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IN THE SUPREME COURT OF THE STATE OF NEVADA

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KIMBERLY KLINE,

Appellant,

vs.

CITY OF RENO; CANNON COCHRAN MANAGEMENT SERVICES, "CCMSI"; the STATE OF NEVADA DEPARTMENT OF ADMINISTRATION, HEARINGS DIVISION, an Agency of the State of Nevada; the STATE OF NEVADA DEPARTMENT OF ADMINISTRATION APPEALS DIVISION, an Agency of the State of Nevada; MICHELLE MORGANDO,, ESQ., Sr. Appeals Officer; RAJINDER NIELSEN, ESQ., Appeals Officer; ATTORNEY GENERAL AARON FORD, ESQ.,

Respondents.

Supreme Court No. 82608

Injured Worker Appellant's Appeal of the

Second Judicial District Court,

The Honorable Connie Steinheimer's Order

of the Appeals Officer's Decision of the Department of Administration

APPELLANT'S APPENDIX

Volume X

Pages 2175-2196

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ALPHABETICAL INDEX

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AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby certify that the preceding documents, ***APPELLANT'S APPENDIX VOLUME X***, filed in Supreme Court case number 82608, do not contain the social security number of any person.

DATED this 1 day of April, 2022.

THE LAW FIRM OF HERB SANTOS, JR.
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By _____

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KEN MACALEESE, PH.D. (Advanced Child Behavior Solutions):
I have submitted my letter of support (Exhibit D) for S.B. 217. The profession is ready and anticipates this legislation will help us establish a stronger, faster Board that can be responsive to our local consumers, constituents and professionals.

MS. HALLIGAN:
The language in section 58, dealing with background checks was supposed to be cleaned up but was missed. The Board does not conduct background checks.

VICE CHAIR NEAL:
I will close the hearing on S.B. 217 and open the hearing on S.B. 289.

SENATE BILL 289: Revises provisions relating to workers' compensation. (BDR 53-713)

SENATOR DALLAS HARRIS (Senatorial District No. 11):
I am here as the sponsor of S.B. 289.

JASON MILLS:
I sit on the Nevada Justice Association (NJA) Board of Certification for expertise in the legal specialization of workers' compensation.

The bill contains 11 substantive sections. I am working from the amendment (Exhibit E) requested by the NJA. This draft was negotiated and deals with concerns from the Nevada Resort Association, Nevada Self Insurers Association and Employers' Insurance Company of Nevada (EICN). The Nevada Resort Association and EICN support the amended version of S.B. 289.

Section 1 deals with the concept of apportionment in workers' compensation. Prior injuries are typically subtracted from an award. If you had a prior shoulder injury with an award, your award for a new injury on the job should be reduced. The language drafted in the apportionment part of the bill conforms to this concept and clarifies exactly how apportionment should take place. This aligns Nevada law with most other states and removes confusion.

Sections 2, 4, 6 and 10 deal with a concept of electronic facsimile transmission of determinations. When insurers issue a determination, the claimant has only 70 days to appeal. These sections modernize the delivery to claimants and allow

for proof of transmission for the determination. The workers' compensation system does not have an electronic filing system yet.

Section 3 of S.B. 289 is cleanup language that provides that such compensation may be subject to an attorney's lien. Section 5 provides for the claimant's recovery of certain costs such as expert witness, deposition and filing fee costs. Employers and insurers are able to recover these costs, claimants are not.

Section 7 requires an insurer to commence making installment payments to an injured employee. Approximately 80 percent of the insurers already do this. When there is no disagreement between parties on the award, the insurer typically sends out installment payments. However, about 20 percent of insurers do not interpret the statutes to require this. Section 7 clarifies that undisputed portions should be paid out.

ERICA TOSH:
I am a practicing attorney specializing in the field of workers' compensation law.

Section 8 of S.B. 289 deals with closure of workers' compensation claim and appeal rights. It is designed to allow for resolution of issues that are not being contested while allowing claimants to continue to pursue those issues that are contested. In Nevada claimants are awarded permanent partial disability (PPD) at the end of a case. This award can be offered as installment payments or lump sum. When an individual accepts a lump sum award, this resolves all issues of fact and law and prevents them from pursuing any other issues from that point forward, with a few exceptions. The bill allows any contested matter pending at the time of acceptance of the lump sum to continue to be litigated.

We see a lot of retroactive temporary total disability and travel issues. These are generally smaller. The actual PPD award is usually not contested, but if it is accepted, we are prohibited from pursuing other outstanding matters. This can delay the final resolution of a case.

Section 9 deals with vocational rehabilitation counselors (VRC) and clarifies language consistent with the intent of A.B. No. 128 of the 80th Session. That legislation required insurers to provide a list of three VRC names for a claimant to select from. What has happened is they often provide three names from the same firm. Senate Bill 289 requires the three VRCs be from three separate entities.

