a contested hearing, the
21 Applicant may challenge only that portion of the Board's decision which departs from the
22 recommendation of the Administrator. *See*, NAC 616B.7781 (2).

23 It was stipulated that the ten (10) day time frame was not met by the Applicant, as
24 required by NAC 616B.779 (2). The Applicant's legal counsel argued, however, that the ten (10)
25 day time period was tolled because notification of the Administrator's decision did not include
26 written notice of the ten (10) day time frame to request the contested hearing provided for in
27 NAC 616B.7779 (2). Counsel for the DIR argued that no written notification was required of the
28 ten (10) day deadline because the regulations, themselves, provide the requisite notice.

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1 After substantial debate on the issue, the DIR, by and through counsel, John Wiles, Esq.,
2 stipulated to waive the 10-day requirement and to allow the matter to proceed on this date as a
3 contested hearing. On behalf of the Applicant, J. Michael McGroarty, Esq., accepted the
4 stipulation and agreed that the matter could be heard on the merits as a contested hearing on this
5 date without further notification or process. The Board accepted the stipulation of the parties and
6 allowed the matter to proceed as a contested hearing as if timely application to contest the
7 decision of the Administrator had been made.

8 Turning to the merits of the claim, the Administrator recommended denial of this request
9 pursuant to NRS 616B.578 (1) and (3). The Administrator believed that the remaining sections
10 of NRS 616B.578, however, had been satisfied by the Applicant.

11 The total amount requested for reimbursement was the sum of THIRTEEN THOUSAND
12 NINE HUNDRED NINETY-NINE DOLLARS AND 96/CENTS (\$13,999.96). The amount of
13 reimbursement after costs were verified was the sum of THIRTEEN THOUSAND FOUR
14 HUNDRED TWENTY-TWO DOLLARS AND 51/CENTS (\$13,422.51), the amount the
15 Administrator recommended for payment in the event that the Administrator's recommendation on
16 claim acceptance was overturned by the Board and the Board accepted the claim.

17 The initial injury suffered by the injured worker was to the right knee and lumbar spine
18 only. The subsequent injury, the injury which generated the application before the Board, was to
19 the right shoulder only. The second injury occurred when the injured worker caught her toe on a
20 carpet and fell, injuring only her right arm and shoulder. Only the injury to the right shoulder
21 required treatment, however.

22 NRS 616B.578 (1) requires that the compensation due the injured worker for the
23 subsequent injury be substantially greater by reason of the "combined effects" of the pre-existing
24 impairment and the subsequent injury, than from the subsequent injury alone. The Administrator
25 found this requirement was not satisfied because according to the Administrator, NRS 616B.578
26 (1) requires that the evaluation of an application for claim acceptance be based upon the
27 "combined effects" of the prior and subsequent injury, not an analysis of the "cause" of the
28 subsequent injury. That is to say, the DIR appears to argue that the subsequent injury must

1 operate upon an existing bodily condition or predisposition to produce a further injurious result as
2 the condition precedent to the satisfaction of NRS 616B.578 (1).

3 Thus, for the DIR, it is no moment that the prior injury might have been the proximate of
4 cause to the second injury. Subsequent injury account eligibility must turn upon whether the two
5 (2) injuries, the prior and subsequent injury, operate in concert so that the combined effects
6 resulted in compensation that is substantially greater by reason of the combined effects of the first
7 and second injury, than the second injury alone.

8 The Administrator stated that there were no medical reports from any of the treating or
9 rating physicians involved with either the original or the second injury indicating a correlation
10 between the two (2) injuries. The first claim was for the spine and right knee. The second claim
11 was for the right shoulder only. According to the Administrator, there was also nothing in the
12 record to establish that the weakened condition of the right knee caused the toe to catch in the
13 carpet which then caused the fall, which then in turn caused the injury to the right shoulder.

14 Richard Kudrewicz, M.D., provided a subsequent injury report. There, he states: "It was
15 possible that this patient [injured worker] could have had an increased risk of catching her
16 toe/foot in the carpet during her subsequent injury based upon the pre-existing muscle and lost
17 range of motion in her knee." The Administrator argued that "anything is possible" and that the
18 "anything is possible" standard does not meet the test of NRS 616B.578 (1).

