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IN THE SUPREME COURT OF THE STATE OF NEVADA


CLARK COUNTY, Self-Insured  
Employer,  
  
Petitioner,  
  
vs.  
  
BRENT BEAN; STATE OF  
NEVADA, NEVADA DEPARTMENT  
OF ADMINISTRATIONS APPEAL  
OFFICE,  
  
Respondents.


Electronically Filed  
Jan 15 2020 10:22 a.m.  
Supreme Court Case No. 72-154  
District Court Case No. A-18-73957-3  
Elizabeth A. Brown  
Clerk of Supreme Court

JOINT APPENDIX

HOOKS MENG & CLEMENT

GREENMAN GOLDBERG  
RABY & MARTINEZ

  
11629  
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<b>DOCUMENT</b>	<b>DATE</b>	<b>VOLUME</b>	<b>BATES NUMBER</b>
Amended Petitioner's Motion for Stay Pending Appeal to the Nevada Supreme Court and Request for Order Shortening Time, or, in the Alternative, Motion for Temporary Stay	03/28/19	II	JA000341 – JA000365
Case Appeal Statement	03/22/19	II	JA000309 – JA000316
Claimant's Brief	09/20/17	II	JA000431 – JA000437
Claimant's Employment Status	N/A	I	JA000032
Claimant's Evidence Packet	04/26/17	III	JA000458 – JA000535
Claimant's Hearing Memorandum	04/26/17	II	JA000452 – JA000457
Claimant's Reply Brief	12/11/17	II	JA000416 – JA000420
Correspondence from Appeals Officer Georganne Bradley to Lisa Anderson	01/08/18	II	JA000413 – JA000415
Correspondence from Claimant's Counsel to CORVEL	11/30/16	I	JA000063
Correspondence from Claimant's Counsel to CORVEL	11/30/16	I	JA000064
Correspondence from Claimant's Counsel to Dr. David Ludlow	10/28/16	I	JA000061 – JA000062
Correspondence from CORVEL to Claimant	12/01/16	I	JA000066
Correspondence from CORVEL to Claimant	01/24/17	I	JA000067
Correspondence from Dalton Hooks, Esq. to Appeals Officer Georganne Bradley (sent via email)	02/27/18	II	JA000411
Correspondence from Lisa Anderson, Esq. to Dalton Hooks, Esq.	01/08/18	II	JA000412

1	Decision and Order of Appeals Officer	04/19/18	I	JA000021 – JA000028
2	Discharge Summary- Dr. Rouhani Nader	02/27/15	I	JA000048 – JA000049
3	Form C-1	12/24/13	I	JA000031
4	Form C-3	12/24/14	I	JA000030
5	Form C-4	12/22/14	I	JA000029
6	Notice of Appeal	03/22/19	II	JA000289 – JA000303
7	Notice of Appeal and Order to Appear	03/28/17	III	JA000582 – JA000587
8	Notice of Claim Acceptance	01/13/15	I	JA000065
9	Notice of Filing Bond	03/22/19	II	JA000304 – JA000308
10	Notice of Resetting	05/01/19	II	JA000450 – JA000451
11	Operative Record- Dr. David Ludlow	02/28/15	I	JA000045 – JA000047
12	Opposition to Petitioner's Motion for Stay Pending Petition for Judicial Review	05/16/18	I	JA000084 – JA000209
13	Opposition to Petitioner's Motion for Stay Pending Supreme Court Appeal	03/28/19	II	JA000366 – JA000388
14	Order Denying Motion for Stay Pending Supreme Court Appeal	08/27/19	II	JA000389 – JA000395
15	Order Denying Motion for Stay Pending Petition for Judicial Review	09/07/18	III	JA000588 – JA000590
16	Order Denying Petition for Judicial Review	03/04/19	II	JA000282 – JA000288
17	Order for In-Court Status Check	08/31/17	II	JA000438 – JA000439
18	Order Transferring Hearing to Appeals Office	03/21/17	I	JA000069 – JA000070

1	Patient Chart Notes- Dr. David Ludlow	11/21/14	I	JA000037 – JA000040
2	Patient Chart Notes- Dr. David Ludlow	02/23/15	I	JA000041 – JA000044
3	Patient Chart Notes- Dr. David Ludlow	06/24/16	I	JA000050 – JA000053
4	Patient Chart Notes- Dr. David Ludlow	06/24/16	I	JA000050 – JA000053
5	Patient Chart Notes- Dr. Jason N. Zommick	11/07/14	I	JA000033 – JA000036
6	Patient Chart Notes- Dr. Jason N. Zommick	11/07/14	I	JA000033 – JA000036
7	Permanent Partial Disability Evaluation – Dr. Charles Quagliari	11/02/16	I	JA000055 – JA000059
8	Permanent Partial Disability Evaluation – Dr. Charles Quagliari	11/02/16	I	JA000055 – JA000059
9	Permanent Partial Disability Evaluation Amendment – Dr. Charles Quagliari	01/04/17	I	JA000060
10	Permanent Partial Disability Evaluation Amendment – Dr. Charles Quagliari	01/04/17	I	JA000060
11	Petition for Judicial Review	05/03/18	I	JA000071 – JA000083
12	Petitioner’s Motion for Stay and Motion for Order Shortening Time, or, in the Alternative, Motion for Temporary Stay	05/09/18	I	JA000001 – JA000083
13	Petitioner’s Motion for Stay and Motion for Order Shortening Time, or, in the Alternative, Motion for Temporary Stay	05/09/18	I	JA000001 – JA000083
14	Petitioner’s Motion for Stay and Motion for Order Shortening Time, or, in the Alternative, Motion for Temporary Stay	05/09/18	I	JA000001 – JA000083
15	Petitioner’s Motion for Stay Pending Appeal to the Nevada Supreme Court and Request for Order Shortening Time, or, in the Alternative, Motion for Temporary Stay	03/27/19	II	JA000317 – JA000340
16	Petitioner’s Motion for Stay Pending Appeal to the Nevada Supreme Court and Request for Order Shortening Time, or, in the Alternative, Motion for Temporary Stay	03/27/19	II	JA000317 – JA000340
17	Petitioner’s Motion for Stay Pending Appeal to the Nevada Supreme Court and Request for Order Shortening Time, or, in the Alternative, Motion for Temporary Stay	03/27/19	II	JA000317 – JA000340
18	Petitioner’s Motion for Stay Pending Appeal to the Nevada Supreme Court and Request for Order Shortening Time, or, in the Alternative, Motion for Temporary Stay	03/27/19	II	JA000317 – JA000340
19	Petitioner’s Opening Brief	07/10/18	II	JA000234 – JA000256
20	Record on Appeal in Accordance with the Nevada Administrative Procedure Act	06/07/18	II	JA000396 – JA000399
21	Record on Appeal in Accordance with the Nevada Administrative Procedure Act	06/07/18	II	JA000396 – JA000399
22	Reply in Support of Petitioner’s Motion for Stay	05/22/18	I	JA000210 – JA000225
23	Reply in Support of Petitioner’s Motion for Stay	05/22/18	I	JA000210 – JA000225
24	Reply in Support of Petitioner’s Opening Brief	09/12/18	III	JA000591 – JA000598
25	Request for a Rotating Rating Physician or Chiropractor	10/12/16	I	JA000054
26	Request for Hearing Before Hearing Officer	01/26/17	I	JA000068
27	Request for Hearing Before Hearing Officer	01/26/17	I	JA000068

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Respondent's Answering Brief	08/09/18	II	JA000257 – JA000281
Self-Insured Employer and Third-Party Administrator's Answering Brief	10/30/17	II	JA000421 – JA000430
Self-Insured Employer and Third-Party Administrator's Prehearing Statement	06/13/17	II	JA000440 – JA000449
Self-Insured Employer Production of Related Documents	04/24/17	III	JA000536 – JA000581
Stipulation and Order for Temporary Stay	05/25/18	I	JA000226 – JA000227
Substitution of Attorneys	03/15/18	II	JA000408 – JA000410
Supplement to Respondent's Opposition to Petitioner's Motion for Stay Pending Petition for Judicial Review	05/25/18	I	JA000229 – JA000233



1 **MOT**  
DALTON L. HOOKS, JR., ESQ., Nevada Bar No. 8121  
2 JOHN A. CLEMENT, ESQ., Nevada Bar No. 8030  
HOOKS MENG SCHAAN & CLEMENT  
3 2820 W. Charleston Blvd., Ste. C-23  
Las Vegas, Nevada 89102  
4 Telephone No. (702) 766-4672  
Facsimile No. (702) 919-4672  
5 Attorneys for Petitioner  
CLARK COUNTY

6 DISTRICT COURT

7 CLARK COUNTY, NEVADA

8 CLARK COUNTY, Self-Insured Employer,  
9 Petitioners,

CASE NO: A-18-773957-J  
DEPT NO: 16

10 vs.

11 BRENT BEAN; STATE OF NEVADA,  
12 NEVADA DEPARTMENT OF  
ADMINISTRATIONS APPEAL OFFICE,  
13 Respondents.

14 **PETITIONER'S MOTION FOR STAY AND MOTION FOR ORDER SHORTENING**  
15 **TIME, OR, IN THE ALTERNATIVE, MOTION FOR TEMPORARY STAY**

16 COMES NOW, Petitioner, Self-Insured Employer, CLARK COUNTY ("Petitioner/SIE")  
17 [COUNTY], by and through its attorney, DALTON L. HOOKS, JR., ESQ., of HOOKS MENG  
18 SCHAAN & CLEMENT, and hereby moves this Court for a Stay of execution of the Appeals  
19 Officer's Decision and Order, dated 04/19/18, pending resolution of the Petitioner's Petition for  
20 Judicial Review filed under separate cover. Petitioner/SIE further moves this Court for an Order  
21 Shortening Time, or, in the alternative, a Temporary Stay in interest of the time-sensitive nature  
22 of the instant Petition for Judicial Review.

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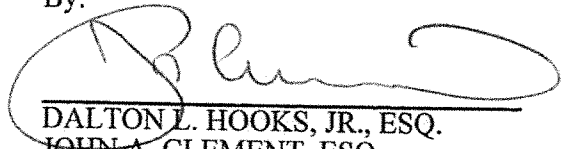
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This Motion is made and based upon the attached memorandum of points and authorities, the exhibits attached hereto and any oral arguments permitted on this matter.

Dated this 8 day of May, 2018.

Respectfully submitted,

HOOKS MENG SCHAAN & CLEMENT  
By:



DALTON L. HOOKS, JR., ESQ.  
JOHN A. CLEMENT, ESQ.  
2820 W. Charleston Blvd., Ste. C-23  
Las Vegas, NV 89102  
Attorneys for Self-Insured Employer  
CLARK COUNTY

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**AFFIDAVIT IN SUPPORT OF ORDER SHORTENING TIME**

STATE OF NEVADA        )  
                                  ) ss.  
COUNTY OF CLARK     )

I, JOHN A. CLEMENT, ESQ., do hereby swear under penalty of perjury that the following assertions are true to the best of my knowledge and belief:

1. Affiant is partner with Hooks Meng Schaan & Clement, the attorneys of record for Petitioner/SIE in the above-entitled action, and has personal knowledge as to the matters set forth herein;

2. This Affidavit is made in support of Petitioner/SIE's Motion for Order Shortening Time;

3. The Appeals Officer's Decision and Order dated 04/19/18 is at issue in this appeal. Accordingly, pursuant to NRS 616C.375, a stay is not granted unless this Court expressly grants a stay on or before 05/18/18.

4. Because a stay must be granted on or before 05/18/18, Petitioner/SIE respectfully requests this Motion for Stay be granted before compliance with the Appeals Officer's Decision and Order is required.

5. If this matter cannot be granted on or before 05/18/18, Petitioner/Insurer respectfully requests that this honorable Court enter a Temporary Stay until this Motion can be heard.

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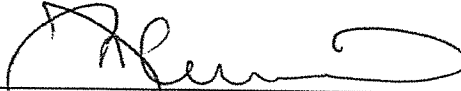


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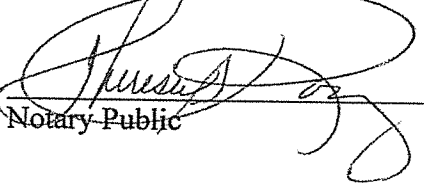
6. This Motion is made in good faith and is not made for the purposes of delay or undue advantage.

FURTHER YOUR AFFIANT SAYETH NAUGHT

DATED this 8<sup>th</sup> day of May, 2018.

  
\_\_\_\_\_  
JOHN A. CLEMENT, ESQ.

SUBSCRIBED AND SWORN  
to before me by AFFIANT  
this 8<sup>th</sup> day of May, 2018.

  
\_\_\_\_\_  
Notary Public



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NOTICE OF MOTION

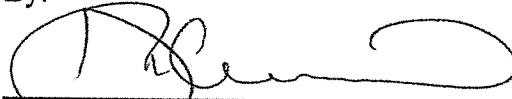
**TO: ALL INTERESTED PARTIES AND THEIR RESPECTIVE COUNSEL**

**PLEASE TAKE NOTICE** that the undersigned will bring the above and foregoing Motion for Stay on for hearing before the Court on the \_\_\_\_ day of June 14, 2018 at 9:00 am a.m./p.m.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2018.

HOOKS MENG SCHAAN & CLEMENT

By:



DALTON L. HOOKS, JR., ESQ.  
JOHN A. CLEMENT, ESQ.  
2820 W. Charleston Blvd., Ste. C-23  
Las Vegas, NV 89102  
Attorneys for Petitioner  
CLARK COUNTY

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I.**

**PRELIMINARY STATEMENT**

The instant Motion for Stay concerns the Appeals Officer’s Decision and Order dated 04/19/18 reversing a 01/24/17 determination by CLARK COUNTY denying the Respondent/Claimant’s request for a permanent partial disability (“PPD”) award. *See* exhibits attached hereto at pp. 1-8. In the underlying matter, the Appeals Officer ignored and/or misinterpreted controlling case law and statutes. As such her Decision amounts to a clear error of law, and in light of substantial evidence in the underlying appeal, is clearly unsupportable and constitutes reversible error or an abuse of discretion by Appeals Officer Bradley.

**II.**

**STATEMENT OF FACTS**

On 12/07/14, the Claimant, BRENT BEAN (“Respondent/Claimant”), a CLARK COUNTY firefighter alleged an occupational disease following his retirement. *See* exhibits attached hereto at pp. 9, 12. Importantly, the Respondent/Claimant retired from the CLARK COUNTY FIRE DEPT. effective 07/25/11. *See id.* at pg. 12. According to the C-4, or about 11/07/14, the Respondent/Claimant was diagnosed with prostate cancer, and thereafter completed his claim on 12/22/14. *See id.* at pg. 9. CLARK COUNTY subsequently completed a C-3, which noted they initially doubted the validity of the claim due to late reporting. *See id.* at pg. 10. A C-1 was completed on 12/24/14 and signed by both the Respondent/Claimant and employer on that date. *See id.* at pg. 11.

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1 Effective 01/13/15, the Petitioner/SIE issued its determination accepting the claim for  
2 prostate cancer. *See id.* at pg. 45. The Respondent/Claimant went forward with treatment for  
3 prostate cancer with Dr. David Ludlow, who recommended the Respondent/Claimant for a  
4 prostatectomy. *See id.* at pp. 13-16. The Respondent/Claimant underwent said prostatectomy on  
5 02/25/15. *See id.* at pp. 17-29. After appropriate follow-up, on 06/24/16, Dr. Ludlow concluded  
6 that the Respondent/Claimant had reached maximum medical improvement (“MMI”) and  
7 specifically noted, “from my standpoint he is cured from disease.” *See id.* at pp. 32. The  
8 acceptance of the prostate cancer and the medical treatment received for this condition are not in  
9 dispute.

10 Thereafter, the Respondent/Claimant obtained an evaluation with a rating physician off  
11 the Division of Industrial Relations (“DIR”) rotating list. *See id.* at pg. 34. Following an  
12 evaluation on 11/02/16 with Dr. Charles E. Quagliari, the Respondent/Claimant was found to  
13 have a forty (40%) whole person impairment as a result of his prostate cancer. *See id.* at pp. 35-  
14 40. The Respondent/Claimant, via counsel, requested the Petitioner/SIE award the 40% PPD as  
15 recommended by Dr. Quagliari. *See id.* at pg. 44.

16 On 01/24/17, the Petitioner/SIE sent correspondence to the Respondent/Claimant,  
17 advising that the Petitioner/SIE would not offer the PPD award. *See id.* at pg. 47. As specified  
18 in that letter, the Petitioner/SIE indicated that because the claim was made after retirement, and  
19 pursuant to NRS 617.453(4)(a), the Respondent/Claimant was not entitled to receive any  
20 monetary compensation for his occupational disease, other than payment of medical benefits.  
21 *See id.*

22 On or about 01/26/17, the Respondent/Claimant filed a request for hearing regarding the  
23 Petitioner/SIE’s determination. *See id.* at pg. 48. The matter was subsequently bypassed directly  
24 to the Appeals Office. *See id.* at pp. 49-50.

1 Following proceedings before Appeals Officer Georganne Bradley, the Appeals Officer  
2 REVERSED the Petitioner/SIE's 01/21/17 determination and remanded the Petitioner/SIE to  
3 offer the Respondent/Claimant a 40% PPD award. *See id.* at pg. 7. On 05/03/18, the  
4 Petitioner/SIE filed its Petition for Judicial Review. *See id.* at pg. 51-63. The Petitioner/SIE  
5 hereby files this Motion for Stay.

6 III.

7 LEGAL ARGUMENTS

8 The Nevada Supreme Court has stated that an Insurer's proper course when aggrieved  
9 by a decision is to seek a stay. *See NRS 616C.375; See also DIR v. Circus Circus*, 101 Nev.  
10 405 (1985). The Court also recognized that a stay should be granted where it can be shown that  
11 the Appellant would suffer irreparable injury during the pendency of the appeal, if the stay is  
12 not granted. *See White Pine Power v. Public Service Commission*, 76 Nev. 263 (1960).

13 In determining whether to issue a stay pending disposition of an appeal, the Nevada  
14 Supreme Court has continually held that in determining whether to grant a stay, the Court  
15 considers the following factors: (1) whether the object of the appeal or writ petition will be  
16 defeated if the stay is denied, (2) whether appellant will suffer irreparable or serious injury if  
17 the stay is denied, (3) whether respondent/real party in interest will suffer irreparable or serious  
18 injury if the stay is granted; and (4) whether appellant is likely to prevail on the merits of the  
19 appeal. *See Fritz Hansen A/S v. Eighth Judicial Dist. Court*, 116 Nev. 650, 657 (Nev. 2000);  
20 *See also Kress v. Corey*, 65 Nev. 1, 189 P.2d 352 (1948). Moreover, the Nevada Supreme  
21 Court has held that no factor carries more weight than the others, although, if one or two factors  
22 are especially strong, they may counterbalance other weak factors. *See Mikohn Gaming Corp.*  
23 *v. McCrea*, 89 P. 3d 36 (2004).

24 ...

1           The Petitioner/SIE has filed its Petition for Judicial Review of the Decision and Order at  
2 issue. The Nevada Administrative Procedure Act, as contained in NRS 233B, outlines the  
3 standard for review to be used when conducting a judicial review of a final decision of an  
4 agency. NRS 233B.135(3) states, in relevant part, the following:

5           3. The court shall not substitute its judgment for that of the agency as to the  
6 weight of evidence on a question of fact. The court may remand or affirm the  
7 final decision or set it aside in whole or in part if substantial rights of the  
8 Petitioner/Respondent/Claimant have been prejudiced because the final  
9 decision of the agency is:

- 10           (a) In violation of constitutional or statutory provisions;
- 11           (b) In excess of the statutory authority of the agency;
- 12           (c) Made upon unlawful procedure;
- 13           (d) **Affected by other error of law;**
- 14           (e) **Clearly erroneous in view of the reliable, probative and**  
15           **substantial evidence on the whole record; or**
- 16           (f) **Arbitrary or capricious or characterized by abuse of discretion.**

17           *See* NRS 233B.135(3) (2013) (emphasis added).

18           The Petitioner/Insurer contends that the recent decision by the Appeals Officer was  
19 clearly erroneous in light of the whole record, is based upon error of law in interpreting binding  
20 case law and NRS 617.453 and presents a clear abuse of discretion in view of the substantial  
21 facts and evidence. As such, the 04/19/18 Decision and Order, as it stands, being clearly  
22 erroneous and contrary to Nevada law, thereby warrants a stay pending resolution of  
23 Petitioner/SIE's Petition for Judicial Review.  
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1           **A. Petitioner’s Appeal is Likely to Succeed on the Merits of Their Appeal**

2           **1. The Appeals Officer’s Decision And Order Is Clearly Erroneous In View**  
3           **Of Substantial Evidence Of The Whole Record. Furthermore, The**  
4           **Appeals Officer’s Failure To Properly Interpret NRS 617.453 and Follow**  
5           **Controlling Case Law Amounts to Clear Error of Law And/Or An Abuse**  
6           **of Discretion.**

7           The issue of payment of disability benefits in the case of an occupational disease claimed  
8           post-retirement, has been addressed by the Nevada Supreme Court in *Howard v. City of Las*  
9           *Vegas*, 121 Nev. 691, 120 P.3d 410 (2005). Therein, the Court concluded that “a retired Nevada  
10          claimant, is effectively denied disability benefits because his weekly wage calculation amounts  
11          to zero.” *See id.* Although the Respondent/Claimant sought to distinguish this decision as  
12          applied to the issue of permanent partial disability benefits, the *Howard* case remains controlling.

13          In *Howard*, Oscar Howard was a retired firefighter who attempted to assert a claim for  
14          disability benefits resulting from a claim for heart disease. The Nevada Supreme Court  
15          concluded that when a retired claimant becomes eligible for occupational disease benefits, the  
16          claimant is entitled to receive medical benefits but may not receive any disability compensation  
17          if the claimant is not earning any wages at the time of his/her application. *Howard v. City of Las*  
18          *Vegas*, 120 P.3d 410, 411.

19           ***i. Any Argument That Permanent Partial Disability Amounts to A Medical Benefit is***  
20           ***Unsupportable.***

21          Consistent with NRS 617.453, payment of medical treatment expenses is proper when a  
22          claimant has been impacted by a disabling cancer. That statute states in pertinent part:

23           **NRS 617.453 Cancer as occupational disease of firefighters.**

24           4. Compensation awarded to the employee or his or her dependents for  
            disabling cancer pursuant to this section must include:

            (a) Full reimbursement for related expenses incurred for **medical treatments**,  
            surgery and hospitalization in accordance with the schedule of fees and  
            charges established pursuant to NRS 616C.260 or, if the insurer has

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contracted with an organization for managed care or with providers of health care pursuant to NRS 616B.527, the amount that is allowed for the treatment or other services under that contract; and

(b) The compensation provided in chapters 616A to 616D, inclusive, of NRS for the disability or death.

See NRS 617.453(4) (2015). In this case, the Petitioner/SIE does not contest its responsibility for payment of the expenses incurred for treatment of the Respondent/Claimant's prostate cancer, and in fact did so without issue. Simply, because PPD benefits are disability benefits as contemplated in *Howard*, the Petitioner/SIE declined to offer a PPD award in this case.

Notably, any attempt to argue that a PPD award constitutes medical benefits is unsupported. Specifically, the American Medical Association's *Guides to the Evaluation of Permanent Impairment*, Fifth Edition, which has been adopted under NRS 616C.110, defines **disability** as an alteration of the individual's capacity to meet *personal, social or occupational demands* or statutory or regulatory requirements because of an impairment. Nowhere in the Nevada Industrial Insurance Act is a claimant's permanent partial disability defined as a **medical benefit**. Clearly medical benefit contemplates medical treatments, surgery, hospitalization, physical therapy and prescriptions, not disability awards such as a PPD award.

*ii. As A Retiree, the Respondent/Claimant Has No Wages For Calculation Of Disability Benefits. As Is The Case With TTD Benefits, There Is No PPD Award Which The Respondent/Claimant Is Entitled To.*

Within NRS 617, under the section addressing compensation for disability and death, NRS 617.430 provides:

**NRS 617.430 Eligibility; limitations.**

1. Every employee who is disabled or dies because of an occupational disease, as defined in this chapter, arising out of and in the course of employment in the State of Nevada, or the dependents, as that term is defined in chapters 616A to 616D, inclusive, of NRS, of an employee whose death is caused by an occupational disease, are entitled to the compensation provided



1 by those chapters for temporary disability, permanent disability or death, as  
2 the facts may warrant ...

3 See NRS 617.430 (2015). This entitlement must be specifically addressed in light of the  
4 Respondent/Claimant's status as a retiree.

