

1                   **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 LAS VEGAS METROPOLITAN  
3 POLICE DEPARTMENT; AND  
4 CANNON COCHRAN MANAGEMENT  
5 SERVICES, INC.,

6                   Appellants,

7                   v.

8 STATE OF NEVADA DEPARTMENT  
9 OF BUSINESS AND INDUSTRY,  
10 DIVISION OF INDUSTRIAL  
11 RELATIONS; AND STATE OF  
12 NEVADA BOARD FOR THE  
13 ADMINISTRATION OF THE  
14 SUBSEQUENT INJURY ACCOUNT  
15 FOR SELF-INSURED EMPLOYERS,

16                   Respondents.

Supreme Court Case No.: 83262

Electronically Filed  
Jan 06 2022 06:35 p.m.

District Court Case No.: A-20-821892-1  
Elizabeth A. Brown  
Clerk of Supreme Court

17                   **APPELLANTS' APPENDIX VOLUME I**

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Statement of Intent to Participate in Petition for Judicial Review by Board for the Administration of the Subsequent Injury Account for Self-Insured Employers, filed October 14, 2020	I	00151-00153
Transmittal of Administrative Record on Appeal, filed November 9, 2020 <sup>1</sup>	I	00154-00157

<sup>1</sup> The documents contained in the Record on Appeal are indexed individually in alphabetical order. The documents, however, were arranged chronologically in the Record on Appeal which is how they are presented attached hereto.



**BRIAN SANDOVAL**  
Governor

WCS Contact  
Information  
Main: 702-486-8080  
Fax: 702-980-0364  
<http://wcs.nv.gov>

**STATE OF NEVADA**



**CJ MANTHE**  
Director

**JOSEPH "JD"  
DECKER**  
Administrator

**CHARLES J. VERRE**  
Chief Administrative  
Officer

**DEPARTMENT OF BUSINESS AND INDUSTRY  
DIVISION OF INDUSTRIAL RELATIONS  
WORKERS' COMPENSATION SECTION  
1301 N. Green Valley Parkway, Suite 200  
Henderson, Nevada 89074**

**MEMORANDUM**

**TO:** The Board for Administration of Subsequent Injury Account for Self-Insured Employers

**FROM:** Charles J. Verre, Chief Administrative Officer, Workers' Compensation Section

**SUBJECT:** Administrator's Recommendation on Request for Reimbursement from the Subsequent Injury Account Pursuant to NRS 616B.557

Claim No: 12D34C229979  
Date of Injury: 06-22-12  
Insurer: Las Vegas Metropolitan Police Department  
Employer: Las Vegas Metropolitan Police Department  
Third-Party Administrator: CCMSI8  
Submitted By: Kim Price with Lewis Brisbois Bisgaard & Smith LLP

**DATE:** April 18, 2018

**ADMINISTRATOR'S RECOMMENDATION:**

It is the Administrator's recommendation to accept this request pursuant to NRS 616B.557 for the right shoulder only. The cervical and lumbar spine do not qualify for consideration and were not requested by the insurer.

**AMOUNT OF REIMBURSEMENT:**

The total amount requested for reimbursement is \$14,008.47. This amount was under by \$13,952.14 in medical expenses. There were amounts listed on the Paid Transaction sheets that were not included on the calculator tapes and some amounts that were, however, the amounts that were not requested were not crossed out so all amounts had to be considered. The amount that should have been requested for reimbursement is \$27,960.61. This claim had subrogation recovery that was included in the request. The amount of verified costs is \$<69,630.88>. Since there was subrogation recovery the amount to be considered is less than the actual amount spent on the claim. Disallowances under this claim are considered against all expenses prior to the reduction of the subrogation recovery, therefore, allowing no reimbursement at this time. An explanation of the disallowance is attached to this letter.

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Claim No: 12D34C229979

Insurer: Las Vegas Metropolitan Police Department

April 18, 2018 Recommendation Memorandum

**BACKGROUND:**

This request was received from Kim Price with Lewis Brisbois Bisgaard & Smith LLP on April 10, 2018.