19 Counsel for the Applicant argued that on a policy level, the Board should look at the
20 combined causation of the two (2) injuries. Counsel for the Applicant adopted the approach of
21 Dr. Kudrewicz that since it was possible that the injury to right knee may have caused the fall
22 which in turn caused the injury to the right shoulder, the requirement has been satisfied in NRS
23 616B.578 (1) that the combined effects result in compensation which is substantially greater due
24 to the combined effects of the first and second injury the second injury alone.

25 Counsel, for the Applicant, also argued that Dr. Kudrewicz's opinion that the injured
26 employee's pre-existing right leg pathology, being 20% responsible for the compensation due the
27 shoulder injury, met the substantiality test of NRS 616B.578. Applicant's counsel then argued
28 that the "substantial evidence" rule applied at this stage of the proceedings and that it is a rule

1 which does not require very much evidence at all to satisfy. The substantial evidence rule is a rule
2 that is met whenever there is sufficient evidence in the record to support a conclusion. It was the
3 Applicant's position that a 20% contribution to the second injury met this test, *i.e.*, constituted
4 substantial evidence.

5 In reply, Mr. Wiles argued that NRS 616B.578 (1) is not a proximate cause statute. The
6 existence of the two (2) injuries is assumed under NRS 616B.578. Rather, the statute focuses
7 upon the combined effects of the condition upon the injured worker, once the subsequent injury
8 takes place. According to Mr. Wiles, the expression "combined effects" in the statute relates to
9 the interaction of the prior impairment and subsequent injury upon each other, not whether the
10 first injury caused the second injury, a proximate cause question which, according to Mr. Wiles,
11 was the case that Applicant's counsel was trying to make. The question, according to the DIR
12 was whether the subsequent injury caused a pre-existing, asymptomatic condition to become
13 symptomatic and/or whether the subsequent injury aggravated the pre-existing condition.

14 The issue under NRS 616B.578 (1) was, thus, joined. According to the Applicant's
15 counsel, NRS 616B.578 (1) was a proximate cause statute. According to the DIR through John
16 Wiles, Esq., NRS 616B.578 (1) was a proximate "effect" statute. It was, therefore, also the
17 position of the DIR that under NRS 616B.578 (3) it must logically follow that the prior
18 impairment and subsequent injury must involve the same body part. Counsel for the Applicant
19 disagreed on this point, also, thereby joining the issue under NRS 616B.578 (3).

20 FINDINGS OF FACT

21 The Board sets forth its Findings of Fact below. To the extent that portions of the
22 preceding section constitute Findings of Fact, those portions are incorporated herein by reference.

- 23 1. Legal counsel for the Applicant and the Administrator of the Department of
24 Industrial ("DIR") stipulated to a contested hearing of the Administrator's decision.
- 25 2. The initial injury suffered by the injured worker was to the right knee and lumbar
26 spine only.
- 27 3. The subsequent injury occurred when the injured worker caught a toe on a carpet
28 and fell, injuring only the right arm and shoulder.

1 4. Only the right shoulder required treatment, however, by reason of the fall or
2 subsequent injury.

3 5. There is no credible evidence in the record which establishes that the pre-existing
4 impairment, the right knee and lumbar spine, was aggravated by the subsequent injury or that the
5 subsequent injury made worse the previous impairment.

6 6. The prior and subsequent injuries involved entirely separate body parts. If the
7 injured worker had not previously injured her right knee and had not previously injured her
8 lumbar spine and still had fallen on the right shoulder, there is no credible evidence in the record
9 that the injury to the right shoulder suffered by the worker would have been less severe than it
10 was.

11 7. The only credible evidence in the record is that the severity of the injury to the
12 right shoulder is entirely the product of the fall, itself, and is unrelated to any interaction between
13 the previous injuries and the subsequent right shoulder injury.

