

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED BY
NRS 233B.066
LCB FILE R026-18**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) Chapter 616B.773, *et seq.*

1. A clear and concise explanation of the need for the adopted regulation.

These new and amended regulations were necessary because of the requirement that regulations be periodically updated. *See*, NRS 233B.050(d). They were also necessary to plug gaps in and to clarify the regulations which Board experience revealed needed revision.

These new and amended regulations were also necessary due to the following requirements of NRS 233B.0603.

1. Implementation of changes enacted by the Legislature since 2007 to the present;
2. NRS 233B.050(1)(a) which requires the Board to enact rules of practice;
3. NRS 616B.575(6) and 616B.578(6), which authorize the Board to adopt regulations governing the administration and practice before the Board;
4. NRS 233B.120 which requires Boards to adopt regulations which provide for the filing and disposition of petitions for declaratory orders and advisory opinions;
5. NRS 233B.050(1)(d) and (e) which require periodic review of the Board's regulations;
6. The Board's determination that the process for deciding applications for reimbursement could be further standardized and streamlined through regulations reflecting upon the Board's experience deciding claims since the Board's inception; and
7. Decisions of the Nevada Supreme Court directly impacting the Board.

2. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

On July 12, 2018, Chairman Bryan Wachter called to order the meeting of the Board for the Administration of the Subsequent Injury Account for Associations of Self-insured Public or Private Employers at 10:21 a.m., for the purpose of conducting a workshop regarding the proposed amendments to the Board's regulations. As the Agenda for this meeting included a Workshop to address the effort of the Board to amend, repeal and adopt regulations governing the Board's procedure for addressing claims, this meeting was simulcast from the video conferencing room of the Division of Industrial Relations ("DIR") situated at 3360 West Sahara Avenue, Suite 250, Las Vegas, Nevada, 89102 to

the Division of Industrial Relations, 400 West King Street, Suite 400, Conference room, Carson City, Nevada, 89703, and at the Nevada Occupational Safety and Health Review offices, 4600 Kietzke Land, Building F, Suite 153, Nevada OSHA Conference Room, Reno Nevada, 89502.

As this meeting included the regulations Workshop, this meeting was noticed at least 15 days before the Workshop was scheduled to take place. Notice of the Workshop was given or posted as follows:

All persons on the Board's meeting list and posted at the following locations:

- Division of Industrial Relations, 3360 West Sahara Avenue, Suite 250, Las Vegas, Nevada, 89102
- Division of Industrial Relations, 400 West King Street, Suite 400, Carson City, Nevada, 89703
- Division of Industrial Relations, Occupational Safety and Health Enforcement Section, 4600 Kietzke Lane, Building F, Suite 153, Reno, Nevada, 89502
- Nevada Business Center, 3300 W. Sahara Avenue, Suite 425, Las Vegas, Nevada 89102

It was also posted at the following web site addresses:

- State of Nevada, Department of Business and Industry, Industrial Relations, Workers' Compensation Section ("WCS") website at <http://dir.nv.gov/WCS/Hearings/>
- Nevada Public Notices at <https://notice.nv.gov/>
- Legislative Counsel Bureau at <https://www.leg.state.nv.us/App/Notice/A/>

An electronic copy of the Small Business Impact Statement was also sent to:

- akillian@lcb.state.nv.us

The meeting was duly noticed in compliance with the Nevada Open Meeting Law to take place at 3360 West Sahara Avenue, Suite 250, Las Vegas, Nevada 89102, in the Executive Video Conference Room, at the offices of the Division of Industrial Relations ("DIR").

The Board meeting was noticed to commence at 10:00 a.m., on this date, July 12, 2018. The Board elected to wait until 10:20 a.m., before commencing the meeting, in order to give the public the opportunity to participate at the three locations, above, where the meeting was simulcast. After waiting for 20 minutes, the Board was informed that no one from the public was in attendance at the Carson City and Reno locations. Similarly, no one was in attendance at the Las Vegas location of the meeting where the Board meeting was actually, physically to be convened.