**PRIOR HISTORY:**

This employee was hired by the Las Vegas Metropolitan Police Department (LVMPD) on July 18, 2006.

On September 29, 2006, while he was in the academy, this gentleman injured his right knee. The C-3 Form listed a right knee strain. The C-4 Form, dated September 29, 2006, listed sprain/strain of the right knee (pp.1-2).

The insurer submitted several documents to be considered for the requirement of employer knowledge of the pre-existing permanent physical impairment and they are as follows:

- Occupational Injury/Illness/Exposure Report from the LVMPD dated October 3, 2006 and signed by a supervisor. This report listed the right knee as the injured body part and was received by the employer on October 3, 2006 (pp.3);
- A LVMPD Officer's Report, dated September 29, 2006, that described the nature of the injury to the right knee. This form was received by the employer on October 3, 2006 (pp.4); and
- A LVMPD Medical Evaluation Form, dated October 3, 2006 and received by the employer on October 3, 2006 that noted a meniscal tear to the right knee (pp.5).

This is the extent of the employer's documents concerning this date of injury. The injured employee sought treatment at UMC and was diagnosed with sprain/strain of the right knee and x-rays were normal. He was taken off work through October 3, 2006 and then released to modified duty (pp.6-7).

The patient saw Dr. Higgins on October 3, 2006. His impression was a bucket handle tear, medial semilunar cartilage and he requested surgery. The patient had partial debridement of the anterior cruciate ligament (ACL) with partial synovectomy and medial meniscorrhesis on October 4, 2006 (pp.8-9).

In follow up reports, Dr. Higgins released the patient to full duty on October 23, 2006 and noted he was still working through the academy and an ACL repair after he was finished would be considered. The patient attended physical therapy and was given a knee brace. As of February 13, 2007, the patient had an ACL deficient knee. He was working in the field and could continue as long as he protected the knee. He was released from care (pp.10-11). This is the extent of the

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medical records for this date of injury. It should be noted the injured employee was not rated.

On January 6, 2008, during a foot pursuit, this employee fell into a hole and twisted his right knee. The C-3 Form indicated right knee strain and the January 7, 2008 C-4 Form also noted right knee strain. The C-4 Form was received by the employer on January 14, 2008 (pp.12-13).

The insurer submitted several documents to be considered for the requirement of employer knowledge of the pre-existing permanent physical impairment and they are as follows:

- A LVMPD Occupational Injury/Illness/Exposure Report, dated January 6, 2008 and signed by a supervisor. The form noted right knee pain with meniscus tear in Oct 2006 and surgery. This form was received by the employer on January 7, 2008 (pp.14);
- A February 25, 2008 Application for Leave for the right knee and off work status from February 2, 2008 through February 25, 2008. This was sent to the payroll department from a senior LEST with the employer. The form was also copied to the Risk Management Section for the employee's file (pp.15). Please note this form coincides with a surgical procedure;
- A June 30, 2008 Application for Leave for the right knee and off work status from June 16, 2008 through June 25, 2008. This form was sent to the payroll department from a senior LEST with the employer and also copied to the employee's file. This time frame also coincides with a surgery date (pp.16);
- A November 24, 2008 PPD evaluation penned by Dr. Perry. The report does not show that it was received by the employer (pp.18-21); and
- A January 11, 2010 PPD offer letter for 7% WPI for the 2008 right knee injury. This letter was copied to the employer however, there is no indication it was received by the employer (pp.17).

History for this injury was taken from the November 24, 2009 PPD evaluation penned by Dr. Perry. The injured employee had three additional surgeries under this claim and treated with Drs. Patti, Miao and Tingey. The last surgery was done in December 2008 with follow up under Dr. Tingey. Reporting under the PPD only goes through September 21, 2009 and the patient continued to follow up. He had been released to full duty and as of October 27, 2009, the patient had reached MMI and was stable and ratable (pp.22).

Dr. Perry evaluated this injured employee for permanent impairment and found 7% WPI and did not apportion for the prior injury or surgery. Please note that the rater was not furnished with any medical reporting prior to the 2008 date of injury and the patient denied any previous injuries to the right knee.