14 8. Dr. Kudrewicz's participation in the proceedings came in the form of a written
15 report. In it he states: "It was possible that this patient [the injured worker] could have had an
16 increased risk of catching her toe/foot in the carpet during her subsequent injury based upon the
17 pre-existing muscle and loss of range of motion in her knee." Exhibit E, p. 3.

18 9. Dr. Kudrewicz also states in his report: a. it was "somewhat difficult" to assign
19 responsibility between the first and second injury, Ex. E, pp. 3, 4; it "is possible" that the first
20 injury had an impact on the second, Ex. E, pp. 3, 4; and, that the relationship of the first injury to
21 the second injury is relatively mild. Ex. E, pp. 3, 4.

22 10. The opinions rendered by Dr. Kudrewicz in the preceding two (2) paragraphs were
23 not stated within a reasonable degree of medical certainty or probability. The standard for Dr.
24 Kudrewicz's opinion was one of "possibility," or an opinion that was "somewhat difficult," to
25 render.

26 11. The record is bereft of any information from which to infer that Dr. Kudrewicz
27 intended anything other than that his opinion was difficult to render and that it was possible the
28 first injury caused the second injury. While stating that the cost of treatment and care for the

1 second injury was 20 % referable to the injury to the right knee, Dr. Kudrewicz also states that
2 the 20% is at best a figure he would use, indicating that it could be less. Further, he states, it is
3 "**possible** that this patient **could** have had an increased risk..." of falling because of the initial
4 injury to the right knee. (emphasis added). He also states that the contribution of the initial
5 injury of the right knee to the injury sustained to the right shoulder is a contribution that is
6 "...**relatively mild**..." and that the "...**probabilities are somewhat increased**..." that the accident
7 could occur because of the initial injury to the right knee. (emphasis added) Exhibit E, p. 4.

8 12. Dr. Kudrewicz couches or labels his own analysis of the *sequela* of the second
9 injury as "...the **following thoughts**..." (emphasis added) Ex. E., p. 3.

10 CONCLUSIONS OF LAW

11 1. To the extent that any of the preceding paragraphs constitute conclusions of law,
12 they are incorporated herein.

13 2. Due to the paucity of case law in Nevada involving the State's various subsequent
14 injury accounts, the Board must look to other jurisdictions for guidance. There, it is revealed that
15 the reason for creating subsequent injury funds is three-fold. Such funds have typically been
16 created to help prevent discrimination against disabled persons by easing the impact which the
17 threat of a subsequent injury holds by providing a pooled source of funds to underwrite the cost
18 of the subsequent injury that might occur. Secure in the knowledge that a pooled subsequent
19 injury fund exists, employers are thought to be encouraged to employ or retain in its employ the
20 already disabled/injured worker.

21 3. The fund was also created, or designed to relieve employers from the hardship of
22 liability for those consequences of compensable injury not attributable to their employment.

23 4. Finally, it is the intent of the subsequent injury account that "[e]ach employer's
24 premium should reflect his own cost experience in order to reward, and thereby encourage, safety,
25 as well as to avoid an unfair burden on other employers." *Jussila v. Department of Labor and*
26 *Industries*, 370 P.2d 582, 586 (Wash., 1962). *See also, Hernandez v. Gerber Group*, 608 A.2d
27 87, 89 (Conn., 1992); *Jacques v. H.O. Penn Machinery Co.*, 349 A.2d 847, 166 Conn. 352,
28 355-56 (Conn., 1974).

1 5. Applications for reimbursement under Nevada's subsequent injury account should
2 be considered with these premises in mind and applications approved which promote these
3 legislative purposes.

4 6. Additionally, it is well settled, the burden of proof is upon the applicant/employer
5 to show entitlement to reimbursement. *See, Franklin v. Victoria Elevator Co.*, 206 N.W.2d 555,
6 556 (Mn., 1973); *O'Reilly v. Raymond Concrete Piling*, 419 N.Y.S.2d 475, 476 (N.Y., 1979).
7 Thus, in Nevada the burden is upon the self-insured to show the injured worker " ...incurred a
8 subsequent injury arising out of and in the course of his employment which entitles him to
9 compensation for disability that is substantially greater by reason of the combined effects of the
10 preexisting impairment and the subsequent injury than that which would have resulted from the
11 subsequent injury alone...." NRS 616B.578(1). *See, Franklin v. Victoria Elevator Co.*, *supra*;
12 *O'Reilly v. Raymond Concrete Piling*, *supra*. Furthermore, there is no presumption favoring the
13 employer in pursuit of this burden of proof. *Jussila v. Department of Labor*, *supra* at 585.