5 While the issue in *Howard* was the denial of temporary total disability ("TTD") benefits,  
6 the logic applied in reaching that conclusion is applicable to the instant issue. The *Howard*  
7 Court began its analysis with NRS 617.420 which states:

8 No compensation may be paid under this chapter for disability which does not  
9 incapacitate the employee for at least 5 cumulative days within a 20-day period  
10 from earning full wages, but if the incapacity extends for 5 or more days within a  
20-day period, the compensation must then be computed from the date of  
disability. The limitations in this section do not apply to medical benefits, which  
must be paid from the date of application for payment of medical benefits.

11 See NRS 617.420 (2015). The Court held that when a retired claimant becomes eligible for  
12 occupational disease benefits, the claimant is entitled to receive medical benefits but may not  
13 receive any disability compensation if the claimant is not earning any wages. See *Howard*, 120  
14 P.3d at 412. The Court's rationale for this ruling is based on two reasons. First, retirement  
15 benefits are not included in NRS 617.050's definition of "compensation," and no other provision  
16 suggests that retirement benefits should be included within the meaning of wages.<sup>1</sup> Second, a  
17 retiree has usually lost no salary or wages due to the impairment. *Id.*

18 Additional support for this analysis, and the Court's ruling, can be gleaned from NRS  
19 616C.390(6) which denies TTD or vocational rehabilitation benefits where a claimant has  
20 retired. As the Court reasoned in *Howard*, there should be no award for disability benefits where  
21 there are no "wages" lost. In fact, a retired claimant maintains his exact same income,  
22 unaffected by his occupational injury or disease. In the instance of a permanent partial disability  
23 ("PPD") award, going back to the AMA Guides definition, there is no disability to occupational

24 \_\_\_\_\_  
1 See NAC 616C.423 (describing items included in average monthly wage but omitting retirement benefits.)

1 demands where there is no occupational income lost.

2       The *Howard* Court also comments that the date of disability for Mr. Howard was the date  
3 of his heart attack, and the date immediately preceding the occupational disease is the date from  
4 which disability benefits are properly calculated. *See Howard*, 120 P.3d at 412; *see also Mirage*  
5 *v. State. Dept. of Administration*, 871 P.2d 317, 319. In other words, disability benefits trigger at  
6 the time of disablement. This has been addressed in NRS 617.060 as well as NRS 617.420 (cited  
7 previously above). NRS 617.060 provides:

8       **617.060 “Disablement” and “total disablement” defined.**

9       “Disablement” and “total disablement” are used interchangeably in this  
10 chapter and mean the event of becoming physically incapacitated by reason of  
11 an occupational disease arising out of and in the course of employment as  
12 defined in this chapter *from engaging, for remuneration or profit, in any*  
13 *occupation for which he or she is or becomes reasonably fitted by education,*  
14 *training or experience.*

15 *See* NRS 617.060 (2015) (emphasis added).

16       Further, the Nevada Supreme Court has considered the issue of disablement as it relates  
17 to occupational diseases and held:

18       [I]n order to become eligible for disability benefits, the employee must be  
19 incapacitated by the occupational disease for a least five cumulative days  
20 within a twenty-day period **earning full wage**.

21 *See Mirage v. State Dept. of Admin.*, 110 Nev. 257, 260, 871 P.2d 317 (1994); *see also Manwill*  
22 *v. Clark County*, 123 Nev. 238, 244 (2007); *Employers Ins. Co. of Nevada v. Daniels*, 122 Nev.  
23 1009, 1014 (2006). Moreover, the Court has stated:

24       An employee is not entitled to compensation from the mere contraction of an  
occupational disease. Instead, compensation ... flows from a disablement  
resulting from such a disease.

*See Daniels*, 122 Nev. at 1027 (internal quotations omitted). Thus, in looking at the standards of  
disablement, they are focused on the fact that there must be a loss of ability in earning a wage

1 from an occupation. The Court has indicated in *Mirage v. State Dept. of Admin*, that for  
2 occupational disease cases compensation in terms of average monthly wage must be computed  
3 from the date of disability. In fact, the Nevada Supreme Court has definitively held, “[o]nly  
4 after the employee becomes disabled does it become necessary to look to NRS Chapter 616 for  
5 the method of calculating the employee’s average wage.” *Mirage*, 871 P.2d at 319.

6 As in the *Howard* case, the Respondent/Claimant, as a retiree, was properly denied an  
7 award for PPD, as he has no wages on which to calculate a disability award. His income consists  
8 of retirement benefits from the fire department, and retirement income is not considered  
9 “compensation.” Nor is there evidence of alternate employment. Accordingly, the  
10 Respondent/Claimant was not earning an actual wage as contemplated under NAC 616C.423,  
11 from which any disability benefit could be calculated. Even if the 40% PPD award were proper,  
12 the net result is a \$0 award.

13 ***iii. The Attorney General’s 2002 Opinion Does Not Represent Binding Authority,  
14 And Has Been Superseded By Howard v. City of Las Vegas.***

15 In light of the Appeals Officer’s 04/19/18 Decision and Order, it is clear that the Appeals  
16 Officer relied on an August 7, 2002, Attorney General Opinion<sup>2</sup> to refute the Petitioner/SIE’s  
17 denial of a PPD award. Certainly, reliance upon this opinion was erroneous. First, the Opinion  
18 presumes that a retired police officer or fireman is earning a higher or lower “salary” following  
19 retirement. It in fact presumes some form of subsequent employment by the retiree. This is not  
20 our facts in this case, as there is no evidence that Respondent/Claimant is earning a “salary” or  
21 wage as contemplated under the NIIA.  
22

23 <sup>2</sup> No specific guidance is found in Nevada case law. However, in looking at other 9<sup>th</sup> Circuit Decisions, a formal  
24 opinion of the Attorney General represents the carefully considered judgment as to what the law requires in the  
circumstances presented, but “*has no legal binding effect on the requesting officer.*” *Univ. of Utah v. Shurtleff*,  
252 F. Supp. 2d 1264, 1271 (D. Utah 2003).

1           Second, the AG Opinion speculates that the Legislature intended that disability benefits  
2 for an occupational disease would be based upon wages earned prior to the covered employee's  
3 separation from public service as a firefighter or police officer. The AG Opinion acknowledges  
4 that, at the time, the Nevada Supreme Court had not been presented with the issue of calculating  
5 a disability benefit where a claimant earned significantly lower or higher wages following  
6 retirement. Instead, the AG Opinion offers a speculative opinion as to what the Nevada Supreme  
7 Court would do. However, it is now clear what the Supreme Court would do. The *Howard* case  
8 was decided three years after the AG Opinion, and it represents the only mandatory authority for  
9 the Court to follow on the issue at hand. The Court in *Howard* unequivocally states that the  
10 period immediately preceding the occupational disease is the date from which we must calculate  
11 disability benefits. *See Howard*, 120 P.3d at 412 (citing *Mirage v. State Dept. of*  
12 *Administration*). In reaching this conclusion, the Court in *Howard* looked at case law from  
13 multiple jurisdictions, and appropriately noted that "a retired New Hampshire claimant, like a  
14 retired Nevada claimant, is effectively denied disability benefits because his weekly wage  
15 calculation amounts to zero." *Id.*

16           Following this mandatory authority of the *Howard* case and applying the relevant statutes  
17 and regulations, the Respondent/Claimant's average monthly wage, as calculated pursuant to  
18 NAC 616C.435, **amounts to \$0, thereby the PPD award is also \$0.** Importantly, the  
19 Legislature has made no special provisions for firefighters or police officers as to the date of  
20 calculation. Here, the Respondent/Claimant's earliest period of disability was the date of  
21 diagnosis on 11/07/14. *See* exhibits attached hereto at pp. 9, 13. **At that time, the Claimant**  
22 **was retired and earning no wage.** As stated above, the idea of disability is tied to earning  
23 capacity. **In this case, while the Respondent/Claimant contracted an occupational disease,**  
24 **he has not been disabled from earning a wage, and therefore just as he is precluded from**

1 earning TTD, he is similarly precluded from any entitlement to a PPD award. To assert  
2 that the *Howard* Court never intended this result fails to properly consider the logic and opinion  
3 expressed in the case itself.

4 In view of the foregoing, the Appeals Officer had no basis in fact or at law upon which to  
5 upset the determination of the Petitioner/SIE which denied the Respondent/Claimant's request  
6 for a PPD award. The controlling case law and statutes are unambiguous and must be given full  
7 force. As such, the determination of the Petitioner/SIE must, as a matter of law, be AFFIRMED  
8 and the instant matter stayed until such time as the Petition for Judicial Review is heard.

9 **B. Denial of this Motion for Stay Will Result in Irreparable Harm to the Petitioner.**

10 Among the factors used in weighing the Petitioner/SIE's Motion for Stay are whether  
11 Petitioner/SIE is likely to succeed on the merits of their appeal and whether the Petitioner/SIE  
12 will suffer irreparable or serious injury if the stay is not granted. *See Fritz Hansen A/S v.*  
13 *Eighth Judicial Dist. Court*, 166 Nev. 650, 659, 6 P.3d 982, 987 (2000) (citing NRAP 8(c)).  
14 Importantly, the Nevada Supreme Court found in a 1988 decision that an insurer "cannot  
15 recoup contested benefits that were paid, but thereafter ruled unjustified on appeal." *See*  
16 *Ransier v. SIIS*, 104 Nev. 742, 745 (1988).

17 This decision all but ensures that an affected SIE will be irreparably harmed where the  
18 payment of benefits is ordered in error. Here, the Appeals Officer's order would require the  
19 Petitioner/SIE to pay a PPD award which was properly denied. *See* exhibits attached hereto at  
20 pp. 1-8. This is erroneous considering the fact that the Respondent/Claimant was retired and not  
21 earning a wage at the time of his disablement. *See id.* at all.

22 Due to the Appeals Officer's unwarranted decision, the Petitioner/SIE will, if a stay is  
23 not granted, be forced to comply with the 04/19/18 Decision and Order and offer a forty (40%)  
24 PPD award. Because of the financial hardship which will be imposed on the Petitioner/SIE by

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complying with the Decision and Order, the Petitioner/SIE, CLARK COUNTY, respectfully requests this Motion for Stay be granted until its Petition for Judicial Review can be heard.

**C. The Respondent Will NOT be Harmed if the Stay is Granted.**

The Respondent/Claimant will not suffer irreparable or serious harm if the Petitioner/SIE's Motion for Stay is granted as the only benefit at issue is an unwarranted PPD award and any order adjusting the Petitioner/SIE's determination would reimburse the Respondent/Claimant for back-due compensation. Thus, although the Petitioner/SIE is in a position to be irreparably harmed, there is simply nothing that can happen to the Respondent/Claimant that would be irreversible or irreparable.

**IV.  
CONCLUSION**

The Appeals Officer's Decision and Order, dated 04/19/18, is for the myriad of reasons set forth heretofore erroneous, arbitrary and capricious. Namely, the Appeals Officer ignored and/or misinterpreted controlling case law and statutes in ordering the Petitioner/SIE to offer a PPD award. As set forth herein, the Petitioner/SIE is likely to prevail on the merits with of its Petition for Judicial Review and denial of this Motion for Stay would cause the Petitioner/SIE, CLARK COUNTY, irreparable harm by requiring payment of benefits that cannot possibly be recovered assuming the Petitioner/SIE is victorious in its appeal of the 04/19/18 Decision and Order. For these reasons, the instant Motion for Stay should be granted pending resolution of CLARK COUNTY's Petition for Judicial Review.

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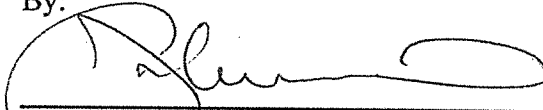
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Wherefore, Petitioner/SIE, CLARK COUNTY, respectfully requests that this honorable Court provide the following relief:

1. That this Court enter a stay of the Appeals Officer's Decision and Order dated 04/19/18 pending resolution of the issue on Judicial Review, or in the alternative, that a temporary stay shall begin on or before 05/18/18, and remain in effect until this matter can be heard.

Dated this 8<sup>th</sup> day of May, 2018.

HOOKS MENG SCHAAN & CLEMENT  
By:

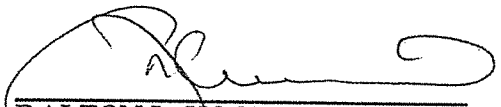


DALTON L. HOOKS, JR., ESQ.  
JOHN A. CLEMENT, ESQ.  
2820 W. Charleston Blvd., Ste. C-23  
Las Vegas, NV 89102  
Attorneys for Petitioner  
CLARK COUNTY

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AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding pleading filed in District Court Case No. does not contain the social security number of any person.



DALTON L. HOOKS, JR., ESQ.  
JOHN A. CLEMENT, ESQ.  
HOOKS MENG SCHAAN & CLEMENT  
2820 W. Charleston Blvd., Ste. C-23  
Las Vegas, Nevada 89102  
Attorneys for Petitioner  
CLARK COUNTY

5-8-18

DATE

**HMSC**  
HOOKS MENG SCHAAN & CLEMENT  
2820 West Charleston Blvd., Ste. C-23, Las Vegas, NV 89102



CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am employee of the law firm of HOOKS MENG SCHAAN & CLEMENT, and on this \_\_\_\_ day of April, 2018, I am serving the foregoing PETITIONER'S MOTION FOR STAY AND MOTION FOR ORDER SHORTENING TIME, OR, IN THE ALTERNATIVE, MOTION FOR TEMPORARY STAY and that on this date I deposited for mailing at Las Vegas, Nevada, a true copy of the attached document addressed to:

LISA M. ANDERSON, ESQ.  
GREENMAN GOLDBERG RABY & MARTINEZ  
601 S. NINTH ST.  
LAS VEGAS, NV 89101  
ATTORNEY FOR RESPONDENT: BRENT BEAN

MR. BRENT BEAN  
C/O LISA M. ANDERSON, ESQ.  
GREENMAN GOLDBERG RABY & MARTINEZ  
601 S. NINTH ST.  
LAS VEGAS, NV 89101

APPEALS OFFICER GEORGANNE W. BRADLEY  
DEPARTMENT OF ADMINISTRATION  
2200 SOUTH RANCHO DRIVE, SUITE 220,  
LAS VEGAS, NV 89102

KIMBERLY BUCHANAN/LESLIE RIBADENEIRA  
CLARK COUNTY RISK MANAGEMENT  
500 S. GRAND CENTRAL PARKWAY 5<sup>TH</sup> FLOOR  
LAS VEGAS NV 89106

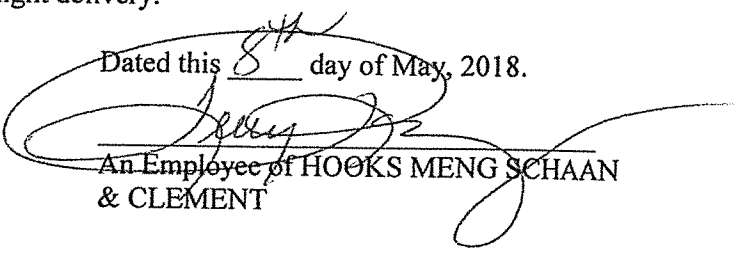
PATRICK CATES, DIRECTOR, STATE OF  
NEVADA,  
DEPARTMENT OF ADMINISTRATION  
5151 E. MUSSER ST.  
CARSON CITY, NV 89701

ADAM LAXALT, ESQ.  
ATTORNEY GENERAL, STATE OF NEVADA  
100 NORTH CARSON STREET  
CARSON CITY, NV 89701

BY:

- Placing a true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Las Vegas, Nevada, postage prepaid, following ordinary business practices.
- Personal delivery by runner or messenger service.
- Federal Express or other overnight delivery.

Dated this 8<sup>th</sup> day of May, 2018.

  
An Employee of HOOKS MENG SCHAAN  
& CLEMENT

*L.D. Hooks*

CLARK COUNTY  
FILED *TC* *1/2*

APR 19 2018

BEFORE THE APPEALS OFFICER

APPEALS OFFICE

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In the Matter of the Contested  
Industrial Insurance Claim of:

Claim No. : 0583WC150000098

BRENT BEAN

Appeal No. : 1710715-GB

Claimant.

DECISION AND ORDER

The above-referenced matter came on for hearing before Appeals Officer  
GEORGANNE W. BRADLEY, ESQ. Claimant, BRENT BEAN (hereinafter referred to as  
"Claimant"), was represented by counsel, THADDEUS J. YUREK III, ESQ. and LISA M.  
ANDERSON, ESQ. of the law firm GREENMAN, GOLDBERG, RABY & MARTINEZ. The  
Employer, CLARK COUNTY FIRE DEPARTMENT (hereinafter referred to as "Employer")  
and the Insurer, CORVEL (hereinafter referred to as "Insurer"), were represented by DALTON  
L. HOOKS, JR., ESQ. of the law firm ALVERSON TAYLOR MORTENSEN & SANDERS.

On January 24, 2016, the Insurer notified Claimant that they were not offering a  
permanent partial disability award. The Insurer's rationale was that Claimant was not entitled  
to any compensation benefits, including permanent partial disability, for his claim for  
occupationally related cancer because he was retired when the claim was filed. Claimant  
appealed that determination to the Hearing Officer, who affirmed the Insurer's determination.  
Claimant timely appealed the Hearing Officer's decision.

After considering the arguments of counsel and reviewing the documentary evidence  
herein, including the written briefs submitted by the parties, the Appeals Officer finds and  
decides as follows:

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Greenman Goldberg Raby Martinez  
ACCIDENT INJURY ATTORNEYS

FINDINGS OF FACT

1  
2 1. That Claimant retired as a firefighter with the Clark County Fire Department on July 25,  
3 2011.

4  
5 2. That on October 15, 2014, Claimant completed blood work that revealed elevated  
6 prostate specific antigen (PSA) levels. Claimant came under the care of Dr. David Ludlow for  
7 his prostate condition.

8  
9 3. That Claimant was diagnosed with malignant neoplasm of prostate and underwent a  
10 prostatectomy on February 24, 2015. Claimant was subsequently declared medically stable and  
11 ratable. Dr. Ludlow opined that Claimant would require ongoing medication for erectile  
12 dysfunction following claim closure. Dr. Ludlow confirmed that the medication was needed as  
13 a direct result of the prostate cancer.

14  
15 4. That on November 2, 2016, Dr. Charles Quagliari evaluated Claimant for permanent  
16 partial disability evaluation. Dr. Quagliari concluded that Claimant qualified for thirty-nine  
17 percent (39%) whole person impairment as a result of the occupationally related prostate cancer  
18 condition. Claimant was granted sixteen percent (16%) whole person impairment for the  
19 prostatectomy, ten percent (10%) whole person impairment for incontinence and twenty percent  
20 (20%) whole person impairment for loss of sexual function.

21  
22 5. That on November 30, 2016, Claimant notified the Insurer that Dr. Quagliari had  
23 miscalculated the impairment and that the correct whole person impairment sum was forty  
24 percent (40%). For that reason, the Insurer was asked to offer Claimant a forty percent (40%)  
25 whole person impairment award.

26  
27 6. That on November 30, 2016, the Insurer was asked to authorize ongoing erectile  
28 dysfunction medication following claim closure.

1 7. That on December 1, 2016, the Insurer notified Claimant that there appeared to be a  
2 calculation error in Dr. Quaglieri's disability report and was seeking clarification.

3  
4 8. That on January 4, 2017, Dr. Quaglieri issued a statement acknowledging his calculation  
5 error and confirmed that Claimant's whole person impairment was forty percent (40%).

6 9. That on January 9, 2017, an electronic mail communication was sent to the Insurer  
7 outlining that the Attorney General Opinion 2002-28 established that firefighter's "date of  
8 separation from service in such capacity and wages earned immediately prior to such date of  
9 separate form the basis upon which disability benefits are to be calculated."

10  
11 10. That on January 24, 2017, the Insurer notified Claimant that they were declining to offer  
12 a permanent partial disability award because the claim for occupational disease was filed after  
13 his retirement. The Insurer concluded that Claimant was therefore not entitled to receive any  
14 compensation benefits, including permanent partial disability, for his industrial injury.

15  
16 11. That Claimant appealed that determination to the Hearing Officer. The parties  
17 subsequently agreed to transfer the matter directly to the Appeals Officer for final administrative  
18 decision.

19 12. That this Court ordered the parties to submit briefs concerning the legal question as to  
20 whether Howard v. City of Las Vegas, 120 P.3d 410 (2005) disqualified Claimant from being  
21 entitled to permanent partial disability compensation benefits.

22  
23 13. That Claimant submitted his Opening Brief on the application of Howard on September  
24 20, 2017.

25 14. That the Insurer/Employer submitted their Answering Brief on the application of  
26 Howard on October 30, 2017.

27 ///

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Greenman Goldberg Raby Martinez  
ACCIDENT INJURY ATTORNEYS

BWB

1 15. That Claimant submitted his Reply Brief on the application of Howard on December 11,  
2 2017.

3 16. That the evidence supports Claimant's entitlement to permanent partial disability  
4 compensation benefits on the grounds that neither Howard nor any applicable <sup>statute</sup> ~~status~~ disqualifies  
5 Claimant from those benefits. | | | |

6 17. That these findings of fact are based upon the credible and substantial evidence within  
7 the record.  
8

9 18. That any Findings of Fact more appropriately deemed a Conclusion of Law shall be so  
10 deemed, and vice versa.  
11

12 CONCLUSIONS OF LAW

13 1. Claimant retired from the Clark County Fire Department effective July 25, 2011. On or  
14 about December 22, 2014, Claimant filed a claim for compensation under NRS 617. Effective  
15 January 13, 2015, the Insurer issued its determination accepting the claim for prostate cancer.  
16 Following treatment, Claimant was found to have a forty percent (40%) whole person  
17 impairment as a result of his occupationally related prostate cancer. The Insurer declined to  
18 offer the award because the claim was made after retirement. The Insurer contends that Claimant  
19 is only entitled to the payment of medical benefits and not any monetary compensation.  
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Greenman Goldberg Raby Martinez / ACCIDENT INQUIRY ATTORNEYS

1 2. NRS 617.452(4) provides in pertinent part that compensation awarded to a firefighter or  
2 his or her dependents for disabling cancer pursuant to this section must include full  
3 reimbursement for related expenses incurred for medical treatments, surgery and hospitalization  
4 and the compensation provided in chapters 616A to 616D, inclusive of NRS for the disability or  
5 death. Subsection 5 of the statute makes it clear that the firefighter's retirement prior to  
6 submitting a claim does not bar compensation for his claim simply because he has retired. The  
7 rebuttable presumption provided by subsection 5 applied to disabling cancer diagnosed after the  
8 termination of his employment. Also relevant is NRS 617.430(1), which provides in pertinent  
9 part that every employee who is disabled or dies because of an occupational disease, or the  
10 dependents of an employee whose death is caused by an occupational disease, is entitled to the  
11 compensation provided by NRS 616A-D for temporary disability, permanent disability, or death,  
12 as the facts may warrant, subject to the modifications mentioned in Chapter 617.

13  
14  
15 3. The Nevada Supreme Court case of Howard considered the extent to which a firefighter  
16 who retires and, thereafter, suffers a heart attack, is entitled to temporary total disability benefits.  
17 The Court held that although Nevada law is clear that retired firefighters who sustain a disability  
18 post-retirement are entitled to medical benefits, the Legislature's method for calculating  
19 compensation precludes an award for temporary total disability benefits when the retired  
20 firefighters are not earning wages at the time of the disability. In Howard, the specific issue was  
21 whether the retired firefighter, who submitted a claim for heart disease, was entitled to temporary  
22 total disability benefits.

23  
24  
25 4. For the reasons set forth in Claimant's Opening and Reply Briefs, this Court finds and  
26 concludes that Claimant is entitled to receive an otherwise proper permanent partial disability  
27 award despite the fact that he was retired when his claim was filed and permanent disability  
28

1 determined to exist. NRS 617.453(4) provides that a firefighter with a cancer claim is entitled  
2 to not only medical benefits but also disability benefits to which is entitled pursuant to NRS  
3 616A-D. Nothing set forth in NRS 616C.490 or the regulations governing permanent partial  
4 disability provides that a person is not entitled to permanent partial disability benefits once he is  
5 no longer working. NRS 616C.390 expressly provides that a retired person, upon reopening,  
6 may not receive temporary total disability benefits or vocational rehabilitation benefits. The  
7 Legislature could have, but did not, exclude permanent partial disability benefits from the  
8 benefits to which a claimant is entitled after retirement. Unlike temporary total disability  
9 benefits, which are intended to compensate the injured worker during the temporary period in  
10 which he is not working, permanent partial disability benefits are intended to compensate the  
11 injured worker for permanent physical impairment. This Court therefore declines to extend the  
12 Supreme Court's holding in Howard to permanent partial disability awards.

