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February 26, 2016

Carol M. Stonefield  
Chief Principal Policy Analyst  
Research Division  
Legislative Counsel Bureau  
401 South Carson Street  
Carson City, NV 89701

Re: *Board for the Administration of the Subsequent Injury Account for Associations of Self-Insured Public or Private Employers*

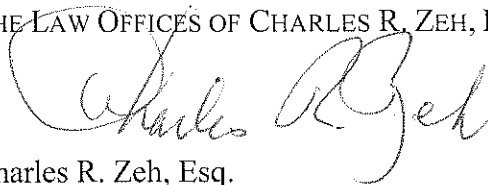
Dear Ms. Stonefield:

Please be advised that this office is legal counsel to the Board for the Administration of the Subsequent Injury Account for Associations of Self-Insured Public or Private Employers (the Board). I am pleased to forward to you the Board's responses to the form entitled: "Information Concerning Board or Commission, Subject to Review by the Sunset Subcommittee of the Legislative Commission." We have completed the form on line and are forwarding the responses to you in MS Word format along with the attachments that were requested on the Sunset Subcommittee Review Form.

Please contact me if you have any questions.

Sincerely,

THE LAW OFFICES OF CHARLES R. ZEH, ESQ.



Charles R. Zeh, Esq.

CRZ/kdk

Enclosures as stated

cc: Bryan Wachter, Chairman  
Donald C. Smith, Esq., Legal Counsel, DIR  
Charles J. Verre, Chief Administrative Officer, DIR  
Steve George, Administrator, DIR

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**STATE OF NEVADA**  
**Board for the Administration of the**  
**Subsequent Injury Account for the**  
**Associations of Self-insured Public or Private Employers**

**Meeting Minutes**  
**For the Meeting of February 11, 2016**  
**Meeting of the Board**  
**Henderson, Nevada**

A meeting of the Board for the Administration of the Subsequent Injury Account for the Associations of Self-insured Public or Private Employers was convened on February 11, 2016. The meeting was duly noticed in compliance with the Nevada Open Meeting Law to take place at 1301 North Green Valley Parkway, WCS Conference Room, Henderson, Nevada, the offices of the Division of Industrial Relations ("DIR"). Vice-Chairman Emilia Hooks and member Richard Iannone attended the meeting in person. Member Joyce Smith attended the meeting *via* telephone conference call. Chairman Bryan Wachter was absent. There is one vacant position on the Board. The meeting was conducted so that each member of the Board and public, if any, could hear all participants and all Board members could participate in the deliberations and discussions. Each Board member participating in the meeting also had before him or her all written materials to be considered during the deliberations of the Board meeting or was obliged to refrain from voting if not in their possession.

**1. Roll Call.**

Vice-Chairman Hooks called the meeting to order. In the absence of Chairman Bryan Wachter, she chaired the meeting. Vice-Chairman Emilia Hooks and member Richard Iannone attended the meeting in person. Member Joyce Smith attended the meeting *via* telephone conference call. Chairman Wachter was absent. There is now one vacant position on the Board. A quorum of the Board was present to conduct the Board's business, as three members of the Board were in attendance.

Also present in person were Jacque Everhart, the Liaison to the Board for the Administrator of the Division of Industrial Relations (DIR), Jennifer Leonescu, counsel for the DIR, Judy S. Viet-Cheun, Compliance Audit Investigator, DIR, and Charles R. Zeh, Esq., The Law Offices of Charles R. Zeh, Esq., legal counsel to the Board.

Also, participating by phone was Larae Polson, Associated Risk Management, Inc. (ARMI).

**2. Public Comment.**

There was no public comment.

**3. Approval of the Posting of Agenda.**

Acting Chairman Hooks called this matter to be heard and requested a motion regarding the posting of the Agenda. It was moved by Joyce Smith, seconded by Richard Iannone, to approve the posting of the notification of the meeting. **Motion adopted.**

**Vote: 3-0.**

**4. Approval of Agenda.**

Acting Chairman Hooks called this matter to be heard and requested a motion regarding the Agenda. It was moved by Joyce Smith, seconded by Richard Iannone, to approve the Agenda. **Motion adopted.**

**Vote: 3-0.**

**5. Approval of the Minutes for the January 21, 2016, Meeting.**

Acting Chairman Hooks called the minutes for the January 21, 2016, Board meeting to be heard. It was moved by Joyce Smith, seconded by Richard Iannone, to approve the minutes as presented. **Motion adopted.**

**Vote: 3-1**

**6. Underutilization. Discuss the downturn in applications for reimbursement. Consider methods of publicizing the availability of the Account for reimbursement and the process by which applications are processed. Consider request for utilization of the Administrator's list to promote knowledge of the Account and its availability for assistance, and other possible antidotes to the apparent underutilization of the Account. Direction to Board Counsel and Staff.**

Acting Chairman Hooks called this item to be heard. Inasmuch as the item contemplated a report from Chairman Wachter, Board counsel suggested that this item be continued since the Chairman was absent from the meeting. There was a brief discussion wherein the Board members concurred that this item should be re-agendized. There remained a general mystery as to why the Associations Board's business level has dropped but that the other two self-insureds, the Private Carriers, and the Self-Insured Employers, had sustained a high level of activity. To be sure, the *Holiday* decision had made some inroads into the level of activity across the board but that does not explain the slow down, as it were, in business of this Board, given the high level of business continuing to be conducted by the Self-Insureds and Private Carriers.

**7. Discussion of review of Board by the Sunset Subcommittee to determine whether a board or commission should be terminated, modified, consolidated with another board or commission or continued, information required for the audit, forms to be completed and attendance at the presentation before the Subcommittee. Develop a plan and possible direction to Board Counsel and Board members.**

Acting Chairman Hooks next called this item to be heard. She asked Board Counsel to explain. Board Counsel stated that as a result of the last legislative session, all State Boards and Commissions are being subjected to a review of their activities and continued relevance. Thus, this Board was not singled out for special notice. As a part of this process, a questionnaire was sent to each Board and Commission by the Legislative Committee. This was the item of business for the Board, this morning. Board Counsel stated, he had prepared proposed answers to the questionnaire and they were supplied to Board members in advance of the meeting. Board counsel emphasized, the answers were merely proposed because the answers need to originate with the Board as the Board's own answers. Thus, Board Counsel proceeded to review each and every question, and each and every proposed answer to the questions. After each answer was reviewed, the Board members were asked if they had any questions, suggestions for revision, or any objections to the proposed answer. As it turned out, except for a few technical revisions, there were no substantive changes. This includes the comment quoted in the answers from member Joyce Smith, at the last meeting, that the presence of the subsequent injury account was of great relief to employers in the construction industry, where back injuries are prevalent. This was a comment made in response to the question where the Board was asked whether it was achieving its mission. The Board agreed, it was a part of its mission to help in the employment of workers who have preexisting disabilities or to retain in employment workers who are injured while on the job. The Board has no staff to conduct such a survey. But, anecdotally, the answer was yes, this is the Board's main mission and anecdotally, it is being promoted.

With the aid, also, of Board Counsel and Jacque Everhart, the Board made minor, technical revisions in items 3, 6, 10, 14, 16, 20 and item 5 on page 5 of the questionnaire. A copy of the revised questionnaire is attached.

At the conclusion of a rather lengthy and exhaustive review of the questionnaire, it was moved by Richard Iannone, seconded by Joyce Smith, to approve the questionnaire, as revised during the course of the meeting, to direct Board Counsel to make the revisions, and then, to submit the revised questionnaire to the Sunset Committee as the Board's response to the questionnaire before the Committee. **Motion adopted.**

**Vote: 3-0.**

Board Counsel advised that the Sunset Committee will meet to hear from the Board on March 15, 2016. The hearing will be teleconferenced between Carson City and the Grant Sawyer Building in Las Vegas. Board Counsel will be attending. The time set for the appearance of the Board before the Committee has not been established. Board Counsel anticipated that he would be appearing with the Chairman at the hearing and if not the Chairman, another Board member. Board members are invited to attend, in any event.

## **8. Additional Items:**

- a. General Matters of Concern to Board Members Regarding Matters Not Appearing on the Agenda.**

There were no matters discussed.

**b. Old and New Business.**

Jacque Everhart announced that it appeared that the Board was getting a new member to provide a full complement of Board members. She would advise once the credentials of the proposed Board member were reviewed.

Acting Chairman Hooks reminded Board members to complete the applications for reappointment, as that matter was coming up in June 2016. Former Chairman Richard Iannone advised that as he has been a member of the Board for at least 10 years, it was time to depart and, therefore, he will not be re-applying but will serve out his term. The Governor's office will be accordingly notified in due course.

**c. Schedule of Next Meeting(s).**

The Board reviewed its schedule of meetings. Because member Joyce Smith will be unavailable in May as will as Board Counsel, it was agreed that absent an emergency, the May 2016 meeting will be cancelled.

**9. Public Comment.**

There was no public comment.