Chairman Wachter called the workshop to be heard. This is where the public would have the opportunity to comment upon the existing regulations and their amendment, replacement or repeal. No public appeared at the workshop and consequently, no comment was taken as the meeting was noticed as an opportunity to comment and advise the Board, as indicated. The Chairman, however, pointed out that the public had the opportunity to comment in writing to the Board by August 9, 2018. The Board would then reconvene on August 16, 2018, to approve the draft regulations pursuant to a 30 day notice of intent to act upon the draft regulations. The workshop was then adjourned.

On August 16, 2018, the hearing was held on the Notice of Intent to Adopt Regulations. Chairman Bryan Wachter called the meeting to order of the Board for the Administration of Subsequent Injury Account for Associations of Self-insured Public or Private Employers at approximately 10:00 a.m. There were no witnesses in attendance, no testimony and there were no written comments submitted.

Notice of the meeting was posted, published or served as follows:

- Division of Industrial Relations, 3360 West Sahara Avenue, Suite 250, Las Vegas, Nevada, 89102
- Division of Industrial Relations, 400 West King Street, Suite 400, Carson City, Nevada, 89703
- Division of Industrial Relations, Occupational Safety and Health Administration, 4600 Kietzke Lane, Building F, Suite 153, Reno, Nevada, 89502
- Nevada Business Center, 3300 W. Sahara Avenue, Suite 425, Las Vegas, Nevada 89102

The Notice was also been posted at the following web site addresses:

- State of Nevada, Department of Business and Industry, Division of Industrial Relations (DIR), Workers' Compensation Section website at <http://dir.nv.gov/WCS/Hearings/>
- Nevada Public Notices at <https://notice.nv.gov/>

The Notice was also served as follows:

- Placing an original or true copy thereof in a sealed envelope, postage prepaid, placed for collection and mailing in the United States Mail, at Reno, Nevada to;

Robert Vogel
ProGroup Management, Inc.
575 South Saliman Road
Carson City, Nevada 89701

Battle Mountain Branch Library
(Lander County)
625 South Broad Street
Battle Mountain, Nevada 89820

Richard S. Staub
Attorney at Law
Post Office Box 392
Carson City, NV 89702

Lincoln County Library
63 Main Street
Pioche, Nevada 89043

White Pine County Library
950 Campton Street
Ely, NV 89301

Lyon County Library System
20 Nevin Way
Yerington, Nevada 89447-2399

Tonopah Public Library
P.O. Box 449
Tonopah, Nevada

Eureka County Library
10190 Monroe Street
Eureka, Nevada 89316

Mineral County Library
Post Office Box 1390
Hawthorne, NV 89415

- Telephonic Facsimile at the following numbers:

775.847.0921: Storey County Community Library, Virginia City
775.623.6438: Humbolt County Library, Winnemucca
775.273.0421: Pershing County Library, Lovelock
775.738.8262: Elko Library

- By e-mail at the following addresses:

jcrobins@clan.lib.nv.us: Lincoln County Library
kemacdon@clan.lib.nv.us: Esmerelda County Library
dfwargo@churchillcountylibrary.org: Churchill County Library
dcpl-postings@douglas.lib.nv.us: Douglas County Library
library-postinggroup@washoecounty.us: Washoe County Library
allisona@lvccld.org: Las Vegas-Clark County Library District
Headquarters
tonopahlibrary@hotmail.com: Tonopah Public Library
jkintop@admin.nv.gov: State Library and Archives Administrator
posting@carsoncitylibrary.org: Carson City Library

Chairman Wachter called the posting for the agenda of the hearing for the permanent adoption, amendment or repeal of the regulations to be heard. The Board members had before them, proof of the timely posting under Nevada's Open Meeting law of the Agenda for this meeting. They also had before them, a copy of the Amended Notice of Intent to Adopt Regulations, with a copy of the proposed regulations attached. Proof of

service and posting of the Amended Notice of Intent to Adopt Regulations was also before the Board. The proof consisted of a certificate of posting and service dated July 10, 2018, signed by Karen Kennedy, which showed that the Amended Notice of Intent to Adopt Regulations was served upon Robert Vogel and Richard S. Staub, Esq., and either e-mailed, faxed or mailed to the main library in every county in the State of Nevada. The draft regulations were attached to the Notice of Intent.

Additionally, the Board had before it proof that an electronic copy of the Notice of Intent to Adopt Regulations was sent to the Legislative Counsel Bureau, with the proposed regulations attached at director@lcb.state.nv.us.