13  
14  
15 5. There is no statute, regulation, or case law that provides that a retired firefighter with an  
16 accepted occupational disease claim may be deprived of an otherwise properly determined  
17 permanent partial disability award. Furthermore, no other grounds for denial were asserted or  
18 argued by the Insurer, this Court finds Dr. Quaglieri's permanent partial disability rating  
19 evaluation to be thorough and properly performed.  
20

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Greenman Goldberg Raby Martinez & Martines  
ACCIDENT INJURY ATTORNEYS

CERTIFICATE OF MAILING

The undersigned, an employee of the State of Nevada, Department of Administration, Hearings Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing was duly mailed, postage prepaid OR placed in the appropriate addressee file maintained by the Division, 2200 South Rancho Drive, Suite 220, Las Vegas, Nevada 89102, to the following:

BRENT BEAN  
3405 AMISH AVENUE  
NORTH LAS VEGAS, NEVADA 89031

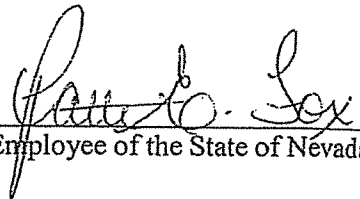
LISA M. ANDERSON, ESQ.  
GREENMAN GOLDBERG RABY & MARTINES  
601 SOUTH NINTH STREET  
LAS VEGAS, NEVADA 89101

DALTON L. HOOKS, JR., ESQ.  
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SUITE 200  
LAS VEGAS, NEVADA 89149

SANDRA SWICKARD  
CLARK COUNTY RISK MANAGEMENT  
500 SOUTH GRAND CENTRAL PARKWAY  
SUITE 200  
LAS VEGAS, NEVADA 89106

CORVEL  
P.O. BOX 61228  
LAS VEGAS, NEVADA 89160

DATED this 19th day of April, 2018.

  
Employee of the State of Nevada

FORM-C4  
 PLEASE TYPE OR PRINT

EMPLOYEE'S CLAIM - PROVIDE ALL INFORMATION REQUESTED					
First Name <b>FRANK</b>	M.I. <b>F.</b>	Last Name <b>BRACKI</b>	Birthdate <b>3-7-61</b>	Sex <b>RM</b>	Claim Number (include Use Date)
Home Address <b>7408 MICHELLE AVE.</b>			Age <b>53</b>	Height <b>5'8"</b>	Weight <b>202</b>
City <b>LAS VEGAS</b>			State <b>NV</b>	Zip <b>89131</b>	Telephone <b>702-370-2869</b>
Mailing Address <b>SAME</b>			State <b>NV</b>	Zip <b></b>	Primary Language Spoken <b>ENGLISH</b>
INSURER <b>CORVEL CORP.</b>		THIRD PARTY ADMINISTRATOR		Employee's Occupation (Job Title) When Injured or Occupationally Disease Occurred <b>RETIRED</b>	Telephone <b>702-455-7311</b>
Employer's Name/Company Name <b>CLARK COUNTY FIRE DEPT.</b>					
Office Mailing Address (Number and Street) <b>745 E. FLAMINGO RD.</b>					
Date of Injury (if applicable)	Hours Injury (if applicable)	Date Employer Notified	Last Day of Work After Injury or Occupational Disease	Supervisor to Whom Injury Reported	
Address or Location of Accident (if applicable)					
What were you doing at the time of the accident? (if applicable)					
How did this injury or occupational disease occur? (Be specific and answer in detail. Use additional sheet if necessary)					
If you believe that you have an occupational disease, when did you first have knowledge of the disability and its relationship to your employment? <b>11-7-14</b>					Witnesses to the Accident (if applicable)
Nature of Injury or Occupational Disease <b>PROSTATE CANCER</b>			Part(s) of Body Injured or Affected <b>PROSTATE</b>		
<small>LOSS OF EYE VISION IS DEFINED AS THE LOSS OF VISION IN ONE OR BOTH EYES TO SUCH AN EXTENT THAT THE PERSON IS UNABLE TO PERFORM HIS OR HER USUAL OCCUPATIONAL DUTIES OR ACTIVITIES. THIS REPORT IS TO BE COMPLETED BY THE EMPLOYEE OR HIS OR HER REPRESENTATIVE. IT IS NOT TO BE COMPLETED BY THE EMPLOYER OR ITS REPRESENTATIVE. THE EMPLOYEE OR HIS OR HER REPRESENTATIVE MUST SIGN AND DATE THIS REPORT. THE EMPLOYER OR ITS REPRESENTATIVE MUST SIGN AND DATE THIS REPORT. THE EMPLOYEE OR HIS OR HER REPRESENTATIVE MUST SIGN AND DATE THIS REPORT. THE EMPLOYER OR ITS REPRESENTATIVE MUST SIGN AND DATE THIS REPORT.</small>					
Date <b>12-22-14</b>	Place <b>Home</b>	Employee's Signature <b>[Signature]</b>			
<b>THIS REPORT MUST BE COMPLETED AND MAILED WITHIN 3 WORKING DAYS OF TREATMENT</b>					
Name of Facility <b>Urology Specialists of Nevada</b>					
Date <b>12-22-14</b>	Hour <b>11:09</b>	Diagnosis and Description of Injury or Occupational Disease <b>Prostate Cancer diagnosed with prostate biopsy</b>		<input type="checkbox"/> Did you know of any previous injury or disease contributing to this condition or occupational disease? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Treatment <b>Will need prostatectomy</b>		<input type="checkbox"/> Do you believe you are unable to perform your usual occupational duties? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
X-Ray Findings <b>[Signature]</b>		<input type="checkbox"/> Do you believe you are unable to perform your usual occupational duties? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
From information given by the employee, together with medical evidence, can you directly connect this injury or occupational disease as job related? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					
Is additional medical care by a physician indicated? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No					
Do you know of any previous injury or disease contributing to this condition or occupational disease? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (explain if yes)					
Date <b>12/22/14</b>	Physician's Name <b>Dan Ludwig</b>	I certify that this employee's condition is work related as defined in the statute.		<b>CORVEL LAS VEGAS</b>	
Address			INSURER'S USE ONLY		
City	State	Zip	Provider's Tax ID Number <b>8834956</b>	Telephone	<b>RECEIVED</b>
Doctor's Signature <b>[Signature]</b>			Degree <b>M.D.</b>		

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JA000029

		Please Type or Print	
EMPLOYER	Employer's Name Clark County, Nevada	Nature of Business (mfg., etc.) FIRE DEPT	FEIN 88-600002
	Office Mail Address 500 S. Grand Central Parkway	Location... If different from mailing address 575 E FLAMINGO RD LAS VEGAS NV 89119	Telephone (702) 455-7311
	City Las Vegas	State NV	Zip 89106
EMPLOYEE	First Name BRENT	Last Name BEAN	Birthdate 08/07/1961
	Home Address (Number & Street) 7408 MICHELLE AVE	Sex Male	Marital Status Single
	City LAS VEGAS	State NV	Zip 89131
ACCIDENT OR DISEASE	In which state was employee hired? NV	Employee's occupation (job title) when hired or disabled FIRE ENGINEER	Department in which regularly employed; FIRE SUPPRESSION
	Telephone: (702) 379-2869	Is the injured employee a corporate officer? NO	Was employee in your employ when injured or disabled by occupational disease (OD)? NO
	Date of injury (if applicable) 11/07/2014	Time of injury (hours, minute, AM/PM) (if applicable) 12:00 AM	Date employer notified of injury or O/D 12/24/2014
	Address or location of accident (Also provide city, county, state) (if applicable) VARIOUS AS FIRE FIGHTER, LAS VEGAS, CLARK, NV		Supervisor to whom injury or O/D reported KELLY BLACKMON
INJURY OR DISEASE	Specify machine, tool, substance, or object most closely connected with the accident (if applicable)		Witness N/A
	Part of body injured or affected Feet	If fatal, give date of death	Witness N/A
	Nature of Injury or Occupational Disease (scratch, cut, bruise, strain, etc.) Cancer		Witness N/A
	If validity of claim is doubted, state reason UNKNOWN		Will you have light duty work available if necessary? NO
IMPORTANT LOST TIME INFO	Treating physician / chiropractor name DAVID TUDLAV	Emergency Room NO	Hospitalized NO
	How many days per week does employee work? S M T W T F S		Last day wages were earned
	Date employee was hired 07/20/1981	Last day of work after injury or disability 11/07/2014	Date of return to work RETIRED
	Was the employee hired to work 40 hours per week? NO	If not, for how many hours a week was the employee hired? 56.00	Did the employee receive unemployment compensation any time during the last 12 months? Unknown
For the purpose of calculation of the average monthly wage, indicate the employee's gross earnings by pay period for 12 weeks prior to the date of injury or disability. If the injured employee is expected to be on work 6 days or more, attach wage verification form (D-8). Gross earnings will include overtime, bonuses, and other remuneration, but will not include reimbursement for expenses. If the employee was employed by you for less than 12 weeks, provide gross earnings from the date of hire to the date of injury or disability.			
Pay period ends on:	SUN MON TUE WED THU FRI SAT	Employee is paid: N/A	On the date of injury or disability the employee's wage was: \$0.00 Per RETIRED
For assistance with Workers' Compensation Issues you may contact the Office of the Governor Consumer Health Assistance Toll Free: 1-888-333-1597 Web site: <a href="http://govcha.state.nv.us">http://govcha.state.nv.us</a> E-mail: <a href="mailto:cha@govcha.state.nv.us">cha@govcha.state.nv.us</a>			
★	I affirm that the information provided above regarding the accident and injury or occupational disease is correct to the best of my knowledge. I further affirm the wage information provided is true and correct as taken from the payroll records of the employee in question. I also understand that providing false information is a violation of Nevada law.		Employer's Signature and Title OFFICE SVCS SUPV Gene Davidson
	Date 12/24/2014		
Claim is:	Accepted	Denied	Deferred
Class Code	0593:V02-15-00000000	Account (Claim No.)	Class Code
Claim Examiner's Signature	Date	Status Clerk	Date

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JA000030

DEPARTMENT OF FINANCE • RISK MANAGEMENT  
 500 SOUTH GRAND CENTRAL PARKWAY • 5TH FLOOR • BOX 551711 • LAS VEGAS NV 89155-1711

"NOTICE OF INJURY OR OCCUPATIONAL DISEASE"

(Incident Report)

Pursuant to NRS 616C.015

Name of Employer: CLARK COUNTY FIRE DEPT

Name of Employee <u>BRENT BEAN</u>		Social Security/PPNR	Telephone Number <u>702-379-2869</u>
Date of Accident (if applicable)	Time of Accident (if applicable) <u>8:00 AM</u>	Place where accident occurred (if applicable)	
What is the nature of the injury or occupational disease? <u>CAR CRASH</u>		What body parts involved? <u>NECK</u>	
Briefly describe accident or circumstances of occupational disease. (Note: You are claiming an occupational disease, which is the date on which employee first became aware of connection between condition and employment) <u>CLARK COUNTY FIRE DEPT. NECK PAIN. NOTICED ON 11-7-14</u>			
Names of Witnesses			
Did the employee leave work because of the injury or occupational disease? <u>RETIRED</u>	Yes, when (date and time) Date: _____ Time: <u>8:00 AM</u>	Has the employee returned to work? <u>NO</u>	Yes, when (date and time) Date: _____ Time: _____
Was first aid provided? <u>NO</u>	If yes, by whom?	Name and address of treating physician (if applicable or known) <u>DR. DAVID LODLOW</u> <u>3150 TENAYA WAY # 105</u> <u>CURVE LAS VEGAS</u>	
Did the accident happen in the normal course of work? (if applicable) <u>RETIRED</u>	<u>NO</u>	Date <u>JAN 12 2015</u>	
Was anyone else involved? <u>NO</u>	Names of others involved	<u>RECEIVED</u>	

MY EMPLOYER/INSURER MAY HAVE ARRANGEMENTS TO DIRECT ME TO A HEALTH CARE PROVIDER FOR MEDICAL TREATMENT. OF MY INDUSTRIAL INJURY OR OCCUPATIONAL DISEASE, I HAVE BEEN NOTIFIED OF THESE ARRANGEMENTS.

Supervisor's Signature: [Signature] Date: 12/24/14  
 Signature of Injured or Disabled Employee: [Signature] Date: 12-24-14

TO FILE A CLAIM FOR COMPENSATION, SEE REVERSE SIDE, SECTION ENTITLED, CLAIM FOR COMPENSATION (FORM C-4).

For assistance with Workers' Compensation issues you may contact the Office of the Governor Consumer Health Assistance Toll Free: 1-888-333-1597 Website: <http://govcha.state.nv.us> E-Mail: [chs@govcha.state.nv.us](mailto:chs@govcha.state.nv.us)

Employee should sign, date and retain a copy.  
 Original to Employer; Copy to Employee

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C-1 (Rev. 10/08)

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JA000031

Personnel

Personnel No: 80885  
 EE Group: 57 Retired  
 EE Subgroup: 57 Retiree  
 Start: 07/30/2011 to 12/31/9999  
 Name: BEAM, BERT  
 Personnel Ar: 8028  
 Status: Withdrawn  
 Chng: 08/01/2011 01210924

Date Specifications

Date type	Date	Date type	Date
53: Leave Accrual	07/30/1981	26: Longevity	07/20/1981
23: Original Hire	07/28/1981	27: Anniversary	01/24/1988
22: Sick Sell Back	07/20/1981	27: Current Hire	07/20/1981
24: Seniority	07/20/1981	28: Shift Seniority	01/24/1988
25: Separation	07/25/2011	29: PERS Membership	09/01/1991

# Urology Specialists

## Patient Chart Note

November 07, 2014

PATIENT: Brent E. Bean      DOB: 08/07/1961      AGE: 53

PCP: Roehl Penn, M. D.

REFERRING PHYSICIAN: Steven Norrls, M. D.

### HISTORY OF PRESENT ILLNESS

Brent is a 53 year old male who presents for follow up of his elevated PSA. This problem started approximately 3 Months ago. He denies any history of gross hematuria or hematospermia. His AUA voiding system score is in the moderate range at 14/35 - 3. Pt s/p TRUS Bx. Recovered well. Bx revealed GS 6 in 3/12 cores. Each 5% volume.

The following has been reviewed: LABS: 10/29/14 Path=ADENOCARCINOMA    MEDICAL RECORDS: Old medical records were reviewed.

### PAST MEDICAL HISTORY:

<u>Diagnosis</u>	<u>Year</u>
Left Renal Cell Carcinoma	
Renal insufficiency	
Hypertension	1999
Membranous Neuropathy	1996
Hypercholesterolemia	2000

### PAST SURGICAL HISTORY:

<u>Procedure</u>	<u>Year</u>
Left Partial Nephrectomy	2010
Wisdom teeth	1987
Right Total Knee Arthroplasty	2013
Shoulder Arthroscopy	1999

### MEDICATIONS:

<u>Medication</u>	<u>Dose</u>
Valium	10 Mg

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Date: 11/07/2014 Page 1 of 4 Patient Name: Brent E. Bean Date of Birth: 08/07/1961

JA000033

000013

# Urology Specialists

## Patient Chart Note

Doxycycline Hyclate	100 Mg
Flomax	0.4 Mg
Allopurinol	
Simvastatin	40mg
Benazepril Hcl	20mg

### ALLERGIES:

NKDA

### ALLERGIES:

Allergy

Rxn

No Known Allergies

### SOCIAL HISTORY:

The patient is Single. He has 3 children. His primary spoken language is English. His highest level of education is a high school degree. His major occupation is a(n) firefighter. He smoked one half pack per day of cigarettes and has a 2 pack-year history of tobacco use. He quit smoking approximately 32 years ago. He drinks 3 cups of coffee per day. He drinks 1-2 glasses of Wine (4oz) on a daily basis. Patient denies any previous history of IV or recreational drug use.

### FAMILY HISTORY:

<u>Member</u>	<u>Age</u>	<u>Condition</u>	<u>COD</u>	<u>Comments</u>
1 Father	66	Heart Disease	YES	
2 Mother	70	Cancer	NO	Multiple Myeloma s/p stem cell transplants.
3 Brother	38	Healthy	NO	
4 Sister	38	Healthy	NO	
5 Maternal Grandmother	88	Cancer	NO	
5 Paternal Grandfather	74	Heart Attack	NO	
5 Maternal Grandmother	58	Alcoholism	NO	
5 Paternal Grandmother	91	Healthy	NO	
10		Family History of		Melanoma NO
10		Family History of		Colon Cancer NO

### PHYSICAL EXAM:

#### VITAL SIGNS

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Date: 11/07/2014 Page 2 of 4 Patient Name: Brent E. Bean Date of Birth: 08/07/1961

JA000034

000014

# Urology Specialists

## Patient Chart Note

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<u>Temp F</u>	<u>BP</u>	<u>P</u>	<u>Height</u>	<u>Wt Lb</u>
	135/86	83	5'8"	208

### EXAM

<u>System</u>	<u>Findings / Comment</u>
GENERAL	This is a well nourished and normally developed individual. In no acute distress.
NECK	Neck is supple. Trachea is midline and freely moveable. No palpable masses or thyromegaly are appreciated.
LUNGS	Respiratory effort is normal without use of accessory muscles.
BACK	The spine is straight with normal ROM. There is no CVA or spinal tenderness to percussion.
ABDOMEN	Abdomen is soft and non-tender. There are no palpable masses or organomegaly. No obvious hernias are noted.
LYMPHATIC	There is no evidence of any cervical or inguinal lymphadenopathy.
NEURO-PSYCH	Patient has an appropriate affect.
SKIN-BREAST	Skin is warm and dry. No obvious rashes are noted.

### OFFICE LABS:

<u>Color</u>	<u>Turbidity</u>	<u>SP-G</u>	<u>pH</u>	<u>Glu</u>	<u>Ket</u>	<u>Bili</u>	<u>Urobili</u>	<u>Ptn</u>	<u>Heme Nit</u>	<u>LE</u>	<u>U-Cx</u>
Yellow	Clear	1.015	6	150 mg/dL		Neg	Neg	Normal	500 mg/dL		250 Neg
Neg	NO										

### IMPRESSION:

#### # DIAGNOSIS

1 Malignancy-Prostate

#### ASSESSMENT

Chronic condition with a severe exacerbation. Newly dx'd low grade, low volume prostate cancer on biopsy. Standard of care for this stage disease would be active surveillance per the NCCN guidelines. Pt is complicated because he needs to be cleared from cancer in order to get renal transplant. We will discuss options with tx coordinator and i/u in 2 wks. Discussed different options including active surveillance vs surgery vs radiation. It is my hope that with this stage of disease that treatment won't be necessary. The chance of this cancer causing mortality in the next 10-20 years is extremely low.

### PLAN-ORDERS:

#### Orders:

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Date: 11/07/2014 Page 3 of 4 Patient Name: Brent E. Bean Date of Birth: 08/07/1961

JA000035

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Urology Specialists

Patient Chart Note

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#	<u>ORDER / PLAN</u>	<u>WHEN?</u>
1	F/U Appt. w/ David Ludlow MD	2 Weeks

Jason N. Zommick MD FACS

DATE: 11/07/2014 4:12 PM

Electronically signed by Jason N. Zommick MD FACS on 11/18/2014 03:07 PM

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Date: 11/07/2014 Page 4 of 4 Patient Name: Brent E. Bean Date of Birth: 08/07/1961

JA000036

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Urology Specialists

Patient Chart Note

November 21, 2014

PATIENT: Brent E. Bean

DOB: 08/07/1961

AGE: 53

PCP: Roehl Pena, M. D.

REFERRING PHYSICIAN: Steven Norris, M. D.

HISTORY OF PRESENT ILLNESS

Brent is a 53 year old male who presents with a new diagnosis of prostate cancer. He denies any previous treatment of his prostate cancer. He denies any history of SUI or erectile dysfunction. His AUA voiding system score is in the moderate range at 14/35 - 3. The patient's calculated prostatic volume was 14 cc last recorded on 10/29/2014. His Karnofsky Performance Score is 100. Pt was on transplant list, but was taken off the list due to new dx of low grade, low volume prostate cancer.

PAST MEDICAL HISTORY:

<u>Diagnosis</u>	<u>Year</u>
Left Renal Cell Carcinoma	
Renal insufficiency	
Hypertension	1999
Membranous Neuropathy	1996
Hypercholesterolemia	2000

PAST SURGICAL HISTORY:

<u>Procedure</u>	<u>Year</u>
Left Partial Nephrectomy	2010
Wisdom teeth	1987
Right Total Knee Arthroplasty	2013
Shoulder Arthroscopy	1999

MEDICATIONS:

<u>Medication</u>	<u>Dose</u>
Valium	10 Mg
Doxycycline Hyclate	100 Mg

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Date: 11/21/2014 Page 1 of 4 Patient Name: Brent E. Bean Date of Birth: 08/07/1961

JA000037

000017

# Urology Specialists

## Patient Chart Note

Flomax 0.4 Mg  
Allopurinol  
Simvastatin 40mg  
Benazepril Hcl 20mg

### ALLERGIES:

NKDA

### ALLERGIES:

Allergy Rxn  
No Known Allergies

### SOCIAL HISTORY:

The patient is Single. He has 3 children. His primary spoken language is English. His highest level of education is a high school degree. His major occupation is a(n) firefighter. He smoked one half pack per day of cigarettes and has a 2 pack-year history of tobacco use. He quit smoking approximately 32 years ago. He drinks 3 cups of coffee per day. He drinks 1-2 glasses of Wine (4oz) on a daily basis. Patient denies any previous history of IV or recreational drug use.

### FAMILY HISTORY:

Member	Age	Condition	COD	Comments
1 Father	66	Heart Disease	YES	
2 Mother	70	Cancer	NO	Multiple Myeloma s/p stem cell transplants.
3 Brother	38	Healthy	NO	
4 Sister	38	Healthy	NO	
5 Maternal Grandmother	88	Cancer	NO	
5 Paternal Grandfather	74	Heart Attack	NO	
5 Maternal Grandmother	58	Alcoholism	NO	
5 Paternal Grandmother	91	Healthy	NO	
10		Family History of		Melanoma NO
10		Family History of		Colon Cancer NO

### PHYSICAL EXAM:

#### VITAL SIGNS

Temp F BP P Height Wt Lb

CORVEL LAS VEGAS

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Date: 11/21/2014 Page 2 of 4 Patient Name: Brent E. Bean Date of Birth: 08/07/1961

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Urology Specialists

Patient Chart Note

119/79 75 5' 8" 205

EXAM

System

Findings / Comment

GENERAL

This is a well nourished and normally developed individual. In no acute distress.

NECK

Neck is supple. Trachea is midline and freely moveable. No palpable masses or thyromegaly

are appreciated.

LUNGS

Respiratory effort is normal without use of accessory muscles.

BACK

The spine is straight with normal ROM. There is no CVA or spinal tenderness to

percussion.

ABDOMEN

Abdomen is soft and non-tender. There are no palpable masses or organomegaly. No

obvious hernias are noted.

LYMPHATIC

There is no evidence of any cervical or inguinal lymphadenopathy.

NEURO-PSYCH

Patient has an appropriate affect.

SKIN-BREAST

Skin is warm and dry. No obvious rashes are noted.

OFFICE LABS:

Color	Turbidity	SP-G	pH	Glu	Ket	Bili	Urobili	Ptn	Heme	Nit	LE	U-Cx
Yellow	Clear	1.005	5	Neg	Neg	Neg	Neg	500 mg/dL	Neg	Neg	Neg	NO

IMPRESSION:

# DIAGNOSIS

ASSESSMENT

1 Malignancy-Prostate Chronic condition with a severe exacerbation. Newly dx'd low gr, low volume. Pt needs treatment to get back on transplant list. Would like robotic prostatectomy. Discussed risks including bowel injury, vessel injury, SUI, and ED. I discussed all of the most common risks, benefits, goals and alternatives to the proposed treatment and all questions have been answered.

PLAN-ORDERS:

Orders:

# ORDER / PLAN

1 Weight Reduction Counseling

WHEN?

Today

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Surgery:

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Date: 11/21/2014 Page 3 of 4 Patient Name: Brent E. Bean Date of Birth: 08/07/1961

JA000039

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Urology Specialists

Patient Chart Note

Surgery # 1

Laparoscopic Radical Prostatectomy

Surgery # 2

Surgery # 3

David Ludlow MD

DATE: 11/21/2014 11:58 AM

Electronically signed by David Ludlow MD on 11/21/2014 05:33 PM

CORVEL LAS VEGAS

DEC 8 1 2014

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Date: 11/21/2014 Page 4 of 4 Patient Name: Brent E. Bean Date of Birth: 08/07/1961

000020

JA000040

Corvel Scan Date: 6/9/

# Urology Specialists

## Patient Chart Note

February 23, 2015

PATIENT: Brent E. Bean      DOB: 08/07/1961      AGE: 53

PCP: Roehl Pena, M. D.