**10. Adjournment.**

It was moved by Richard Iannone, seconded by Joyce Smith, to adjourn the meeting.  
**Motion adopted.**

**Vote: 3-0**

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**STATE OF NEVADA**  
**Board for the Administration of the**  
**Subsequent Injury Account for the**  
**Associations of Self-insured Public or Private Employers**

**Meeting Minutes**  
**For the Meeting of January 21, 2016**  
**Meeting of the Board**  
**Henderson, Nevada**

A meeting of the Board for the Administration of the Subsequent Injury Account for the Associations of Self-insured Public or Private Employers was convened on January 21, 2016. The meeting was duly noticed in compliance with the Nevada Open Meeting Law to take place at 1301 North Green Valley Parkway, WCS Conference Room, Henderson, Nevada, the offices of the Division of Industrial Relations ("DIR"). Chairman Bryan Wachter, Vice-Chairman Emilia Hooks and member Richard Iannone attended the meeting in person. Member Joyce Smith attended the meeting *via* telephone conference call. There is one vacant position on the Board. The meeting was conducted so that each member of the Board and public, if any, could hear all participants and all Board members could participate in the deliberations and discussions. Each Board member participating in the meeting also had before him or her all written materials to be considered during the deliberations of the Board meeting or was obliged to refrain from voting if not in their possession.

**1. Roll Call.**

Chairman Bryan Wachter, Vice-Chairman Emilia Hooks and member Richard Iannone attended the meeting in person. Member Joyce Smith attended the meeting *via* telephone conference call. There is now one vacant position on the Board. A quorum of the Board was present to conduct the Board's business, as all four members of the Board were in attendance.

Also present in person were Jacque Everhart, the Liaison to the Board for the Administrator of the Division of Industrial Relations (DIR), Jennifer Leonescu, counsel for the DIR, Judy S. Viet-Cheun, Compliance Audit Investigator, DIR, and Charles R. Zeh, Esq., The Law Offices of Charles R. Zeh, Esq., legal counsel to the Board.

Also, participating by phone were Richard Staub, Esq., Attorney at Law, Robert Balkenbush, Esq., Thorndal Armstrong Delk Balkenbush & Eisinger, and Larae Polson, Associated Risk Management, Inc. (ARMI).

**2. Public Comment.**

There was no public comment.

**3. Approval of the Posting of Agenda.**

Chairman Wachter called this matter to be heard and requested a motion regarding the posting of the Agenda. It was moved by Emilia Hooks, seconded by Joyce Smith, to approve the posting of the notification of the meeting. **Motion adopted.**

**Vote: 4-0.**

**4. Approval of Agenda.**

Chairman Wachter called this matter to be heard and requested a motion regarding the Agenda. It was moved by Joyce Smith, seconded by Emilia Hooks, to approve the Agenda. **Motion adopted.**

**Vote: 4-0.**

**5. Approval of the Minutes for the November 12, 2015, Meeting.**

Chairman Wachter called the minutes for the November 12, 2015, Board meeting to be heard. It was moved by Emilia Hooks, seconded by Joyce Smith, to approve the minutes as presented. **Motion adopted.**

**Vote: 3-0-1 (Iannone abstaining as he was absent from this meeting).**

**6. Underutilization. Discuss the downturn in applications for reimbursement. Consider methods of publicizing the availability of the Account for reimbursement and the process by which applications are processed. Consider request for utilization of the Administrator's list to promote knowledge of the Account and its availability for assistance, and other possible antidotes to the apparent underutilization of the Account. Direction to Board Counsel and Staff.**

Chairman Wachter called this item to be heard, and immediately opened it up to the public for comment. Richard Staub, Esq., on behalf of Pro-Group and ARMI, spoke first. Actually, he presented to the Board at the very beginning of the meeting, a memo he wrote on this issue and item 7, of the Agenda. He said, his oral remarks would mirror his comments in the paper and then, proved it by essentially parroting his comments, there.

Robert Balkenbush, Esq., then followed, and said, his remarks would be a ditto of Mr. Staub's remarks and then, proved that, as well, essentially agreeing with Mr. Staub, though pointing out that his client, PACT, has a slightly different, general approach to the submission of claims and their evaluation, before submission.

Both were adamant, however, that their clients, respectively, devoted staff and time to the completion of applications, to the evaluation of claims, and to the education of the individual employers who are members of the respective associations that Mr. Staub and Mr. Balkenbush represent.

Mr. Staub took the position that the downturn in applications being submitted to the Board was in part due to the fact that in his opinion, the Board was taking an unjustified and narrow, complicated reading of the statute that it administers. Mr. Staub also suggested that the *Holiday* decision of the Nevada Supreme Court had created a paradigm shift in the eligibility of claims, which was making inroads in their submission, as frequently, they felt, employers did not discover the preexisting condition, until treatment for the subsequent injury. After *Holiday*, the timing of discovery then comes too late to be eligible for reimbursement.

Mr. Balkenbush added that claims were down, in his opinion, because:

1. The Board's proposed regulations, pigeonhole unreasonably the claim process and in Mr. Balkenbush's opinion were a huge blow to the submission of claims;
2. The *Holiday* decision;
3. Arbitrary decisions made by the Board, apart from pigeonholing;
4. The case law in Nevada lags other jurisdictions and is not developed;
5. There is a self-censorship or screening of claims based upon the opinion of Mr. Balkenbush, in conjunction with his client, that a claim would fail because of their prediction of what the Board might do; and
6. The Board decisions, themselves, were not fully developed.

Some, if not all, of these remarks were repeated when the discussion under item 7 came before the Board.

Chairman Wachter pointed out to both Mr. Staub and Mr. Balkenbush in response to the claim asserted by Mr. Balkenbush that the regulations were a major impediment, the regulations are still in draft form. They are before the LCB. Once that step is completed, there will be another hearing on whether the regulations should be adopted as written or further revised. They are invited to attend and point out in detail, how and to what extent the regulations unduly pigeonhole claims, or are unduly cumbersome or in excess of Board authority. Board counsel affirmed the statement of Chairman Wachter. It was difficult, therefore, for the Board to discern how regulations that had not yet even been adopted could be a barrier to participation in the process.

Considerable discussion also took place about the process by which claims were initiated at the Association and employer level. Member Hooks wanted to know how a claim was initiated and by whom. Mr. Staub and Mr. Balkenbush explained their respective clients' approaches. Mr. Staub indicated that his clients had seven claims in the process of being prepared for submission to the Board. Neither, however, actually explained how a claim is initiated or the role played by the employer in the process.

Member Iannone wanted to know what percentage of Associations/employers were the possible bottleneck. It was developed that Pro-Group represents at least six Associations. Mr. Balkenbush represents one association, PACT, but PACT represents public employers throughout Nevada. Between the two, then, they constitute at least 60% of the Associations whose employer members constitute perhaps 75% of the employers who employ possibly 75% of the employees of the employers that belong to self-insured



Associations. Member Iannone then stated, that if the Board were to focus on the 25% of the Associations who are not heard from, generally speaking, in an effort to educate them and their employers about the Account, it would probably not generate a lot of additional business for the Board. He was not adverse to educating them, but questioned whether such an effort would generate much additional business and, therefore, be a worthwhile undertaking for the Board.

Chairman Wachter floated the notion that although PACT and Pro-Group were doing a lot of educating of employers and Associations about the subsequent injury account, perhaps a round table discussion with the Association representatives for PACT and Pro-Group might help eliminate what still appears as a bottleneck, given that the self-insured employer's Board has considerably more claims, and is highly active, even after the *Holiday* decision. Discussion then turned to perhaps reaching out to the 25% that apparently do not participate. Chairman Wachter volunteered that he would make contact to explore ways of interesting the 25% group in the pursuit of claims before the Board through some form of education about the Board, and the process.

A consensus was generally built around that notion and it was then moved by Emilia Hooks, seconded by Richard Iannone, to direct the Chairman to try and learn more about the 25% who do not appear before the Board with claims and to contact them, to educate and dialogue with them about the subsequent injury account and the benefits which the Board believed attaches to having this account as a means of opening them to the prospects of applying to the Board for reimbursement assistance. **Motion adopted.**

**Vote: 4-0.**

- 7. Discussion of review of Board by the Sunset Subcommittee to determine whether a board or commission should be terminated, modified, consolidated with another board or commission or continued, information required for the audit, forms to be completed and attendance at the presentation before the Subcommittee. Develop a plan and possible direction to Board Counsel and Board members.**

Chairman Wachter then called this item to be heard. He asked Board Counsel to explain. Board Counsel advised that as a result of the last legislative session, a review of all State Boards and Commissions has been mandated and commenced. This Board has been chosen as a part of the first tranche of Boards and Commissions to be reviewed. As all Boards and Commissions are to be reviewed, this Board is not being singled out. The inquiry or review will include the status of the Boards and Commissions, whether they are still meeting and viable, whether there is still a need for the Boards and Commissions and whether they might even be merged with another Board or Commission. A meeting with the Board Chairman and legal counsel is contemplated by the Legislative Committee. Before meeting about the Board, the Sunset Subcommittee has propounded a questionnaire that must be completed to provide information about the Board to the Subcommittee.