14 7. The burden of proof for subsequent injury fund eligibility is a "but for" test. *See*,
15 *Eckhart v. State Indus. Special Indem. Fund*, 985 P.2d 685 (Idaho 1999). That is to say, the
16 employer must establish that **but for the combined effects** of the prior impairment and
17 subsequent work related injury, the compensation paid would not have been as great as would
18 have been the case from the subsequent injury alone. *Cf. Jussila v. Department of Labor*, *supra*
19 at 585,586. *See also, Office of Workers' Comp. Prog. v. Cargill*, 709 F.2d 616, 617 (9th Cir.,
20 1983) ("an injury that would not have resulted in as great a disability" if there had not been a pre-
21 existing condition); *Flor-A-Crete Industries, Inc. v. Drake*, 409 So.2d 1196, 1197 (Fla., 1982).

22 8. The Applicant argues that the Applicant need only produce substantial evidence
23 in order to satisfy the burden of proof, given the remedial nature of the subsequent injury account
24 statutory scheme. The Applicant is mistaken, here for two reasons. First, the substantial evidence
25 rule is inapposite. The rule was meant to be applied at the appellate level when an appellate
26 tribunal is charged with the responsibility of reviewing the factual terminations of quasi-judicial
27 administrative bodies such as this Board. *See, Jussila v. Department of Labor*, *supra* at 586, *see*
28 *also, Eckhart v. State Indus. Special Indem. Fund*, *supra* at 689. The employer is also mistaken

1 because the "legislative purpose" of the statutory scheme is not a rule of evidence, but a rule of
2 interpretation and application. It should be applied to aid in the acceptance or rejection of
3 interpretations urged upon the Board which support or run counter to the purpose for creating the
4 subsequent injury account in the first place. Interpretations or applications which thwart the
5 purpose for creating subsequent injury funds should be rejected. *See, Hernandez v. Gerber*
6 *Group*, 608 A.2d 87, 91 (Conn. 1992).

7 9. The burden, therefore, upon the employer in subsequent injury fund cases is to
8 satisfy the "but for" rule by a preponderance of the evidence. *Eckhart v. State Industrial Special*
9 *Indem. Fund, supra* at 689. The reason for this is simple. Were the burden of proof less, it
10 would become too easy for the employer to justify reimbursement, thereby allowing the employer
11 to seek recovery without regard for keeping the workplace safe because the employer would
12 know that the fund would virtually always be there as a bailout.

13 10. Only NRS 616B.578 (1) and (3) are at issue before the Board in this case. The
14 parties are in agreement that the remaining eligibility criterion have been met for claim acceptance
15 and reimbursement. Additionally, there is no issue before the Board on the timing of the request
16 for a contested hearing by reason of the stipulation of the parties that the matter may proceed as a
17 contested hearing. The regulation providing for notice of an appeal is not jurisdictional, and
18 therefore, the Board has the authority to waive the timeliness requirement.

19 11. The Applicant, through counsel, argues that the burden of proof under NRS
20 616B.578 (1) is a proximate cause test. The Applicant claims that NRS 616B.578 (1) was
21 satisfied because the initial injury, the Applicant argues as a matter of fact, was the proximate
22 cause of the subsequent injury. Therefore, the Applicant reads the "combined effects"
23 requirement or nexus between the first impairment and the subsequent injury set forth in NRS
24 616B.578 (1) as "proximate cause." In short, the expression "combined effects," means,
25 according to the Applicant, "proximate cause."