REFERRING PHYSICIAN: Steven Norris, M. D.

### HISTORY OF PRESENT ILLNESS

Brent is a 53 year old male who presents with a history of prostate cancer. There is no change in condition from last visit. He denies any previous treatment of his prostate cancer. His AUA voiding system score is in the moderate range at 14/35 - 3. The patient's calculated prostatic volume was 14 cc last recorded on 10/29/2014. Pt on transplant list for renal failure and found to have elevated PSA and Bx revealed LGLV PCa. Plans for robotic prostatectomy for cure and to allow pt to get back on transplant list. Had recent peritoneal dialysis cath placed and returns to evaluate scars and location to make sure robotic approach still feasible.

The following has been reviewed: MEDICAL RECORDS: Old medical records were reviewed.

### PAST MEDICAL HISTORY:

<u>Diagnosis</u>	<u>Year</u>
Left Renal Cell Carcinoma	
Renal insufficiency	
Hypertension	1999
Membranous Neuropathy	1996
Hypercholesterolemia	2000

### PAST SURGICAL HISTORY:

<u>Procedure</u>	<u>Year</u>
Left Partial Nephrectomy	2010
Wisdom teeth	1987
Right Total Knee Arthroplasty	2013
Shoulder Arthroscopy	1999

### MEDICATIONS:

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JUN 09 2015

CORVELMEDCHECKLV

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Date: 02/23/2015 Page 1 of 4 Patient Name: Brent E. Bean Date of Birth: 08/07/1961

JA000041

000021

**Urology Specialists**

**Patient Chart Note**

<u>Medication</u>	<u>Dose</u>
Vallium	10 Mg
Doxycycline Hyclate	100 Mg
Flomax	0.4 Mg
Allopurinol	
Simvastatin	40mg
Benazepril Hcl	20mg

ALLERGIES:  
NKDA

ALLERGIES:

Allergy

No Known Allergies

Rxn.

SOCIAL HISTORY:

The patient is Single. He has 3 children. His primary spoken language is English. His highest level of education is a high school degree. His major occupation is a(n) firefighter. He smoked one half pack per day of cigarettes and has a 2 pack-year history of tobacco use. He quit smoking approximately 32 years ago. He drinks 3 cups of coffee per day. He drinks 1-2 glasses of Wine (4oz) on a daily basis. Patient denies any previous history of IV or recreational drug use.

FAMILY HISTORY:

<u>Member</u>	<u>Age</u>	<u>Condition</u>	<u>COD</u>	<u>Comments</u>
1 Father	66	Heart Disease	YES	
2 Mother	70	Cancer	NO	Multiple Myeloma s/p stem cell transplants.
3 Brother	38	Healthy	NO	
4 Sister	38	Healthy	NO	
5 Maternal Grandmother	88	Cancer	NO	
5 Paternal Grandfather	74	Heart Attack	NO	
5 Maternal Grandmother	58	Alcoholism	NO	
5 Paternal Grandmother	91	Healthy	NO	
10		Family History of		Melanoma NO
10		Family History of		Colon Cancer NO

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JUN 09 2015

Urology Specialists of Nevada

CORVEL MEDCHECK LV

2010 Goldring Ave., Suite 200, Las Vegas, NV 89106 // 56 N. Pecos Rd., Suite B, Henderson, NV 89074

3150 N Tenaya Way, Suite 160, Las Vegas, NV 89128 // 5701 W. Charleston Blvd., Suite 201, Las Vegas, NV 89146

Phone: (702) 877-0814 // Fax: (702) 877-3238 // www.usonv.com

Date: 02/23/2015 Page 2 of 4 Patient Name: Brent E. Bean Date of Birth: 08/07/1961

Corvel Scan Date: 6/9/15

# Urology Specialists

## Patient Chart Note

### PHYSICAL EXAM:

#### VITAL SIGNS

<u>Temp F</u>	<u>BP</u>	<u>P</u>	<u>Height</u>	<u>Wt Lb</u>
	143/93	68	5'8"	

#### EXAM

##### System

##### Findings / Comment

##### GENERAL

This is a well nourished and normally developed individual. In no acute distress.

##### NECK

Neck is supple. Trachea is midline and freely moveable. No palpable masses or thyromegaly

are appreciated.

##### LUNGS

Respiratory effort is normal without use of accessory muscles.

##### BACK

The spine is straight with normal ROM. There is no CVA or spinal tenderness to

percussion.

##### ABDOMEN

ABDOMEN: Soft. It is non-tender to palpation. There are no palpable masses. There is no organomegaly. No hernias are appreciated. Stool guac not tested. Has peritoneal dialysis catheter on Rt abdomen. Also healing l/s incision sites.

##### NEURO-PSYCH

Patient has an appropriate affect.

##### SKIN-BREAST

Skin is warm and dry. No obvious rashes are noted.

### OFFICE LABS:

<u>Color</u>	<u>Turbidity</u>	<u>SP-G</u>	<u>pH</u>	<u>Glu</u>	<u>Ket</u>	<u>Bili</u>	<u>Urobili</u>	<u>Ptn</u>	<u>Heme Nit</u>	<u>LB</u>	<u>U-Cx</u>
Yellow	Clear	1.010	6	>1000 mg/dL		Neg	Neg	Neg	500 mg/dL	Neg	Neg Neg
NO											

### IMPRESSION:

#### # DIAGNOSIS

1 Malignancy-Prostate

#### ASSESSMENT

Chronic condition with a mild exacerbation. Had PD catheter placed few wks ago. Has some incisional scars and catheter in Rt abdomen. Discussed case with multiple nephrologists and they say that prostatectomy is not contraindicated. We discussed that case may be more difficult robotically due to PD cath and recent l/s surgery. Discussed that there is possibility of converting to open.

David Ludlow MD

DATE: 02/23/2015 11:54 AM

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 Phone: (702) 877-0814 // Fax: (702) 877-3238 // www.usonv.com

Date: 02/23/2015 Page 3 of 4 Patient Name: Brent E. Bean Date of Birth: 08/07/1961

JA000043

000023



Corvel Scan Date: 6/9,

Urology Specialists

Patient Chart Note

---

Electronically signed by David Ludlow MD on 02/23/2015 12:08 PM

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Date: 02/23/2015 Page 4 of 4 Patient Name: Brent E. Bean Date of Birth: 08/07/1961

JA000044

000024

SHM- Summerlin Hospital Medical Center  
657 Town Center Drive  
Las Vegas, NV 89144-8367

Patient: BEAN, BRENT E  
MRN: SHM4800516; CHH7164585  
FIN: SHM0000011793122  
DOB/Sex: 8/7/1961 / Male  
Patient Room: SHM 5W1; 596; 01

Admit: 2/24/2015  
Disch: Disch Time:  
Attending: Rouhani, Nader DO  
Copy To: n/a

**Operative Record**

DOCUMENT NAME:  
SERVICE DATE/TIME:  
RESULT STATUS:  
PERFORM INFORMATION:  
SIGN INFORMATION:

Operative Reports  
2/26/2015 01:01 PST  
Auth (Verified)  
Ludlow, David V MD (2/25/2015 18:40 PST)  
Ludlow, David V MD (2/26/2015 08:55 PST)

**VH Operative Report**

DATE OF SURGERY: 02/25/2015

PREOPERATIVE DIAGNOSIS: Prostate cancer.

POSTOPERATIVE DIAGNOSIS: Prostate cancer.

PROCEDURE: Robot assisted bilateral nerve sparing, laparoscopic prostatectomy.

SURGEON: David Ludlow, MD

ANESTHESIA: General.

ESTIMATED BLOOD LOSS: 500 mL.

TUBES: Urethral Foley catheter.

COMPLICATIONS: None.

INDICATIONS: The patient is a 53-year-old male with recently diagnosed low-grade, low volume prostate cancer. The patient was previously on a renal transplant list due to renal failure, and because of the diagnosis of prostate cancer he was removed from the list and needed surgical resection. Risk, benefits, and alternatives to different options were discussed in detail, and the patient elected to proceed with the above procedure.

PROCEDURE IN DETAIL: The patient had proper consent obtained. The patient was brought back to the operating room and laid supine on the table. Anesthesia was induced. The patient was placed in dorsal lithotomy position. Then, he was shaved, prepped and draped in the usual sterile fashion. A proper timeout was performed, confirmed that appropriate antibiotics were given. A Foley catheter was inserted. Access into the abdomen was initially gained using a Veress needle. The abdomen insufflated nicely. Using a laparoscopic camera, we were able to place the other necessary ports. Of note, the patient has a history of recently placed peritoneal dialysis catheter and we were careful to avoid this. A 12-mm camera port was placed in the midline. There were three 8-mm robot arms, a

Transcription

Print Date/Time 2/26/2015 22:38 PST

Report Request ID: 69771042

Page 1 of 3

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MAR 10 2015

SHM- Summerlin Hospital Medical Center

Patient: BEAN, BRENT E  
MRN: SHM4800516; CHH7164585  
FIN: SHM0000011793122

Admit: 2/24/2015  
Disch:  
Attending: Rouhani, Nader DO

**Operative Record**

12-mm assistant port was placed in the right upper quadrant, and a 5-mm assistant port was placed in the right lateral abdomen. Instruments were then placed and the robotic portion of the procedure was started. There were a few adhesions along the left lateral wall that were brought down. The patient had a very deep and tight pelvis. So, the decision was made to not do a posterior dissection for the seminal vesicles. I then proceeded to drop the bladder all the way down to the endopelvic fascia. This was then incised along the lateral aspect of the prostate on both sides. We then used a stapler to dissect out the dorsal venous complex. We then developed a plane between the prostate and the bladder neck. An opening was made in this plane at the bladder neck and the Foley catheter was removed and suspended up in the air for retraction. We then developed the plane posterior to the bladder neck and laterally on both sides until the seminal vesicles were visualized. These were then dissected out, the vas deferens were transected bilaterally. A posterior plane was developed behind the seminal vesicles. We then turned our attention to the lateral pedicles, first on the patient's right side as we moved closer to the lateral aspect of the pedicles and anterior approach was used to dissect nerves off of the lateral aspect of the right prostate and this was carried all the way back to the pedicle and we were careful to avoid these, similarly the pedicles were taken down with clips and the nerves were spared on the left side. We then turned our attention to the urethra. We carefully dissected out the urethra until there was a plane between it and the apex of the prostate. We then dissected through the anterior portion of the urethra and pulled the Foley catheter out and then the posterior part, any additional attachments in the posterior plane were then resected and the prostate was placed in the specimen bag. We were careful to obtain good hemostasis. We then used a 3-0 V-Loc Rocco stitch to approximate the tissue underneath the urethra to the tissue underneath the bladder neck. We then used two 3-0 V-Loc sutures that were tied together to perform the anastomosis. Of note, the anastomosis was difficult due to the tight narrow pelvis. Both needles started at 11 o'clock on the bladder neck and 5 o'clock on the urethra and then were brought around opposite directions in a running fashion until they met on the other side. They were then tied together. The bladder was filled with saline and there was no sign of leakage. The bladder was then emptied. We then placed Surgicel along both of the pelvic gutters at the side of the pedicle and nerve dissection, and Evicel was then applied over these areas. We then undocked the robot using the laparoscopic camera. We brought the specimen string out through the midline 12 port and closed the assistant 12 port fascia using the assistance of a Carter-Thomason at an 0 Vicryl. We then extended the midline incision approximately to 4 cm and the specimen was removed and sent for permanent pathology. The fascia was then closed using 2 interrupted 0 Vicryl in a figure-of-eight fashion. All the incision sites were then irrigated and a total of 12 mL of 0.25% Marcaine was applied along the incision sites. All the skin incisions were then closed using 4-0 Monocryl and Dermabond was placed. A new Foley catheter had been reinserted at the end of the anastomosis. At this point, the procedure was complete. The patient was extubated and taken to the PACU in stable condition.

PLAN: The patient will be admitted for routine postoperative recovery and will be discharged with the Foley catheter in place and follow up in clinic for a voiding trial and a discussion of pathology results.

Dictated By: DAVID V LUDLOW, MD

Print Date/Time 2/26/2015 22:38 PST

Transcription

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Page 2 of 3

MAR 10 2015

CORVEL MEDCHECK LV

Name: Bean, Brent

DOB: 08/07/1961

Date:

000026

JA000046

Corvel Scan Date: 3/1/15

SHM- Summerlin Hospital Medical Center

Patient: BEAN, BRENT E  
MRN: SHM4800516; CHH7164585  
FIN: SHM0000011793122

Admit: 2/24/2015  
Disch:  
Attending: Rouhani, Nader DO

**Operative Record**

D: 15226 / T: 6010197 / DT: 02/25/2015 18:40:03PST / TT: 02/26/2015 01:01:39PST / V:  
11793122 / Job# 12114201 / Mod: 02/26/2015 04:01:39

CC:

*Electronically Signed By: Ludlow, David*  
On: 02.26.2015 08:55 PST

Print Date/Time 2/26/2015 22:38 PST

Transcription

**RECEIVED**

Page 3 of 3

MAR 10 2015

CORVELMEDCHECK LV

Name: Bean, Brent

DOB: 08/07/1961

Date:

JA000047

000027

Corvel Scan Date: 3/24

Discharge Summary

BEAN, BRENT E - SHM4800516

\* Final Report \*

Result Type: Discharge Summary  
Result Date: 27 February 2016 23:41 PST  
Result Status: Auth (Verified)  
Result Title/Subject: VH Discharge Summary  
Performed By/Author: Rouhani, Nader DO on 27 February 2015 17:44 PST  
Verified By: Rouhani, Nader DO on 27 February 2015 23:55 PST  
Encounter Info: SHM0000011793122, SHM Center, Inpatient, 02/24/16 - 02/27/16  
Contributor system: SHM\_UNSQL\_DICTATION

\* Final Report \*

VH Discharge Summary

DATE OF ADMISSION: 02/24/2015

DATE OF DISCHARGE: 02/27/2015.

ADMITTING DIAGNOSES:

1. End-stage renal disease, awaiting peritoneal dialysis.
2. Status post peritoneal dialysis catheter placement over 2 weeks ago.
3. History of prostate cancer, status post laparoscopic prostatectomy by Dr. David Ludlow, robotic assisted.
4. Postoperative anemia, requiring blood transfusion, 2 units of packed red blood cells.
5. History of hypertension.
6. Hyperlipidemia.
7. History of membranous nephropathy.

HISTORY AND HOSPITAL COURSE: This is a 53-year-old gentleman initially with end-stage renal disease, who is awaiting peritoneal dialysis, initially presented to hospital for laparoscopic prostatectomy by Dr. David Ludlow. He was found to have elevated potassium. On repeat test, was also elevated. He was treated with Kayexalate, admitted overnight. Next day, he had laparoscopic prostatectomy, robotic assisted by Dr. Ludlow. Postoperatively, he developed acute blood loss anemia with hemoglobin down to 7.8. He was transfused 2 units of packed RBC. Now with hemoglobin at 9.6. He is feeling much better. Yesterday, he was very weak, unable to ambulate today. He is able to ambulate without any difficulty. At this point, he is cleared for discharge home,

DISPOSITION: The patient discharged home.

PHYSICAL EXAMINATION ON DISCHARGE:

~~RECEIVED~~

MAR 24 2015

CORVEL MEDCHECK LV

Printed by: Fajardo, Nancy  
Printed on: 03/19/15 08:13 PDT

Page 1 of 2  
(Continued)

JA000048

000028

Corvel Scan Date: 3/24

Discharge Summary

BEAN, BRENT E - SHM4800516

\* Final Report \*

GENERAL: The patient afebrile, normotensive, not tachycardic \_\_\_\_\_.  
HEENT: Unremarkable.  
NECK: No JVD. No bruit.  
HEART: Regular rate and rhythm.  
LUNGS: Clear to auscultation.  
ABDOMEN: Soft, nontender. No hepatosplenomegaly. He is slightly tender in the lower abdomen to deep palpation. He has multiple incisions. He has his peritoneal dialysis catheter in place.  
EXTREMITIES: With no cyanosis, clubbing, or edema.  
NEUROLOGICAL: Nonfocal today.

LABORATORY: His potassium is 4. BUN 47, creatinine 6.46. White count is normal.

DISPOSITION: The patient discharged home. Followup with Dr. Ludlow in early next week and follow up with PMD within one week and follow up with nephrology within one week.

DISCHARGE MEDICATIONS: He was given prescription for Dilaudid 2 mg q.4h. p.r.n. for pain. He may continue the rest of his home medication per med reconciliation.

Dictated By: NADER ROUHANI, DO

D: 91053 / T:6012322 /DT: 02/27/2015 17:44:07PST / TT: 02/27/2015 23:41:53PST / V: 11793122 / Job# 12126070 / Mod: 02/28/2015 02:41:53

CC:

Signature Line

Electronically Signed By: Rouhani, Nader  
On: 02.27.2015 23:55 PST

Completed Action List:

- \* Perform by Rouhani, Nader DO on 27 February 2015 17:44 PST
- \* Transcribe by on 27 February 2015 23:41 PST
- \* Sign by Rouhani, Nader DO on 27 February 2015 23:55 PST Requested on 27 February 2015 23:52 PST
- \* VERIFY by Rouhani, Nader DO on 27 February 2015 23:55 PST

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MAR 24 2015

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Printed by: Fajardo, Nancy  
Printed on: 03/19/15 08:13 PDT

Page 2 of 2  
(End of Report)

000029

JA000049

# Urology Specialists

O: 702.877.0814 • F: 702.877.3283  
www.usonv.com

## Patient Chart Note

June 24, 2016

PATIENT: Brent E. Bean

DOB: 08/07/1961

AGE: 54

PCP: Roehl Pena, M. D.

REFERRING PHYSICIAN: Steven Norris, M. D.

### HISTORY OF PRESENT ILLNESS

Brent is a 54 year old male who presents with a history of prostate cancer. Overall, the patient's condition has improved. He initially presented with an elevated PSA. He has undergone previous treatment of his prostate cancer with radical prostatectomy. He admits to SUI requiring no pads and erectile dysfunction associated with the current problem. His AUA voiding system score is in the moderate range at 11/35 - 5. The patient's calculated prostatic volume was 14 cc last recorded on 10/29/2014. S/p RARP around 2 yrs ago. PSA's still negative. Overall doing well. Still mild leakage but slowly improving. Reviewed kegels. Still has ED but currently not a big priority. Looking to get back on transplant list. From my standpoint he is cured from disease.

The following has been reviewed: LABS: 6/20/2016 , PSA= < 0.1 MEDICAL RECORDS: Old medical records were reviewed.

### PAST MEDICAL HISTORY:

Diagnosis	Year
Membranous Neuropathy	1996
Hypercholesterolemia	2000
Hypertension	1999
Renal insufficiency	
Left Renal Cell Carcinoma	

### PAST SURGICAL HISTORY:

Procedure	Year
Shoulder Arthroscopy	1999
Wisdom teeth	1987
Left Partial Nephrectomy	2010

NORTHWEST  
3160 N. Tenaya Way  
Suite 165  
Las Vegas, NV 89128

CENTRAL  
2010 Goldring Ave.  
Suite 200  
Las Vegas, NV 89106

GREEN VALLEY  
68 N. Pecos Rd.  
Henderson, NV 89074

# Urology Specialists

GI NEVADA

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 www.usoniv.com

Right Total Knee Arthroplasty 2013

**MEDICATIONS:**

Medication	Dose
LOSARTAN POTASSIUM	100 mg
ROPINIROLE HCL	2 mg
SILDENAFIL CITRATE	20 mg

**ALLERGIES:**

NKDA

**ALLERGIES:**

Allergy	Rxn
NO KNOWN ALLERGIES	

**SOCIAL HISTORY:**

The patient is single. He has 3 children. His primary spoken language is English. His highest level of education is a high school degree. His major occupation is a(n) firefighter. He smoked one half pack per day of cigarettes and has a 2 pack-year history of tobacco use. He quit smoking approximately 32 years ago. He drinks 3 cups of coffee per day. He drinks 1-2 glasses of wine (4oz) on a daily basis. Patient denies any previous history of IV or recreational drug use.

**FAMILY HISTORY:**

Member	Age	Condition	COD	Comments
1 Father	66	Heart Disease	YES	
2 Mother	70	Cancer	NO	Multiple Myeloma s/p stem cell transp
3 Brother	38	Healthy	NO	
4 Sister	38	Healthy	NO	
5 Maternal Grandmother	88	Cancer	NO	
5 Paternal Grandfather	74	Heart Attack	NO	
5 Maternal Grandmother	58	Alcoholism	NO	
5 Paternal Grandmother	91	Healthy	NO	
1 Family History of		Melanoma	NO	
0				
1 Family History of		Colon Cancer	NO	
0				

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 Las Vegas, NV 89128

**CENTRAL:**  
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 Suite 200  
 Las Vegas, NV 89106

**GREEN VALLEY:**  
 58 N. Pecos Rd.  
 Henderson, NV 89074



# Urology Specialists

OF NEVADA

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**PHYSICAL EXAM:**

**VITAL SIGNS**

Temp F	BP	P	Height	Wt Lb
	162/ 91	58	5' 8"	174

**EXAM**

System	Findings / Comment
GENERAL	This is a well nourished and normally developed individual, in no acute distress.
NECK	Neck is supple. Trachea is midline and freely moveable. No palpable masses or thyromegaly are appreciated.
LUNGS	Respiratory effort is normal without use of accessory muscles.
BACK	The spine is straight with normal ROM. There is no CVA or spinal tenderness to percussion.
ABDOMEN	Abdomen is soft and non-tender. There are no palpable masses or organomegaly. No obvious hernias are noted.
LYMPHATIC	There is no evidence of any cervical or inguinal lymphadenopathy.
NEURO-PSYCH	Patient has an appropriate affect.
SKIN-BREAST	Skin is warm and dry. No obvious rashes are noted.

**OFFICE LABS:**

Color	Turbidity	SP-G	pH	Glu	Ket	Bill	Urobilin	Ptn	Hem	Nit	LE	U-CX
Yellow	Clear	1.005	7	50	Neg	Neg	Neg	500	50	Neg	Neg	NO
				mg/dL				mg/dL				

**IMPRESSION:**

# **DIAGNOSIS**  
 1 Hx of malignant neoplasm of prostate

**ASSESSMENT**

Chronic condition with a mild exacerbation, S/p RARP around 2 yrs ago. PSA's still negative. Overall doing well. Still mild leakage but slowly improving. Reviewed kegels. Still has ED but currently not a big priority. Will Rx Viagra. Looking to get back on transplant list. From my standpoint he is cured from disease.