Board counsel advised, he had the questionnaire. He intended to complete a draft of the questionnaire. It should be done as soon as reasonably possible. Board counsel then

stated, it was his intention to present it to the Board for review, revision, if necessary, and ultimate approval before it is sent to the Subcommittee. It is anticipated that upon receipt of the questionnaire, the Sunset Subcommittee will then set the meeting with the Board to consider its operation.

The Chairman then opened the discussion to the public. He again called upon Richard Staub, Esq., inasmuch as his memo also included comments about the Board and this item, in particular. Mr. Staub stated that his comments were already set out in the paper, but he then proceeded to reiterate some of the observations in his paper. Mr. Balkenbush then stated, he echoed the sentiments of Mr. Staub. He also returned to the discussion above, about the problems he felt existed with the Board, including, again, the discussion of the regulations creating a pigeonholing road block to what should be an uncomplicated process.

Chairman Wachter indicated that any discussion about whether the Board should continue to exist was outside the scope of this issue, as the Board is a creation of statute, and this Committee, therefore, had no ability on its own to sunset the Board. Only legislative action could accomplish this, as Board counsel also advised. At some point, also, in the discussion of this item and item 6, member Smith advised that in the construction industry, back injuries are endemic to the work and it is of some comfort to the employer in the construction industry to know that the Subsequent Injury Account is there to help absorb the cost of employing or retaining a worker with a preexisting back injury or one who injures his back on the job, and wants to continue working.

No action is required on this item. Board counsel will, as discussed, attempt to draft the answers to the questionnaire, in time for the Board to review, comment, and where appropriate, revise the answers at the February 11, 2016 meeting of the Board. Mr. Balkenbush and Mr. Staub will have further opportunity to comment, then, also.

## **8. Additional Items:**

### **a. General Matters of Concern to Board Members Regarding Matters Not Appearing on the Agenda.**

There was no further comment upon any of these items, except to point out that the e-mail blast publicizing the vacancy on the Board had gone out to the public through the Administrator by Jacque Everhart. She also advised that each Board members' term was up in June, 2016, and given the length of time it takes to complete the re-appointment process, applications for re-appointment should be submitted by March, 2016. The applications are on the State web-site.

The Board was advised that Mr. Balkenbush and Ms. Polson were still on the phone participating. Ms. Polson advised, however, that Mr. Staub had to depart, and advised, he had no further comment.

**b. Old and New Business.**

There was no old or new business discussed.

**c. Schedule of Next Meeting(s).**

The following dates have been scheduled in advance but are subject to change at any time: February 11, 2016; March 10, 2016; April 21, 2016; May 19, 2016; June 16, 2016; July 14, 2016; August 11, 2016; September 8, 2016; October 13, 2016; November 17, 2016; and December 15, 2016.

**9. Public Comment.**

Although Larae Polson was still present, there was no public comment.

**10. Adjournment.**

It was moved by Joyce Smith, seconded by Richard Iannone, to adjourn the meeting.  
**Motion adopted.**

**Vote: 4-0.**

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**STATE OF NEVADA**  
**Board for the Administration of the**  
**Subsequent Injury Account for the**  
**Associations of Self-insured Public or Private Employers**

**Meeting Minutes**  
**For the Meeting of November 12, 2015**  
**Meeting of the Board**  
**Henderson, Nevada**

A meeting of the Board for the Administration of the Subsequent Injury Account for the Associations of Self-insured Public or Private Employers was convened on November 12, 2015. The meeting was duly noticed in compliance with the Nevada Open Meeting Law to take place at 1301 North Green Valley Parkway, Conference Room B, Henderson, Nevada, the offices of the Division of Industrial Relations ("DIR"). Vice-Chairman Emilia Hooks attended the meeting in person. Chairman Bryan Wachter and member Joyce Smith attended the meeting *via* telephone conference call. Member Richard Iannone was absent. There is one vacant position on the Board. The meeting was conducted so that each member of the Board and public, if any, could hear all participants and all Board members could participate in the deliberations and discussions. Each Board member participating in the meeting also had before him or her all written materials to be considered during the deliberations of the Board meeting or was obliged to refrain from voting if not in their possession.

**1. Roll Call.**

Vice-Chairman Emilia Hooks attended the meeting in person. Chairman Bryan Wachter and member Joyce Smith attended the meeting *via* telephone conference call. There is now one vacant position on the Board. As three of the members of the Board were in attendance, a quorum of the Board was present to conduct the Board's business.

Also present in person were Jacque Everhart, the Liaison to the Board for the Administrator of the Division of Industrial Relations (DIR), Jennifer Leonescu, counsel for the DIR, and Charles R. Zeh, Esq., The Law Offices of Charles R. Zeh, Esq., legal counsel to the Board.

Also, attending from the outset but for only a portion of the meeting was John D. Hooks, Esq., who was substituting for Robert Balkenbush, Esq., Thorndal Armstrong Delk Balkenbush & Eisinger, on the Elko County matter, item 6 on the Agenda.

**2. Public Comment.**

There was no public comment.

**3. Approval of the Posting of Agenda.**

Chairman Wachter called this matter to be heard and requested a motion regarding the posting of the Agenda. It was moved by Joyce Smith, seconded by Emilia Hooks, to approve the posting of the notification of the meeting. **Motion adopted.**

**Vote: 3-0.**

**4. Approval of Agenda.**

Chairman Wachter called this matter to be heard and requested a motion regarding the Agenda. It was moved by Joyce Smith, seconded by Emilia Hooks, to approve the Agenda. **Motion adopted.**

**Vote: 3-0.**

**5. Approval of the Minutes for the July 15, 2015 Meeting.**

Chairman Wachter called the minutes for the July 15, 2015 Board meeting to be heard. It was moved by Joyce Smith, seconded by Emilia Hooks, to approve the minutes as presented. **Motion adopted.**

**Vote: 3-0**

**6. Action on the Recommendation of the Administrator of the Division of Industrial Relations for Acceptance of the Following Supplemental Request(s) for Reimbursement from the Subsequent Injury Account for the Associations of Self-insured Public or Private Employers in the Amount Verified by the Administrator.**

**a. C143-03-00898-01 Elko County**

Chairman Wachter called this matter next for hearing. The association and association administrator for this matter is Public Agency Compensation Trust. The association member for this matter is Elko County. The third-party administrator for this matter is Alternative Service Concepts. The matter was submitted by Robert Balkenbush, Esq., Thorndal Armstrong Delk Balkenbush & Eisinger. John D. Hooks, Esq., Thorndal Armstrong Delk Balkenbush & Eisinger, appeared on behalf of Robert Balkenbush, Esq., of the same law firm, for the applicant in this matter.

The Administrator recommended acceptance of this second supplemental request pursuant to NRS 616B.578 for coronary artery disease. The amount of reimbursement requested was \$37,752.72. The amount of reimbursement after costs were verified was \$37,023.60. At the conclusion of the presentation, the Chairman asked Mr. Hooks if he had any comment about this matter. He advised that he had nothing to add.

Accordingly, based upon the Administrator's recommendation, the exhibits attached to the Staff Report, the discussion before the Board and other good cause appearing, it was moved by Emilia Hooks, seconded by Joyce Smith, to approve the recommendation of the Administrator and direct payment in the verified amount of \$37,023.60. **Motion adopted.**

**Vote: 3-0.**

Mr. Hooks then discontinued his participation in the meeting.

**7. Consideration of the regulations in light of the workshop process. Consider possible revisions to the draft regulations. Status update on the amendment process, possible direction to Board counsel.**

Chairman Wachter then called this item to be heard. Because the subject matter of this item was the Board's draft regulations, he asked Board counsel to explain. Board counsel advised that there was an error in the annuity portion of the draft regulations, Section 2, paragraphs 3 and 3(a). The way the draft is written, it would preclude full reimbursement for the cost of an annuity, if the applicant for reimbursement had already paid for medical care and had been reimbursed for those costs before purchasing an annuity and asking for reimbursement for the annuity in addition to the costs, previously reimbursed. The way the draft regulation was written, the applicant would have had to discount the reimbursement for the cost of the annuity by the amount that the applicant had previously been reimbursed for the medical care for which reimbursement had been secured. This was in error, as the applicant would be entitled to full reimbursement for the cost of the annuity plus the costs of medical care for which the applicant had previously been reimbursed. The statutory framework contemplates full reimbursement for all eligible costs. Medical expenses and the cost of an annuity are both eligible costs for reimbursement.

That being said, Board counsel was recommending the revisions set out in the Board packet for Section 2, paragraph 3 and paragraph 3(a). In Section 2, paragraph 3, the words "of an annuity" are to be added, and in Section 2, paragraph 3(a), the words "when added to the amount of any reimbursement already paid" are to be deleted.

Chairman Wachter then stated, he wanted to do this in two stages. First, he wanted a motion on the recommended revisions. Then, assuming that motion passed, he wanted a motion from the Board, directing legal counsel to transmit the draft regulations with the revision of this date, to the Legislative Counsel Bureau for review and ultimately, for approval of the entire set of draft regulations.

Board counsel had previously advised the Board that these and the other edits that the Board had completed since the Board received the draft regulations from the Director's Office were not so material that they required the Board to re-submit them to the Director's Office for review. These edits were important, but they did not change the direction of the draft regulations and they did not impose a more onerous burden on applicants or the Board when conducting its review.