Claimants have to file claims promptly. An injured worker has 7 days to report an injury to the employer and 90 days to obtain an Initial Report of Injury (C-4). The C-4 is usually completed at a medical facility. Medical doctors and chiropractors are permitted to complete these documents. Section 11 of S.B. 289 adds physician assistants (PA) and advanced nurse practitioners (ANP) to the list of medical professionals who are permitted to issue the C-4. They are not treating providers but may simply document the injury. Use of PA and ANP is becoming increasingly common in rural areas lacking easy access to doctors. Large corporations often have in-house clinics and keep a PA or ANP on staff to address the immediate concern of a work-related injury.

Section 11 allows for electronic signatures on the C-4. This helps meet the short deadlines we have been discussing.

VICE CHAIR NEAL:
Physician assistants and ANPs typically have a supervising medical doctor. What happens if the medical doctor disagrees with their report?

MS. TOSH:
The PA or ANP would be completing the C-4. They are documenting whether an industrial injury occurred. The C-4 informs the insurance company and any other party involved of the injury. A provider has a three-day window to give notice that they treated someone for a work-related injury. The insurance company has a 30-day window in which it can deny a claim, which would result in litigation. At that point, physicians are generally involved to render opinions.

VICE CHAIR NEAL:
What is the appeal process if there is a lack of medical documentation or confusion regarding previous injuries?

MR. MILLS:
It is often easy to discern a surgery has taken place—scars exist or x-rays reveal hardware. If there is no medical documentation of surgery, as originally drafted, the bill excluded that from being apportionable. The amended version stipulates that, if there is evidence of a surgery, the rating physician would be able to use his or her medical expertise to indicate that the surgery he or she sees would be apportionable.

With regard to proving a prior injury occurred and its impact on a new industrial injury, NRS 616C.175 indicates any pre-existing, non-industrial condition that is aggravated, accelerated or precipitated by an industrial event is compensable.

DALTON HOOKS (Nevada Self Insurers Association):
I am a Board certified specialist in workers' compensation. I represent employers, insurers and others in workers' compensation litigation throughout the State. We support S.B. 289 in its amended form.

RUSTY MCALLISTER (Nevada State AFL-CIO):
On behalf of our more than 150,000 members throughout Nevada, we support this legislation.

TODD INGALSBEE (Professional Firefighters of Nevada):
We support S.B. 289. We support any measures that help get our members back to work.

ROBERT BALKENBUSH (General Counsel, Public Agency Compensation Trust):
The Public Agency Compensation Trust is an association of public employers who pool monetary resources to provide workers' compensation coverage.

We oppose S.B. 289 as drafted. Section 3 presents a change in existing policy and presents a conflict in policy. The intent of this amendment to NRS 616C.205 is to make compensation subject to a lien for attorney's fees under NRS 18.015. Previously, compensation under the Nevada Industrial Insurance Act (NIIA) and Nevada Occupational Disease Act (NODA) has not been expressly subject to a lien for attorney's fees. In this regard, the NIIA and NODA represent a policy compromise of common law rights and responsibilities between an employee and an employer, which the Nevada Supreme Court has referenced as a "delicate balance." The change in policy represented by section 3 is to protect lawyers, who are not the reason for the enactment of the NIIA and NODA. Furthermore, on its face, NRS 18.015 expressly applies to suits or actions outside the NIIA and NODA. Therefore, incorporation of NRS 18.015 into NRS 616C.205 also presents a conflict in policy.

I have submitted a memorandum (Exhibit F) with all our concerns. We want the Committee to consider the conflicts in policy represented by many provisions of S.B. 289.

ALEXIS MOTAREX (Nevada Associated General Contractors):
The Nevada Associated General Contractors is neutral on S.B. 289 as presented with the amendment. We do have some concerns with the addition of the language in section 8, subsection 2, paragraph (d).

When a PPD lump sum award is accepted, the claimant has to drop all legal and factual issues. This means all appeals are done and the claimant can only seek claim reopening, vocational rehabilitation or a benefit penalty. The addition of the language in the amendment would allow a claimant to take the PPD award and still pursue contested matters. The point of offering a PPD award is to resolve all litigation. Removal of the widely used NRS 616C.495(2) would significantly impact employers and the ability to resolve claims.

VICE CHAIR NEAL:
Please address the conflicts referred to by Mr. Balkenbush.

MR. MILLS:
Senate Bill No. 33 of the 80th Session allows for the recovery of child support liens from workers' compensation and personal injury recoveries. That legislation indicated the attorneys working on those cases had a claim to those recoveries. That right has existed in personal injury cases for a long time but not in workers' compensation recoveries. This meant an attorney on a workers' compensation case could not collect a fee if the funds were taken for child support. The language in S.B. 289 conforms to the changes made by S.B. No. 33 of the 80th Session. I disagree with the statement that this presents a conflict.

With regard to the acceptance of a PPD award settling all issues of law in fact, the original draft would strike the signing of the PPD award settling all issues of law in fact. These claims do not close for life. They are able to be reopened throughout a claimant's life. The signing of a PPD does not equate to a release or a compromise.

For example, if an employer awarded a 5 percent claim on a shoulder and the claimant agreed but there were outstanding medical bills hung up in litigation, a claimant could not recover those out-of-pocket expenses if they sign an election of payment. The language in the amendment addresses that issue. It does not undermine the spirit of the law. On page 28 of Exhibit E it details that the

claimant may not contest the scope of the claim, stable and ratable status or average monthly wage.