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 Las Vegas, NV 89128

**CENTRAL**  
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**GREEN VALLEY**  
 58 N. Pecos Rd.  
 Henderson, NV 89074

Corvel Scan Date: 7/5/2016

# Urology Specialists

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www.usonv.com

**PLAN ORDERS:**

**Medications:**

Medication	Dose	#	Sig
SILDENAFIL CITRATE	20 mg	90	take 1 tablet by oral route 3-5 tablets per day for ED

**Orders:**

#	ORDER / PLAN	WHEN?
3	Low Carbohydrate / Mediterranean Diet	Today
4	F/U Appt. w/ David Ludlow MD	PRN (As Needed)

David Ludlow MD

DATE: 06/24/2016

Electronically signed by David Ludlow MD on 06/24/2016 12:48 PM

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Suite 165  
Las Vegas, NV 89128

CENTRAL  
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Suite 200  
Las Vegas, NV 89106

GREEN VALLEY  
58 N. Pecos Rd.  
Henderson, NV 89074

State of Nevada  
Department of Business and Industry  
**DIVISION OF INDUSTRIAL RELATIONS**  
Workers' Compensation Section  
400 West King Street, Suite 400  
Carson City, Nevada 89703  
(775) 684-7265 (775) 687-6305 (fax)

**REQUEST FOR A ROTATING RATING PHYSICIAN OR CHIROPRACTOR**

Name of Requestor: Leslie Ribadeneira Date: 10/12/2016  
Address: P.O. Box 61228 Phone: 702-455-2450 Fax: 866-728-8275  
City: Las Vegas State: NV Zip: 89160  
Requestor is:  Insurer/Third-Party Administrator  Injured Employee  
 \*Injured Employee's Attorney or Representative  Other (specify):

*\* Please provide a signed release or power of attorney*

Insurer/Third Party Administrator/  
Association of Self-Insured Employer's Name: CorVel Certificate #: \_\_\_\_\_  
Self-Insured Employer's Name: Clark County Certificate #: \_\_\_\_\_  
Employer Name: \_\_\_\_\_  
Injured Employee's Name: Brent Bean  
Injured Employee's Address: 7408 Michelle Ave  
City: Las Vegas State: NV Zip: 89131  
Social Security Number: \_\_\_\_\_ Claim Number: 0583-WC-15-0000098 Date of Injury: 11/07/2014

**INSURER'S INITIAL REQUEST**

Stable & Ratable Received: 9/27/2016 Name(s) of Treating & Evaluating Doctor(s): David J. Jafflow, MD  
Body Part(s) Codes: 48  
Body Part(s) to be evaluated: Internal Organs  
Diagnosis: Prostate Cancer  
Name(s) of Doctor(s) who reviewed for possible PPD \_\_\_\_\_

*If a specific specialty is ordered by a hearing or appeals officer, the decision must be attached*

**FOR ADDITIONAL RATING PHYSICIAN/CHIROPRACTOR REQUESTS ONLY**

Date(s) or prior PPD Evaluation(s): \_\_\_\_\_ Prior Rating Doctor(s): \_\_\_\_\_  
Name of Treating Physician(s)/Chiropractor(s): \_\_\_\_\_  
Body Part(s) Codes: \_\_\_\_\_  
Body Part(s) to be evaluated: \_\_\_\_\_  
Diagnosis: \_\_\_\_\_  
Reason for additional request: \_\_\_\_\_

*If a specific specialty is ordered by a hearing or appeals officer, the decision must be attached*

**INSURER AND INJURED EMPLOYEE ASSIGNMENT/AGREEMENT OF RATER**

Assigned or Agreed by: CorVel Corporation & GGRM Date of Assignment/Agreement: 10/12/2016  
Physician/Chiropractor Assigned or Mutually Agreed to: Charles Quaglinoff, MD  
Assigned Rating Physician/Chiropractor's Phone Number: 775-398-3602

**\*\*Notice to requestor:** *Hard copy will not follow by mail.  
Compliance with NAC 616C.103 is required*

D-35 (rev 03/15)

JA000054

000034

**Charles E. Quaglieri, MD**

330 E. Liberty St, Ste 200  
Reno, NV 89501-2221

Ph: 775-398-3610  
Fax: 775-398-3676

**PERMANENT PARTIAL DISABILITY EVALUATION**

RE: BRENT BEAN  
DATE: November 2, 2016  
CLAIM #: 0583-WC-15-0000098  
DOI: 11/07/2014  
EMPLOYER: Clark County  
BODY PARTS: Prostate cancer

WORKERS' COMPENSATION CARRIER: CORVEL CORPORATION

This 54-year-old man was referred for a Permanent Partial Disability Evaluation by CorVel Corporation.

The body part to be evaluated is prostate cancer.

This man is a retired firefighter. He has a complicated medical history. He has had a partial nephrectomy for cancer of the kidney. He is on peritoneal dialysis for membranous nephropathy. He also was found to have an elevated PSA in 2014. A prostatic biopsy showed adenocarcinoma of the prostate. He underwent robotically-assisted laparoscopic radical prostatectomy in February 2015. When he is considered clear of any prostatic cancer (and this takes 2 years), he will undergo a renal transplant. He already has a donor identified.

He has had a radical prostatectomy. He has urinary leakage and male stress incontinence manifested by leaking when he coughs. He uses pads for this when he leaves his home. He has no sexual function at all. He cannot obtain erections even after using Cialis. He does have sensation, however. His most recent PSAs have been 0.

**MEDICAL RECORD REVIEW:**

- 09/19/2014 Ultrasound. Increased renal cortical echogenicity suggestive of medical renal disease. A 1.5 cm left peripelvic renal cyst. A 6 mm nonobstructive right renal calculus suspect hepatic steatosis, hepatic cysts.
- 10/03/2014 Amanda Gould, PA. Urology consultation. Chronic renal failure doing well and no need of dialysis. Waiting for renal transplant. Elevated PSA, malignancy of the kidney and renal cysts. The patient is a 53-year-old man who presents with a complaint of malignancy of the kidney on the left side. There is no change in his

BRENT BEAN  
11/02/2014  
Page 2 of 5

condition. He is status post left partial nephrectomy in 2010. He is doing well. He is not on dialysis. He is waiting for a renal transplant. He also has an elevated PSA. His voiding system scores in the moderate range at 14/35. He is taking Flomax. This has helped with his emptying symptoms.

- 10/23/2014 A.M. Wodsworth, PA. Urology evaluation. Elevated PSA. He is waiting for renal transplant. Diagnosis: Chronic renal failure. His current PSA is 4.1. This was performed on 10/15/2014.
- 10/29/2014 Dr. Ludlow. Procedure note. Prostate biopsy.
- 10/29/2014 Prostate biopsy results. Adenocarcinoma Gleason 3+3=6 stage involving 5% of a 19-mm core.
- 11/18/2014 Dr. Zommick. Urology. Diagnoses: Malignancy of the prostate, newly diagnosed low grade, low volume prostate cancer on biopsy. Standard of care for this stage of disease would be active surveillance. The patient was complicated, but he needs to be cleared from cancer in order to get a renal transplant. We will discuss options with his coordinator. It is my hope that with this stage of disease that treatment will not be necessary. The chance of this cancer-causing mortality in the next 10 to 20 years is extremely low.
- 12/22/2014 C4 Form. Prostate cancer diagnosis with prostate biopsy. The patient will need prostatectomy.
- 02/21/2015 Dr. Ludlow. Urology followup. The patient needs treatment to get back on the transplant list. Would like robotic prostatectomy. Plan laparoscopic radical prostatectomy.
- 02/23/2015 Dr. Ludlow. Urology followup. Diagnosis: Malignancy of the prostate. The patient had a PD catheter placed a few weeks ago. He has some incisional scars and catheter in the right abdomen. The case has been discussed with nephrologist and they say prostatectomy is not contraindicated. We may have to do the case open due to the catheter.
- 02/24/2015 Summerlin Hospital. Discharge Summary. The patient was admitted with end stage renal disease. He is awaiting peritoneal dialysis. He is status post peritoneal dialysis catheter placement 2 weeks ago. He has a history of prostate cancer and postoperative anemia. He has a history of membranous nephropathy and hyperlipidemia. The patient underwent laparoscopic prostatectomy robotically assisted.
- 02/24/2015 Procedure Note. Robot assisted bilateral nerve sparing laparoscopic prostatectomy.

BRENT BEAN  
11/02/2014  
Page 3 of 5

- 02/24/2015 Dr. Rouhani. Consult. Endstage renal disease awaiting peritoneal dialysis. He has a peritoneal dialysis catheter in. He has history of prostate cancer and is awaiting prostatectomy. A history of hypertension, hyperlipidemia and history of membranous nephropathy.
- 04/03/2015 Dr. Ludlow. Urology followup. The patient is currently cured from his urological standpoint and should be able to get back on the transplant list. He passed the voiding trial. We discussed Kegel exercises. He will take Cialis once daily for ED rehab. He is also taking Norco.
- 06/04/2015 Prostatic antigen less than 0.1 with a reference range of 0.0 to 4.0 ng/mL.
- 06/17/2015 Dr. Ludlow. Urology followup. Diagnosis: Prostate malignancy. He can be placed back on the transplant list. He has organic impotency. No improvement with Cialis. He has male stress incontinence. This is improving, but still requires one PDD. Kegel exercises were again discussed. His voiding score is in the moderate range at 11/35 - 5. He is on dialysis. He is impotent. He is on Cialis.
- 06/20/2016 PSA. Less than 0.1 with reference range of 0.024.0 ng/mL.
- 06/24/2016 Dr. Ludlow. PSA is still negative. Overall, doing well. He still has mild leakage, but slowly improving. We reviewed Kegels. He still has ED, but not a big priority. Viagra prescribed. He is trying to get back on the transplant list. From my standpoint, he is cured from the disease.

**PAST MEDICAL HISTORY:** is as noted above. He is currently on peritoneal dialysis for membranous nephropathy. He has had a partial nephrectomy for CA of the kidney. He has had a radical prostatectomy for prostate CA. He has hypertension and restless legs syndrome. He takes Ropinirole, Bystolic and losartan. He has no known allergies. He has had a nephrectomy, radical prostatectomy, and a total knee replacement.

**FAMILY HISTORY:** is noncontributory.

**SOCIAL HISTORY:** He is a retired firefighter. He does not smoke or drink.

**HISTORY OF PREVIOUS AWARD:** He has had a previous PPD award for his diagnosis of cancer of the kidney and nephrectomy.

He was accompanied today by his attorney.

BRENT BEAN  
11/02/2014  
Page 4 of 5

**EXAMINATION:** reveals an alert, oriented, and cooperative left-handed man. The patient has normal distribution of pubic hair. The testicles are descended. There are no testicular masses noted. He is checked for herniae and there are no herniae noted. Sensation in the perineum to light touch is intact.

**RATING EVALUATION:**

The AMA Guides to the Evaluation of Permanent Impairment, 5th edition, second printing were consulted.

The male reproductive system is discussed in Chapter 7 of the Guides.

I first reviewed Section 7.7g dealing with the prostate gland and seminal vesicles. The claimant has undergone a radical prostatectomy for cancer of the prostate. This puts him in Class 3, which allows 16-20% impairment. In example 7-38 on Page 162, the Guides awarded 16% impairment of the whole person due to the radical prostatectomy.

The claimant also has urinary incontinence, i.e. male stress incontinence. The example in the Guides did not have this complication. The Guides direct the rater to consider this and the claimant's sexual function in addition to the award for the radical prostatectomy. The claimant's male stress incontinence and dribbling are considered under section 7.8. I used table 7-4. He uses a pad intermittently (when he is away from home). He is class 1 and this allows 0-10% whole person impairment. He is allowed 10% whole person impairment for incontinence.

The Guides direct the rater to also consider and combine any impairment of sexual function with this award. This is discussed in Section 7.7a. The patient has no sexual function possible even with medication. According to Table 7.5 he is Class 3 which allows 20% impairment of the whole person.

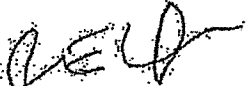
The 16% impairment of the whole person due to the radical prostatectomy; the 10% whole person impairment due to incontinence; and, the 20% due to loss of sexual function are combined for a total of 39% impairment of the whole person.

**APPORTIONMENT:** There are no issues of apportionment.

CorVel Scan Date: 11/18/2016

BRENT BEAN  
11/02/2014  
Page 5 of 5

**CONCLUSION:** My conclusion is that there is 39% impairment of the whole person due to the diagnosis, treatment, and complications of prostate cancer of this claimant.

  
Charles H. Quaglieri, MD  
CBO/ke: 497/513

cc: CorVel Corporation  
Attn: Leslie Ribadeneira  
PO Box 61228  
Las Vegas, NV 89160

JA000059

000039



**Charles E. Quaglieri, MD**

330 E Liberty St, Ste 200  
Reno, NV 89501-2221

Ph: 775-398-3610  
Fax: 775-398-3676

January 4, 2017

CorVel Corporation  
Attn: Leslie Ribadeneira  
PO Box 61228  
Las Vegas, NV 89160

CORVEL LAS VEGAS

RE: BRENT BEAN  
Claim No: 0583WC15-0000098  
DOI: 11/07/2014  
Employer: Clark County

JAN 11 2017

RECEIVED

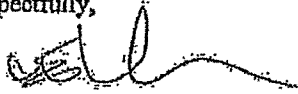
Dear Ms. Ribadeneira,

I reviewed my PPD evaluation that I performed on November 2, 2016 in the case of Brent Bean.

You are correct. The combined total impairment is 40% whole person impairment/

I apologize for my error and by this letter amend my previous Permanent Partial Disability Evaluation performed on November 2, 2016.

Respectfully,



Charles E. Quaglieri, MD

CEQ/kc: 629

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From: 417022624055 Page: 1/3 Date: 10/31/2016 11:02:05 AM  
From: 417022624055 Page: 1/3 Date: 10/28/2016 11:20:58 AM

OCT 28 2016

GREENMAN, GOLDBERG, RAY & MARTINEZ

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

801 SOUTH KUNTH STREET

LAS VEGAS, NEVADA 89101-7012

TELEPHONE: (702) 884-1010

FACSIMILE: (702) 884-8800

JOHN A. GREENMAN  
AUBREY GOLDBERG  
PAUL E. RAY  
CASSIUS A. MARTINEZ  
LISA R. ANDERSON  
THOMAS W. ASHROTH  
THADDEUS J. YORER, III

October 28, 2016

Via Mail and Facsimile (702) 877-3238

DAVID LUDLOW, M.D.  
58 North Pecos Road  
Suite B  
Henderson, Nevada 89074

RE: Claimant : Brent Bean  
Claim No. : CK1000432  
DOI : 11/14/09  
Employer : Clark County  
Our File No. : 16-432TY

Dear Dr. Ludlow:

Please be advised that this office represents Brent Bean in the above-referenced industrial injury claim. A copy of the signed medical release executed by Mr. Bean is enclosed.

On June 24, 2016, you discharged Mr. Bean from care for his industrially related prostate condition. At that time, you opined that Mr. Bean would require ongoing medications for his erectile dysfunction. You reported that the medication was "not a big priority" at that time. Please be advised the medication is now a priority. For that reason, we are sending this letter to clarify your medical opinion regarding this matter.

Therefore, this letter is being sent to ask for your medical opinion regarding Mr. Bean's need for ongoing medication related to the prostate condition. Please indicate below if you can state to a reasonable degree of medical probability that the erectile dysfunction medication is directly related to the industrially related prostate condition and subsequent surgery and should therefore be covered by Mr. Bean's workers' compensation carrier on an ongoing basis.

Yes  No  Date \_\_\_\_\_  
Dr. David Ludlow

If you answer yes to this question, please provide the rationale to support your medical opinion, what medication is required, and whether/how often periodic follow-ups will be necessary to monitor and prescribe the medication.

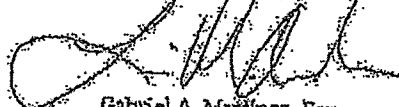
Common side effect from prostate cancer surgery  
was to disruption of the nerves associated  
with erection.

From: +17022524055 Page: 2/3 Date: 10/28/2016 11:02:05 AM  
From: +170223932890 Page: 2/3 Date: 10/28/2016 11:00:55 AM

Brent Bean  
October 27, 2016  
Page Two

Your attention to this matter is greatly appreciated. If you have any questions, please do not hesitate to contact me.

Very truly yours,



Gabriel A. Martinez, Esq.  
At: Thaddeus J. Yurek, III, Esq.

TJY/fw  
Enclosure

GREENMAN, GOLDBERG, RABY & MARTINEZ  
A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW

JOHN A. GREENMAN  
AUBREY GOLDBERG  
PAUL E. RABY  
GABRIEL A. MARTINEZ  
LISA H. ANDERSON  
THOMAS W. ASKENOTH  
THADDEUS J. YUREK, III

801 SOUTH NINTH STREET  
LAS VEGAS, NEVADA 89101-7012

TELEPHONE: (702) 384-1818  
FACSIMILE: (702) 384-2090

November 30, 2016

VIA U.S. MAIL & FACSIMILE: 866-728-8275

Leslie Ribadeneira, Claims Examiner  
CORVEL  
P.O. Box 61228  
Las Vegas, Nevada 89160

RE: Claimant : Brent Bean  
Claim No. : CK1000432  
DOI : 11/14/09  
Employer : Clark County  
Our File No. : 16-432TY

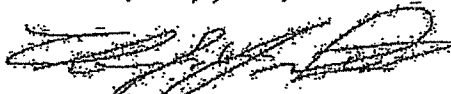
Dear Ms. Ribadeneira:

As you know, this office represents Brent Bean regarding the above-referenced industrial injury.

Mr. Bean underwent a laparoscopic prostatectomy as a result of his occupationally related prostate cancer condition. Mr. Bean's treating physician, Dr. David Ludlow, has confirmed that Mr. Bean requires ongoing medication for erectile dysfunction caused by the nerve damage that resulted from the prostate cancer surgery. Pursuant to this opinion, please accept this letter as a formal request to authorize ongoing medication following claim closure. Please notify the parties if this request will be granted.

Your attention this matter is greatly appreciated. If you have any questions or concerns regarding this matter, please do not hesitate to contact me.

Very truly yours,



Gabriel A. Martinez, Esq.  
Thaddeus J. Yurek, Esq.

TJY/rw  
Enclosure

GREENMAN, GOLDBERG, RABY & MARTINEZ  
A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW

JOHN A. GREENMAN  
AUBREY GOLDBERG  
PAUL E. RABY  
GABRIEL A. MARTINEZ  
LISA M. ANDERSON  
THOMAS W. ASKEROTH  
THADDEUS J. YUREK, III

601 SOUTH NINTH STREET  
LAS VEGAS, NEVADA 89101-7012

TELEPHONE: (702) 384-1816  
FACSIMILE: (702) 384-2990

November 30, 2016

VIA U.S. MAIL & FACSIMIL: 866-728-8275

Leslie Ribadeneira, Claims Examiner  
CORVEL  
P.O. Box 61228  
Las Vegas, Nevada 89160

RE: Claimant	:	Brent Bean
Claim No.	:	CK1000432
DOI	:	11/14/09
Employer	:	Clark County
Our File No.	:	16-432TY

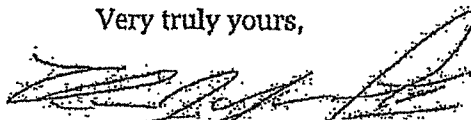
Dear Ms. Ribadeneira:

As you know, Dr. Charles Quaglieri recently evaluated Brent Bean for permanent partial disability. A copy of that report is enclosed for your convenience. As you can see, Dr. Quaglieri concluded that Mr. Bean qualified for a thirty-nine percent (39%) whole person impairment. Upon further review, it appears that Dr. Quaglieri miscalculated the impairment and the correct impairment should actually be forty percent (40%) whole person impairment.

Pursuant to the recent legislative changes, you are now able to offer thirty percent (30%) in a lump sum. Therefore, please accept this letter as a formal request to offer Mr. Bean the forty percent (40%) whole person impairment, with thirty percent (30%) being offered in a lump sum. Please notify the parties if this request will be granted.

Your attention this matter is greatly appreciated. If you have any questions or concerns regarding this matter, please do not hesitate to contact me.

Very truly yours,



Gabriel A. Martinez, Esq.  
Thaddeus J. Yurek, Esq.

CORVELLAS VEGAS

DEC 05 2016

RECEIVED

TJY/rw  
Enclosure

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CORVEL

January 13, 2015

Mr. Brent Bean  
7408 Michelle Avenue  
Las Vegas, NV 89131

RE: Claimant: Brent Bean  
Claim Number: 0583-WC-15-0000098  
Employer: Clark County, Nevada  
Date of Injury: 11/7/2014  
Body/Condition: Prostate Cancer

NOTICE OF CLAIM ACCEPTANCE

(Pursuant to NRS 616C.065)

Dear Mr. Bean,

CorVel administers workers' compensation claims for the above-captioned employer.

This letter is to advise you that we have received your C-4 form and that it is our determination to accept your claim for the above captioned condition(s). This does not include any pre-existing, degenerative or arthritic conditions nor any other diagnoses or body parts.

Please check the information contained on this notice. If you find any of the information to be incorrect or you have any questions, please notify this office at 702-699-7020 extension 66584. A brief description of your benefits is enclosed.

If you have missed any time from work in regards to your work related injury, you must complete the attached D-6 form, and return it to this office along with medical certification of disability. These requests are made pursuant to NRS 616.475 subsection 6 and 7, respectfully.

If you disagree with this determination, you have the right to request a resolution to your dispute pursuant to NRS 616C.305 and 616C.315 to 616C.385, inclusive. To do so, complete the enclosed "Request for Hearing" and submit it with a copy of this determination letter to the Department of Administration, Hearings Division, at one of the addresses listed on the form WITHIN SEVENTY (70) DAYS OF THE DATE OF THIS LETTER.

Sincerely,

*Michele Coggins/ol*

Michele Coggins  
Claims Representative

Cc: File

Encl.: D-2, D-6, D-12a, D-26(1), D-26(2), D-52

CorVel Corporation  
www.corvel.com

P.O. Box 61226  
Las Vegas, NV 89160

702-699-7020 Tel  
888-368-4212 (800)  
702-699-7005-Fax

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CORVEL

December 1, 2016

Brent Bean  
3405 Amish Ave.  
N. Las Vegas NV 89031

RE: Claim Number: 0583-WC-15-0000098  
Employer: Clark County  
Date of Injury: 11/07/2014

Dear Mr. Bean  
CorVel Corporation is the Third Party Administrator for above listed employer.

We have received and review the Permanent Partial Disability (PPD) evaluation by Charles E. Quaglieri (enclosed).

There appears to be a clerical error in the combining of multiple impairment rating(s) and we are seeking further clarification from the doctor. Once clarification is received a further determination will be rendered.

NAC 616C.103 (7) If the insurer disagrees in good faith with the result of the rating evaluation, the insurer shall, within the time prescribed in NRS 616C.490:

(c) Notify the injured employee of the specific reasons for the disagreement and the right of the injured employee to appeal. The notice must also set forth a detailed proposal for resolving the dispute that can be executed in 75 days, unless the insurer demonstrates good cause for why the proposed resolution will require more than 75 days.

**If you disagree with this determination, you have the right to request a resolution to your dispute pursuant to NRS 616C.305 and 616C.315 to 616C.385, inclusive. To do so, complete the enclosed "Request for Hearing" and submit it with a copy of this determination letter to the Department of Administration, Hearings Division, at one of the addresses listed on the form WITHIN SEVENTY (70) DAYS OF THE DATE OF THIS LETTER.**

If you have any questions, please contact the undersigned at 702-455-2450.

Sincerely,



Leslie Ribadeneira  
Sr. Claims Specialist

Encl.: D-12a, D-2, PPD Report

cc: File, Clark County, GGRM

CorVel Corporation  
www.corvel.com

P.O. Box 61228  
Las Vegas, NV 89160

888-368-4212 (800)  
888-720-8275 E-Fax

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JA000066

CORVEL

January 24, 2017

Brent Bean  
3405 Amish Ave.  
N. Las Vegas NV 89031

RE: Claim Number: 0583-WC-15-000098  
Employer: Clark County  
Date of Injury: 11/07/2014

Dear Mr. Bean  
CorVel Corporation is the Third Party Administrator for above listed employer.

We have received and review the Permanent Partial Disability (PPD) evaluation addendum by Charles E. Quaglieri (enclosed).

Upon review of NRS 617.453(4) (a), it is our determination to decline offering of the PPD award as you filed the claim for Occupational Disease after retirement, thus making you not entitled to receive any compensation for that disease other than medical benefits.

**NRS 617.453 Cancer as occupational disease of firefighters.**

(4) Compensation awarded to the employee or his or her dependents for disabling cancer pursuant to this section must include: (a) Full reimbursement for related expenses incurred for medical treatments, surgery and hospitalization in accordance with the schedule of fees and charges established pursuant to NRS 616C.260 or, if the insurer has contracted with an organization for managed care or with providers of health care pursuant to NRS 616B.527, the amount that is allowed for the treatment or other services under that contract

**If you disagree with this determination, you have the right to request a resolution to your dispute pursuant to NRS 616C.305 and 616C.315 to 616C.385, inclusive. To do so, complete the enclosed "Request for Hearing" and submit it with a copy of this determination letter to the Department of Administration, Hearings Division, at one of the addresses listed on the form WITHIN SEVENTY (70) DAYS OF THE DATE OF THIS LETTER.**

If you have any questions, please contact the undersigned at 702-455-2450.

Sincerely,



Leslie Ribadeneira  
Sr. Claims Specialist

Encl.: D-12a, PPD Evaluation Addendum

cc: File, Clark County, GGRM

CorVel Corporation  
www.corvel.com

P.O. Box 61228  
Las Vegas, NV 89160

888-368-4212 (800)  
866-728-8275 E-Fax

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Nevada Department of Administration Hearings Division  
2200 South Rancho Drive, Suite 210  
Las Vegas, NV 89102  
(702) 486-2525

17

### REQUEST FOR HEARING

#### CLAIMANT INFORMATION

Claimant: Brent Bean
Address: 3405 Amish Ave. N. Las Vegas, NV 89031
Telephone:

#### EMPLOYER INFORMATION

Claim number: 0583-WC-15-0000098
Employer: Clark County
Address: 500 S. Grand Central Pkwy., 1st flr. Las Vegas, NV 89106
Telephone:

PERSON REQUESTING APPEAL: (circle one) CLAIMANT EMPLOYER INSURER

I WISH TO APPEAL THE DETERMINATION DATED: January 24, 2017

**YOU MUST ATTACH A COPY OF THE DETERMINATION LETTER**  
PER NRS 616C.315 2(a)(b) CORVEL LAS VEGAS

FEB 16 2017

BRIEFLY EXPLAIN REASON FOR APPEAL: Disagree with Insurer's January 24, 2017 letter regarding PPD award. RECEIVED

If you are represented by an attorney or other agent, please print the name and address below.