The Board had before it, proof that the Notice of Intent, aforementioned, was posted at the DIR offices situated at 3360 West Sahara Avenue, Suite 350, Las Vegas, Nevada, 89102, DIR offices situated at 400 West King Street, Suite 400, Carson City, Nevada, 89703, Division of Industrial Relations Occupational Safety and Health Enforcement Section, 4600 Kietzke Lane, Building F, Suite 153, Reno, Nevada, 89502, Nevada Business Center, 3300 West Sahara Avenue, Suite 425, Las Vegas, Nevada, 89502.

Furthermore, the Board had proof before it that the Notice of Intent with draft regulations were posted on the website of the Division of Industrial Relations:
<http://dir.nv.gov/WCS/Hearings/>

The proof of posting included proof the Notice of Intent and draft regulations were made available in the State of Nevada Register of Administrative Regulations which is published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the internet at <http://w.w.w.leg.state.nv.us>.

Finally, the Board had before it proof that the Notice of Intent with regulations attached were posted at the following web sites addresses:

<http://dir.nv.gov/WCS/Hearings/>

<https://notice.nv.gov/>

<https://www.leg.state.nv.us/app/notice/a/>

The proof showed that all of this was accomplished in time to meet the requirement of posting and service, 30 days prior to today's meeting. The posting for the August 16, 2018 meeting was approved upon a motion by Joyce Smith and then seconded by member Rebecca Fountain. The agenda was approved upon a motion by Debra Collins, seconded by Rebecca Fountain

The Chairman then called for hearing the Notice of Intent to Adopt Regulations, which gave the Board the opportunity at this meeting to finally adopt proposed regulations for submission to the Legislative Counsel Bureau and then Legislative Commission, for, hopefully, the final approval of the draft regulations. If the Legislative Commission

approves the draft regulations, they will then become a part of the Nevada Administrative Code (NAC).

The Chairman then canvassed the three sites where the meeting was simulcast to determine if any members of the public were present to participate. No member of the public was present.

The Chairman then canvassed the conference call into the meeting to determine if anyone from the public was present to participate in the meeting. No one was present.

The conclusion was that no member of the public was present to comment on the draft regulations.

The Chairman noted that the public could also submit written comments to the Board's legal counsel. He asked the Board counsel if he had received any written comments. Board counsel advised that no comments had been received.

The Chairman then closed the hearing on the Notice of Intent. Board counsel then reminded that action on the draft regulations, themselves, needed to be taken. The Chairman then asked for a motion approving the draft regulations, adopting them, and directing Board legal counsel to move forward the draft regulations, if approved. It was accordingly approved after being moved by Rebecca Fountain, seconded by Debra Collins.

On December 11, 2018, Chairman Wachter called the meeting to order at approximately 10:14 a.m. of the Board for the Administration of the Subsequent Injury Account for Associations of Self-Insured Public or Private Employers. The meeting was duly noticed in compliance with the Nevada Open Meeting Law to take place at 3360 West Sahara Avenue, Suite 250, Las Vegas, Nevada 89102, in the Executive Video Conference Room, in the offices of the Division of Industrial Relations ("DIR").

The meeting was also video conferenced at the Division of Industrial Relations, Department of Business and Industry, 400 West King Street, Suite 400, Conference Room, Carson City, Nevada 89703 and at the Nevada Occupational Safety and Health Administration, 4600 Kietzke Lane, Building F, Suite 153, OSHA Conference Room, Reno, Nevada 89502.

Present in person in Las Vegas were Chairman Bryan Wachter, and Members Allen Walker, Debra Collins and Rebecca Fountain. Vice-Chairman Joyce Smith attended the meeting *via* phone.

Also present in person in the Las Vegas offices were the Administrator's Board Liaison, Jacque Everhart; Vanessa Skrinaric, Compliance Audit Investigator, DIR; and Charles R. Zeh, Esq., The Law Offices of Charles R. Zeh, Esq., legal counsel to the Board. Also

participating in person in the Carson office was Doc Williams, DIR WCS.