VICE CHAIR NEAL:
Mr. Mills, once you have had a chance to review Mr. Balkenbush's written memorandum, I would like you to write up your comments and rebuttals for the Committee.

SENATOR PICKARD:
Absent the language in this bill, workers' compensation awards are not subject to the child support lien. I recognize the Public Agency Compensation Trust would resist this since it puts them on the hook, but this is about making sure children get their support. The point of the Committee to Review Child Support Guidelines, set up by A.B. No. 278 of the 79th Session, was to capture as many different sources of child support from the obligor as possible. Workers' compensation was not expressly used. This is an important addition to increase child support remittances.

VICE CHAIR NEAL:
I will close the hearing on S.B. 289.

CHAIR SPEARMAN:
I will open the hearing on S.B. 269.

SENATE BILL 269: Revises provisions relating to dental insurance. (BDR 57-817)

SENATOR BEN KIECKHEFER (Senatorial District No. 16):
Senate Bill 269 relates to the recovery of overpayments made from dental insurance plans to doctors and to coverage of benefits after a prior authorization. Language would be inserted into NRS 687B, Contracts of Insurance, and NRS 695D, Plans for Dental Care.

PAUL KLEIN (Nevada Dental Association):
Senate Bill 269 creates sensible policy that protects patients from surprise billings. The bill cleans up insurance claim denials, a process that has likely confused and frustrated many of us at some point.

Arizona or California residents who live near the border and meet this standard. Since the law has not been passed yet, we have no statistics for an "as applied" analysis.

SENATOR PICKARD:
I had concerns given the narrative that is now part of the legislative history of S.B. 44. I will vote no, but reserve the right to vote differently on the Senate Floor.

CHAIR SPEARMAN:
The Legal Division of the Legislative Counsel Bureau is the final arbiter of the legality of proposed legislation.

SENATOR LANGE MOVED TO AMEND AND DO PASS AS AMENDED S.B. 44.

SENATOR SCHEIBLE SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS HARDY, PICKARD AND SETTELMEYER VOTED NO.)

* * * * *

MR. MELGAREJO:
Senate Bill 289 was heard by the Committee on April 2, and revises various provisions concerning workers' compensation. The Nevada Justice Association proposes several amendments, as detailed in the work session document (Exhibit C).

SENATE BILL 289: Revises provisions relating to workers' compensation. (BDR 53-713)

Amendment item 2 in Exhibit C adds a new subsection to section 1 to authorize the rating doctor to apportion the rating under certain conditions, provided the doctor can meet the requirements of subsection 2.

JASON MILLS (Nevada Justice Association):
Section 1, subsection 4 was arrived at by agreement with stakeholders. The subsection provides for the instance in which there is no documentation but

there is physical evidence of prior surgery to the affected body part. Notwithstanding the lack of documentation, the measure provides that the rating doctor may apportion the rating provided the doctor meets the requirements of subsection 2.

SENATOR SETTELMEYER:
On page 30 of the amendment, language in section 9 is changed to "the insurer must include at least three vocational rehabilitation counselors who are employed by separate organizations or entities". Do we have enough vocational rehabilitation counselors in Nevada to fulfill this requirement?

MR. MILLS:
That provision was inserted to encourage competition. We noted the frequency with which three counselors from one company were being offered to the claimant. The counselors must be licensed in Nevada.

SENATOR SETTELMEYER:
Do we have enough licensed counselors in Nevada to meet this requirement?

MR. MILLS:
There are more than three employed by separate companies. I have worked with at least a dozen in the State.

SENATOR NEAL:
Looking at section 1, subsection 4, does a patient have a process by which to appeal a rating?

MR. MILLS:
Assume a person had prior spinal fusion surgery. Perhaps it was decades ago in another state or country. An x-ray clearly shows the hardware in this individual's back. Lack of documentation should not be the basis for disallowing apportionment when there is clear, objective proof of a prior surgery. Through a preponderance of the evidence, a rating doctor can use the guidelines to apply an apportionment. This is current practice—the bill clarifies it.

SENATOR NEAL:
Is the bill retroactive? Can a processed claim be reviewed with the new guidelines in place?

MR. MILLS:
It only applies to open claims. However, claims can be reopened under existing law.

MR. KEANE:
Based on what Mr. Mills said, the amended language in section 1, subsection 4, should have the added clause "other than any requirement to have medical records or to base a rating upon medical records". Could he confirm that for me?

MR. MILLS:
That is the intent.

SENATOR PICKARD MOVED TO AMEND AND DO PASS AS AMENDED S.B. 289.

SENATOR NEAL SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

MR. MELGAREJO:
Senate Bill 290 enacts provisions relating to prescription drugs for the treatment of cancer and was heard by the Committee on April 1. Senator Lange has proposed several amendments which are detailed in the work session document (Exhibit D).