#### ATTORNEY/REPRESENTATIVE:

Name: Lisa M. Anderson, Esq.
Address: 601 S. Ninth St. Las Vegas, NV 89101
Telephone: (702) 384-1616

#### INSURANCE COMPANY:

Name: CorVel
Address: P.O. Box 61228 Las Vegas, NV 89160
Telephone:

Signature

January 26, 2017  
Date

A COPY OF THE DETERMINATION LETTER MUST BE SUBMITTED:

- NRS 616C.315 Request for hearing; forms for request to be provided by Insurer; appeals; expeditious and informal hearing required; direct submission to Appeals Officer.
2. Except as otherwise provided in NRS 616C.305, a person who is aggrieved by:
- (a) A written determination of an Insurer; or
  - (b) The failure of an Insurer to respond within 30 days to a written request mailed to the Insurer by the person who is aggrieved, may appeal from the determination or failure to respond by filing a request for a hearing before a Hearing Officer.

SCHEDULED ON

March 17, 2017

170 866 6-5E

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CORVEL 24492  
JC 14

**STATE OF NEVADA**  
**DEPARTMENT OF ADMINISTRATION**  
**HEARINGS DIVISION**

In the matter of the Contested  
Industrial Insurance Claim of:

Hearing Number: 1708666-SE  
Claim Number: 0583WC15000098

BRENT BEAN  
3405 AMISH AVE  
N LAS VEGAS, NV 89031

ATTN SANDRA SWICKARD  
CLARK COUNTY RISK MGMT  
500 S GRAND CENTRAL PKWY 5TH FL  
LAS VEGAS, NV 89106

**ORDER TRANSFERRING HEARING TO APPEALS OFFICE**

The Claimant's Request for Hearing was filed on January 26, 2017 and scheduled for March 14, 2017. The requesting party appealed the Insurer's determination dated January 24, 2017. The hearing was scheduled for March 14, 2017.

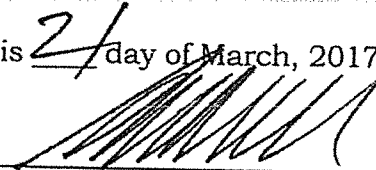
The parties have filed a stipulation to waive a hearing at the Hearing Officer level and to proceed directly to the Appeals Officer level.

**NRS 616C.315(7)** provides that the parties to a contested claim may, if the Claimant is represented by counsel, agree to forego a hearing before a Hearing Officer and submit the contested claim directly to an Appeals Officer.

Therefore, good cause appearing, the Hearing Officer proceeding shall be and is hereby transferred to the Appeals Officer for further proceedings.

IT IS SO ORDERED this 24 day of March, 2017.

ENTERED  
3/22

  
\_\_\_\_\_  
Steven Evans  
Hearing Officer

**NOTICE: If any party objects to this transfer to the Appeals Office, an objection thereto must be filed with the Appeals Office at 2200 South Rancho Drive, Suite 220, Las Vegas, Nevada 89102, within 15 days of this order.**

RECEIVED  
MAR 21 2017  
BY: CS

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**CERTIFICATE OF MAILING**

The undersigned, an employee of the State of Nevada, Department of Administration, Hearings Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing **ORDER TRANSFERRING HEARING TO APPEALS OFFICE** was duly mailed, postage prepaid OR placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 2200 S. Rancho Drive, #210, Las Vegas, Nevada, to the following:

BRENT BEAN  
3405 AMISH AVE  
N LAS VEGAS NV 89031

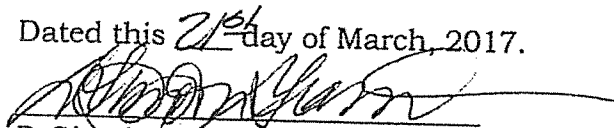
LISA M ANDERSON ESQ  
GREENMAN GOLDBERG RABY & MARTINEZ  
601 S NINTH ST  
LAS VEGAS NV 89101

ATTN SANDRA SWICKARD  
CLARK COUNTY RISK MGMT  
500 S GRAND CENTRAL PKWY 5TH FL  
LAS VEGAS NV 89106

CORVEL CORPORATION  
P O BOX 61228  
LAS VEGAS NV 89160-1228

DALTON HOOKS JR ESQ  
ALVERSON TAYLOR MORTENSEN & SANDERS  
7401 W CHARLESTON BLVD  
LAS VEGAS NV 89117-1401


Dated this 21<sup>st</sup> day of March, 2017.



D Giambelluca  
Employee of the State of Nevada

000050

JA000070



1 **PTJR**  
DALTON L. HOOKS, JR., ESQ., Nevada Bar No. 8121  
2 JOHN A. CLEMENT, ESQ., Nevada Bar No. 8030  
HOOKS MENG SCHAAN & CLEMENT  
3 2820 W. Charleston Blvd., Ste. C-23  
Las Vegas, Nevada 89102  
4 Telephone No. (702) 766-4672  
Facsimile No. (702) 919-4672  
5 Attorneys for Petitioner  
CLARK COUNTY

6 DISTRICT COURT

7 CLARK COUNTY, NEVADA

8 CLARK COUNTY, Self-Insured Employer,  
9 Petitioners,

CASE NO: A-18-773957-J  
DEPT NO: Department 16

10 vs.

11 BRENT BEAN; STATE OF NEVADA,  
12 NEVADA DEPARTMENT OF  
ADMINISTRATIONS APPEAL OFFICE,

Arbitration Exemption: Review of  
Administrative Decision

13 Respondents.  
14

15 PETITION FOR JUDICIAL REVIEW

16 (Arbitration Exemption: Review of Administrative Decision)

17 COMES NOW the Petitioner, CLARK COUNTY, by and through its attorney, DALTON  
18 L. HOOKS, JR., ESQ. and requests judicial review of the Appeals Officer Decision and Order  
19 dated April 19, 2018. A copy of the Decision and Order is attached hereto as **EXHIBIT A**.

20 This Petition is filed with the District Court on the grounds that Petitioner is aggrieved by  
21 said Decision of the Appeals Officer which was arbitrary and capricious and contrary to the  
22 substantial evidence presented in this case.

23 ...  
24

**HMSC**  
HOOKS MENG SCHAAN & CLEMENT  
2820 West Charleston Blvd., Ste. C-23, Las Vegas, NV 89102

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Further, that this Appeals Officer committed an error of law in rendering this decision. The decision of the Appeals Officer was an abuse of discretion and clearly erroneous as a matter of law. The grounds on which review is sought are the following:

1. The instant Petition for Judicial Review is filed pursuant to NRS Chapter 233B.130, which mandates that judicial review shall be the sole and exclusive authorized judicial proceeding in contested industrial insurance claims.
2. That an order be granted, reversing said Decision and Order from the Appeals Officer, dated April 19, 2018.

It is specifically requested, pursuant to NRS 233B133(4), that this Court hear oral argument and receive written briefs on this Petition for Judicial Review.

WHEREFORE, Petitioner prays as follows:

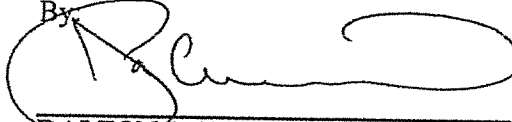
1. That an order be granted reversing the decision titled DECISION AND ORDER dated April 19, 2018 from the Appeals Officer.
2. For such other and further relief as the Court deems just and proper.

Dated this 2<sup>nd</sup> day of May, 2018.

Respectfully submitted,

HOOKS MENG SCHAAN & CLEMENT

By:



DALTON L. HOOKS, JR., ESQ.  
JOHN A. CLEMENT, ESQ.  
2820 W. Charleston Blvd., Ste. C-23  
Las Vegas, NV 89102  
Attorneys for Self-Insured Employer  
CLARK COUNTY

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AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding pleading filed in or submitted for the instant matter pending before District Court does not contain the social security number of any person.



5-2-18

DALTON I. HOOKS, JR., ESQ.  
JOHN A. CLEMENT, ESQ.  
HOOKS MENG SCHAAN & CLEMENT  
2820 W. Charleston Blvd., Ste. C-23  
Las Vegas, Nevada 89102  
Attorneys for Petitioner  
CLARK COUNTY

DATE

**HMSC**  
HOOKS MENG SCHAAN & CLEMENT  
2820 West Charleston Blvd., Ste. C-23, Las Vegas, NV 89102

HMSC

HOOKS MENG SCHAAN & CLEMENT  
3800 West Charleston Blvd., Ste. C-23, Las Vegas, NV 89102

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am employee of the law firm of HOOKS MENG SCHAAN & CLEMENT, and on this 2<sup>D</sup> day of May, 2018, service of the foregoing PETITION FOR JUDICIAL REVIEW was made this day by depositing a true and correct copy thereof in the folder for such delivery as is located in the Appeals Office from which an employee daily takes possession of the contents addressed to:

APPEALS OFFICER GEORGANNE W. BRADLEY  
DEPARTMENT OF ADMINISTRATION  
2200 SOUTH RANCHO DRIVE, SUITE 220,  
LAS VEGAS, NV 89102  
APPEAL NO.: 1710715-GB

and that on this date I deposited for mailing at Las Vegas, Nevada, a true copy of the attached document addressed to:

LISA M. ANDERSON, ESQ.  
GREENMAN GOLDBERG RABY & MARTINEZ  
601 S. NINTH ST.  
ATTORNEY FOR RESPONDENT BRENT BEAN

BRENT BEAN  
3405 AMISH AVENUE  
NORTH LAS VEGAS, NV 89031

KIMBERLY BUCHANAN/LESLIE RIBADENEIRA  
CLARK COUNTY RISK MANAGEMENT  
500 S. GRAND CENTRAL PARKWAY 5<sup>TH</sup> FLOOR  
LAS VEGAS NV 89106  
CLAIM NO.: 0583-WC-15-0000098

PATRICK CATES, DIR, STATE OF NEVADA,  
DEPARTMENT OF ADMINISTRATION  
5151 E. MUSSER ST.  
CARSON CITY, NV 89701

ADAM LAXALT, ESQ.  
ATTORNEY GENERAL, STATE OF NEVADA  
100 NORTH CARSON STREET  
CARSON CITY, NV 89701

BY:

Placing a true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Las Vegas, Nevada, postage prepaid, following ordinary business practices.

Personal delivery by runner or messenger service.

Dated this 2<sup>D</sup> day of May, 2018.

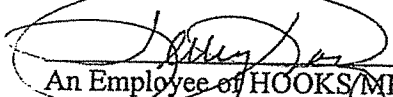
  
An Employee of HOOKS MENG  
SCHAAN & CLEMENT

EXHIBIT A

JA000075

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277 10111  
CLARK COUNTY  
FILED

APR 19 2018

BEFORE THE APPEALS OFFICER

APPEALS OFFICE

In the Matter of the Contested  
Industrial Insurance Claim of:

Claim No. : 0583WC150000098

BRENT BEAN

Appeal No. : 1710715-GB

Claimant.

DECISION AND ORDER

The above-referenced matter came on for hearing before Appeals Officer GEORGANNE W. BRADLEY, ESQ. Claimant, BRENT BEAN (hereinafter referred to as "Claimant"), was represented by counsel, THADDEUS J. YUREK III, ESQ. and LISA M. ANDERSON, ESQ. of the law firm GREENMAN, GOLDBERG, RABY & MARTINEZ. The Employer, CLARK COUNTY FIRE DEPARTMENT (hereinafter referred to as "Employer") and the Insurer, CORVEL (hereinafter referred to as "Insurer"), were represented by DALTON L. HOOKS, JR., ESQ. of the law firm ALVERSON TAYLOR MORTENSEN & SANDERS.

On January 24, 2016, the Insurer notified Claimant that they were not offering a permanent partial disability award. The Insurer's rationale was that Claimant was not entitled to any compensation benefits, including permanent partial disability, for his claim for occupationally related cancer because he was retired when the claim was filed. Claimant appealed that determination to the Hearing Officer, who affirmed the Insurer's determination. Claimant timely appealed the Hearing Officer's decision.

After considering the arguments of counsel and reviewing the documentary evidence herein, including the written briefs submitted by the parties, the Appeals Officer finds and decides as follows:

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Greenman Goldberg Raby Martinez  
ACCIDENT INJURY ATTORNEYS

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Greenman Goldberg Raby Martinez  
ATTORNEYS

FINDINGS OF FACT

1  
2 1. That Claimant retired as a firefighter with the Clark County Fire Department on July 25,  
3 2011.

4  
5 2. That on October 15, 2014, Claimant completed blood work that revealed elevated  
6 prostate specific antigen (PSA) levels. Claimant came under the care of Dr. David Ludlow for  
7 his prostate condition.

8  
9 3. That Claimant was diagnosed with malignant neoplasm of prostate and underwent a  
10 prostatectomy on February 24, 2015. Claimant was subsequently declared medically stable and  
11 ratable. Dr. Ludlow opined that Claimant would require ongoing medication for erectile  
12 dysfunction following claim closure. Dr. Ludlow confirmed that the medication was needed as  
13 a direct result of the prostate cancer.

14  
15 4. That on November 2, 2016, Dr. Charles Quaglieri evaluated Claimant for permanent  
16 partial disability evaluation. Dr. Quaglieri concluded that Claimant qualified for thirty-nine  
17 percent (39%) whole person impairment as a result of the occupationally related prostate cancer  
18 condition. Claimant was granted sixteen percent (16%) whole person impairment for the  
19 prostatectomy, ten percent (10%) whole person impairment for incontinence and twenty percent  
20 (20%) whole person impairment for loss of sexual function.

21  
22 5. That on November 30, 2016, Claimant notified the Insurer that Dr. Quaglieri had  
23 miscalculated the impairment and that the correct whole person impairment sum was forty  
24 percent (40%). For that reason, the Insurer was asked to offer Claimant a forty percent (40%)  
25 whole person impairment award.

26  
27 6. That on November 30, 2016, the Insurer was asked to authorize ongoing erectile  
28 dysfunction medication following claim closure.

1 7. That on December 1, 2016, the Insurer notified Claimant that there appeared to be a  
2 calculation error in Dr. Quaglieri's disability report and was seeking clarification.

3 8. That on January 4, 2017, Dr. Quaglieri issued a statement acknowledging his calculation  
4 error and confirmed that Claimant's whole person impairment was forty percent (40%).  
5

6 9. That on January 9, 2017, an electronic mail communication was sent to the Insurer  
7 outlining that the Attorney General Opinion 2002-28 established that firefighter's "date of  
8 separation from service in such capacity and wages earned immediately prior to such date of  
9 separate form the basis upon which disability benefits are to be calculated."  
10

11 10. That on January 24, 2017, the Insurer notified Claimant that they were declining to offer  
12 a permanent partial disability award because the claim for occupational disease was filed after  
13 his retirement. The Insurer concluded that Claimant was therefore not entitled to receive any  
14 compensation benefits, including permanent partial disability, for his industrial injury.  
15

16 11. That Claimant appealed that determination to the Hearing Officer. The parties  
17 subsequently agreed to transfer the matter directly to the Appeals Officer for final administrative  
18 decision.

19 12. That this Court ordered the parties to submit briefs concerning the legal question as to  
20 whether Howard v. City of Las Vegas, 120 P.3d 410 (2005) disqualified Claimant from being  
21 entitled to permanent partial disability compensation benefits.  
22

23 13. That Claimant submitted his Opening Brief on the application of Howard on September  
24 20, 2017.

25 14. That the Insurer/Employer submitted their Answering Brief on the application of  
26 Howard on October 30, 2017.  
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EWB

Greenman Goldberg Raby Martinez, P.A.  
ACCIDENT INJURY ATTORNEYS

1 15. That Claimant submitted his Reply Brief on the application of Howard on December 11,  
2 2017.

3 16. That the evidence supports Claimant's entitlement to permanent partial disability  
4 compensation benefits on the grounds that neither Howard nor any applicable <sup>statute</sup> ~~status~~ disqualifies  
5 Claimant from those benefits. | | |

6 17. That these findings of fact are based upon the credible and substantial evidence within  
7 the record.  
8

9 18. That any Findings of Fact more appropriately deemed a Conclusion of Law shall be so  
10 deemed, and vice versa.  
11

12 CONCLUSIONS OF LAW

13 1. Claimant retired from the Clark County Fire Department effective July 25, 2011. On or  
14 about December 22, 2014, Claimant filed a claim for compensation under NRS 617. Effective  
15 January 13, 2015, the Insurer issued its determination accepting the claim for prostate cancer.  
16 Following treatment, Claimant was found to have a forty percent (40%) whole person  
17 impairment as a result of his occupationally related prostate cancer. The Insurer declined to  
18 offer the award because the claim was made after retirement. The Insurer contends that Claimant  
19 is only entitled to the payment of medical benefits and not any monetary compensation.  
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Greenman Goldberg Raby Martinez  
ACCOUNT INQUIRY ATTORNEYS

1 2. NRS 617.452(4) provides in pertinent part that compensation awarded to a firefighter or  
2 his or her dependents for disabling cancer pursuant to this section must include full  
3 reimbursement for related expenses incurred for medical treatments, surgery and hospitalization  
4 and the compensation provided in chapters 616A to 616D, inclusive of NRS for the disability or  
5 death. Subsection 5 of the statute makes it clear that the firefighter's retirement prior to  
6 submitting a claim does not bar compensation for his claim simply because he has retired. The  
7 rebuttable presumption provided by subsection 5 applied to disabling cancer diagnosed after the  
8 termination of his employment. Also relevant is NRS 617.430(1), which provides in pertinent  
9 part that every employee who is disabled or dies because of an occupational disease, or the  
10 dependents of an employee whose death is caused by an occupational disease, is entitled to the  
11 compensation provided by NRS 616A-D for temporary disability, permanent disability, or death,  
12 as the facts may warrant, subject to the modifications mentioned in Chapter 617.

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16 3. The Nevada Supreme Court case of Howard considered the extent to which a firefighter  
17 who retires and, thereafter, suffers a heart attack, is entitled to temporary total disability benefits.  
18 The Court held that although Nevada law is clear that retired firefighters who sustain a disability  
19 post-retirement are entitled to medical benefits, the Legislature's method for calculating  
20 compensation precludes an award for temporary total disability benefits when the retired  
21 firefighters are not earning wages at the time of the disability. In Howard, the specific issue was  
22 whether the retired firefighter, who submitted a claim for heart disease, was entitled to temporary  
23 total disability benefits.

24  
25 4. For the reasons set forth in Claimant's Opening and Reply Briefs, this Court finds and  
26 concludes that Claimant is entitled to receive an otherwise proper permanent partial disability  
27 award despite the fact that he was retired when his claim was filed and permanent disability  
28

1 determined to exist. NRS 617.453(4) provides that a firefighter with a cancer claim is entitled  
2 to not only medical benefits but also disability benefits to which is entitled pursuant to NRS  
3 616A-D. Nothing set forth in NRS 616C.490 or the regulations governing permanent partial  
4 disability provides that a person is not entitled to permanent partial disability benefits once he is  
5 no longer working. NRS 616C.390 expressly provides that a retired person, upon reopening,  
6 may not receive temporary total disability benefits or vocational rehabilitation benefits. The  
7 Legislature could have, but did not, exclude permanent partial disability benefits from the  
8 benefits to which a claimant is entitled after retirement. Unlike temporary total disability  
9 benefits, which are intended to compensate the injured worker during the temporary period in  
10 which he is not working, permanent partial disability benefits are intended to compensate the  
11 injured worker for permanent physical impairment. This Court therefore declines to extend the  
12 Supreme Court's holding in Howard to permanent partial disability awards.

13  
14  
15 5. There is no statute, regulation, or case law that provides that a retired firefighter with an  
16 accepted occupational disease claim may be deprived of an otherwise properly determined  
17 permanent partial disability award. Furthermore, no other grounds for denial were asserted or  
18 argued by the Insurer, this Court finds Dr. Quaglieri's permanent partial disability rating  
19 evaluation to be thorough and properly performed.

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6. For the reasons stated in Claimant's written briefs, the Appeals Officer concludes that the permanent partial disability award shall be calculated based upon the wages the Claimant was earning at the time of his retirement from the Clark County Fire Department. The Nevada Supreme Court's decision in Howard does not address permanent partial disability awards and, as stated above, the Appeals Officer declines to extend the Court's holding in that case to permanent partial disability awards; the Court's holding was not based on NRS 617.453 or 616C.490 which are applicable in the instant case. To conclude that the Claimant's PPD award must be calculated based on his wages on the date of disability (i.e., zero) would, from a practical perspective, render subsection (5) of NRS 617.453 meaningless. By its very terms, subsection (5) refers to cancer diagnosed after the firefighter is no longer employed; the "date of disability" would always be post-retirement for purposes of awarding of benefits pursuant to NRS 617.453 unless evidence to rebut the presumption is presented.

**ORDER**

IT IS HEREBY ORDERED that the Insurer's January 24, 2017 determination is REVERSED. The Insurer is REMANDED to offer Claimant the forty percent (40%) whole person permanent partial disability award as found by Dr. Quaglieri.

IT IS SO ORDERED this 19th day of April, 2018.

Georganne W. Bradley  
Georganne W Bradley, Esq.  
APPEALS OFFICER

**NOTICE:** Pursuant to NRS 233B.130, should any party desire to appeal this final determination of the Appeals Officer, a Petition for Judicial Review must be filed with the District Court within 30 days after service by mail of this decision.

(SAT 5/19) HUN 5/21  
CAL

1 CERTIFICATE OF MAILING

2 The undersigned, an employee of the State of Nevada, Department of Administration,  
3 Hearings Division, does hereby certify that on the date shown below, a true and correct copy of  
4 the foregoing was duly mailed, postage prepaid OR placed in the appropriate addressee file  
5 maintained by the Division, 2200 South Rancho Drive, Suite 220, Las Vegas, Nevada 89102, to  
6 the following:  
7

8 BRENT BEAN  
9 3405 AMISH AVENUE  
10 NORTH LAS VEGAS, NEVADA 89031

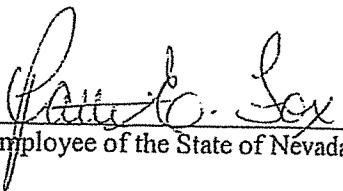
11 LISA M. ANDERSON, ESQ.  
12 GREENMAN GOLDBERG RABY & MARTINES  
13 601 SOUTH NINTH STREET  
14 LAS VEGAS, NEVADA 89101

15 DALTON L. HOOKS, JR., ESQ.  
16 ALVERSON TAYLOR MORTENSEN & SANDERS  
17 6605 GRAND MONTECITO PARKWAY  
18 SUITE 200  
19 LAS VEGAS, NEVADA 89149

20 SANDRA SWICKARD  
21 CLARK COUNTY RISK MANAGEMENT  
22 500 SOUTH GRAND CENTRAL PARKWAY  
23 SUITE 200  
24 LAS VEGAS, NEVADA 89106

25 CORVEL  
26 P.O. BOX 61228  
27 LAS VEGAS, NEVADA 89160

28 DATED this 19th April day of ~~February~~, 2018.

  
Employee of the State of Nevada

Greenman Goldberg Raby Martinez & Associates  
ACCIDENT INJURY ATTORNEYS



1 **OPPS**  
2 **LISA M. ANDERSON, ESQ.**  
3 Nevada Bar No. 004907  
4 **THADDEUS J. YUREK III, ESQ.**  
5 Nevada Bar No. 011332  
6 **GREENMAN, GOLDBERG, RABY & MARTINEZ**  
7 601 South Ninth Street  
8 Las Vegas, Nevada 89101  
9 Phone: (702) 384-1616  
10 Facsimile: (702) 384-2990  
11 Email: lanserson@ggrmlawfirm.com  
12 tyurek@ggrmlawfirm.com  
13 *Attorneys for Respondent*

DISTRICT COURT  
CLARK COUNTY, NEVADA

14 CLARK COUNTY, )  
15 )  
16 Petitioner )  
17 )  
18 vs. ) CASE NO. : A-18-773957-J  
19 ) DEPT. NO. : XVI  
20 BRENT BEAN and THE DEPARTMENT )  
21 OF ADMINISTRATION, HEARINGS )  
22 DIVISION, )  
23 )  
24 Respondents. )  
25 )

**OPPOSITION TO PETITIONER'S MOTION FOR STAY**  
**PENDING PETITION FOR JUDICIAL REVIEW**

26 COMES NOW, Respondent, BRENT BEAN (hereinafter "Respondent"), by and  
27 through his attorneys, LISA M. ANDERSON, ESQ. and THADDEUS J. YUREK III, ESQ., of  
28 the law firm of GREENMAN, GOLDBERG, RABY & MARTINEZ, and files this Opposition  
to Motion for Stay Pending Petition for Judicial review filed by the self-insured employer,  
CLARK COUNTY (hereinafter "Respondent"), by and through its attorney of record,  
DALTON L. HOOKS, JR. ESQ., of the law firm of HOOKS MENG SCHAAN & CLEMENT.