The Notice was posted at the following locations at least 30 days in advance of the meeting:

- Division of Industrial Relations, 3360 West Sahara Avenue, Suite 250, Las Vegas, Nevada, 89102
- Division of Industrial Relations, 400 West King Street, Suite 400, Carson City, Nevada, 89703
- Division of Industrial Relations, Occupational Safety and Health Administration, 4600 Kietzke Lane, Building F, Suite 153, Reno, Nevada, 89502
- Nevada Business Center, 3300 W. Sahara Avenue, Suite 425, Las Vegas, Nevada 89102

The Notice was also been posted at the following web site addresses:

- State of Nevada, Department of Business and Industry, Division of Industrial Relations, Workers' Compensation Section website at <http://dir.nv.gov/WCS/Hearings/>
- Nevada Public Notices at <https://notice.nv.gov/>

The Notice was also served as follows:

- Placing an original or true copy thereof in a sealed envelope, postage prepaid, placed for collection and mailing in the United States Mail, at Reno, Nevada:

Robert Vogel
ProGroup Management, Inc.
575 South Saliman Road
Carson City, Nevada 89701

Battle Mountain Branch Library
(Lander County)
625 South Broad Street
Battle Mountain, Nevada 89820

Richard S. Staub
Attorney at Law
Post Office Box 392
Carson City, NV 89702

Lincoln County Library
63 Main Street
Pioche, Nevada 89043

White Pine County Library
950 Campton Street
Ely, NV 89301

Eureka County Library
10190 Monroe Street
Eureka, Nevada 89316

Tonopah Public Library
P.O. Box 449
Tonopah, Nevada

Mineral County Library
Post Office Box 1390
Hawthorne, NV 89415

Carson City Library
900 North Roop Street
Carson City, NV

Robert Balkenbush, Esq.
Thorndal, Armstrong, Delk,
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6590 S. McCarran Blvd., Ste B
Reno, NV 89101

Dalton Hooks, Esq.
Hooks Meng Schaan Clement, PLLC
2820 West Charleston Blvd., Ste C-23
Las Vegas, NV 89102

- Telephonic Facsimile at the following numbers:

775.847.0921: Storey County Community Library, Virginia City
775.623.6438: Humbolt County Library, Winnemucca
775.273.0421: Pershing County Library, Lovelock
775.738.8262: Elko Library

- By e-mail at the following addresses:

jrobins@clan.lib.nv.us: Lincoln County Library
kemacon@clan.lib.nv.us: Esmerelda County Library
dfwargo@churchillcountylibrary.org: Churchill County Library
dcpl-postings@douglas.lib.nv.us: Douglas County Library
library-postinggroup@washoecounty.us: Washoe County Library
allisona@lvccld.org: Las Vegas-Clark County Library District
Headquarters
tonopahlibrary@hotmail.com: Tonopah Public Library
jkintop@admin.nv.gov: State Library and Archives Administrator
posting@carsoncitylibrary.org: Carson City Library

With that, Chairman Wachter opened the hearing, the Notice of Intent to Adopt Regulations for the Associations Board. Previously, these draft regulations were approved, with one minor revision, namely, the deletion of Section 16, paragraph 5 at page 17 of the previously approved amended Regulations. This insubstantial revision was prompted by comments previously made by members of the public before the employer Board. As the draft regulations on this subject matter were the same for both Boards, in the interest of comity and because it was a good idea, the deletion of Section 16, paragraph 5 at page 17 of the draft regulations seemed appropriate. The Notice of Intent was simulcast for hearing in Las Vegas, Carson City and Reno, as indicated above. It was also noticed through the main library of every county in the State of Nevada. Notice of the hearing was also sent to each person or group requesting personal notice of hearings before the Board. A request for written comment was also made to the public. Board legal counsel advised that no further public comment in writing had been received. No one appeared at any of the sites for the meeting to comment on the proposed revision. The Chairman asked, then, for a vote on the proposed deletion of Section 16, paragraph 5 on page 17 of the draft regulations, the balance of which had previously been approved by the Board pursuant to a Notice of Intent to Adopt. It was accordingly moved by Debra Collins, seconded by Rebecca Fountain, to approve this last revision, the deletion of Section 16, paragraph 5 on page 17 of the draft regulations and to then direct Board legal counsel to submit the draft regulations to the Legislative Commission for adoption and incorporation into the Nevada Administrative Code.