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**PRESENT CLAIM:**

This gentleman continued to work for the LVMPD and, on June 22, 2012, he was involved in a motor vehicle accident and injured his cervical and lumbar spine and right knee. The C-4 Form noted central cord syndrome (pp.23-24).

Medical reporting was taken from the November 8, 2012 PPD evaluation penned by Dr. Perry. The patient was taken to the hospital via ambulance, treated and released to follow up with Dr. Tingey for his knee and Dr. Flangas for the spine. MRI of the knee was done and the impression was sprain/strain with a history of ACL reconstruction and microfracture.

On September 5, 2012, the patient was taken to surgery for the right knee and underwent arthroscopic chondroplasty, medial femoral condyle with compartment synovectomy. He attended physical therapy and as of October 18, 2012, Dr. Tingey released him to full duty and he had reached MMI and was stable and ratable (pp.).

The injured employee was rated for the cervical and lumbar spine as well as the right knee. He was found to have 12% WPI, combined, for the cervical and lumbar spine and no additional impairment for the right knee (pp.25-29).

The claim was successfully subrogated and the insurer received reimbursement in the amount of \$83,325.00 to be applied to the claim.

**FINDINGS:**

A. NRS 616B.557 (1) states that if an employee of a self-insured employer has a permanent physical impairment from any cause or origin and incurs a subsequent disability by injury arising out of and in the course of his employment which entitles him to compensation for disability that is substantially greater by reason of the combined effects of the pre-existing impairment and the subsequent injury than that which would have resulted from the subsequent injury alone, the compensation due must be charged to the Subsequent Injury Account for Self-Insured Employers in accordance with regulations adopted by the Board.

Medical reporting supports a substantial increase in the costs of this claim for the right knee due to testing, evaluations and additional surgery.

Therefore, NRS 616B.557 (1) has been satisfied.

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B. NRS 616B.557 (3) states that as used in this section, "permanent physical impairment" means any permanent condition, whether congenital or caused by injury or disease, of such seriousness as to constitute a hindrance or obstacle to obtaining employment or to obtaining reemployment if the employee is unemployed. For the purposes of this section, a condition is not a "permanent physical impairment" unless it would support a rating of permanent impairment of 6 percent or more of the whole man if evaluated according to the American Medical Association's Guides to the Evaluation of Permanent Impairment as adopted and supplemented by the Division pursuant to NRS 616C.110.

This gentleman was rated at 7% WPI under his 2008 claim for the right knee.

Therefore, NRS 616B.557 (3) has been satisfied.

C. NRS 616B.557 (4) states that to qualify under this section for reimbursement from the Subsequent Injury Account for Self-Insured Employers, the self-insured employer must establish by written records that the self-insured employer had knowledge of the "permanent physical impairment" at the time the employee was hired or that the employee was retained in employment after the self-insured employer acquired such knowledge.

The file contained a LVMPD Medical Evaluation Form, dated October 3, 2006 and received by the employer on October 3, 2006 that noted a meniscal tear to the right knee.

Under the 2008 date of injury the employer submitted a LVMPD Occupational Injury/Illness/Exposure Report, dated January 6, 2008 and signed by a supervisor. The form noted right knee pain with meniscus tear in Oct 2006 and surgery. This form was received by the employer on January 7, 2008.

There were also two applications for leave submitted by a senior LEST from the employer to the payroll department for leave time for the February and June 2008 surgery dates.

Therefore, NRS 616B.557(4) has been satisfied.

D. NRS 616B.557(5) states a self-insured employer shall notify the Board of any possible claim against the Subsequent Injury Account for Self-Insured Employers as soon as practicable, but not later than 100 weeks after the injury or death.

Subsection five does not need to be satisfied in order for this claim to be considered for reimbursement since the date of injury is after the October 1, 2007 change in the requirements of the statute.

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**WITNESSES:**

List of witnesses who may be called to testify on behalf of the DIR and a brief summary of the proposed testimony of each.

Jacque Everhart, Compliance/Audit Investigator, Workers' Compensation Section who may testify as to the basis of the Administrator's recommendation.