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This Opposition is made and based upon the Points and Authorities attached hereto as well as all other pleadings and papers on file in this action.

Dated this 15<sup>th</sup> day of May, 2018.

GREENMAN, GOLDBERG,  
RABY & MARTINEZ

By 

LISA M. ANDERSON, ESQ.  
Nevada Bar No. 004907  
THADDEUS J. YUREK III, ESQ.  
Nevada Bar No. 011332  
601 South Ninth Street  
Las Vegas, Nevada 89101  
Attorneys for Claimant

  
Greenman Goldberg Raby Martinez  
ACCIDENT INJURY ATTORNEYS

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**POINTS AND AUTHORITIES**

**STATEMENT OF CASE**

On or about November 7, 2015, Respondent reported the onset of an occupational disease that was contracted while in the course and scope of his employment as a firefighter with the Clark County Fire Department. Respondent was diagnosed with prostate cancer. Liability for the claim was appropriately accepted and Respondent received various modalities of medical care, including a prostatectomy. Petitioner's refusal to offer a permanent partial disability award based upon Dr. Charles Quaglieri's disability findings is the subject of this appeal.

Respondent retired as a firefighter with Petitioner on July 24, 2011 or July 25, 2011.

On October 15, 2014, Respondent completed blood work that revealed elevated prostate specific antigen (PSA) levels. **SEE RESPONDENT'S PAGE 7.** Respondent came under the care of Dr. David Ludlow for his prostate condition. Respondent was diagnosed with malignant neoplasm of prostate and underwent a prostatectomy on February 24, 2015. Respondent was subsequently declared medically stable and ratable. Dr. Ludlow opined that Respondent would require ongoing medication for erectile dysfunction following claim closure. Dr. Ludlow confirmed that the medication was needed as a direct result of the prostate cancer. **SEE RESPONDENT'S PAGES 8-42.**

On November 2, 2016, Dr. Quaglieri evaluated Respondent for permanent partial disability. Dr. Quaglieri concluded that Respondent qualified for thirty-nine percent (39%) whole person impairment as a result of the occupationally related prostate cancer condition. Respondent was granted sixteen percent (16%) whole person impairment for the prostatectomy, ten percent (10%) whole person impairment for incontinence and twenty percent (20%) whole person impairment for loss of sexual function. **SEE RESPONDENT'S PAGES 43-47.**

1 On November 30, 2016, Petitioner was notified that Dr. Quaglieri miscalculated  
2 Respondent's impairment and that the correct whole person impairment sum should have been  
3 forty percent (40%). For that reason, Petitioner was asked to offer Respondent the forty percent  
4 (40%) whole person impairment award. SEE RESPONDENT'S PAGES 48-53.

6 On November 30, 2016, Petitioner was asked to authorize ongoing erectile dysfunction  
7 medication following claim closure. SEE RESPONDENT'S PAGES 54-56.

8 On December 1, 2016, Petitioner notified Respondent that there appeared to be a  
9 calculation error in Dr. Quaglieri's disability report and was seeking clarification. SEE  
10 RESPONDENT'S PAGES 57-62.

12 On January 4, 2017, Dr. Quaglieri issued a statement verifying his calculation error and  
13 outlined that Respondent's whole person impairment was forty percent (40%). SEE  
14 RESPONDENT'S PAGE 63.

16 On January 9, 2017, an electronic mail communication was sent to Petitioner outlining  
17 that the Attorney General Opinion 2002-28 established that firefighter's "date of separation from  
18 service in such capacity and wages earned immediately prior to such date of separate form the  
19 basis upon which disability benefits are to be calculated." SEE RESPONDENT'S PAGES 64-  
20 72.

22 On January 24, 2017, Petitioner notified Respondent that they were declining to offer a  
23 permanent partial disability award because the claim for occupational disease was filed after his  
24 retirement. Petitioner concluded that Respondent was therefore not entitled to receive any  
25 compensation, including permanent partial disability, for his industrial injury. SEE  
26 RESPONDENT'S PAGES 73-74. Respondent appealed that determination to the Hearing  
27  
28

1 Officer. The parties subsequently agreed to transfer the matter directly to the Appeals Officer  
2 for final administrative decision.

3  
4 The Appeals Officer instructed the parties to submit briefs in support of their positions  
5 concerning the legal question as to whether Howard v. City of Las Vegas, 120 P.3d 410 (2005)  
6 disqualified Respondent from being entitled to permanent partial disability compensation  
7 benefits. On September 20, 2017, Respondent submitted his Opening Brief. Claimant argued  
8 that, for the purpose of calculating his permanent partial disability, his average monthly wage  
9 must be calculated using the wages from the date of his retirement. **SEE RESPONDENT'S**  
10 **PAGES 75-81**. On October 30, 2017, Petitioner filed its Answering Brief in support of their  
11 position that Respondent's average monthly wage was zero for the purpose of calculating his  
12 permanent partial disability. **SEE RESPONDENT'S PAGES 82-91**. Respondent filed his  
13 Reply Brief on December 11, 2017, wherein he distinguishes the difference between seeking  
14 temporary total disability benefits from permanent partial disability benefits when a claim for  
15 occupational cancer is filed after retirement. **SEE RESPONDENT'S PAGES 92-96**

16  
17  
18 On April 19, 2018, the Appeals Officer filed a Decision and Order reversing Petitioner's  
19 January 24, 2017 determination. Under Conclusion of Law 2, the Appeals Officer found that:

20  
21 NRS 617.453(4) provides in pertinent part that compensation  
22 awarded to a firefighter or his or her dependents for disabling  
23 cancer pursuant to this section must include full reimbursement  
24 for related expenses incurred for medical treatments, surgery and  
25 hospitalization and the compensation provided in chapters 616A  
26 to 616D, inclusive of NRS for the disability or death. Subsection  
27 5 of the statute makes it clear that the firefighter's retirement prior  
28 to submitting a claim does not bar compensation for his claim  
simply because he has retired. The rebuttable presumption  
provided by subsection 5 applied to disabling cancer diagnosed  
after the termination of his employment. Also relevant is NRS  
617.430(1), which provides in pertinent part that every employee  
who is disabled or dies because of an occupational disease, or the  
dependents of an employee whose death is caused by an

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occupational disease, is entitled to the compensation provided by NRS 616A-D for temporary disability, permanent disability, or death, as the facts may warrant, subject to the modifications mentioned in Chapter 617.

Under Conclusion of Law 3, the Appeals Officer provided her interpretation of Howard's application to the matter at hand. The Appeals Officer found that:

The Nevada Supreme Court case of Howard considered the extent to which a firefighter who retires and, thereafter, suffers a heart attack, is entitled to temporary total disability benefits. The Court held that although Nevada law is clear that retired firefighters who sustain a disability post-retirement are entitled to medical benefits, the Legislature's method for calculating compensation precludes an award for temporary total disability benefits when the retired firefighters are not earning wages at the time of the disability. In Howard, the specific issue was whether the retired firefighter, who submitted a claim for heart disease, was entitled to temporary total disability benefits.

Under Conclusion of Law 4, the Appeals Officer weighed in on the briefs submitted by the parties and concluded that:

For the reasons set forth in Claimant's Opening and Reply Briefs, this Court finds and concludes that Claimant is entitled to receive an otherwise proper permanent partial disability award despite the fact that he was retired when his claim was filed and permanent disability determined to exist. NRS 617.453(4) provides that a firefighter with a cancer claim is entitled to not only medical benefits but also disability benefits to which is entitled pursuant to NRS 616A-D. Nothing set forth in NRS 616C.490 or the regulations governing permanent partial disability provides that a person is not entitled to permanent partial disability benefits once he is no longer working. NRS 616C.390 expressly provides that a retired person, upon reopening, may not receive temporary total disability benefits or vocational rehabilitation benefits. The Legislature could have, but did not, exclude permanent partial disability benefits from the benefits to which a claimant is entitled after retirement. Unlike temporary total disability benefits, which are intended to compensate the injured worker during the temporary period in which he is not working, permanent partial disability benefits are intended to compensate the injured worker for permanent physical impairment. This Court therefore declines

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to extend the Supreme Court's holding in Howard to permanent partial disability awards.

The Appeals Officer ruled under Conclusion of Law 5 that:

There is no statute, regulation, or case law that provides that a retired firefighter with an accepted occupational disease claim may be deprived of an otherwise properly determined permanent partial disability award. Furthermore, no other grounds for denial were asserted or argued by the Insurer, this Court finds Dr. Quaglieri's permanent partial disability rating evaluation to be thorough and properly performed.

Under Conclusion of Law 6, the Appeals Officer decided that:

For the reasons stated in Claimant's written briefs, the Appeals Officer concludes that the permanent partial disability awarded shall be calculated based upon the wages the Claimant was earning at the time of his retirement from the Clark County Fire Department. The Nevada Supreme Court's decision in Howard does not address permanent partial disability awards and, as stated above, the Appeals Officer declines to extend the Court's holding in that case to permanent partial disability awards; the Court's holding was not based on NRS 617.453 or 616C.490 which are applicable in the instant case. To conclude that the Claimant's PPD award must be calculated based on his wages on the date of disability (i.e zero) would, from a practical perspective, render subsection (5) of NRS 617.453 meaningless. By its very terms, subsection (5) refers to cancer diagnosed after the firefighter is no longer employment; the "date of disability" would always be post-retirement for purposes of awarding of benefits pursuant to NRS 617.453 unless evidence to rebut the presumption is presented.

Thus, the Appeals Officer ordered Petitioner to calculate Respondent's average monthly wage for the purpose of calculating the permanent partial disability award based upon the wages he was earning at the time of his retirement. **SEE RESPONDENT'S PAGES 97-104.** Petitioner timely filed a Petition for Judicial Review. Petitioner also filed a Motion for Stay and Motion for Order Shortening Time, or, in the Alternative, Motion for Temporary Stay.

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LEGAL DISCUSSION

**I. THE APPLICATION FOR STAY PENDING APPEAL IS UNWARRANTED**

An order for stay is not a right to be exercised, but a matter of judicial discretion to be used by the Court, when appropriate, upon application of a party. NRS 233B.140(3) provides that in making a ruling, the Court shall give deference to the trier of fact and consider the risk to the public, if any, of staying the administrative decision.

When considering an application for a stay order pending appeal, there are four factors which must be addressed:

- 1) Whether the petitioner for the stay order has made a *strong* showing that it is likely to prevail on the merits of the appeal;
- 2) Whether or not the petitioner has shown it would sustain irreparable injury absent the stay order;
- 3) Whether or not the issuance of a stay order would substantially harm the other interested parties; and
- 4) Where the public interest lies.

Dollar Rent a Car of Washington v. Travelers Indem., 774 F.2d 1371, 1374 (Nev. 1975); American Horse Protection Assoc. v. Frizzel, 403 F.Supp. 1206, 1215 (Nev. 1975). In this matter, a stay is unwarranted as Petitioner has failed to meet the burden of making a strong showing that it is likely to prevail on the merits or that it will sustain irreparable injury absent the stay order. Moreover, a stay is unwarranted because the issuance of a stay order will substantially harm one of the other interested parties and the public interest favors Respondent. The administrative determination that is the subject of this appeal is tantamount to an attempt by Petitioner to deny Respondent permanent partial disability benefits to which he is entitled.



1       A. PETITIONER HAS NOT MADE A STRONG SHOWING THAT IT WILL  
2       PREVAIL ON THE MERITS.

3           In order to show that it will prevail on the merits, Petitioner has the burden of  
4 demonstrating that the Appeals Officer's decision was factually or legally incorrect and that the  
5 Appeals Officer acted arbitrarily or capriciously. NRS 233B.135(2); Campbell v. Nevada Tax  
6 Com'n, 853 P.2d 717 (Nev. 1993). In determining the appropriateness of the Appeals Officer's  
7 decision, this Court may not substitute its judgment for that of the Appeals Officer as to the  
8 weight of the evidence. N.R.S. 233B.135; SIIS v. Campbell, 862 P.2d 1184 (Nev. 1993);  
9 Campbell v. Nev. Tax Com'n, 853 P.2d 717 (Nev. 1993). On questions of fact, this Court is  
10 limited to determining whether *substantial evidence* exists in the record to support the Appeals  
11 Officer's decision. Desert Inn Casino & Hotel v. Moran, 106 Nev. 334, 792 P.2d 400, 401  
12 (1990); SIIS v. Swinney, 103 Nev. 17, 20, 731 P.2d 359, 361 (1987). Substantial evidence is  
13 "that quantity and quality of evidence which a reasonable [person] could accept as adequate to  
14 support a conclusion." State of Nevada Emplmt. Sec. Dept. v. Hilton Hotels Corp., 102 Nev.  
15 606, 607-08, 729 P.2d 497, 498 (1986), quoting Robertson Transp. Co. v. P.S.C., 39 Wis.2d 653,  
16 159 N.W.2d. 636, 638 (1968). In the instant case, Petitioner has failed to meet its burden of  
17 demonstrating that the Appeals Officer's decision was factually or legally incorrect. Petitioner  
18 has also failed to show that the Appeals Officer acted arbitrarily or capriciously.

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1 LEGAL ARGUMENT

2 I. Respondent Contends That, For The Purpose Of Calculating Permanent Partial  
3 Disability, His Average Monthly Wage Must Be Calculated Using The Wages  
4 From The Date of His Retirement

5 In its Motion for Stay, Petitioner argues that it will prevail upon the merits of the appeal  
6 because the Appeals Officer's decision was erroneous, arbitrary and capricious because it  
7 misinterpreted controlling case law and statutes when ruling on Respondent's entitlement to  
8 permanent partial disability award compensation benefits. Petitioner's arguments lack merit and  
9 are a clear attempt to reweigh the evidence and reconsider the arguments previously submitted  
10 in their briefs and during oral arguments.

11 The crux of the issue to be determined in this brief is whether Howard controls the  
12 methodology for wage calculation for the purpose of calculating permanent partial disability.  
13 The Appeals Officer correctly noted under Conclusion of Law 3 that:

14  
15 The Nevada Supreme Court case of Howard considered the extent  
16 to which a firefighter who retires and, thereafter, suffers a heart  
17 attack, is entitled to temporary total disability benefits. The Court  
18 held that although Nevada law is clear that retired firefighters who  
19 sustain a disability post-retirement are entitled to medical benefits,  
20 the Legislature's method for calculating compensation precludes  
21 an award for temporary total disability benefits when the retired  
22 firefighters are not earning wages at the time of the disability. In  
Howard, the specific issue was whether the retired firefighter,  
who submitted a claim for heart disease, was entitled to temporary  
total disability benefits.

23 The Appeals Officer correctly noted under Conclusion of Law 4 that:

24 For the reasons set forth in Claimant's Opening and Reply Briefs,  
25 this Court finds and concludes that Claimant is entitled to receive  
26 an otherwise proper permanent partial disability award despite the  
27 fact that he was retired when his claim was filed and permanent  
28 disability determined to exist. NRS 617.453(4) provides that a  
firefighter with a cancer claim is entitled to not only medical  
benefits but also disability benefits to which is entitled pursuant  
to NRS 616A-D. Nothing set forth in NRS 616C.490 or the

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regulations governing permanent partial disability provides that a person is not entitled to permanent partial disability benefits once he is no longer working. NRS 616C.390 expressly provides that a retired person, upon reopening, may not receive temporary total disability benefits or vocational rehabilitation benefits. The Legislature could have, but did not, exclude permanent partial disability benefits from the benefits to which a claimant is entitled after retirement. Unlike temporary total disability benefits, which are intended to compensate the injured worker during the temporary period in which he is not working, permanent partial disability benefits are intended to compensate the injured worker for permanent physical impairment. This Court therefore declines to extend the Supreme Court's holding in Howard to permanent partial disability awards.

In Howard, the Court considered whether a firefighter who retires and, thereafter, suffers a heart attack, is entitled to temporary total disability benefits. The Court confirmed that retired firefighters are entitled to all medical benefits for their occupationally related condition, however, the "method for calculating compensation precludes an award for temporary total disability benefits when the retired firefighters are not earning wages at the time of the disability."

Howard is clearly distinguishable from the case at hand because Respondent is not seeking temporary total disability for lost wages. Under Howard, the Court differentiated between workers' compensation benefits related to medical benefits and those benefits associated with disability compensation in the form of lost wages caused by the occupational disease. While the Court made it clear that it intended for the injured worker to be precluded from obtaining temporary total disability compensation if the claim for disability was filed after retirement, the Court further made it clear that it did not intend for the decision to affect medical benefits in any way.

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1           The Court intended for the injured worker to remain entitled to all medical benefits  
2 associated with the physical injury, which includes permanent partial disability caused by  
3 permanent physical disfiguration. Permanent partial disability is a medical benefit intended to  
4 compensate the injured worker for permanent physical damage caused by the industrial injury  
5 or occupational disease and not a form of disability compensation associated with lost wages.  
6 In this case, Respondent's prostate was removed due to a compensable occupationally related  
7 cancer. Respondent was found to have sustained forty percent (40%) whole person impairment  
8 related to his significant occupational disease. Permanent partial disability is a medical benefit  
9 directly related to the removal of the prostate and its residual effects. Thus, permanent partial  
10 disability is in no way intended to replace lost wages, as was held in Howard.

13           NRS 616C.490(5) states in part:

14                     5. Unless the regulations adopted pursuant to NRS  
15                     616C.110 provide otherwise, a rating evaluation must include an  
16                     evaluation of the loss of motion, sensation and strength of an  
17                     injured employee if the injury is of a type that might have caused  
18                     such a loss. Except in the case of claims accepted pursuant to NRS  
19                     616C.180, no factors other than the degree of physical impairment  
20                     of the whole person may be considered in calculating the  
21                     entitlement to compensation for a permanent partial disability.

22           NRS 616C.490 establishes that permanent partial disability is not related to temporary  
23 total disability compensation that is associated with lost wages. Instead, permanent partial  
24 disability is a medical benefit directly related to the permanent loss of physical function, such  
25 as loss of range of motion, loss of sensation, and loss of strength, and is intended to compensate  
26 the injured worker for the physical damage caused by the occupational disease. Nothing in  
27 Howard sought to eliminate compensation related to permanent partial disability because  
28 permanent partial disability is not intended to compensate the injured worker for lost wages.

1           The Court specifically stated that the issue on appeal in Howard involved eligibility for  
2 temporary total disability compensation when the injured worker was retired and not earning  
3 wages at the time the claim was filed. The Court solely considered whether an injured worker  
4 is entitled to temporary total disability compensation related lost time caused by the  
5 occupationally related heart condition. Nevertheless, the Court reiterated that “when a retired  
6 claimant becomes eligible for occupational disease benefits, the claimant is entitled to receive  
7 medical benefits but may not receive any disability compensation if the claimant is not earning  
8 any wages.”

9  
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11           In further distinguishing Howard from the present matter, the Court outlined that:

12                       Second, a retiree usually has lost no salary due to the impairment.  
13                       However, the claimant may lose money in the form of medical  
14                       expenses attributable to the work-related disability; for these  
15                       expenses, NRS 617.420 provides no prohibition. As we held in  
16                       *Gallagher*, retired claimants will still be able to claim medical  
17                       expenses, despite not being entitled to receive compensation  
18                       based on lost wages.

19                       ...

20                       Because Howard was retired and not earning an actual wage at the  
21                       time of his disability, from which a lost wage may be calculated,  
22                       he is not entitled to disability compensation in the form of lost  
23                       wages.

24                       ...

25                       For the forgoing reasons, we conclude that a retired firefighter’s  
26                       entitlement to occupational disease benefits does not include  
27                       compensation for temporary total disability benefits when the  
28                       firefighter is not earning any wages. Accordingly, we affirm the  
                         order of the district court.

                      In every instance, the Court in Howard specifically cited that its decision related solely  
to temporary total disability compensation related to lost wages. Since Howard had no intention  
of limiting compensation related to the recovery of permanent partial disability, we must look

1 to the Attorney General's opinion on how to calculate a permanent partial disability award when  
2 the injured worker is retired at the time claim was filed.

3  
4 On August 7, 2002, the Attorney General issued an official opinion regarding this exact  
5 issue. In its opinion, the Attorney General concluded that a "firefighter's or police officer's date  
6 of separation from service in such capacity and wages earned immediately prior to such date of  
7 separation form the basis upon which disability benefits are to be calculated." The Attorney  
8 General determined that this calculation method would prevent "an absurd result" of using "a  
9 significantly higher, or lower, salary in another (post-retirement) occupation" when calculating  
10 disability benefits. SEE RESPONDENT'S PAGES 63-67.

11  
12 In this case, there is no dispute that Respondent qualifies for forty percent (40%) whole  
13 person related to his occupationally related and accepted prostate cancer condition. However,  
14 Petitioner is of the position that Respondent has a zero dollar (\$0) wage base for the purpose of  
15 calculating the value of the permanent partial disability because he was retired at the time of the  
16 claim. Although Respondent is not seeking temporary total disability related to lost wages, he  
17 is seeking compensation for the medical portion of his case due to a permanent disability  
18 sustained when his prostate was removed due to occupationally related cancer.

19  
20 Respondent maintains that a common sense approach must be adopted in order to avoid  
21 the "absurd result" identified by the Attorney General. Assigning a zero dollar (\$0) value for  
22 the purpose of calculating a monetary award for the forty percent (40%) permanent partial  
23 disability is patently unfair and leads to the "absurd result" that is the foundation of this appeal.  
24 As noted above, permanent partial disability is a medical benefit that is intended to compensate  
25 the injured worker for the permanent physical damage and disfiguration caused by the  
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1 occupational disease. Ignoring the Attorney General opinion would absolutely result in the  
2 “absurd result” that the Attorney General sought to avoid.

3 Pursuant to the Attorney General’s opinion, Respondent’s wages, for the purpose of  
4 calculating his permanent partial disability award, should be his July 24, 2011 or July 25, 2011  
5 retirement date. Utilizing the last wage Respondent actually earned prior to his retirement avoids  
6 the “absurd” result contemplated by the Attorney General. Petitioner must therefore be  
7 ordered to calculate Respondent’s wages based upon his earnings at the time of retirement.  
8 Petitioner must then be ordered to calculate the permanent partial disability award and offer it  
9 to Claimant.  
10

11  
12 Based upon the foregoing, Respondent has established that Howard is clearly  
13 distinguishable from the current appeal, as the present matter does not involve the recovery of  
14 temporary total disability compensation related to lost wages. Howard does not control the  
15 methodology for calculating Respondent’s average monthly wage for the purpose of placing a  
16 monetary value on the calculation of Respondent’s forty percent (40%) permanent partial  
17 disability. Since Howard does not impact this issue, the Appeals Officer correctly found that  
18 wages from the date of Respondent’s retirement must be utilized for the purpose of calculating  
19 the permanent partial disability award.  
20

21  
22 **II. Claimant Distinguishes The Difference Between Seeking Temporary Total**  
23 **Disability Benefits from Permanent Partial Disability Benefits When A Claim**  
24 **For Occupational Cancer is Filed After Retirement**

25 Petitioner disputes Respondent’s argument that permanent partial disability is not a  
26 medical benefit. Respondent is not attempting to distinguish medical benefits from disability  
27 benefits because it is simply a fact that these two (2) benefits are different. Respondent is not  
28 asking for wage replacement benefits. Instead, Respondent is requesting that his entitlement for

1 compensation due to the medical incident that happened to him and the ensuing permanent  
2 physical condition that resulted in the removal of his prostate.

