



Ethical Administration and Litigation of Claims in a Changing Workers' Compensation Environment

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What Claimant's Think of Industry



What Industry Thinks of Claimants



What we should be doing:



Working together “to ensure the quick and efficient payment [or litigation] of compensation to employees who are injured or disabled at a reasonable cost to the employers...” NRS 616A.010(1)

Professional Responsibility

Professional Responsibility is the area of legal practice that encompasses the duties of attorneys to act in a professional manner, obey the law, avoid conflicts of interest, and put the interests of clients ahead of their own interests

Legal Ethics

Legal Ethics encompasses an ethical code governing the conduct of persons engaged in the practice of law and persons more generally in the legal sector

In the United States

- “Legal ethics” in the United States is generally understood to primarily apply to lawyers, while codes of professional responsibility also apply in a derivative sense (indirectly) to non-lawyers who work with lawyers, such as paralegals or private investigators.
- In the United States, the practice of law is regulated by the governments of the individual states and territories.
- As a whole, federal law does not control legal ethics

Legal Ethics

- Each state or territory has a code of professional conduct dictating rules of ethics
- These may be adopted by the respective state legislatures and/or judicial systems
- The American Bar Association has promulgated the Model Rules of Professional Conduct which, while formally only a recommendation by a private body, have been influential in many jurisdictions.

Nevada Legal Ethics

- The Nevada Bar Association has promulgated the Nevada Rules of Professional Conduct which are adopted by The Supreme Court of Nevada which govern the practice of law and enumerate the base-line levels or moral conduct for attorneys in Nevada.

Nevada Legal Ethics

- The NEVADA RULES OF PROFESSIONAL CONDUCT comprise the following eight (8) topics
 - CLIENT-LAWYER RELATIONSHIP
 - COUNSELOR
 - ADVOCATE
 - TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS
 - LAW FIRMS AND ASSOCIATIONS
 - PUBLIC SERVICE
 - INFORMATION ABOUT LEGAL SERVICES
 - MAINTAINING THE INTEGRITY OF THE PROFESSION

Purposes of Legal Ethics

- To promote:
 - Respect of client confidences,
 - Candor toward the tribunal,
 - Truthfulness in statements to others,
 - And professional independence are some of the defining features of Nevada legal ethics.

Lawyers who fail to comply with local rules of ethics may be subjected to discipline ranging from private (non-public) reprimand to disbarment

Adjuster Professional Ethics

NRS 684A.165 Standards of conduct. [Effective July 1, 2018.]

1. An adjuster shall be honest and fair in all communications with the insured, the insurer and the public.
2. An adjuster shall give policyholders and claimants prompt, knowledgeable service and courteous, fair and objective treatment at all times.
3. An adjuster shall not give legal advice and shall not deal directly with any policyholder or claimant who is represented by legal counsel without the consent of the legal counsel involved.
4. An adjuster shall comply with all local, state and federal privacy and information security laws, if applicable.
5. An adjuster shall identify himself or herself as an adjuster and, if applicable, identify his or her employer when dealing with any policyholder or claimant.
6. An adjuster shall not have any financial interest in any adjustment or acquire for himself or herself or any person any interest or title in salvage without first receiving written authority from the principal.

Hearing Officer & Appeals Officer Professional Conduct

NAC 616C.2691 Hearing or appeals officer: Professional conduct. ([NRS 616C.295](#)) A hearing or appeals officer shall:

1. Act in a manner that preserves the integrity, impartiality and independence of hearings in contested cases for compensation conducted pursuant to [chapters 616A](#) to [617](#), inclusive, of NRS and promotes public confidence in such hearings;
2. Act in a manner that avoids the appearance of impropriety, including, without limitation, disclosing any affiliation to a party in a proceeding before the officer;
3. Perform diligently all official duties;
4. Be faithful to the law and decide matters on the basis of the facts and the applicable law, including, without limitation, judicial decisions; and
5. Maintain order and decorum in proceedings before the officer.