Board counsel also laid out for the Board the next steps in the process. These include that assuming the Board approved the edits on the draft regulations this date, the draft regulations would correspondingly be sent off to the Legislative Counsel Bureau. Once the Board and the Legislative Counsel Bureau agreed on a version of the draft regulations, the Board would set a hearing for the public to comment orally and in writing to the Board about the regulations.

An elaborate 30-day notice of this meeting must be prepared by Board Counsel. Depending upon the extent of the objections to the draft regulations, the draft regulations could be approved at this meeting. If not, the Board could continue the review and approve, or not, the draft regulations at the next meeting. Once this step is cleared, and the Board has approved a set of regulations that were also approved by the Legislative Counsel Bureau, the regulations once again go back to the Legislative Counsel Bureau, together with an exhaustive statement summarizing the process. The Legislative Counsel Bureau, in turn, will hand off the draft regulations and the statement summarizing the process to the Legislative Commission. If the Commission approves the draft, the regulations are final and adopted.

This is a truncated version of the process. There are also substantial notification requirements that must be observed throughout. This is in essence the remaining process for approval.

Board counsel then stated, it was a shame to spend this much thought, time and effort by the Board and staff for a Board whose business has dropped off. Board counsel, therefore, suggested, it was also time to revisit the underutilization issue, once again. There was a discussion of this issue, then, as a part of the discussion of the draft regulations. The consensus on this issue was that this be agendized at the next meeting of the Board when it has cases to decide. The Board did not think it necessary to call a meeting, just for this issue and this issue alone.

It was then moved by Emilia Hooks, seconded by Joyce Smith, to accept the revisions recommended by Board Counsel, as stated in the Board packet. **Motion adopted.**

**Vote: 3-0.**

It was then moved by Emilia Hooks, seconded by Joyce Smith, to direct Board counsel to transmit the draft regulations to the Legislative Counsel Bureau, without first routing them to the Administrator's office for further review. **Motion adopted.**

**Vote: 3-0.**

**8. Additional Items:**

**a. General Matters of Concern to Board Members Regarding Matters Not Appearing on the Agenda.**

Chairman Wachter then called item 8 to be heard, starting with 8.a. Board counsel pointed out that there was still a vacancy on the Board. Jacque Everhart advised that as of the moment, there were no applicants for the vacant position. Board counsel informed that typically, Board members have affirmatively helped recruit new Board members. This was something that the Board felt should be done again. Board members wanted to know how they could help and said they would.

**b. Old and New Business.**

Board counsel informed the Board that there was still one of the Board's cases, the South Lake Tahoe Fire District matter, still pending a decision from the District Court. Board counsel said, the case had been sitting there, fully briefed, for several months and, thus, he had no idea when it would be decided.

**c. Schedule of Next Meeting(s).**

The Board left the schedule unchanged, though Jacque Everhart said, as of this moment, she had no cases for the month of December. The December meeting may then, have to be cancelled. The meeting schedule was left unchanged. The following dates have been scheduled in advance but are subject to change at any time: December 17, 2015; January 14, 2016; February 11, 2016; March 10, 2016; April 21, 2016; May 19, 2016; June 16, 2016; July 14, 2016; August 11, 2016; September 8, 2016; October 13, 2016; November 17, 2016; and December 15, 2016.

**9. Public Comment.**

There was no public comment.

**10. Adjournment.**

It was moved by Emilia Hooks, seconded by Joyce Smith, to adjourn the meeting. **Motion adopted.**

**Vote: 3-0.**



**STATE OF NEVADA**  
**Board for the Administration of the**  
**Subsequent Injury Account for the**  
**Associations of Self-insured Public or Private Employers**

**Meeting Minutes**  
**For the Meeting of July 15, 2015**  
**Meeting of the Board**  
**Henderson, Nevada**

A meeting of the Board for the Administration of the Subsequent Injury Account for the Associations of Self-insured Public or Private Employers was convened on July 15, 2015. The meeting was duly noticed in compliance with the Nevada Open Meeting Law to take place at 1301 North Green Valley Parkway, Conference Room B, Henderson, Nevada, the offices of the Division of Industrial Relations ("DIR"). Chairman Bryan Wachter and member Richard Iannone attended the meeting in person. Members Joyce Smith and Emila Hooks attended the meeting *via* telephone conference call. There is one vacant position on the Board. The meeting was conducted so that each member of the Board and public, if any, could hear all participants and all Board members could participate in the deliberations and discussions. Each Board member participating in the meeting also had before him or her all written materials to be considered during the deliberations of the Board meeting or was obliged to refrain from voting if not in their possession.

**1. Roll Call.**

Chairman Bryan Wachter and member Richard Iannone attended the meeting in person. Members Joyce Smith and Emila Hooks attended the meeting *via* telephone conference call. There is now one vacant position on the Board with the departure of Shannon Hoolihan. As all of the members of the Board were in attendance, a quorum of the Board was present to conduct the Board's business.

Also present in person were Judy S. Viet-Cheun, Compliance Audit Investigator, Division of Industrial Relations (DIR), Jennifer Leonescu, counsel for the DIR, and Charles R. Zeh, Esq., The Law Offices of Charles R. Zeh, Esq., legal counsel to the Board.

**2. Public Comment.**

There was no public comment.

**3. Approval of the Posting of Agenda.**

Chairman Wachter called this matter to be heard and requested a motion regarding the posting of the Agenda. It was moved by Joyce Smith, seconded by Emilia Hooks, to approve the posting of the notification of the meeting. **Motion adopted.**

**Vote: 4-0.**

4. **Approval of Agenda.**

Chairman Wachter called this matter to be heard and requested a motion regarding the Agenda. It was moved by Emilia Hooks, seconded by Joyce Smith, to approve the Agenda. **Motion adopted.**

**Vote: 4-0.**

5. **Approval of the Minutes for the Workshop on May 21, 2015 and the June 18, 2015 Meeting.**

Chairman Wachter called the minutes for the Workshop of May 21, 2015 to be heard. It was moved by Emilia Hooks, seconded by Richard Iannone, to approve the minutes as presented. **Motion adopted.**

**Vote: 3-0-1 (Joyce Smith abstaining as she was absent from the Workshop).**

Chairman Wachter called the minutes for the June 18, 2015 meeting to be heard. It was moved by Joyce Smith, seconded by Emilia Hooks, to approve the minutes as presented. **Motion adopted.**

**Vote: 4-0.**

6. **The Board Will Consider Whether to "Do Over" the Conduct of the Biennial Election of Officers. In the Event the Board Votes to "Do Over" One or Both Election of Officers from the May 21, 2015 Meeting, One or Two Elections of Officers Will Then Be Conducted to Determine the Chairman, Vice-chairman, or Both for the Next Two Years.**

The Board then took up the matter of the reconsideration of the Board elections. Chairman Wachter advised that the Board could reconsider, if the Board voted to do so, the election for Chairman, or the Board, if it voted to do so, could take up only one of the Board officer positions. Emilia Hooks moved to reconsider the position of Vice-Chairman, in light of the comments made by Joyce Smith of her reluctance to take the position, given her location in Carson City. Joyce Smith did not feel a member should fill the position of Vice-Chairman, when that person could not be physically present at the location of the meeting, typically in Las Vegas. Richard Iannone seconded the motion. There was then some discussion about whether the motion should have been to open up the elections for both the Chairman and Vice-Chairman. Former Chairman Iannone made clear, he was content with the results of the last election, when Bryan Wachter was elected the new Chairman, and therefore, this discussion directed at re-opening the election for both positions, Chairman and Vice-Chairman, was concluded. The question was called and the motion to re-open the election for the position of Vice-Chairman, only, was voted upon and the motion carried upon a vote of 4-0. **Motion adopted.**

**Vote: 4-0.**

Chairman Wachter then opened up the floor for nominations for the position of Vice-Chairman. Emilia Hooks was nominated by Joyce Smith to fill that position. There were no further nominations and the nominations were accordingly closed. A vote was taken, and Emilia Hooks was elected the new Vice-chairman of the Board on a vote of 3-0-1, with Emilia Hooks abstaining. **Motion adopted.**

**Vote: 3-0-1 (Hooks abstaining).**

**7. Draft Regulations, Next Steps: Consideration of the Results of the Workshop on the Proposed Draft Regulations; Consider Whether the Results of the Workshop Will Require Further Revision and Analysis; Identification of Next Steps in the Process and Possible Direction to Board Counsel.**

Chairman Wachter then called this item to be heard. He asked Board counsel to review where the Board was with respect to the continued revisions of the draft regulations. Board Counsel explained that after the last meeting, he had revised the draft regulations consistent with what he thought the Board had indicated would be acceptable to the Board. These were reflected in the red-lines on the draft regulations before the Board. Board counsel also advised that once again, he had discovered a clerical error that resulted in a mis-reference in the draft regulations to the Self-Insured Employer Board, rather than to the Associations Board and Fund. This error had appeared in the draft regulations from the outset and, thus, had escaped detection through many readings and by many readers, astonishingly enough. This had to be changed, as it was an obvious clerical error.