The Administrator reserves the right to call rebuttal and impeachment witnesses.

**NOTIFICATION TO APPLICANT:**

Applicants are advised that they should not take for granted a recommendation of the Administrator to the Board, whether positive or adverse to the self-insured employer. The Administrator's role is to make recommendations, only. The Board is the body which decides the application on the merits. Its authority is plenary. Consequently, the applicant should be fully advised that the Board is free to accept or reject in whole or in part, the recommendation of the Administrator. In addition, the Board may agree with the Administrator's recommendation to accept or reject the claim, but make its decision based upon grounds totally different than the basis for the Administrator's recommendation, provided the decision is supported by substantial evidence in the record before the Board and the Board is correct in its disposition as a matter of law. Applicants are advised, then, to appear and represent their position to the Board. Applicants are also further advised to review the pertinent statutes and regulations found at NAC 616B.770 *et. seq.*, and NRS 616B.545 *et. seq.*, and any other statutes, regulations and case law that might apply, to make their own assessment of what might be required of them.

**SUBROGATION RECOVERY NOTICE:**

Please note that pursuant to NRS 616C.215, if an insurer receives reimbursement from the Subsequent Injury Account, the Nevada Division of Industrial Relations (DIR) has a statutory lien upon the total amount paid by the employer or upon the total proceeds of any recovery from a third party. Additionally, NRS 616C.215(8) makes the injured worker, claimant's counsel and third-party insurer jointly and severally liable for any amount to which the Subsequent Injury Account is entitled if the party has knowledge of the lien and does not notify the Administrator, DIR, for the Subsequent Injury Account within 15 days after the date of recovery by way of actual receipt of the proceeds of the judgment or settlement.

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Claim No: 12D34C229979

Insurer: Las Vegas Metropolitan Police Department

April 18, 2018 Recommendation Memorandum

### CERTIFICATE OF SERVICE

Kim Price

Lewis Brisbois Bisgaard & Smith LLP


2300 W. Sahara Avenue, Suite 300, Box 28

Las Vegas, Nevada 89102

I certify that I am an employee of the Division of Industrial Relations, Workers' Compensation Section, and on 4-18, 2018 I served the attached Administrator's Recommendation Memorandum on the person(s) listed above:

<input checked="" type="checkbox"/>	By placing an original or true copy thereof in a sealed envelope, postage prepaid, placed for collection and mailing in the United States Mail, at Henderson, Nevada
<input type="checkbox"/>	By personal delivery
<input type="checkbox"/>	By Federal Express or other overnight delivery
<input type="checkbox"/>	By Certified Mail/Return Receipt Requested