3. The number persons who:

- **Attended each hearing:** July 12, 2018 - 0
August 16, 2018 - 0
December 11, 2018 - 0
- **Testified at each hearing:** July 12, 2018 - 0
August 16, 2018 - 0
December 11, 2018 - 0
- **Submitted to the agency written comments:** No written comments were submitted.

4. A list of names and contact information, including telephone number, business address, business telephone number, electronic mail address, and name of entity or organization represented, for each person identified above in #3, as provided to the agency.

There were no attendees at the workshop or the two hearings. Only the Board members, DIR employees and legal counsel for the Board.

5. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy

of the summary.

Aside from notice given generally to the public, no comment was solicited from affected small businesses because the Board determined that there will be no adverse impact from the proposed changes to the regulations upon small businesses or restrict the formation, operation or expansion of a small business. Solicitation of comment from small businesses is only mandated if the Board determines that the proposed changes in the regulations would impose a direct and significant economic burden upon a small business or would directly restrict the formation, operation or expansion of a small business. *See*, NRS 233B.0608(1) and (2).

6. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The permanent regulations were finally adopted on December 11, 2018. No one appeared at the hearing and, therefore, only the changes proposed by the Board were considered. Also, no written comments were ever received.

7. The estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include:

- a. Both adverse and beneficial effects; and**
- b. Both immediate and long-term effects.**

- a. Both adverse and beneficial effects: The Board determined that there will be no adverse impact visited by the amended regulations. The Board also concluded that the amendments will have a positive, immediate and long term beneficial impact because the proposed amendments will, *inter-alia*, add provisions for declaratory relief from the Board, and the opportunity for the public to propose the repeal, modification or addition of regulations governing the disposition of matters before the Board, clarify the process by which requests for continuances of hearing are to be processed, clarify the procedure for conducting hearings before the Board, provide for the disposition of annuities and the handling of commutated payments, address the standards for considering written records, address the question of retention in employment in light of recent Nevada Supreme Court decisions and clarify "permanent physical impairment."

To reach the Board's conclusion of no adverse impact, the Board drew upon the experience and expertise of the Board members, themselves. They are business persons and owners with broad and long-term experience in the assessment of workers' compensation and its impact on business operations. They are appointed to the Board by the Governor. The Board considered recent case law

when deciding whether to adopt changes to the regulatory scheme, reviewed in great detail, the existing regulatory scheme, and also considered how the existing regulatory scheme could be changed to more readily dispose of the cases which have come before the Board. The Board, then, after drafting the proposed regulatory changes, took a step back and assessed the impact of the process for resolving claims, if the proposed regulatory changes were enacted. The result of this analysis was the recognition that the proposed regulatory changes would clarify, simplify and add to the regulatory framework provisions that were lacking but were mandated to be in place. Because all of these revisions inure to the benefit of applicants for reimbursement before the Board, the Board does not anticipate that adopting these regulations will have any adverse, negative economic effect, either immediate or long term on small businesses. The streamlining of the process will have a positive, long term impact.

No fees are being added by these draft regulations, though the Board is adding that applicants have the option at their cost, of employing a court reporter to report upon and to secure a transcript of the hearing before the Board. As this is an expense incurred at the applicant's election, it is neither a fee, nor a source of revenue for the Board. It simply gives the applicant one more option for assessing a record of the proceedings before the Board.

Finally, these findings and determinations were reached by consensus of the Board after a public hearing. It was accordingly moved by Debra Collins, seconded by Rebecca Fountain, to approve this last revision, the deletion of Section 16, paragraph 5 on page 17 of the draft regulations and to then direct Board legal counsel to submit the draft regulations to the Legislative Commission for adoption and incorporation into the Nevada Administrative Code. The motion was adopted by a vote of 5, in favor and 0, against the motion, with a quorum of the Board being present to conduct this Board business, as reflected in the minutes of the meeting of the Board held on December 11, 2018.

- b. Both immediate and long-term effects: *See*, Item # 7(a).
- **The estimated cost to the agency for enforcement of the adopted amendments to the regulations.**

There is no additional cost to the Board for enforcement of these amendments to the regulations. *See also*, the answer to question 7, above.

- **A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

There are no other state or government agency regulations that the proposed regulation duplicates.

- **If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.**

There are no federal regulations that apply.

- **If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

This regulation does not provide a new fee or increase an existing fee.