26 12. The Administrator, DIR, argues that NRS 616B.578 (1) is not a proximate cause
27 statute but requires the evidence of substantiality to focus upon the injuries, themselves, after they
28 have been caused and to turn upon the interaction of the two upon effect, not cause. The DIR's

1 rationale is based upon the fact that NRS 616B.578 (1) explicitly uses the term "combined
2 effects," rather than "combined cause" or proximate cause.

3 13. It is unnecessary for the Board to resolve this dispute between the DIR and the
4 Applicant over these divergent views of NRS 616B.578 (1). Assuming *arguendo*, but not
5 deciding that the Applicant's interpretation of NRS 616B.578 (1) is the correct one, there is
6 nevertheless a failure of proof by the Applicant.

7 14. No matter whether the standard is one of proximate cause, proximate effect or
8 both, as *Hernandez*, states, the question always remains whether as a "... factual matter, the
9 requisite causal linkage therefore exist[s]... between preexisting disability and subsequent injury,
10 permitting assignment of liability for the subsequent injury to the Fund." *Hernandez v. Gerber*,
11 *supra* at 91.

12 15. The Applicant relies exclusively upon Dr. Kudrewicz' report, Exhibit E, to
13 establish by a preponderance of the evidence that the requisite nexus exists in this case, namely, in
14 the Applicant's view, that the "combined effects" test was met because the pre-existing injury was
15 the "proximate cause" of the second injury.

16 16. In his report, Dr. Kudrewicz admits this is an atypical case. Unlike the usual case
17 he sees, he states that here, there is no evidence that the subsequent injury aggravated the prior
18 condition or vice versa. "In most cases we have a body part which has sustained a previous injury
19 and now through a subsequent injury has sustained additional pathology and additional disability
20 to that body part." Exhibit "E," p. 3. Here, however, no such additional pathology exists and
21 there exists no additional disability to the subsequently injured body part, the shoulder. Rather,
22 Dr. Kudrewicz states: "In this particular case the right shoulder has no history of previous
23 problems." Exhibit E, p. 3.

24 17. Thus, to Dr. Kudrewicz, the linkage between the prior impairment and subsequent
25 injury is strictly a matter of proximate cause. He states: "It is a question of whether or not the
26 previous knee difficulties presented an increased risk for the subsequent injury in which the patient
27 sustained injury to the right shoulder." Ex. E, p. 3.

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1 18. The proximate cause "linkage" Dr. Kudrewicz supplies is as follows. Initially, he
2 states:

3 **If the preexisting knee difficulties did present an increased risk, it is somewhat**
4 **difficult to quantify exactly how much responsibility** we should assign...
5 between the prior knee problem and subsequent shoulder injury. Ex. E, p. 3.
6 (Emphasis added.).

7 19. As additional evidence of a nexus between the two injuries, he adds the "mere
8 possibility that the knee injury could have led to the trip and fall which in turn led to the shoulder
9 injury." He also labels the "contribution" and, thus, the nexus as "**relatively mild**." Finally, he
10 says that it is certainly "conceivable" that the condition of the knee, as distinguished from some
11 other cause such as inattentiveness, negligence, and the like, "**could**" have led to the trip and fall.
12 These characterizations or linkages, Dr. Kudrewicz labels as his "**thoughts**" on what happened.

13 20. Never did Dr. Kudrewicz offer his thoughts, here, as expert medical opinion within
14 a reasonable degree of medical certainty. At no point also was Dr. Kudrewicz offered as an
15 expert on the cause and effect of slip and fall industrial injuries. His assessment of the cause of
16 the fall is entitled to no greater weight than a lay person.

17 21. The record is devoid of proof that persons with knee injuries are more likely than
18 not to trip and fall and suffer injury to a shoulder as a result of the fall caused by a weakened knee
19 condition. Furthermore, proof based upon that which is conceivable or possible is no proof at all
20 as anything is possible. It is evident from the record that Dr. Kudrewicz was merely speculating
21 or musing about the cause of the second injury, *i.e.*, the fall, and indeed he says as much by
22 labeling his statements as his "**thoughts**." It is well settled in Nevada that a party's burden of
23 proof is not carried by mere speculation. *Cf. Collins v. Union Fed. Sav. & Loan*, 99 Nev. 284
24 (1983) (not entitled to build a case based upon the gossamer threads of whimsy, speculation or
25 conjecture).