Dated this 18 day of April, 2018



Division of Industrial Relations  
Workers' Compensation Section

TO AVOID PENALTY, THIS REPORT MUST BE COMPLETED AND MAILED TO THE INSURER WITHIN 6 WORKING DAYS OF RECEIPT OF THE FORM				Please Type or Print		EMPLOYEE REPORT OF INDUSTRIAL INJURY OR OCCUPATIONAL DISEASE	
EMPLOYEE	Employer's Name <b>Las Vegas Metro Police Dept.</b>		Nature of Business (mfg., etc.) <b>Law Enforcement</b>		FEIN <b>88-6000028</b>		OSHA Log #
	Office Mail Address <b>400 E. Stewart Street</b>		Location...If different from mailing address <b>9880 W. Cheyenne Ave Las Vegas, NV 89129</b>		Telephone <b>(702) 795-3111</b>		
	City State Zip <b>Las Vegas, NV 89101</b>		INSURER <b>LVMPD</b>		THIRD-PARTY ADMINISTRATOR <b>CCMSI</b>		
	First Name <b>M.I.</b>	Last Name	Social Security <b>[REDACTED]</b>	Birthdate <b>[REDACTED]</b>	Age <b>30</b>	Primary Language Spoken	
	Home Address (Number and Street) <b>[REDACTED] STREET</b>		Sex <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female	Marital Status <input type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Divorced <input type="checkbox"/> Widowed			
	City State Zip <b>LAS VEGAS, NV 89135</b>		Was the employee paid for the day of injury? (if applicable) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		How long has this person been employed by you in Nevada? <b>0 yr</b>		
	In which state was employee hired? <b>NV</b>		Employee's occupation (job title) which hired or disabled <b>POLICE RECRUIT</b>		Department in which regularly employed <b>Training Sec 1 Academy</b>		
	Telephone (702) <b>[REDACTED]</b>		Is the injured employee a corporate officer? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Was employee in your employ when injured or disabled by occupational disease (O/D)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
	Date of Injury (if applicable) <b>09/29/2006</b>		Time of Injury (Hours; Minute AM/PM) (if applicable) <b>07:45 AM</b>		Date employer notified of injury or O/D <b>10/03/2006</b>		Supervisor to whom injury or O/D reported <b>SHELLIE CLARK</b>
	Address or location of accident (Also provide city, county, state) (if applicable) <b>PT Field behind Academy, 9880 W. Cheyenne Ave, Las Vegas, Clark, NV 89129</b>						Accident on employer's premises? (if applicable) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
ACCIDENT OR INJURY OR DISEASE	What was this employee doing when the accident occurred (loading truck, walking down stairs, etc.)? (if applicable) <b>Physical training</b>						
	How did this injury or occupational disease occur? Include time employee began work. Be specific and answer in detail. Use additional sheet if necessary. <b>Time began work: During physical training I was doing knee to stomach drills.</b>						
	Specify machine, tool, substance, or object most closely connected with the accident (if applicable)				Witness <b>TAC Officer Bland</b>		Was there more than one person injured in this accident? (if applicable) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Part of body injured or affected <b>Right KNEE(s)</b>		If fatal, give date of death		Witness		
	Nature of Injury or Occupational Disease (scratch, cut, bruise, strain, etc.) <b>STRAIN</b>				Witness <b>Recruit Boiko</b>		Will you have light duty work available if necessary? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	If validity of claim is doubted, state reason <b>no</b>				Location of Initial Treatment <b>UMC - RANCHO, . . .</b>		
	Treating physician/chiropractor name <b>Higgins, Gerald</b>				Emergency Room <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Hospitalized <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	IMPORTANT How many days per week does employee work? <b>4</b>		From 07:00 <input checked="" type="checkbox"/> am <input type="checkbox"/> pm To 05:00 <input type="checkbox"/> am <input checked="" type="checkbox"/> pm				Last day wages were earned
	Scheduled days off S <input checked="" type="checkbox"/> M <input checked="" type="checkbox"/> T <input checked="" type="checkbox"/> W <input type="checkbox"/> T <input type="checkbox"/> F <input type="checkbox"/> S <input type="checkbox"/> Rotating <input type="checkbox"/>		Are you paying injured or disabled employee's wages during disability? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No				
	Date employee was hired <b>07/18/2006</b>		Last day of work after injury or disability <b>09/29/2006</b>		Date of return to work <b>10/03/2006</b>		Number of work days lost <b>1</b>
Was the employee hired to work 40 hours per week? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		If not, for how many hours a week was the employee hired?		Did the employee receive unemployment compensation any time during the last 12 months? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Do not know			
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 off work 5 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: <input type="checkbox"/> SUN <input type="checkbox"/> TUE <input type="checkbox"/> THUR <input type="checkbox"/> SAT <input checked="" type="checkbox"/> MON <input type="checkbox"/> WED <input checked="" type="checkbox"/> FRI		Employee is paid: <input type="checkbox"/> WEEKLY <input type="checkbox"/> MONTHLY <input type="checkbox"/> OTHER <input checked="" type="checkbox"/> BI-WKLY <input type="checkbox"/> SEMI-MONTHLY		On the date of injury or disability the employee's wage was: \$ <b>22.24</b>		per <input checked="" type="checkbox"/> Hr <input type="checkbox"/> Day <input type="checkbox"/> Wk <input type="checkbox"/> Mo	
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:chc@govcha.state.nv.us">chc@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 <b>[Signature]</b>		Date <b>10/3/06</b>	
Claim is: <input type="checkbox"/> Accepted <input type="checkbox"/> Denied <input type="checkbox"/> Deferred <input type="checkbox"/> 3rd Party		Deemed Wage		Account No		Class Code	
Claims Examiner's Signature		Date		Status Clerk		Date	