After Board counsel completed this summary of the revisions, excluding the provisions set out in Section 3(e) through (g), the sections that were the subject of lively discussion at the last Board meeting, Board Chairman asked for a motion to approve the changes referenced by Board Counsel, excluding Section 3(e) through (g). It was moved by Joyce Smith, seconded by Emilia Hooks, to approve the changes as completed and as proposed for page 20 of the regulations by Board Counsel where the incorrect reference was made. **Motion adopted.**

**Vote: 4-0.**

Board counsel then reviewed again for the Board, sections 3(e) through (g) of the draft regulations. Discussion ensued, briefly, with the Chairman questioning the necessity of the inclusion of these provisions in the draft regulations. The Administrator's legal counsel, Jennifer Leonescu, explained that these regulations were a defense to a claim of *ad hoc* rule making, given that they explain what the Board would most likely do on a case-by-case basis anyway. Board counsel pointed out further that the presence of these regulations would also serve to put Associations on notice of the possible disposition of a

claim involving a pre-existing condition that is also an industrial injury, itself subject to rating and award of compensation. The Board grasped the concept being expressed in this draft regulation and accordingly, it was moved by Joyce Smith, seconded by Emilia Hooks, to leave sections 3(e) through (g) in the draft regulations, as is. **The motion was adopted.**

**Vote: 4-0.**

**8. Additional Items:**

**a. General Matters of Concern to Board Members Regarding Matters Not Appearing on the Agenda.**

Board counsel noted that one of the Balkenbush cases was still pending a decision before the District Court in Las Vegas. A check with the Court Clerk revealed to Board counsel's office that decision was imminent without oral argument.

**b. Old and New Business.**

The Chairman under this item asked Board counsel to address the next steps for the regulations. Board counsel advised that in light of the revisions to the regulations, it might be required that they be sent back to the Director's office for review if the changes were material. This was a question under advisement, and when a decision was made, Board counsel would alert the Board. Otherwise, a hearing by the Board, duly noticed to the public, would be held to provide final adoption by the Board of the draft regulations for submission to the Legislative Counsel.

**c. Schedule of Next Meeting(s).**

The meeting schedule was left unchanged. The following dates have been scheduled in advance but are subject to change at any time: August 13, 2015; September 17, 2015, October 15, 2015; November 12, 2015; and December 17, 2015.

**9. Public Comment.**

There was no public comment.

**10. Adjournment.**

It was moved by Joyce Smith, seconded by Emilia Hooks, to adjourn the meeting. **Motion adopted.**

**Vote: 4-0.**

**STATE OF NEVADA**  
**Board for the Administration of the**  
**Subsequent Injury Account for the**  
**Associations of Self-insured Public or Private Employers**

**Meeting Minutes**  
**For the Meeting of June 18, 2015**  
**Meeting of the Board**  
**Henderson, Nevada**

A meeting of the Board for the Administration of the Subsequent Injury Account for the Associations of Self-insured Public or Private Employers was convened on June 18, 2015. The meeting was duly noticed in compliance with the Nevada Open Meeting Law to take place at 1301 North Green Valley Parkway, Conference Room B, Henderson, Nevada, the offices of the Division of Industrial Relations ("DIR"). Chairman Richard Iannone, Vice-chairman Bryan Wachter and member Emilia Hooks attended the meeting in person. Members Shannon Hoolihan and Joyce Smith attended the meeting *via* telephone conference call. The meeting was conducted so that each member of the Board and public, if any, could hear all participants and all Board members could participate in the deliberations and discussions. Each Board member participating in the meeting also had before him or her all written materials to be considered during the deliberations of the Board meeting or was obliged to refrain from voting if not in their possession.

**1. Roll Call.**

Chairman Richard Iannone, Vice-chairman Bryan Wachter and member Emilia Hooks attended the meeting in person. Member Shannon Hoolihan participated for a part of the meeting *via* telephone conference call and Joyce Smith participated for the entire meeting *via* telephone conference call. As all of the members of the Board were in attendance at the outset, a quorum of the Board was present to start the meeting and as at least four Board members participated throughout, a quorum was always present to conduct the Board's business.

Also present in person were Jacque Everhart, the Liaison to the Board for the Administrator of the Division of Industrial Relations (DIR), Donald C. Smith, Esq., counsel for the DIR, and Charles R. Zeh, Esq., The Law Offices of Charles R. Zeh, Esq., legal counsel to the Board.

Also attending the meeting *via* telephone conference call for portions of the meeting were Richard Staub, Attorney at Law and Robert F. Balkenbush, Thorndal, Armstrong, Delk, Balkenbush & Eisinger.

The meeting was called to Order at 10:30 a.m., by the Chairman, Richard Iannone, after a quorum of the Board finally was convened. Richard Staub participated in the meeting

from the outset before concluding his participation prior to the end of the meeting. Robert Balkenbush joined the meeting while in progress and concluded his participation, also, prior to the conclusion of the meeting.

**2. Public Comment.**

There was no public comment.

**3. Approval of the Posting of Agenda.**

Chairman Iannone called this matter to be heard and requested a motion regarding the posting of the Agenda. It was moved by Emilia Hooks, seconded by Bryan Wachter, to approve the posting of the notification of the meeting. **Motion adopted.**

**Vote: 5-0.**

**4. Approval of Agenda.**

Chairman Iannone called this matter to be heard and requested a motion regarding the Agenda. It was moved by Bryan Wachter, seconded by Emilia Hooks, to approve the Agenda. **Motion adopted.**

**Vote: 5-0.**

**5. Approval of the Minutes for May 21, 2015.**

Chairman Iannone called the minutes for the meeting of May 21, 2015 to be heard. It was moved by Bryan Wachter, seconded by Emilia Hooks, to approve the minutes as presented. **Motion adopted.**

**Vote: 3-0-2 (Joyce Smith and Shannon Hoolihan abstaining as both were absent from the meeting).**

**6. Action on the Recommendation of the Administrator of the Division of Industrial Relations for Acceptance of the Following Request(s) for Reimbursement from the Subsequent Injury Account for the Associations of Self-insured Public or Private Employers in the Amount Verified by the Administrator.**

**a. 5001-1137-2014-0195**

**Warren's Homework**

Chairman Iannone next called this matter for hearing. The association name for this matter is Nevada Transportation Network. The association member for this matter is Warren's Homework. The association administrator for this matter is ProGroup Management, Inc. The third-party administrator for this matter is Associated Risk Management, Inc. The matter was submitted by Richard S. Staub, Esq.

The Administrator recommended acceptance of this request pursuant to NRS 616B.578 for the left foot. The amount of reimbursement requested was \$34,842.60. The amount of reimbursement after costs were verified was \$32,211.62.

Richard Staub, Attorney at Law, appeared on behalf of the applicant. As the Administrator recommended acceptance of the application for reimbursement, Mr. Staub stated that he had nothing to add when given the opportunity by the Chairman to discuss the application before the Board.

Vice-chairman Wachter, however, questioned the evidence in support of the claim. He was concerned that Dr. Schifini did not believe that the injured worker's presenting condition revealed any significant evidence of "complex regional pain syndrome" for the subsequent injury and Vice-chairman Wachter wanted to know if there was a finding someplace in the record to show that this condition actually presented. The Administrator's Liaison to the Board, Jacque Everhart, pointed out that Dr. Kong was adamant that this injured worker, in fact, presented with this condition, as evidenced in the record at pages 27-30, of the materials provided to the Board by the Administrator in the evidence packet attached to the Administrator's recommendation. This satisfied Vice-chairman Wachter, and accordingly, it was moved by Bryan Watcher, seconded by Emilia Hooks, to accept the recommendation of the Administrator and to approve reimbursement of the claim in the verified amount of \$32,211.62. **Motion adopted.**

**Vote: 5-0.**

**7. Draft Regulations, Next Steps: Consideration of the Results of the Workshop on the Proposed Draft Regulations; Consider Whether the Results of the Workshop Will Require Further Revision and Analysis; Identification of Next Steps in the Process and Possible Direction to Board Counsel.**

Chairman Iannone called this item to be heard and asked Board counsel for a report on the status of the draft regulations in light of the workshop, and the written material that was produced in connection with the workshop. At this time, Robert Balkenbush, Esq., the law firm of Thorndal, Armstrong, Delk, Balkenbush & Eisinger, made his participation in the meeting by phone known to the Board.

Board counsel pointed to his memo to the Board of April 30, 2015, which was, in part, a response to a memo to the Board submitted by Richard Staub, Esq., conveying his concerns about some of the draft regulations propounded by the Board. Board counsel advised that he agreed with Mr. Staub that the draft regulations mistakenly referred to NRS 616B.557 when they should have referenced NRS 616B.578. Board counsel recommended this revision.

Next, on page three of the regulations, Board counsel advised that the reference in Section 3(1)(d), to "subsequent injury" was in error. The reference should have been to a "preexisting condition." Board counsel recommended this revision.