SENATE BILL 290: Enacts provisions relating to prescription drugs for the treatment of cancer. (BDR 57-973)

SENATOR PICKARD:
The bill seems to exempt a health insurer from the requirement if they use a formulary. Nearly every insurer uses a pharmacy benefit manager (PBM) and a formulary. Why do we exempt the majority of insurers? Is there a legal reason?

MR. KEANE:
There is no legal requirement. The provision would seem to dramatically reduce the applicability of the bill.

Assemblyman O'Neill:
I have a relatively simple question. I think I like the bill. I feel fairly certain I like the bill. This is a yes or no answer. If this bill became instituted in the state, are the projections then that it will save money in our unemployment insurance, in the programs, keep people partially working, and keep our unemployment rates down? That is the way I understand it. Is that a fair understanding of the bill proposal?

Jeffrey Frischmann:
Yes.

Chair Jauregui:
Are there any other questions? [There were none.] At this point, we will move to testimony in support of S.B. 308 (R1). Is there anyone wishing to testify in support? [There was no one.] Is there anyone wishing to testify in opposition? [There was no one.] Is there anyone wishing to testify in neutral? [There was no one.] Senator Dondero Loop, would you like to give any closing remarks?

Senator Dondero Loop:
Thank you very much. I know it has been a long day, so I appreciate your time.

Chair Jauregui:
I will close the hearing on S.B. 308 (R1). That brings us to our last bill hearing for the day. It is Senate Bill 289 (1st Reprint). I will open the hearing on Senate Bill 289 (1st Reprint). Senator Harris has instructed me that she will not be present for the bill presentation and said the bill is in good hands with her friends Jason Mills and Erica Tosh, who I believe are with us on Zoom.

Senate Bill 289 (1st Reprint): Revises provisions relating to workers' compensation. (BDR 53-713)

Jason D. Mills, Treasurer, Nevada Justice Association:
I have Erica Tosh with me today, who is also from the Nevada Justice Association. We worked closely with Senator Harris on this bill, as well as all the various stakeholders in the field, including our friends in organized labor, Nevada Resort Association, Nevada Self Insurers Association, and Employers Insurance Company of Nevada. Nevada Resort Association and Employers Insurance Company of Nevada indicated that I could represent today, and they are in support of this bill moving forward.

Because I know this is a long day, in the interest of time, I am going to go through and explain. Senate Bill 289 (1st Reprint) has various sections to it. The way the Legislative Counsel Bureau has drafted it, because it touches so many different areas of law, it causes the sections to jump around a little bit, but the issues are the same. I am going to address them by issues and then reference the sections, if that would help.

First and foremost is that sections 1 and 7 are dealing with what is called the apportionment of permanent partial disability (PPD) and forced installments. Permanent partial disability awards are at the end of cases. Current case law basically says if you have prior injury or prior award, if the same body part is indicated, then the reward would be apportioned or reduced. That is existing law. What we are looking to do in sections 1 and 7 is to further clarify exactly how apportionment should be done. Specifically, how the apportionment should be done, through prior PPDs, or if there are existing medical records that would show that a person had an actual impairment prior to the injury. Finally, if there were no medical records available, there is a section in the bill, namely section 1, subsections 4 and 5, that indicates evidence of a prior surgery would allow for apportionment.

The next issue to be addressed is found in sections 2, 4, 6, and 10. That has to do with the proof of service and determinations by insurers on claimants. What we do, if requested, would require an insurer—when they issue one of their determinations to a claimant—they would have to send it either by fax or through other electronic transmission with proof of sending and receipt that is readily verifiable. This is to address the issue of determinations that sometimes are questioned whether or not they have actually been served on the parties. All it does, if there is no proof of service, is to simply toll the statute until the parties have acknowledged their receipt or are able to prove their receipt and they did deliver it.

The next issue to be addressed is in section 3. It introduces lien language into the Industrial Insurance Act that is essentially in complement to Senate Bill 33 of the 80th Session to carry out the intent of the 2019 Session to allow the lien language that was created there to also exist inside of the act and, therefore, be internally consistent.

The next issue is in section 5. That is with regard to the recoverable costs that can be incurred in the workers' compensation plan. Currently, there is no mechanism for an injured worker to recover any costs from having to fight or defend an industrial insurance claim. Particularly, these costs sections would allow for recovery if they are successful on a litigated matter, such as deposition costs, clerk of the court costs, expert witness costs, postage, copies, and travel to the deposition costs. It would only apply to the costs that were generated as a matter from the issue that we are actually litigating. It is not the cost of the entire claim, but only those issues that incur costs that are actually litigated. It would then be supplied to the insurer, so the insurer has the right to review it. If the parties do not agree on those costs, then the appeals officer would then adjudicate that.

The next issue has to do with the effect of signing lump sum or award payments—what we call PPD awards—and the implication of what that does to your claim. That is found in section 8. Currently, the law says when a claimant signs those election papers in workers' compensation awards, it extinguishes all issues that are pending on a case, except for the right to reopen, vocational rehabilitation benefits, and penalties that the Division of Industrial Relations, Department of Business and Industry has levied. This section would make an amendment that if there is any pending contested matter at the time of signing the PPD or award documents, those too are preserved. The exception would be that the scope of claim could no longer be fought over, whether or not the claimant was stable and ratable could no

longer be fought over, and the average monthly wage could no longer be fought over. However, such issues like out-of-pocket expenses that are often left hanging at the time when the award needs to be signed by the claimant, if they are in pending litigation, then they would be able to continue on that issue; or, for example, retroactive benefits that were still owed that they would otherwise lose if they signed the award, even though the parties already agreed what the award is.