711H34T576700

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## EMPLOYEE'S CLAIM FOR COMPENSATION/REPORT OF INITIAL TREATMENT

FORM C-4

PLEASE TYPE OR PRINT

EMPLOYEE'S CLAIM - PROVIDE ALL INFORMATION REQUESTED

Name	[REDACTED]	Birthdate	[REDACTED]	Sex	DM OF	Claim Number (Insurer's Use Only)
Home Address	[REDACTED]	Age	[REDACTED]	Height	6'6"	Weight
City	LV	State	NV	Weight	245	Social Security Number
Physical Address	[REDACTED]	State	NV	Telephone	[REDACTED]	Primary Language Spoken
						ENGLISH
	THIRD-PARTY ADMINISTRATOR	Employee's Occupation (job title) When Injury or Occupational Disease Occurred				

Employer's Name/Company Name **LVMPD** Telephone **229-3695**

Office Mail Address (Number and Street) **9880 W. CHEYNE AVE LV NV 89129**

Date of Injury (if applicable) **09/29/06** Hours Injury (if applicable) **7:45 am** Date Employer Notified **09/29/06** Last Day of Work After Injury or Occupational Disease **09/29/06** Supervisor to Whom Injury Reported **T/O BLAND**

Address of Location of Accident (if applicable) **9880 W. CHEYNE LV NV 89129**

What were you doing at the time of the accident? (if applicable) **PHYSICAL TRAINING**

How did this injury or occupational disease occur? (Be specific and answer in detail. Use additional sheet if necessary) **WAS DOING PHYSICAL TRAINING EXERCISE WHEN I BENT DOWN AND MY RT KNEE DIPPED.**

Do you believe that you have an occupational disease, when did you first have knowledge of the disability and its relationship to your employment? **N/A**

Witnesses to the Accident (if applicable) **T/O BLAND**

Part(s) of Body Injured or Affected **RT KNEE**

DATE **09/29/06** PLACE **QUICK CARE-RANCHO** EMPLOYEE'S SIGNATURE **[REDACTED]** RECEIVED

THIS REPORT MUST BE COMPLETED AND MAILED WITHIN 3 WORKING DAYS OF TREATMENT

ICE **RANCHO QUICK CARE** NAME OF FACILITY **UNIVERSITY MEDICAL CENTER** OCT 03 2006

to **9-29-06** Diagnosis and Description of Injury or Occupational Disease **Sprain/strain @ knee** Is there evidence that the injured employee was under the influence of alcohol and/or another controlled substance at the time of the accident? **NO** YES (if yes, please explain) **CCMSI-METRO**

ur **17:40** Have you advised the patient to remain off work five days or more? **NO** YES Indicate dates: from to

atment: **RICE X 20 MM. TLD NSAIDS** If modified duty, specify any limitations/restrictions: **Non weight bearing PLE**

ay Findings: **Neg.** Information given by the employee, together with medical evidence, can you directly connect this injury or occupational disease as job incurred? **YES** NO

Additional medical care by a physician indicated? **YES** NO

Do you know of any previous injury or disease contributing to this condition or occupational disease? **NO** YES (Explain if yes)

9-29-06 Print Doctor's Name **MARY BETTA, MSN, FNP, APRN, BC** I certify that the employer's copy of this form was mailed to the employer on **[REDACTED]**

INSURER'S USE ONLY **OCT 03 2006**

31 N. RANCH RD. State **NV** Zip **89130** Provider's Tax I.D. Number **88-6000436** Telephone **702 383-3800** Degree **N/A**

3 VEGAS, NEVADA 89130 Director's Signature **[REDACTED]**

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LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
OCCUPATIONAL INJURY/ILLNESS/EXPOSURE REPORT