Board counsel then referred to his letter of April 29, 2015, to Richard Staub, in direct response to Mr. Staub's written comments to the Board contained in his memo dated April 9, 2015. The discussion, there, revolved around Section 3(1)(e)-(g), where the Board expressly reserved the right to rule on a claim in the case where the preexisting condition was also an industrial injury, until the preexisting, work-related impairment was actually rated. In his memo, Mr. Staub suggested that this was excessive and would result in undue delays, which he felt applied and would hold up all claims while a rating was sought for the preexisting condition.

Robert Balkenbush also opined that generally, he felt in all cases, the Board was not bound by determinations made by administrative law judges or hearing officers about the rating of the preexisting condition, because the Board was not a party to the hearing in the first place. He believed that any such determination by an administrative law judge or hearing officer was just some evidence that the Board could consider, and that the Board was free to take its own course in light of the record before it. He thought that the Administrator could call its own expert witness to testify about the rating for the preexisting condition in order to prove the Administrator's case. He also felt, as a general matter, that the Board was trying to pigeonhole items with these draft regulations. He concluded, however, by saying that he thought the Board was trying its best to do what was right and that he could live with whatever set of regulations the Board ultimately approved.

Vice-chairman Wachter wondered why the provisions of Section 3(1)(e)-(g) were even in the draft regulations. These proposed sections, however, have been in the draft regulations from the outset and not questioned in that regard during this entire time.

Jacque Everhart said, she also questioned these draft regulations in Section 3(1)(e)-(g), though she said, no matter what was adopted, they would not change how she works applications for reimbursement. She felt, however, that Section 3(1)(e)-(g) should not be limited to just the situation where the preexisting condition was a work related injury because the regulations apply to congenital conditions, as well, and they are always rated, as a part of the apportionment process.

It was pointed out in the general conversation before the Board that the Administrator does not have to prove anything. The Administrator makes recommendations and, thus, the Administrator has no obligation to present an expert to support its position on the question of the rating of the preexisting condition. The burden of proof in all cases lies with the applicant.

It was further pointed out that the Administrator does not necessarily have a budget to underwrite the cost of an expert in the first place.

Board counsel explained also that these regulations would not result in the hold up of all claims because it applied only in the case where the preexisting condition was a work-related injury. He advised, further, that this right to defer ruling was reduced to a written regulation because in the past, the Board had been pressured to rule on claims, where the



preexisting condition was, itself, an industrial injury, the ruling was sought even though the rating of the preexisting condition had not been completed or affirmed, and then, the rating, once affirmed, concerning the preexisting condition, came in at less than a 6% PPD, or, a rating that was less than the minimum threshold requirement of NRS 616B.578(3). This statute, NRS 616B.578(3) states that the preexisting condition must support a rating of at least 6% PPD, under the *Guides* existing at the date of the injury. If the Board approved, then, a claim where the preexisting condition, work related, is ultimately rated, and the rating is less than a 6% PPD, the Board would have been in error by approving a claim that ultimately proved to support a rating of less than the threshold requirement of 6% PPD. Thus, it was thought when these regulations were crafted, the prudent thing to do was to give the Board the option of deferring action on a claim until the preexisting condition is actually rated and the appeal time on that rating had elapsed. The Board does not have to exercise the option as it is couched in the precatory. However, the regulations also give applicants notice that the Board has reserved this option.

Ms. Everhart confirmed the scenario that the Board had situations where the preexisting condition was not rated, the Board approved the claim, the preexisting condition was a work-related injury and that when the work-related injury was rated, the rating was less than the 6% minimum requirement. This suggested that the claim approval was in error inasmuch as the formal rating of the work-related, preexisting impairment was proved to be less than the 6% minimum threshold.

Board counsel also advised that it was prudent to put this in a regulation, to give advance notice to applicants of what might happen to their claims, in the event the preexisting condition was a work-related injury that had not yet been rated. Also, it was prudent to put this in writing so that the Board would avoid criticism of regulating by informal policy instead of by an actual regulation reduced to writing and vetted by the process reserved for amending or drafting regulations.

This concluded the lively back and forth debate that involved Section 3(1)(e)-(g).

In his memo to the Board, Mr. Staub advised that at page 6, Section 5(6), the provision, there, barring a party whose application to intervene is granted, from participating in the hearing, itself, on the underlying application to adopt, amend or appeal a regulation, should be removed from the draft regulations. The Board concurred and this limitation will be removed from the regulations.

While appreciative of Mr. Staub's efforts, the Board generally found his remaining concerns wanting, including the recommendation set out in the last paragraph of his memo. This paragraph, the Board pointed out, would run counter to the *Holiday* decision of the Nevada Supreme Court which, actually, renders moot, the concern expressed by Mr. Staub, there. If an applicant has knowledge of the preexisting condition before the date of the subsequent industrial injury and the injured worker refuses or fails or is unable to return to work after the subsequent industrial injury, the applicant for reimbursement will still be eligible for reimbursement because the retention requirement of NRS

616B.578(4) would have been met. Provided the applicant met the remaining elements of NRS 616B.578, eligibility should be established. The fact that the injured worker does not return to work following the subsequent industrial injury is rendered irrelevant under *Holiday*, for this hypothetical.

Board counsel then recommended one more change to the draft regulations at Section 5(9). The phrase "...petitioner or intervener" at the end of the provision should be deleted and replaced with "party seeking judicial review" so that the clause would now read, "...after service of notice of the decision on the party seeking judicial review."

Chairman Iannone asked Mr. Staub if he had anything more to add on these subjects and he said, he had nothing more to add.

Chairman Iannone then asked Mr. Balkenbush the same thing, did he have anything more to add on these subjects and he said, he had nothing more to add.

Member Hoolihan advised, she had another matter requiring her attention and, therefore, she ended her participation in the meeting. As four members of the Board continued to participate in the meeting, a quorum was preserved. This exit was her concluding act as a Board member.

Chairman Iannone then thanked both Mr. Staub and Mr. Balkenbush for their contributions to the discussion and their time and interest devoted to the draft regulations. At the conclusion of the discussion, Chairman Iannone directed Board counsel to prepare a set of revised regulations consistent with the discussion before the Board on this date. He specifically told Board counsel to leave in tact Section 3(1)(e)-(g) in the draft regulations. The Board will then be able to vote on these revisions, including whether Section 3(1)(e)-(g) should be retained, at the next Board meeting, after having time to digest the draft regulations and the discussion of this date before the Board.

Messrs. Balkenbush and Staub both concluded their participation in the meeting and terminated their phone connection into the meeting on the conference line.

## **8. Additional Items:**

### **a. General Matters of Concern to Board Members Regarding Matters Not Appearing on the Agenda.**

Joyce Smith advised that she had only missed one meeting and it was the meeting that she was elected Vice-chairman, and that she thought it was poor practice to conduct an election under such circumstances, especially when she attends the meetings by phone and therefore, she wanted the entire election revisited at the next meeting. Accordingly, whether the election should be revisited in whole or in part will be agendaized and if the decision is to revisit the election in whole or in part, the election will accordingly be revisited.

Jacque Everhart also informed the Board that Shannon Hoolihan has advised, she is concluding her membership on the Board as of the expiration of her term on June 30, 2015. Board members need to help locate a replacement for her so that the Board will have a full complement of members.

**b. Old and New Business.**

The discussion under general matters would pertain this section, also.

**c. Schedule of Next Meeting(s).**

Board Liaison Jacque Everhart advised that she will be absent on July 16, 2015, and therefore, it was suggested that the Board change the meeting date to July 15, 2015. As Ms. Everhart did not have the calendar with her, for scheduling meetings at the State offices, this date, July 15, 2015, was tentatively set for the next meeting of the Board. Ms. Everhart will confirm this date and notify everyone.

The following dates have been scheduled in advance but are subject to change at any time: July 16, 2015; August 13, 2015; September 17, 2015, October 15, 2015; November 12, 2015; and December 17, 2015. Note, again, the meeting of July 16, 2015, may be moved to July 15, 2015.

**9. Public Comment.**

There was no public comment.

**10. Adjournment.**

It was moved by Joyce Smith, seconded by Bryan Watcher, to adjourn the meeting.  
**Motion adopted.**

**Vote: 5-0.**

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**STATE OF NEVADA**  
**Board for the Administration of the**  
**Subsequent Injury Account for the**  
**Associations of Self-insured Public or Private Employers**

**Meeting Minutes**  
**For the Meeting of May 21, 2015**  
**Meeting of the Board**  
**Henderson, Nevada**

A meeting of the Board for the Administration of the Subsequent Injury Account for the Associations of Self-insured Public or Private Employers was convened on May 21, 2015. The meeting was duly noticed in compliance with the Nevada Open Meeting Law to take place at 1301 North Green Valley Parkway, OSHA Video Conference Room, First Floor, Henderson, Nevada, the offices of the Division of Industrial Relations ("DIR"). Chairman Richard Iannone and member Emilia Hooks attended the meeting in person. Vice-chairman Bryan Wachter attended the meeting *via* simulcast from the Carson City, Nevada, Division of Industry Conference Room. Members Joyce Smith and Shannon Hoolihan were absent. The meeting was conducted so that each member of the Board and public, if any, could hear all participants and all Board members could participate in the deliberations and discussions. Each Board member participating in the meeting also had before him or her all written materials to be considered during the deliberations of the Board meeting or was obliged to refrain from voting if not in their possession.