I think it is important to point out that the intent and meaning of the phrase that has to do with when any contested matter is pending at the time of the signing of the PPD documents essentially means it has been filed in front of the hearing office, appeals office, district court, court of appeals, Supreme Court, or any other court of competent jurisdiction. Those are the five issues that I am addressing today. My colleague, Ms. Tosh, will address the other three issues that are in this bill.

Erica Tosh, representing Nevada Justice Association:
I will be discussing those sections that have not already been covered by my colleague. Specifically, under S.B. 289 (R1), nurse practitioners and physician assistants have been added as medical professionals who will be able to provide initial treatments and examinations to industrial claimants. It allows the nurse practitioners and physician assistants to also complete C-4 forms, which are a necessary requirement for an injured worker to initiate a workers' compensation claim. These medical providers can also be required to testify and have their opinion now considered and relied upon by appeals officers, hearing officers, and parties. They can be held in the same standard for filing as the physicians who are currently treating injured workers. Further, by having nurse practitioners and physician assistants assist in helping injured workers, they are able to obtain medical attention more quickly in rural areas of Nevada where medical doctors are often not as readily accessible as they are in urban areas.

The language dealing with nurse practitioners and physician assistants is kind of spread out throughout the bill, but you can most readily find it under sections 1.2, 1.4, 1.6, 1.8, 2.2, 2.4, 2.6, 2.8, 3.3, 3.7, 4.5, 6.3, 6.7, and 9.5.

Next, dealing with sections 2, 4, 6, and 10, this bill will allow for electronic transmission of determinations, medical signatures, and the providing of proof of service by electronic means should the claimant or a person acting on behalf of the claimant choose this method of service. This section goes both to the expediency and ease of delivery of documents in industrial claims and allows the time in filing of appeals as needed. In addition, proof of service by electronic means must be maintained and made readily available if requested.

Lastly, section 9 pertains to the location of rehabilitation counselors and selection process that we use for those counselors. During the last legislative session, Assembly Bill 128 of the 80th Session passed, allowing claimants to choose between three vocational rehabilitation counselors when they were eligible for those benefits. What occurred after the passage of A.B. 128 of the 80th Session was that the insurers and third-party administrators would provide three counselors from the same company, thereby, in essence, eliminating the

choice aspect for the claimant. Section 9 of S.B. 289 (R1) is intended to rectify that situation by requiring that three counselors be from different entities or companies, thus reinstating the choice that was originally intended under A.B. 128 of the 80th Session.

In short, these sections here provide additional medical professions that can be available to claimants' industrial claims; it modernizes the service of documents; and it clarifies requirements for vocational rehabilitation counselor assignments. With that, I will give it back to my colleague, Mr. Mills.

Jason Mills:
Madam Chair, that concludes our presentation. We wanted to leave as much time as possible for any questions that you or any of the members of the Committee may have. We are available for any of your questions.

Chair Jauregui:
Are there any questions?

Assemblywoman Carlton:
In all my years in this building doing workers' compensation bills, thank you for having such a concise presentation. It is my impression with talking with the folks who were involved in this particular bill—which is always really great for workers' compensation—is that there were a lot of people at the table, and this was a very highly negotiated bill. Everyone found a way to get where they needed to be to address the issues in this bill. Am I correct?

Jason Mills:
Yes, that is correct. We spoke with all of the major stakeholders, as I said, including the Nevada Resort Association, Nevada Self Insurers Association, and Employers Insurance Company of Nevada. In fact, much of this bill contained language from a bill that Nevada Self Insurers Association had pending under Senate Bill 266, and we incorporated much of the language from their bill into this bill to achieve such a wide consensus on this matter.

Assemblywoman Carlton:
It is always good when the opposition stuff is in your bill, too, so that way you both have just as much to lose. Thank you very much for all of your hard work on this. I think this will benefit the folks you are trying to take care of. The goal in this state has always been to get injured workers back to work. That is our main goal, but we know if that does not happen, there are a lot of other things that need to work through the system in order to take care of that injured worker.

Assemblyman Flores:
Thank you for that presentation. I think you did a great job walking us through that. I think it would be great for the Committee and for the record to understand some of the really bad practices that are out there, and how some members in Nevada are disproportionately impacted when we talk about workers' compensation. Say we were comparing an injured employee from our rurals versus maybe Las Vegas or Reno. I laid that foundation so we

can talk a little bit about inserting the language of nurses and physician assistants. My understanding is that at times, there is paperwork that is completed by nurses and physician assistants, and later it results in those claims being denied because the medical doctors did not sign off on those. Obviously, there are a whole host of issues behind that. I think if you could provide some context to that and really explain to folks what is happening out there, I think they will see why this is so important.