1. Event #:

06-10-03-07

## PART ONE - STATEMENT OF INJURED EMPLOYEE

2. NAME: [REDACTED] 3. PW: [REDACTED] 4. AGE: [REDACTED] 5. SEX: M 6. DATE OF HIRE: 07-18-06 7. DATE OF BIRTH: [REDACTED] 8. SOCIAL SECURITY NUMBER: [REDACTED]  
HOME MAILING ADDRESS (R. Street, Bldg/Apt. R. City, State & Zip): [REDACTED] 10. HOME PHONE NUMBER: [REDACTED]

11. BUREAU OF ASSIGNMENT:

12. CLASSIFICATION:

13. MARITAL STATUS:

☒ Married ☐ Single

14. REGULAR WORK HOURS

15. RDO's

16. INJURY/ILLNESS/EXPOSURE:

Date: 09-29-06 Time: 0745

17. REPORTED TO SUPERVISOR:

Date: 09-29-06 Time: 0745

18. LEFT SHIFT:

Date: N/A Time: N/A

19. LOCATION OF OCCURRENCE: (Give Sufficient Detail):

WHERE: 9880 W. CHEYENNE ON PT FIELD BEHIND  
LV NV 89129 ACADEMY

20. WAS FIRST AID PROVIDED?

☒ Yes RECRUIT COLLINS ☐ No  
If yes, by whom?

21. ACTION:

☒ DOCTOR'S CARE ☐ E.R. CARE ONLY ☐ HOSPITALIZED ☐ NO ACTION TAKEN

22. BODY PART INJURED/EXPOSED:

RIGHT KNEE

23. NATURE OF INJURY/EXPOSURE SUSTAINED:

24. LOST TIME:

☐ Yes ☐ No

If yes, last day worked after injury:

If yes, disability slip from physician attached?

☐ Yes ☐ No

25. HOW DID THE INJURY/ILLNESS/EXPOSURE OCCUR?

(Note: If you are claiming an occupational disease, indicate the date on which the employee first became aware of the connection between the condition and employment.)  
HOW: DURING PHYSICAL TRAINING. I WAS DOING KNEE TO STOMACH DRILLS

26. DID THE ACCIDENT HAPPEN IN THE NORMAL COURSE OF WORK?

☒ Yes ☐ No (If applicable)

27. HAS EMPLOYEE RETURNED TO WORK?

☒ Yes ☐ No If yes, what date? 09-29-06

28. HAVE YOU HAD PREVIOUS INJURY/EXPOSURE TO BODY PART MENTIONED? (Explain)

NO

29. HOW MIGHT THIS INJURY/ILLNESS/EXPOSURE HAVE BEEN PREVENTED?

N/A

30. SPECIFY WHAT EQUIPMENT, OBJECTS OR SUBSTANCES WERE INVOLVED (INCLUDE PERSONAL PROTECTIVE EQUIPMENT USED)

WHAT: NONE

31. WITNESSES TO INJURY/ILLNESS/EXPOSURE:

T.A.C. OFFICER BLAND / RECRUIT BOIKO

32. If this is due to abnormal physical result, this form does not need to be signed by your chain of supervisor. Please fax directly to Health &amp; Safety at 732-3848 and call Health &amp; Safety at 220-2855.

Employee's Signature: [REDACTED] Date: 09/29/06

## PART TWO - REPORT OF INVESTIGATION BY SUPERVISOR

34. WHY DID INJURY/ILLNESS/EXPOSURE OCCUR?

DURING PHYSICAL TRAINING

35. WHAT UNSAFE CONDITION OR ACT CAUSED OR CONTRIBUTED TO INJURY/ILLNESS/EXPOSURE?

NONE

36. CORRECTIVE ACTION TAKEN OR RECOMMENDED TO PREVENT RECURRENCE:

NONE

37. IS THERE ANY REASON TO DOUBT THE VALIDITY OF THE CLAIM?

☐ Yes ☒ No

If yes, what reason?