26 22. Since the burden is on the Applicant to show by a preponderance of the evidence
27 under the Applicant's view of NRS 616B.578 (1) that the first injury was the proximate cause of
28 the second, *i.e.*, that there is a causally related *sequela* of pre-existing medical conditions, the
Applicant fails because proof of proximate cause based upon nothing more than speculation does

1 not meet this burden. The proof of proximate cause offered by the Applicant is nothing but the
2 speculation and musings of Dr. Kudrewicz. Therefore, no factual showing has been made by the
3 Applicant to support a finding under NRS 616B.578(1), that the first injury was the proximate
4 cause of the second injury. Under the Applicant's view of NRS 616B.578 (1), therefore, NRS
5 616B.578 (1) has not been satisfied and the application for subsequent injury fund coverage
6 should be denied.

7 23. The result is the same under the "combined effects" approach offered by the DIR
8 as the correct interpretation of NRS 616B.578 (1) in that the Applicant admits that except for a
9 claim of "proximate cause," there is no other nexus between the pre-existing condition and the
10 second injury. Dr. Kudrewicz admits, as indicated, that there is no "pathology" between the pre-
11 existing condition disability of the injured worker. Therefore, under the "combined effects" view
12 of NRS 616B.578 (1), the requirements of NRS 616B.578 (1) have not been satisfied, either.

13 24. The Applicant has, therefore, made no factual showing under either of the theories
14 offered to the Board concerning the meaning of NRS 616B.578 (1) or under any theory of NRS
15 616B.578 (1) which the Board might perceive to support a finding under NRS 616B.578 (1) that
16 its requirements have been satisfied.

17 25. The DIR reads NRS 616B.578 (3) to require that the prior and subsequent injury
18 be to the same body part. Given the Applicant's failure of proof under NRS 616B.578 (1), it is
19 unnecessary for the Board to reach this issue. The Board will, therefore, leave resolution to a
20 later day.

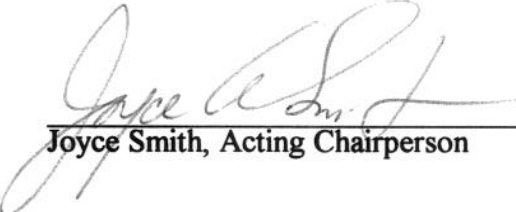
21 **DETERMINATION OF THE BOARD**

22 Based upon the Findings of Fact and Conclusions of Law set out above, the Board makes
23 its decision as follows:

24 The determination of the Administrator of the Division of Industrial Relations is affirmed
25 by the Board. The Applicant has failed to establish a claim by reason of the Applicant's failure to
26 provide proof that NRS 616B.578 (1) was satisfied. Therefore, the application for
27 reimbursement from the Subsequent Injury Account for the Associations of Self-Insured Public
28 and Private Employers is hereby denied. The application was denied upon a motion by Dennis

1 Barton, seconded by acting chairperson Joyce Smith, which motion was sustained by a vote of
2 2-0-2 on April 16, 2002.

3 Dated 14 day of March, 2003.

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6 Joyce Smith, Acting Chairperson
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Law Offices of ZEH, SAINT-AUBIN, SPOO & HEARNE, 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: J. Michael McGroarty, Esq. J. MICHAEL MCGROARTY, CHARTERED 7381 West Charleston Blvd., Suite 130 Las Vegas, NV 89117-1571 John F. Wiles, Division Counsel Department of Business and Industry Division of Industrial Relations 1301 North Green Valley Parkway, Suite 200 Henderson, NV 89104
	Personal delivery
	Telephonic Facsimile at the following numbers: (775) 463-9182
	Federal Express or other overnight delivery
	Reno-Carson Messenger Service
X	Certified Mail/Return Receipt Requested

Dated this 18th day of March, 2003.



Karen Weisbrot