Erica Tosh:
Just to address a few of those issues, what we see on a pretty regular basis is that individuals seek out medical attention quickly after an injury. However, there may not be medical providers available to them in the rural areas; therefore, there is a delay in getting that type of C-4 document we need to initiate a claim. Providing nurse practitioners and physician assistants in those areas—which are more readily available—will allow injured workers to get the necessary documents they need to pursue their claim and, ideally, get treatment a lot quicker than they often are. Here in urban areas, we have general facilities, like a central medical center, which is pretty readily available for people to seek medical attention, and they offer 24-hour care. But you do not see that in other areas of the state. The bill was designed in order to accommodate those areas that are underserved, so injured workers can reap the benefits of getting the attention they need when they are injured on the job.

Assemblyman Flores:
I appreciate your putting that language in there. I had an opportunity to reach out to a bunch of folks ahead of this hearing, and they were very appreciative. I wanted to put that on the record for all that work you have put in.

Chair Jauregui:
Are there any other questions? [There were none.] We will move into testimony in support of S.B. 289 (R1). Is there anyone wishing to testify in support?

Robert Ostrovsky, representing Nevada Resort Association; and Employers Insurance Company of Nevada:
The Employers Insurance Company of Nevada is the company that was developed from the old State Industrial Insurance System. I would just like to thank the members of both the Nevada Justice Association—Jason Mills in particular—and the Nevada Self Insurers Association. We worked our way through many issues in this bill. We think we reached a very good balance and brought clarity to a number of areas in the law, which will assist employees and allow employers and their administrators a reasonable opportunity to bring forward their cases at the same time. We think this is a very balanced bill, and we wholeheartedly support it and ask the Committee's support.

Sarah Adler, representing Nevada Advanced Practice Nurses Association:
The evaluations required for assessing injured workers are within the scope of practice of nurse practitioners. As Ms. Tosh has detailed, S.B. 289 (R1) recognizes the full practice authority, accountability, and confidence of advanced practice registered nurses (APRNs).

As Assemblyman Flores just pointed out, APRNs are fully trained in completing the C-4 claims and other responsibilities. The passage of S.B. 289 (R1) will streamline delivery of medical care to injured workers. The Nevada Advanced Practice Nurses Association appreciates Senator Harris bringing this forward.

Chair Jauregui:
Is there anyone else wishing to testify in support? [There was no one.] Is there anyone wishing to testify in opposition?

Dalton Hooks, representing Nevada Self Insurers Association:
I apologize, I did not get in the queue under support. I am calling in support of this bill. We want to thank Mr. Mills as well as the other stakeholders for their work in getting this very important bill together. I apologize for being under the opposition call. I am having some phone problems.

Chair Jauregui:
Is there anyone else wishing to testify in opposition? [There was no one.] Is there anyone wishing to testify in neutral? [There was no one.] Presenters, would you like to give any closing remarks?

Jason Mills:
I would like to say thanks to Senator Harris for bringing together this much-needed legislation. I would like to thank this Committee for taking this bill into consideration. I ask for your support. I would also like to thank the stakeholders that we worked with: Nevada Resort Association, Nevada Self Insurers Association, Employers Insurance Company of Nevada, and other stakeholders. We really appreciate them.

If I may, Madam Chair, address Assemblywoman Carlton and say that I truly have enjoyed working with you over the years and appearing before you on these issues of workers' compensation. Your dedication and understanding of these topics have always been refreshing to me, and I wanted to say, you will be missed.

Chair Jauregui:
With that, I will close the hearing on S.B. 289 (R1). We have one item left on our agenda, which is public comment. Is there anyone wishing to give public comment? [There was no one.] Are there any other comments from Committee members before we adjourn? [There were none.] At this time, I do want to wish all of our mothers on the Committee and all of our mothers who are Committee staff a very happy Mother's Day this weekend. Please go home and enjoy a wonderful time with your family.

We are adjourned [at 3:13 p.m.].

RESPECTFULLY SUBMITTED:

_____
Paris Smallwood
Recording Secretary

RESPECTFULLY SUBMITTED:

_____
Julie Axelson
Transcribing Secretary

APPROVED BY:

_____
Assemblywoman Sandra Jauregui, Chair

DATE: _____

Paul J. Klein, M.B.A., Government Relations and Public Affairs, TriStrategies, proposes the following amendment:

> Amend subsection 1(g) of section 5 and subsection 1(g) of section 11 to delete the requirement that, in order to deny a claim for which prior authorization was granted because the insured was not eligible to receive the dental care for which the claim was made, the dental insurer or administrator must not have known of the eligibility status of the insured and could not have discovered the eligibility status of the insured through reasonable care.

Chair Jauregui:
Members, are there any questions?

Assemblywoman Carlton:
This amendment reads a little wonky, but I believe it actually gets to the point. The Committee had concerns about folks going in, eligibility and prior authorization are not necessarily the same thing; they are not all in real time. I think this addresses the issue to make sure that the dental practitioner knows the rules of the road and the patient knows the rules of the road when they go in to get these procedures taken care of. I am really hoping this says what I think it says.

Chair Jauregui:
At this time, I would look for a motion to amend and do pass Senate Bill 269.