**1. Roll Call.**

Chairman Richard Iannone and member Emilia Hooks attended the meeting in person. Vice-chairman Bryan Wachter attended the meeting *via* simulcast from the Carson City, Nevada, Division of Industry Conference Room. Members Joyce Smith and Shannon Hoolihan were absent. As three of the five members of the Board were in attendance, a quorum of the Board was present to conduct the Board's business.

Those present in person were Jacque Everhart, the Liaison to the Board for the Administrator of the Division of Industrial Relations (DIR), Donald C. Smith, Esq., counsel for the DIR, and Charles R. Zeh, Esq., The Law Offices of Charles R. Zeh, Esq., legal counsel to the Board.

Also attending the meeting *via* telephone conference call was Richard Staub, Attorney at Law.

**2. Public Comment.**

There was no public comment.

**3. Approval of the Posting of Agenda.**

Chairman Iannone called this matter to be heard and requested a motion regarding the posting of the Agenda. It was moved by Emilia Hooks, seconded by Bryan Wachter, to approve the posting of the notification of the meeting. **Motion adopted.**

**Vote: 3-0.**

**4. Approval of Amended Agenda.**

Chairman Iannone called this matter to be heard and requested a motion regarding the Amended Agenda. It was moved by Emilia Hooks, seconded by Bryan Wachter, to approve the Amended Agenda. **Motion adopted.**

**Vote: 3-0.**

**5. Approval of the Minutes for February 12, 2015.**

Chairman Iannone called the February 12, 2015, minutes to be heard. It was moved by Bryan Wachter, seconded by Emilia Hooks, to approve the minutes as presented. **Motion adopted.**

**Vote: 3-0.**

**6. For Information, Only, Record of Tabled Workshop of April 9, 2015.**

Item six is the presentation of the recordation of the previously scheduled workshop, where a quorum was not present to allow the workshop to proceed. This item was not discussed at this meeting, as it was an information, only, item for the Board as it continues making a record of the efforts to include public participation in the amendment process being undertaken by the Board.

**7. Action on the Recommendation of the Administrator of the Division of Industrial Relations for Denial of the Following Request(s) for Reimbursement from the Subsequent Injury Account for the Associations of Self-insured Public or Private Employers. The Following Claim(s) for Reimbursement Will Be Adjudicated by the Board Pursuant to the Nevada Administrative Procedures Act, NRS 233b.010, *et. seq.***

**a. 5012-0750-2013-0166 M SQRD Masonry, Inc.**

Chairman Iannone next called this matter for hearing. The association name for this matter is Builders Association of Western Nevada. The association member for this matter is M SQRD Masonry, Inc. The association administrator for this matter is ProGroup Management, Inc. The third-party administrator for this matter is Associated Risk Management, Inc. The matter was submitted by Richard Staub, Attorney at Law.

The Administrator recommended denial of this request pursuant to NRS 616B.578 for the right shoulder. The amount of reimbursement requested was \$29,830.89. The amount of reimbursement after costs were verified was \$21,030.72.

Richard Staub, Attorney at Law, appeared on behalf of the applicant. This matter was originally scheduled for a contested hearing as the applicant had timely filed a notice of hearing to challenge the Administrator's recommendation that the application should be denied. Board counsel pointed out, however, that the applicant, through Mr. Staub, had withdrawn its request for a hearing on this matter. The Board, nevertheless, was obliged to hear the case and make a determination of acceptance, or denial in this case. The Board proceeded to hear the case as presented by Jacque Everhart on behalf of the Administrator, DIR.

After completion of the extensive report and exhausting analysis of this application by Jacque Everhart, the Chairman asked Mr. Staub if he had anything to say concerning this claim. Mr. Staub advised that it was a tough case/decision on the client's part but as a result, Mr. Staub had nothing further to say. Therefore, based upon the Staff Report, the accompanying exhibits, the discussion before the Board, and good cause appearing, it was, moved by Emilia Hooks, seconded by Bryan Wachter, to adopt the Administrator's recommendation and, therefore, to deny the claim. **Motion adopted.**

**Vote: 3-0.**

**8. Action on the Recommendation of the Administrator of the Division of Industrial Relations for Acceptance of the Following Request(s) for Reimbursement from the Subsequent Injury Account for the Associations of Self-insured Public or Private Employers in the Amount Verified by the Administrator.**

**a. 5001-0846-2013-0748 Assured Document Destruction**

Chairman Iannone next called this matter for hearing. The association name for this matter is Nevada Transportation Network. The association member for this matter is Assured Document Destruction. The association administrator for this matter is ProGroup Management, Inc. The third-party administrator for this matter is Associated Risk Management, Inc. The matter was submitted by Richard Staub, Attorney at Law.

The Administrator recommended approval of this request pursuant to NRS 616B.578 for the cervical spine. The amount of reimbursement requested was \$85,273.89. The amount of reimbursement after costs were verified was \$83,370.10.

Richard Staub, Attorney at Law, also appeared on behalf of the applicant in this matter.

At the conclusion of the Administrator's presentation of the case, the Chairman asked Mr. Staub if he had anything to add. Mr. Staub advised that he had nothing further to add to the Administrator's recommendation of claim acceptance or to the amount of the verified costs found by the Administrator. Accordingly, based upon the Staff Report, the discussion of the case before the Board and good cause appearing, it was, moved by

Bryan Wachter, seconded by Emilia Hooks, to adopt the Administrator's recommendation and, therefore, to approve reimbursement of this claim and to direct payment of the claim in the verified amount of \$83,370.10. **Motion adopted.**

**Vote: 3-0.**

**9. Discussion Regarding the Apparent Drop off in the Submission of Claims to the Board for the Administration of the Subsequent Injury Account for Associations of Self-insured Public or Private Employers. Possible Direction to Board Counsel.**

The Chairman then called this next matter to be heard, a discussion of the persistent drop-off in utilization rates. Chairman Iannone asked Board counsel to advise. Board counsel stated that this item was appearing on the Agenda as a place holder to permit discussion in the event that the drop in applications becomes even more pernicious. Board counsel said, this could appear on each agenda, as a place holder, to permit discussion at the drop of a hat, in the event the drop-off in Account usage continues. He explained, further, that per the February 12, 2015 minutes, Board counsel was to research the cost and numbers of mailing that were generated when this occurred before. Board counsel reported that we had sent out around 130 letters in the past and that it was relatively painless and inexpensive. Jacques Everhart reported, however, that additional claims appear to be emerging and pointed to the activity of Richard Staub's office before the Board. Richard Staub pointed out, himself, that there was more activity emerging from his office. Therefore, at the request of Bryan Wachter, the Board allowed that this item not reappear until the September 2015, meeting of the Board. This concluded the discussion on this item.

**10. Draft Regulations, Next Steps: Consideration of the Results of the Workshop on the Proposed Draft Regulations; Consider Whether the Results of the Workshop Will Require Further Revision and Analysis; Identification of Next Steps in the Process and Possible Direction to Board Counsel.**

Chairman Iannone then called this item to be heard. He asked Board counsel to discuss. Board counsel advised that obviously, prior to this Board meeting, the Board met in workshop, on the draft regulations. Unfortunately, no one showed for the meeting from the public. Richard Staub, however, stated that he got tied up or he would have otherwise been in attendance. Board counsel then pointed out that in the Board packet for the workshop, the Board members had the Staub memo on concerns he had about the draft regulations, Board counsel's response, and the draft regulations, themselves. Board counsel expressed that he hoped that the Board would read the two memos before the next meeting. Some changes continue to be needed, as Board counsel pointed out in his memo to the Board, and in addition, Richard Staub would then be given the opportunity to make out his case for the additional changes that Board should make, he believes, in the draft regulations. This concluded the discussion on this item before the Board. It will be agendized for the June 2015 meeting of the Board.

**11. Biennial Nomination and Election of Officers of the Board. The Chair Will Accept Nominations for the Position of Chairperson and Vice-chairperson and Conduct an Election for Those Positions. Each Has a Two-year Term of Office Commencing upon Conclusion of the Election.**

Chairman Iannone called the matter of Board elections to be heard. Members of the Board are to select, biennially, the officers for a term of two years following election. Chairman Iannone opened up the meeting to accept nominations for Chairman of the Board. Bryan Wachter immediately spoke up and nominated himself. Chairman Iannone asked if there were any further nominations to the Board. Seeing none, he closed the nominations. A vote was taken and Bryan Wachter was elected Board Chairman by a vote of 3-0.

The gavel immediately passed to the new Chairman.

Chairman-elect Wachter then opened the floor to nominations for the position of Vice-chairman. Emilia Hooks immediately nominated Richard Iannone for the position. Richard Iannone said, he would decline the nomination. Emilia Hooks, then, nominated Joyce Smith to be the new Vice-chairman. Chairman Wachter asked if there were any more nominations. Seeing none, he closed the nominations. A vote was taken and Joyce Smith was unanimously elected to the position of Board Vice-chairman.

**12. Additional Items:**

**a. General Matters of Concern to Board Members Regarding Matters Not Appearing on the Agenda.**

There were no matters of concern discussed.