Violations in General

- Conflicts of interest
- Incompetent representation
- Mishandling of client money
- Fee-splitting arrangements
- Disclosure of confidential information
- Communication with represented parties
- Improper solicitation and advertising

Recent Changes in the Law

- AB 128 (Vocational Rehabilitation)
- AB 370 and SB 377 (Survivor Benefits & PTD Annual Increase)
- AB 455 (Benefit Notification)
- AB 492 (Stress-related claims)
- SB 215 (Cancer claims)
- SB 381 (Transfer of Care/ AMW)

Recent Changes in the Law

- AB 128 (Vocational Rehabilitation)

- If the injured employee does not have existing marketable skills, such a program must not exceed: If no physical impairment rating has been issued, or a permanent disability with a permanent physical impairment of **0 percent, 9 months**;
- **If the injured employee has incurred a permanent physical impairment of 1 percent or more but less than 6 percent, 12 months**;
- If the injured employee has incurred a permanent physical impairment of 6 percent or more, **24 months**.
- A program for vocational rehabilitation may be extended without condition or limitation, by the insurer at the insurer's sole discretion; or **by order of a hearing officer or appeals officer**.
- Effective July1, 2019

Recent Changes in the Law

- AB 370 and SB 377 (PTD Annual Increase)

- NRS 616A.425
- Fund for Workers' Compensation and Safety must be used to defray all costs and expenses of administering the program of workers' compensation, including the payment of:
- *(g) For widows, widowers, surviving children and surviving dependent parents who are entitled to death benefits on account of an industrial injury or a disablement from an occupational disease that occurred before July 1, 2019:*
 - *(1) Reimbursement to insurers for the cost of the increase in the death benefits pursuant to subsection 1 of the section 3.5 of the act;*
 - *(2) The salary and other expenses of administering the payment of the increase in death benefits pursuant to subsection 1 of section 3.5 of this act.*
- *The provisions of this paragraph shall cease to be of any force or effect when no widow, widower, surviving children or surviving dependent parent is entitled to receive death benefits on account of an industrial injury or a disablement from an occupational disease that occurred before July 1, 2019.*

Recent Changes in the Law

- **AB 370 and SB 377 (PTD Annual Increase)**

- *Any widow, widower, surviving child or surviving dependent parent who is receiving death benefits pursuant to chapters 616A to 617, inclusive, of NRS on account of an industrial injury or a disablement from an occupational disease is entitled to an annual increase in those death benefits in the amount of 2.3 percent. The benefits must be increased pursuant to this subsection:*
 - *(a) On January 1, 2020; and*
 - *(b) On January 1 of each year thereafter.*
- *2. Any increase in death benefits provided pursuant to this section is in addition to any increase in death benefits to which a widow, widower, surviving child or surviving dependent parent is otherwise entitled by law.*
- *Any increase in death benefits pursuant to this section on account of an industrial injury or a disablement from an occupational disease that occurred on or after July 2019, must be paid by insurers, including, without limitation, employers who provide accident benefits for injured employees pursuant to NRS 616C.265, without reimbursement from the Fund for Workers' Compensation and Safety pursuant to section 3.8 of this act.*

Recent Changes in the Law

- AB 370 and SB 377 (PTD Annual Increase)

- An insurer, including without limitation, an employer who provides accident benefits for injured employees pursuant to NRS 616C.265, who pays the increase in death benefits to a widow, widower, surviving child or surviving dependent parent pursuant to section 3.5 of this act, is entitled to be reimbursed for the amount of that increase from the Fund.
- An insurer must provide the Administrator the required information not later than March 31 of each year to be eligible for reimbursement for payments of increases in death benefits which were made in the immediately preceding calendar year.
- An insurer may elect to apply any approved reimbursement made pursuant to this section towards any current or future assessment levied by the Administrator pursuant to NRS 232.680.
- Effective July 1, 2019

Recent Changes in the Law

- AB 455 (Benefit Notification)
 - NRS 616B.012
 - The provisions of this section do not prohibit the Administrator or the Division from:
 - (b) *Notifying an injured employee or surviving spouse or dependent of an injured employee of benefits to which such persons may be entitled in addition to those provided pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS but only if:*
 - (1) *The notification is solely for the purpose of informing the recipient of benefits that are available to the recipient; and*
 - (2) *The content of the notification is limited to information concerning services which are offered by nonprofit entities.*
 - Effective July 1, 2019

Recent Changes in the Law

- AB 492 (Stress-related claims)