> ASSEMBLYWOMAN CARLTON MADE A MOTION TO AMEND AND DO PASS SENATE BILL 269.
>
> ASSEMBLYMAN O'NEILL SECONDED THE MOTION.

Is there any discussion on the motion? [There was none.]

> THE MOTION PASSED. (ASSEMBLYWOMAN HARDY WAS ABSENT FOR THE VOTE.)

I will assign that floor statement to Assemblyman O'Neill. Next on our agenda, we have Senate Bill 289 (1st Reprint).

Senate Bill 289 (1st Reprint): Revises provisions relating to workers' compensation. (BDR 53-713)

Marjorie Paslov-Thomas, Committee Policy Analyst:
Senate Bill 289 (1st Reprint) revises provisions relating to workers' compensation [Ms. Paslov-Thomas read from Exhibit M]. It is sponsored by Senator Harris and was heard on May 7, 2021. Senate Bill 289 (1st Reprint) revises various provisions concerning workers' compensation. The bill prohibits an apportionment of percentages of disabilities

where no rating evaluation was performed for the previous disability unless the insurer proves by a preponderance of the evidence that certain specific medical evidence supports a specific percentage of previous disability. The bill further prohibits any reduction of the percentage of present impairment if no medical documentation or health care records of a preexisting impairment exist, unless certain evidentiary requirements are satisfied. The bill also requires an insurer to commence making installment payments to an injured employee within a specified period of time and without requiring the employee to elect a method of payment, for that portion of an award of compensation for permanent partial disability which is not in dispute. The bill further requires an insurer to send its determination by facsimile or electronic transmission to a claimant if requested and provides for the tolling of certain periods to request a hearing or appeal if the insurer fails to send a determination regarding a claim for compensation.

In addition, the bill authorizes a physician assistant or an advanced practice registered nurse to examine a patient for the purpose of ascertaining the character and extent of an injury and to file a claim for compensation for an industrial injury or occupational disease. A claim for compensation may be signed with the original or electronic signature of the injured employee and the treating health care provider. Further, the bill authorizes a person's compensation payable or paid for an industrial injury or occupational disease may be subject to an attorney's lien. Finally, the bill revises certain requirements governing the appointment of a vocational rehabilitation counselor for an injured employee. There are no proposed amendments.

Chair Jauregui:
Members, are there any questions on Senate Bill 289 (1st Reprint)? [There were none.] I would look for a motion to do pass Senate Bill 289 (1st Reprint).

> ASSEMBLYWOMAN CARLTON MADE A MOTION TO DO PASS SENATE BILL 289 (1ST REPRINT).
>
> ASSEMBLYWOMAN CONSIDINE SECONDED THE MOTION.

Is there any discussion on the motion? [There was none.]

> THE MOTION PASSED. (ASSEMBLYWOMAN HARDY WAS ABSENT FOR THE VOTE.)

I will assign that floor statement to Assemblywoman Considine. Next on our agenda, we have Senate Bill 303 (1st Reprint).

Senate Bill 303 (1st Reprint): Revises provisions relating to professions. (BDR 54-669)

Marjorie Paslov-Thomas, Committee Policy Analyst:
Senate Bill 303 (1st Reprint) revises provisions relating to professions [Ms. Paslov-Thomas read from Exhibit N]. It is sponsored by Senators Brooks and Spearman and was heard on

SB289

Final Passage

Assembly (1st Reprint)

Passed	Yes (Constitutional Majority)
Date	Friday, May 21, 2021

Votes

- **All: 42**
- **Yea: 41**
- **Nay: 0**
- **Excused: 0**
- **Not Voting: 0**
- **Absent: 1**

Senate (As Introduced)

Passed	Yes (Constitutional Majority)
Date	Tuesday, April 20, 2021

Votes

- **All: 21**
- **Yea: 21**
- **Nay: 0**
- **Excused: 0**
- **Not Voting: 0**
- **Absent: 0**

American Medical Association
Physicians dedicated to the health of America

Guides *to the* Evaluation *of* Permanent Impairment

Fifth Edition

Linda Cocchiarella, MD, MSc, AMA Medical Editor
Gunnar B. J. Andersson, MD, PhD, Senior Medical Editor

AMA press
AA 2194

Given the range, evolution, and discovery of new medical conditions, the *Guides* cannot provide an impairment rating for all impairments. Also, since some medical syndromes are poorly understood and are manifested only by subjective symptoms, impairment ratings are not provided for those conditions. The *Guides* nonetheless provides a framework for evaluating new or complex conditions. Most adult conditions with measurable impairments can be evaluated under the *Guides*. In situations where impairment ratings are not provided, the *Guides* suggests that physicians use clinical judgment, comparing measurable impairment resulting from the unlisted condition to measurable impairment resulting from similar conditions with similar impairment of function in performing activities of daily living.

The physician's judgment, based upon experience, training, skill, thoroughness in clinical evaluation, and ability to apply the *Guides* criteria as intended, will enable an appropriate and reproducible assessment to be made of clinical impairment. Clinical judgment, combining both the "art" and "science" of medicine, constitutes the essence of medical practice.