**b. Old and New Business.**

There was no old or new business discussed.

**c. Schedule of Next Meeting(s).**

Nothing further was discussed under this item.

The following dates have been scheduled in advance but are subject to change at any time: June 18, 2015; July 16, 2015; August 13, 2015; September 17, 2015, October 15, 2015; November 12, 2015; and December 17, 2015.

**13. Public Comment.**

There was no public comment.



**14. Adjournment.**

It was moved by Emilia Hooks, seconded by Richard Iannone, to adjourn the meeting.

**Motion adopted.**

**Vote: 3-0.**

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**STATE OF NEVADA**  
**Board for the Administration of the**  
**Subsequent Injury Account for the**  
**Associations of Self-insured Public or Private Employers**

**Meeting Minutes**  
**For the Meeting of February 12, 2015**  
**Meeting of the Board**  
**Henderson, Nevada**

A meeting of the Board for the Administration of the Subsequent Injury Account for the Associations of Self-insured Public or Private Employers was convened on February 12, 2015. The meeting was duly noticed in compliance with the Nevada Open Meeting Law to take place at 1301 North Green Valley Parkway, Conference Room B, Henderson, Nevada, the offices of the Division of Industrial Relations ("DIR"). Chairman Richard Iannone and member Emilia Hooks attended the meeting in person. Vice-chairman Bryan Wachter and members Joyce Smith and Shannon Hoolihan attended the meeting *via* telephone conference call. The meeting was conducted so that each member of the Board and public, if any, could hear all participants and all Board members could participate in the deliberations and discussions. Each Board member participating in the meeting also had before him or her all written materials to be considered during the deliberations of the Board meeting or was obliged to refrain from voting if not in their possession.

**1. Roll Call.**

Chairman Richard Iannone and member Emilia Hooks attended the meeting in person. Vice-chairman Bryan Wachter and members Joyce Smith and Shannon Hoolihan attended the meeting *via* telephone conference call. All five members of the Board were in attendance, a quorum of the Board was present to conduct the Board's business.

Those present in person were Jacque Everhart, the Liaison to the Board for the Administrator of the Division of Industrial Relations (DIR) and Charles R. Zeh, Esq., The Law Offices of Charles R. Zeh, Esq., legal counsel to the Board.

No one else participated by telephone in the meeting.

**2. Public Comment.**

There was no public comment.

**3. Approval of the Posting of Agenda.**

Chairman Richard Iannone called this matter to be heard and requested a motion regarding the posting of the Agenda. It was moved by Emilia Hooks, seconded by Bryan Wachter, to approve the posting of the notification of the meeting. **Motion adopted.**

**Vote: 5-0.**

**4. Approval of Agenda.**

Chairman Richard Iannone called this matter to be heard and requested a motion regarding the Agenda. It was moved by Joyce Smith, seconded by Bryan Wachter, to approve the Agenda. **Motion adopted.**

**Vote: 5-0.**

**5. Approval of the Minutes for November 20, 2014.**

Chairman Richard Iannone called the November 20, 2014, minutes to be heard. It was moved by Bryan Wachter, seconded by Emilia Hooks, to approve the minutes as presented. **Motion adopted.**

**Vote: 4-0-1 (Hoolihan abstaining, as she was absent from the November 20, 2014 meeting).**

**6. Analysis of impact upon small businesses: Review and analysis of the impact, if any, upon small businesses (less than 150 employees), review and possible approval of draft finding of no significant impact and analysis leading to this conclusion, other direction, if any, to legal counsel.**

Chairman Richard Iannone then called this matter to be heard. He asked Board counsel to explain. Board counsel advised that before the Board was a draft Small Business Impact statement that is required as a part of the process for amending the regulations, the process the Board is currently undertaking. Board counsel explained that the Board is to consider if the amendments to the regulations are or are not going to have a negative economic impact on small business employers. A small business employer is defined as an employer that has less than 150 employees. If the Board finds that the amendments to the regulations would have an adverse economic impact on small employers, then, the Board must provide an Impact Statement, to that effect. If the Board concludes that the proposed amendments to the regulations would not have an adverse economic impact upon small business employer, then, the Board must provide a statement explaining how the Board arrived at this conclusion. The Board is able to make this assessment, presently, because the Board already has before it, the draft set of amended regulations.

The document before the Board takes the position that the proposed amendments to the regulations will not have an adverse economic impact upon small business employers. The document, then, goes on to state how the Board came to that conclusion, if that is the

conclusion that the Board chooses to take. Board counsel advised that the draft document explains that the Board arrived at this conclusion because, in fact, the proposed amendments were intended to simplify and clarify the application process before the Board and, thus, making the process easier, and more straight forward, the conclusion is inexorably that the proposed regulations would not have a negative or adverse economic impact on small businesses. The document also points out that the methodology by which the Board would or could arrive at this conclusion included the fact that, with one exception, the Board members, themselves, own their own businesses, are employers and bring that vantage point to the analysis. Finally, the Board members would also draw upon their own experience as Board members deciding the cases to reach the conclusion that indeed, the process reflected by the amendments, is streamlined and, therefore, not more cumbersome but less cumbersome for applicants to apply to the Board for subsequent injury account relief. Board counsel then concluded that if the Board, upon review of the document, believes that it accurately depicts their position and the process by which this conclusion was reached, the Board could thereupon vote to approve the draft statement with its finding of no significant impact (FONSI).

After discussion and deliberation, it was moved by Emilia Hooks, seconded by Joyce Smith, to approve and adopt the conclusion and reasoning set out in the draft Small Business Impact Statement as the position of the Board. **The motion was adopted.**

**Vote: 5-0.**

Board counsel explained that this document would follow the amendment process to its conclusion, and that if material changes in the draft, proposed regulations subsequent to this date take place, it may be necessary to revisit the Small Business Impact statement.

**7. Discussion Regarding the Apparent Drop off in the Submission of Claims to the Board for the Administration of the Subsequent Injury Account for Associations of Self-insured Public or Private Employers. Possible Direction to Board's Legal Counsel.**

Chairman Richard Iannone then called this matter to be heard. He asked Board counsel to explain. Board counsel advised that there was still a chronic under-utilization of the Account being experienced. It appeared to Board counsel that the limited effort to publicize and explain the Account and its accessibility to the Associations that submit claims to the Board had no effect. Doing next to nothing, appeared to generate nothing.

The Board then debated whether it was the function of the Board to do anything about this lag in utilization in the first place. Board counsel pointed out that in one sense, communicating with the employers of the Associations, was a form, not so much, of recruitment, but of information to make the employers aware of the apparent lost opportunities the under-utilization represented.

Board counsel advised, further, that when this happened before, a much broader net was cast out to employers, to remind them of the existence of the Account and its possible

value to employers by seeking reimbursement. Board counsel could not recall the number of letters that were sent out when this happened previously, but was certain, the number was greatly in excess of the few that were recently sent out. Board counsel advised, also, that the letter that was sent could be located in counsel's office, and that the effort had a positive impact on utilization rates. Board counsel believed, also, that his office's records could re-construct for the Board, the process utilized at the time to increase utilization rates.

The discussion then returned to whether this was a proper function for the Board, the time and expense that might be entailed, and the efficacy of such an effort. The Board decided to table and continue the discussion to the next meeting with direction to Board counsel to reconstruct, as best as his office can, the steps that were undertaken previously when this under-utilization situation occurred, and be prepared, also, to provide some insight as to the amount of time and the magnitude of the effort that would be required by the office of Board counsel, to undertake a project of the magnitude of that which was previously undertaken by the Board through Board counsel.

**8. Report from Board Counsel on Progress for Proceeding with a Workshop on the Draft Regulations and Possible Direction to Board Counsel Concerning the Same; Schedule Workshop.**

Chairman Richard Iannone called this item to be heard. He asked Board counsel to explain, here, as well. Board counsel said that the next step in the regulation amendment process was the workshop. A copy of the notice of the workshop was contained in the Board packet. Lacking was the date and time for the workshop. The Board agreed to set the workshop for April 9, 2015, at 1:30 p.m., at the places set out in the notice, which includes the conference room at 1301 North Green Valley Parkway, Henderson, the address where the Board usually convenes, but in the smaller conference room on the first floor of the DIR Offices. This is where the Board will officially convene, with video conferencing in the other sites listed in the notice.

**9. Additional Items:**

**a. General Matters of Concern to Board Members Regarding Matters Not Appearing on the Agenda.**

There were no matters of concern discussed.

**b. Old and New Business.**

There was no old or new business discussed.

**c. Schedule of Next Meeting(s).**

Nothing further was discussed under this item, save and except to add April 9, 2015, the workshop date.

The following dates have been scheduled in advance but are subject to change at any time: March 12, 2015, April 9, 2015; April 16, 2015; May 21, 2015; June 18, 2015; July 16, 2015; August 13, 2015; September 17, 2015, October 15, 2015; November 12, 2015; and December 17, 2015.

**10. Public Comment.**

There was no public comment.

**11. Adjournment.**

It was moved by Emilia Hooks, seconded by Shannon Hoolihan, to adjourn the meeting.  
**Motion adopted.**

**Vote: 5-0.**

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