- An injury or disease caused by stress shall be deemed to arise of and in the course and scope of employment, and shall not be deemed the result of gradual mental stimulus, if the employee is a first responder and proves by clear and convincing medical or psychiatric evidence that:
 - (a) The employee has a mental injury caused by extreme stress due to the employee directly witnessing:
 - (1) The death, or aftermath of the death, of a person as a result of a violent, suicide or mass casualty incident or
 - (2) An injury, or aftermath of an injury, that involves grievous bodily harm of a nature that shocks the conscience; and
 - (b) The primary cause of the mental injury was the employee witnessing an event described a paragraph (a) during the course and scope of his or her employment.
- Same language for responding to a mass casualty incident

Recent Changes in the Law

- AB 492 (Stress-related claims)
 - In determining Average Monthly Wage, it must include concurrent wages only if the concurrent wages are earned from one or more employers who are insured for workers' compensation or government disability benefits by:
 - A private carrier;
 - A plan of self-insurance;
 - A workers' compensation insurance system operating under of the laws of any other state or territory of the United States or
 - A workers' compensation or disability benefits plan provided for and administered by the Federal Government or any agency thereof.
 - Wages from a private employer include whether that employment is full-time, part-time, temporary, periodic, seasonal or otherwise limited in term, or pursuant to contract.
 - AMW changes effective July 1, 2019; other amendments effective now.

Recent Changes in the Law

- AB 492 (Stress-related claims)
 - First responder means: a salaried or volunteer firefighter; police officer; emergency dispatcher or call taker who is employed by law enforcement or public safety agency in this State; or emergency medical technician or paramedic who is employed by a public safety agency in this State.
 - Mass casualty incident means an event that, for the purposes of emergency response or operations, is designated as a mass casualty incident by one or more governmental agencies that are responsible for public safety or for emergency response.

Recent Changes in the Law

- SB 215 (Cancer Claims)

- For a firefighter, an investigator of fires or arson, an instructor or officer for the provision of training fire or hazardous materials, or a volunteer firefighter, ***disabling cancer is rebuttably presumed to have arisen out of and in the course of the employment of the person if the disease is diagnosed during the course of the person's employment.***
- ***For a firefighter, an investigator of fires or arson, an instructor or officer for the provision of training fire or hazardous materials who retires before July 1, 2019 or volunteer firefighter regardless of when he or she retires, disabling cancer is rebuttably presumed.***

Poremba v. S. Nevada Paving, 133 Nev. Adv. Op. 2 (2017)

- The Supreme Court, Cherry, C.J., en banc, held that:(1) administrative or appeals officer must first reopen a workers' compensation claim based solely on statutory requirements and then determine what, if any, reimbursement is owed; (2) insurer is not entitled to reimbursement from portion of settlement funds designated to compensate claimant for pain and suffering; (3) claimant was not required to prove that he spent excess tort recovery on medical expenses as condition precedent to reopening claim; (4) appeals officer was required to determine whether claimant qualified to reopen claim before considering whether insurer was entitled to reimbursement; and (5) evidentiary hearing was required on allocation of settlement funds and reimbursement.
- When a person is injured, he or she may sue the responsible party for payment to cover a variety of costs. [Restatement \(Second\) of Torts § 924 \(Am. Law Inst. 1979\)](#). While medical treatment is certainly among those costs, a plaintiff may also recover damages for pain and suffering, lost wages if the defendant's actions prevented the plaintiff from working, and harm to property. *Id.* These damages include and exceed the compensation as defined in [NRS 616A.090](#).
- To deny a worker the opportunity to reopen his claims for future workers' compensation benefits because he properly used the portion of his settlement money designated for pain and suffering to feed himself and his family is patently unjust and not supported by the statute.
- Going forward, parties can expressly designate how settlement funds are to be allocated so that future evidentiary hearings are not necessary.

Hypotheticals:

- Client Counseling
- Hearings and Appeals
- Discovery and Evidence
- Subrogation and Petition for Judicial Review

Questions/Comments

Thank You!



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Don't Forget . . .

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<http://dir.nv.gov/WCS/Training/>**

- **Session 2B -Ethical Administration & Litigation of Claims
in a Changing Workers' Compensation Environment**

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