3  
4 Petitioner argues that medical benefits are intended to mean medical treatment, surgery,  
5 hospitalization, physical therapy and prescriptions but not disability awards related to the  
6 permanent physical damage caused by the occupational disease. They cite the American  
7 Medical Association's *Guides to the Evaluation of Permanent Impairment* that defines disability  
8 as "an alteration of the individual's capacity to meet personal, social or occupational demands  
9 or statutory or regulatory requirements because of an impairment." In this instance, Petitioner  
10 fails to consider what personal and social demands were contemplated under this standard.  
11 Clearly the functionality of the body is certainly personal and social. It is undeniable that  
12 Respondent is altered as a result of this incident. The removal of his prostate and the resulting  
13 permanent residual effects is an "alteration" of Respondent's individual capacity to meet his  
14 personal, social and/or occupational demands.  
15

16  
17 It has been argued that Howard analyzed NRS 617.420 and cited in part that "[T]he  
18 limitations in this section do not apply to medical benefits, which must be paid from the date of  
19 application for payment of medical benefits." This is where Respondent argued that NRS  
20 617.455 contemplates that it will be difficult to pinpoint a date of injury/exposure. So,  
21 Respondent's employment is conclusively presumed to be the cause of the disease. Thus, the  
22 date of application is the date he last worked for these purposes.  
23

24 Petitioner further argued that Howard precludes the payment of permanent partial  
25 disability compensation if Respondent is not earning any wages when a claim for benefits is  
26 filed. While this is true for temporary total disability compensation, Petitioner cannot say that  
27 Respondent has lost no use or function of his body for his non work related activities.  
28



1 Respondent is left disabled, both as to work and as to life in general. The workers' compensation  
2 system contemplates these losses and provides separately that Respondent is entitled to  
3 permanent partial disability for his physical damage. In this case, Respondent had his prostate  
4 removed as a result of cancer and has suffered permanent residual dysfunction.  
5

6 The Appeals Officer ruled under Conclusion of Law 5 that:

7 There is no statute, regulation, or case law that provides that a  
8 retired firefighter with an accepted occupational disease claim  
9 may be deprived of an otherwise properly determined permanent  
10 partial disability award. Furthermore, no other grounds for denial  
11 were asserted or argued by the Insurer, this Court finds Dr.  
12 Quaglieri's permanent partial disability rating evaluation to be  
13 thorough and properly performed.

14 NRS 617.455 is clearly meant to compensate Respondent over his lifetime for any lung  
15 or heart disease he suffers after fulfilling his initial length of employment obligation. The intent  
16 is that Respondent be as fully compensated as possible during and after his service. Petitioner  
17 diminishes this intent by excluding the portion of benefits designed to compensate for permanent  
18 damage. NRS 617.455 is designed to compensate for exposure while employed and extends  
19 coverage after employment.

20 Despite what Petitioner would like for this Court to believe, Howard simply addressed  
21 the issue of entitlement to temporary total disability compensation for lost wages when a  
22 claimant was retired and not earning wages at the time the claim was filed. Howard was never  
23 intended to be applied to issues involving permanent partial disability as that issue does not  
24 involve disability compensation related to lost wages. As such, there is no available case law to  
25 adequately and fairly compensate Respondent for the permanent physical damage caused by the  
26 removal of his prostate and the resulting dysfunction.  
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1 In contrast, the Attorney Generals' 2002 opinion clearly addressed the identical issue  
2 presented in this case. Specifically, the Attorney General concluded that a "firefighter's or  
3 police officer's date of separation from service in such capacity and wages earned immediately  
4 prior to such date of separation form the basis upon which disability benefits are to be  
5 calculated." The Attorney General determined that this calculation method would prevent "an  
6 absurd result" of using "a significantly higher, or lower, salary in another (post-retirement)  
7 occupation" when calculating disability benefits. If Petitioner's position is allowed to stand,  
8 then this case will effectively result in the "absurd" outcomes in the Attorney General sought to  
9 prevent.

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11  
12 Under Conclusion of Law 6, the Appeals Officer decided that:

13 For the reasons stated in Claimant's written briefs, the Appeals  
14 Officer concludes that the permanent partial disability awarded  
15 shall be calculated based upon the wages the Claimant was  
16 earning at the time of his retirement from the Clark County Fire  
17 Department. The Nevada Supreme Court's decision in Howard  
18 does not address permanent partial disability awards and, as stated  
19 above, the Appeals Officer declines to extend the Court's holding  
20 in that case to permanent partial disability awards; the Court's  
21 holding was not based on NRS 617.453 or 616C.490 which are  
22 applicable in the instant case. To conclude that the Claimant's  
23 PPD award must be calculated based on his wages on the date of  
24 disability (i.e zero) would, from a practical perspective, render  
25 subsection (5) of NRS 617.453 meaningless. By its very terms,  
26 subsection (5) refers to cancer diagnosed after the firefighter is no  
27 longer employed; the "date of disability" would always be post-  
28 retirement for purposes of awarding of benefits pursuant to NRS  
617.453 unless evidence to rebut the presumption is presented.

24 In conclusion, Respondent's wages at the time of his retirement must be utilize in the  
25 calculation of his permanent partial disability. Arguing that Respondent qualifies for forty  
26 percent (40%) whole person impairment for his occupationally related cancer condition and then  
27 attempting to apply a standard intended solely for the payment of temporary total disability  
28

1 compensation related to lost wages is clearly inappropriate and insulting to Respondent, who  
2 has suffered significant permanent impairment, and would result in an absurd outcome that goes  
3 against the clear intentions of the Nevada legislature. For that reason, the Appeals Officer  
4 correctly ordered Petitioner to calculate Respondent's permanent partial disability award using  
5 the wages from the date of his retirement.  
6

7 **B. PETITIONER WILL NOT SUFFER IRREPARABLE HARM.**

8 Petitioner has the burden of demonstrating that it will suffer irreparable harm if the stay  
9 order is not issued. Dollar Rent a Car of Washington v. Travelers Indem., 774 F.2d at 1374;  
10 American Horse Protection Assoc. v. Frizzel, 403 F.Supp. at 1215. Petitioner argues in its  
11 Motion that if the stay is not granted, it will be irreparably harmed because of the payment of  
12 benefits. This argument, however, is without merit since there are no Nevada Supreme Court  
13 cases that indicate irreparable harm results from the sole payment of money. To the contrary,  
14 the Nevada Supreme Court, in DIIR v. Circus Circus Enterprises, held that:  
15  
16

17 ...the object of workers' (sic) compensation social legislation is to  
18 provide the disabled worker with benefits during the period of his  
19 catastrophe which the temporary cessation of necessary income  
20 occasions.

21 101 Nev. 405, 408, 705 P.2d 645, 648 (1985). The court also indicated that "...it is clearly the  
22 injured worker and not the employer who is more likely to be irreparably harmed when  
23 immediate payment of benefits is contrasted with delayed payment pending the outcome of the  
24 hearing on the merits." Id. (Emphasis added). Respondent is the party more likely to be harmed  
25 by the issuance of a stay since he would continue to be denied and the payment of appropriate  
26 benefits currently being withheld.  
27

28 ///




1 interest will be unaffected either way. Based on the foregoing, Respondent hereby respectfully  
2 requests that the Appeals Officer's APRIL 19, 2018 Decision and Order remain in force as  
3 entered, and that Petitioner's Motion for Stay be denied.

4 Dated this 15<sup>th</sup> day of May, 2018.

6 GREENMAN, GOLDBERG, RABY & MARTINEZ

7  
8 By: 

9 LISA M. ANDERSON, ESQ.  
10 Nevada Bar No. 004907  
11 THADDEUS J. YUREK III, ESQ.  
12 Nevada Bar No. 011332  
13 **GREENMAN, GOLDBERG, RABY & MARTINEZ**  
14 601 South Ninth Street  
15 Las Vegas, Nevada 89101  
16 (702) 384-1616

  
Greenman Goldberg Raby Martinez  
ACCIDENT INJURY ATTORNEYS

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BEFORE THE APPEALS OFFICER

In the Matter of the Contested  
Industrial Insurance Claim of:

BRENT BEAN,

Claimant.

Claim No: 0583WC150000098

Appeal No: 1710715-GB

NOTICE OF APPEAL AND ORDER TO APPEAR

1. ALL PARTIES IN INTEREST ARE HEREBY NOTIFIED that a hearing will be held on a STACKED CALENDAR by the Appeals Officer, pursuant to NRS 616 and 617 on:

DATE: MAY 22, 2017  
TIME: 2:00PM STACKED  
PLACE: DEPT OF ADMINISTRATION, HEARINGS DIVISION  
2200 SOUTH RANCHO DRIVE, SUITE 220  
LAS VEGAS NV 89102

2. The INSURER shall comply with NAC 616C.300 for the provision of documents in the Claimant's file relating to the matter on appeal.

3. ALL PARTIES shall comply with NAC 616C.297 for the filing and serving of information to be considered on appeal.

4. Pursuant to NRS 239B.030(4), any document/s filed with this agency must have all social security numbers redacted or otherwise removed and an affirmation to this effect must be attached. The documents otherwise may be rejected by the Hearings Division.

5. Pursuant to NRS 616C.282, any party failing to comply with NAC 616C.274-.336 shall be subject to the Appeals Officer's orders as are necessary to direct the course of the Hearing.

6. In the event that all parties to this action agree to have the matter RE-SCHEDULED AND SET FOR A DATE AND TIME CERTAIN, you are hereby required to submit AT LEAST TWO (2) DAYS prior to the scheduled Hearing date a written request, submitted by letter, facsimile or by email, to the Appeals Office advising the Appeals Office that all parties to the action have agreed to remove the action from the Stacked Calendar. A continuance of the hearing date also may be obtained pursuant to NAC 616C.318. The matter will otherwise proceed as scheduled on the STACKED CALENDAR ON A TIME AVAILABLE BASIS.

7. The injured employee may be represented by a private attorney or seek assistance and advice from the Nevada Attorney for Injured Workers.

IT IS SO ORDERED this 28th day of March, 2017.

*Georganne W Bradley*  
GEORGANNE W BRADLEY, ESQ.  
JAD000406 OFFICER

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CERTIFICATE OF MAILING

The undersigned, an employee of the State of Nevada, Department of Administration, Hearings Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing NOTICE OF APPEAL AND ORDER TO APPEAR was duly mailed, postage prepaid OR placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 2200 S. Rancho Drive, #220, Las Vegas, Nevada, to the following:

BRENT BEAN  
3405 AMISH AVE  
N LAS VEGAS NV 89031

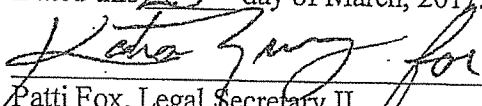
LISA M ANDERSON ESQ  
GREENMAN GOLDBERG RABY & MARTINEZ  
601 S NINTH ST  
LAS VEGAS NV 89101

CLARK COUNTY RISK MGMT  
ATTN SANDRA SWICKARD  
500 S GRAND CENTRAL PKWY 5TH FL  
LAS VEGAS NV 89106

CORVEL CORPORATION  
P O BOX 61228  
LAS VEGAS NV 89160-1228

DALTON HOOKS JR ESQ  
ALVERSON TAYLOR MORTENSEN & SANDERS  
7401 W CHARLESTON BLVD  
LAS VEGAS NV 89117-1401

Dated this 28<sup>th</sup> day of March, 2017.

  
Patti Fox, Legal Secretary II  
Employee of the State of Nevada



**STATE OF NEVADA  
DEPARTMENT OF ADMINISTRATION  
HEARINGS DIVISION**

STATE OF NEVADA  
DEPARTMENT OF ADMINISTRATION  
HEARINGS DIVISION  
MARCH 21 2017 9:02  
RECEIVED  
AND  
FILED

In the matter of the Contested  
Industrial Insurance Claim of:

Hearing Number: 1708666-SE  
Claim Number: 0583WC150000098

BRENT BEAN  
3405 AMISH AVE  
N LAS VEGAS, NV 89031

ATTN SANDRA SWICKARD  
CLARK COUNTY RISK MGMT  
500 S GRAND CENTRAL PKWY 5TH FL  
LAS VEGAS, NV 89106

**ORDER TRANSFERRING HEARING TO APPEALS OFFICE**

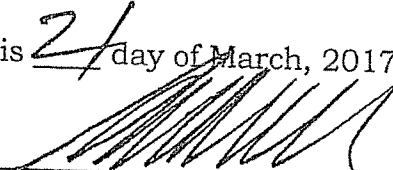
The Claimant's Request for Hearing was filed on January 26, 2017 and scheduled for March 14, 2017. The requesting party appealed the Insurer's determination dated January 24, 2017. The hearing was scheduled for March 14, 2017.

The parties have filed a stipulation to waive a hearing at the Hearing Officer level and to proceed directly to the Appeals Officer level.

**NRS 616C.315(7)** provides that the parties to a contested claim may, if the Claimant is represented by counsel, agree to forego a hearing before a Hearing Officer and submit the contested claim directly to an Appeals Officer.

Therefore, good cause appearing, the Hearing Officer proceeding shall be and is hereby transferred to the Appeals Officer for further proceedings.

IT IS SO ORDERED this 24 day of March, 2017.

  
Steven Evans  
Hearing Officer

**NOTICE:** If any party objects to this transfer to the Appeals Office, an objection thereto must be filed with the Appeals Office at 2200 South Rancho Drive, Suite 220, Las Vegas, Nevada 89102, within 15 days of this order.

SCHEDULED ON

5/22/17

JA000108

1710715 - RMB

**CERTIFICATE OF MAILING**

The undersigned, an employee of the State of Nevada, Department of Administration, Hearings Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing **ORDER TRANSFERRING HEARING TO APPEALS OFFICE** was duly mailed, postage prepaid **OR** placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 2200 S. Rancho Drive, #210, Las Vegas, Nevada, to the following:

BRENT BEAN  
3405 AMISH AVE  
N LAS VEGAS NV 89031

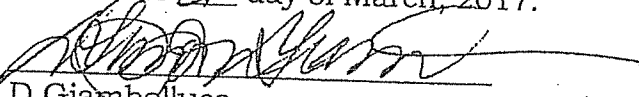
LISA M ANDERSON ESQ  
GREENMAN GOLDBERG RABY & MARTINEZ  
601 S NINTH ST  
LAS VEGAS NV 89101

ATTN SANDRA SWICKARD  
CLARK COUNTY RISK MGMT  
500 S GRAND CENTRAL PKWY 5TH FL  
LAS VEGAS NV 89106

CORVEL CORPORATION  
P O BOX 61228  
LAS VEGAS NV 89160-1228

DALTON HOOKS JR ESQ  
ALVERSON TAYLOR MORTENSEN & SANDERS  
7401 W CHARLESTON BLVD  
LAS VEGAS NV 89117-1401

Dated this 21<sup>st</sup> day of March, 2017.

  
D Giambelluca  
Employee of the State of Nevada

STATE OF NEVADA  
DEPARTMENT OF ADMINISTRATION  
HEARINGS DIVISION

In the Matter of the Contested  
Industrial Insurance Claim

of

Claim No. : 0583 WL 150000098

Hearing No. : 1708666-SE

AGREEMENT TO BYPASS HEARING TO APPEALS OFFICE

Pursuant to NRS 616C.315, the undersigned parties stipulate and agree as follows:

1. This is the appeal of insurer's determination dated 1-24-17
2. The claimant is represented by legal counsel.
3. The parties agree to forego a hearing set for 3-14-17 before a Hearing


Officer and hereby submit this contested claim directly to an Appeals Officer for final determination.

DATED 3-14-17

DATED 03/14/17

By:  , ESQ

Print Name: Lisa M. Anderson

By:  , ESQ

Print Name: DL HOOD

If consolidating with another Appeal include Appeal # \_\_\_\_\_

CORVEL

January 24, 2017

Brent Bean  
3405 Amish Ave.  
N. Las Vegas NV 89031

RE: Claim Number: 0583-WC-15-0000098  
Employer: Clark County  
Date of Injury: 11/07/2014

Dear Mr. Bean  
CorVel Corporation is the Third Party Administrator for above listed employer.

We have received and review the Permanent Partial Disability (PPD) evaluation addendum by Charles E. Quaglieri (enclosed).

Upon review of NRS 617.453(4) (a), it is our determination to decline offering of the PPD award as you filed the claim for Occupational Disease after retirement, thus making you not entitled to receive any compensation for that disease other than medical benefits.

**NRS 617.453 Cancer as occupational disease of firefighters.**

(4) Compensation awarded to the employee or his or her dependents for disabling cancer pursuant to this section must include: (a) Full reimbursement for related expenses incurred for medical treatments, surgery and hospitalization in accordance with the schedule of fees and charges established pursuant to NRS 616C.260 or, if the insurer has contracted with an organization for managed care or with providers of health care pursuant to NRS 616B.527, the amount that is allowed for the treatment or other services under that contract

If you disagree with this determination, you have the right to request a resolution to your dispute pursuant to NRS 616C.305 and 616C.315 to 616C.385, inclusive. To do so, complete the enclosed "Request for Hearing" and submit it with a copy of this determination letter to the Department of Administration, Hearings Division, at one of the addresses listed on the form WITHIN SEVENTY (70) DAYS OF THE DATE OF THIS LETTER.

If you have any questions, please contact the undersigned at 702-455-2450.

Sincerely,



Leslie Ribadeneira  
Sr. Claims Specialist

Encl.: D-12a, PPD Evaluation Addendum

cc: File, Clark County, GGRM

CorVel Corporation  
www.corvel.com

P.O. Box 61228  
Las Vegas, NV 89160

888-368-4212 (800)  
866-728-8275 E-Fax

JA000111

Quest Diagnostics Incorporated

# LABORATORY RESULTS

Facsimile Copy

4230 Burnham Avenue, Suite 250  
Las Vegas, NV 89119 (702) 733-7866

PATIENT BEAN, BRENT E

AUTORT1 6436

REFERRED BY UROLOGY SPECIALIST OF NEVADA

AGE/SEX 08/07/61 M ACCESSION# 49751052 2010 GOLDRING

COLLECTED 10/15/2014 11:06 MED. RECORD# 4555090681 STE 200

RECEIVED 10/15/2014 20:07 CHART# 83568 LAS VEGAS, NV 89106

GOULD AMANDA UPIN-1083854

TEST	RESULTS	UNITS	LOW	HIGH	REF	REMARKS
Patient Phone # (702)379-2869 Ordering Physician: GOULD, AMANDA						
PSA, TOTAL (DIAGNOSTIC) (F)	4.1	H	0.0-4.0	ng/mL		
This test was performed using the Siemens (Bayer) Chemiluminescent method. Values obtained from different assay methods cannot be used interchangeably. PSA levels, regardless of value, should not be interpreted as absolute evidence of the presence or absence of disease.						

CORVEL LAS VEGAS  
DEC 31 2014  
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# Urology Specialists

## Patient Chart Note

October 23, 2014

PATIENT: Brent E. Bean

DOB: 08/07/1961

AGE: 53

PCP: Rochl Pena, M. D.

REFERRING PHYSICIAN: Steven Norris, M. D.

### HISTORY OF PRESENT ILLNESS

Brent is a 53 year old male who presents with a known history of an elevated PSA. Overall, the patient's condition has improved. He initially presented with this as an incidental finding. He has a past history of BPH. He denies any family history of prostate cancer. His current PSA is 4.10 that was performed on 10/15/2014. Patient denies previous PNBx. He has found nothing which provides any relief of the symptoms. There are no aggravating factors. He denies any history of gross hematuria, dysuria, urinary frequency, urgency or weak stream. His AUA voiding system score is in the moderate range at 14/35 - 3. He is waiting for a renal transplant and needs to have the PSA checked and cleared before he can be cleared for the transplant

This patient also complains of renal failure. There is no change in condition from last visit. He denies any pain. He has found nothing which provides any relief of the symptoms. There are no aggravating factors. His AUA voiding symptom score is in the moderate range at 14/35 - 3.

The following has been reviewed: LABS: 10/15/14 , PSA= 4.1 MEDICAL RECORDS: Old medical records were reviewed.

### PAST MEDICAL HISTORY:

<u>Diagnosis</u>	<u>Year</u>
Left Renal Cell Carcinoma	
Renal insufficiency	
Hypertension	1999
Membranous Neuropathy	1996
Hypercholesterolemia	2000

### PAST SURGICAL HISTORY:

<u>Procedure</u>	<u>Year</u>
------------------	-------------

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Phone: (702) 877-0814 // Fax: (702) 877-3238 // www.usonv.com

Date: 10/23/2014 Page 1 of 4 Patient Name: Brent E. Bean Date of Birth: 08/07/1961

# Urology Specialists

## Patient Chart Note

Left Partial Nephrectomy	2010
Wisdom teeth	1987
Right Total Knee Arthroplasty	2013
Shoulder Arthroscopy	1999

### MEDICATIONS:

<u>Medication</u>	<u>Dose</u>
Cipro	500 Mg
Lidocaine Hcl/pf	20 Mg/ml (2 %)
Valium	10 Mg
Doxycycline Hyclate	100 Mg
Flomax	0.4 Mg
Allopurinol	
Simvastatin	40mg
Benazepril Hcl	20mg

### ALLERGIES:

NKDA

### ALLERGIES:

<u>Allergy</u>	<u>Rxn</u>
No Known Allergies	

### SOCIAL HISTORY:

The patient is Single. He has 3 children. His primary spoken language is English. His highest level of education is a high school degree. His major occupation is a(n) firefighter. He smoked one half pack per day of cigarettes and has a 2 pack-year history of tobacco use. He quit smoking approximately 32 years ago. He drinks 3 cups of coffee per day. He drinks 1-2 glasses of Wine (4oz) on a daily basis. Patient denies any previous history of IV or recreational drug use.

### FAMILY HISTORY:

<u>Member</u>	<u>Age</u>	<u>Condition</u>	<u>COD</u>	<u>Comments</u>
1 Father	66	Heart Disease	YES	
2 Mother	70	Cancer	NO	Multiple Myeloma s/p stem cell transplants.
3 Brother	38	Healthy	NO	

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Date: 10/23/2014 Page 2 of 4 Patient Name: Brent E. Bean Date of Birth: 08/07/1961

JA000114

# Urology Specialists

## Patient Chart Note

4 Sister	38	Healthy	NO
5 Maternal Grandmother	88	Cancer	NO
5 Paternal Grandfather	74	Heart Attack	NO
5 Maternal Grandmother	58	Alcoholism	NO
5 Paternal Grandmother	91	Healthy	NO
10		Family History of	
10		Family History of	Melanoma NO Colon Cancer NO

**REVIEW of SYSTEMS:**

System

Positive Findings

Pertinent Negatives.

All reviewed systems were reported as negative. See HPI for a listing of the

**PHYSICAL EXAM:**

VITAL SIGNS

<u>Temp F</u>	<u>BP</u>	<u>P</u>	<u>Height</u>	<u>Wt Lb</u>
98.40	150/84	89	5' 8"	208

EXAM

System

Findings / Comment

GENERAL

This is a well nourished and normally developed individual. In no acute distress.

HEENT

Head is normocephalic and atraumatic. Pupils are equally round. Conjunctiva are normal.

Nares are patent and hearing is within normal limits.

NECK

Neck is supple. Trachea is midline and freely moveable. No palpable masses or thyromegaly

are appreciated.

LUNGS

Respiratory effort is normal without use of accessory muscles.

NEURO-PSYCH

Patient has an appropriate affect.

EXTREM-MS

The patient demonstrates a normal gait. There are no obvious joint deformities appreciated.

**OFFICE LABS:**

<u>Color</u>	<u>Turbidity</u>	<u>SP-G</u>	<u>pH</u>	<u>Glu</u>	<u>Ket</u>	<u>Bili</u>	<u>Urobili</u>	<u>Ptn</u>	<u>Heme</u>	<u>Nit</u>	<u>LE</u>	<u>U-Cx</u>
Yellow	Clear	1.015	5	Neg	Neg	Neg	Neg	Neg	Neg	Neg	Neg	NO

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Date: 10/23/2014 Page 3 of 4 Patient Name: Brent E. Bean Date of Birth: 08/07/1961



Urology Specialists

Patient Chart Note

IMPRESSION:

# DIAGNOSIS

- 1 Elevated PSA
- 2 Renal Failure-Chronic

ASSESSMENT

He is waiting for a renal transplant and needs to have his PSA evaluated. His PSA is 4.1 from 4.3 a couple weeks ago and 5.1 over a month ago. I will set him up for TRUS biopsy. I explained to him the risks and benefits including but not limited to bleeding and infection.

Same as above

PLAN-ORDERS:

Medications:

Medication	Dose	#	Sig
Cipro	500 Mg	6	take 1 tablet by oral route every 12 hours
Lidocaine Hcl/pf	20 Mg/ml (2 %)	1	Please bring with you on the day of your procedure
Valium	10 Mg	4	take 1 tablet by oral route every day

Orders:

# ORDER / PLAN

- 1 TRUS-PNBx
- 3 F/U Appt. w/ David Ludlow MD

WHEN?

- First Available Appt
- First Available Appt

Adelbert M. Wadsworth PA-C

DATE: 10/23/2014 1:38 PM

Electronically signed by Adelbert M. Wadsworth PA-C on 10/27/2014 04:22 PM

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