1.6 Causation, Apportionment Analysis, and Aggravation

1.6a Causation

Physicians may be asked to provide an opinion about the likelihood that a particular factor (injury, illness, or preexisiting condition) caused the permanent impairment. Determining causation is important from a legal perspective, as it is a factor in determining liability.

The term **causation** has multiple meanings. *Dorland's Illustrated Medical Dictionary* lists 12 different types of "cause" including constitutional, exciting, immediate, local, precipitating, predisposing, primary, proximate, remote, secondary, specific, and ultimate.[21] For purposes of the *Guides,* causation means an identifiable factor (eg, accident or exposure to hazards of a disease) that results in a medically identifiable condition.

Medical or scientifically based causation requires a detailed analysis of whether the factor could have caused the condition, based upon scientific evidence and, specifically, experienced judgment as to whether the alleged factor in the existing environment did cause the permanent impairment.[22] Determining medical causation requires a synthesis of medical judgment with scientific analysis.

The legal standard for causation in civil litigation and in workers' compensation adjudication varies from jurisdiction to jurisdiction.[23] The physician needs to be aware of the different interpretations of causation and state the context in which the physician's opinion is being offered.

1.6b Apportionment Analysis

Apportionment analysis in workers' compensation represents a distribution or allocation of causation among multiple factors that caused or significantly contributed to the injury or disease and resulting impairment. The factor could be a preexisting injury, illness, or impairment. In some instances, the physician may be asked to apportion or distribute a permanent impairment rating between the impact of the current injury and the prior impairment rating. Before determining apportionment, the physician needs to verify that all the following information is true for an individual:

1. There is documentation of a prior factor.
2. The current permanent impairment is greater as a result of the prior factor (ie, prior impairment, prior injury, or illness).
3. There is evidence indicating the prior factor caused or contributed to the impairment, based on a reasonable probability (> 50% likelihood).

The apportionment analysis must consider the nature of the impairment and its possible relationship to each alleged factor, and it must provide an explanation of the medical basis for all conclusions and opinions. Most states have their own customized methods for calculating apportionment. Generally, the most recent permanent impairment rating is calculated, and then the prior impairment rating is calculated and deducted. The remaining impairment rating would be attributed or apportioned to the current injury or condition.

A common verbal formulation in the workers' compensation context might state, "in cases of permanent disability less than total, if the degree of disability resulting from an industrial injury or occupational disease is increased or prolonged because of a preexisting physical impairment, the employer shall be liable only for the additional disability from the injury or occupational disease."[5]

For example, in apportioning a spine impairment rating in an individual with a history of a spine condition, one should calculate the current spine impairment. Then calculate the impairment from any preexisting spine problem. The preexisting impairment rating is then subtracted from the present impairment rating to account for the effects of the former. This approach requires accurate and comparable data for both impairments.[23]

1.6c Aggravation

Aggravation, for the purposes of the *Guides,* refers to a factor(s) (eg, physical, chemical, biological, or medical condition) that alters the course or progression of the medical impairment. For example, an individual develops low back pain and sciatica associated with the finding of an L3-L4 herniated disk. Symptoms continue but are intermittent and do not interfere with performing activities of daily living. A few years later, the individual twists his body while lifting a heavy package and develops constant, severe, acute low back pain and sciatica. Imaging studies show no change in the herniated disk compared to earlier studies. The lifting is considered to have aggravated a preexisting condition.

Terms such as *causation, apportionment,* and *aggravation* may all have unique legal definitions in the context of the system in which they are used. The physician is advised to compare these definitions with terminology accepted by the appropriate state or system.

1.7 Use of the Guides

Because of the scope, depth, standardized approach, and foundation in science and medical consensus, the *Guides* is used worldwide to estimate adult permanent impairment. A survey completed in 1999 indicates that in the United States, 40 of 51 jurisdictions (50 states and the District of Columbia) use the *Guides* in workers' compensation cases because of statute or regulations, or by administrative/legal practice.[24]

The *Guides* is formally accepted through adoptive language in each jurisdiction's statutes (laws passed by a state legislature or the US Congress), court-made law (case law or precedent), or administrative agency regulation (rules promulgated by administrative agencies such as a state workers' compensation board). It is this statutory, judicial, or regulatory adoptive language that determines which edition of the *Guides* is mandated in a particular jurisdiction. Some states, such as Oregon and Florida, have developed their own impairment criteria, modeled on the concepts and material in the *Guides.* The *Guides* is also extensively used by the federal systems, eg, FECA (Federal Employees' Compensation Act). The most recent edition of the *Guides* is recommended as the latest blend of science and medical consensus.

Beyond the United States, the *Guides* is used in Canada, Australia, New Zealand, South Africa, and European countries for different applications, including workers' compensation, personal injury, and disability claim management. There is a growing international trend to adopt a standardized, medically accepted approach to impairment assessment such as in the *Guides.* As previously stated, the *Guides* is not to be used for direct financial awards nor as the sole measure of disability. The *Guides* provides a standard medical assessment for impairment determination and may be used as a component in disability assessment.