38. IF TRAFFIC ACCIDENT, WAS THE OTHER PARTY CITED? IF YES, ATTACH COPY OF THE TRAFFIC ACCIDENT REPORT.

☐ Yes ☒ No

39. EXPOSURE OF OTHER PERSONS OR PROPERTY TO HAZARD MUST BE INDICATED

SAFETY IMMEDIATELY NOTIFIED

SUPERVISOR'S NAME (Please print):

SHELLIE CLARK

SUPERVISOR'S SIGNATURE:

[Signature]

DATE:

10-3-06

## PART THREE - BUREAU COMMANDER/DIVISION CHIEF'S REVIEW/COMMENTS

BUREAU COMMANDER'S SIGNATURE

DATE

DEPUTY CHIEF'S SIGNATURE

DATE

For assistance with workers' compensation issues, you may contact the Office of the Governor, Consumer Health Assistance, Toll Free 888-533-1597, Web Site: <http://gov.health.state.nv.us>, E-mail: [chah@health.state.nv.us](mailto:chah@health.state.nv.us)

you should sign, date and retain a copy. Original to Employer, Copy to Employee. TO FILE CLAIM FOR COMPENSATION, PLEASE SEE NEXT PAGE, BRIEF DESCRIPTION OF RIGHTS AND BENEFITS, SECTION ENTITLED, CLAIM FOR COMPENSATION (FORM C-4)

OCT 03 2006

06:17A

DIR3

ROA0010

00010

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
OFFICER'S REPORTEVENT #: 061003-075ON-DUTY INJURY

SUBJECT

DIVISION REPORTING: HUMAN RESOURCES DIVISION OF OCCURRENCE: HUMAN RESOURCESDATE AND TIME OCCURRED: 09-29-06 @ 0745 LOCATION OF OCCURRENCE: 9880 W. CHEYENNEWITNESS: T/O BLAND / RECRUIT BOIKO

ON 09-29-06, I WAS INJURED DURING ACADEMY PHYSICAL TRAINING,

WHILE DOING KNEE TO STOMACH DRILLS I BENT MY RIGHT KNEE DOWN TO RECRUIT BOIKO'S STOMACH AS I DID MY KNEE POPPED AND I FELT PAIN. THIS WAS ALSO WITNESSED BY T.A.C. OFFICER BLAND.

I ICED MY KNEE THROUGHOUT THE DAY AND WENT TO UMC QUICK CARE FOR FOLLOW-UP.

I FILLED OUT AN OCCUPATIONAL INJURY REPORT AND GAVE IT TO T.A.C. OFFICER CLARK.

Date of Report: 09/29/06

Officer: \_\_\_\_\_

Pg: \_\_\_\_\_

Reviewed: S. ClarkOfficer: S. ClarkPg: 4261

002 (REV. 1-07) - AUTOMATED

SIGNATURE: \_\_\_\_\_

DIR4

ROA0011

00011

# LAS VEGAS METROPOLITAN POLICE DEPARTMENT MEDICAL EVALUATION FORM

Employee's Name \_\_\_\_\_ Social Security \_\_\_\_\_ Job Classification POLICE RECDET P# \_\_\_\_\_ Date of Injury 07/29/06

ATTN. PHYSICIAN: The Las Vegas Metropolitan Police Department offers a Structured Return-To-Work Program for injured/disabled employees during their medical recovery. Numerous tasks have been identified (Temporary Work Assignments) which are available and are designed to accommodate most injuries. Based on the detailed work restrictions provided below, a description of the Temporary Work Assignments will be offered to the employee. If you have questions or concerns, please contact the Health and Safety Services Section at 229-3696. Fax Number: 732-3848. Thank you for your cooperation.

## BELOW PORTION TO BE COMPLETED BY PHYSICIAN

Today's Date <u>10-3-06</u>	<input checked="" type="checkbox"/> First Report <input type="checkbox"/> Interim Report <input type="checkbox"/> Final Report	Disability Type <input type="checkbox"/> FMLA <input type="checkbox"/> Occupational <input type="checkbox"/> Non-Occupational	Work Status <input checked="" type="checkbox"/> Full Duty <input type="checkbox"/> Modified Duty
Physician's Objective Findings (Do not complete if for FMLA) <u>MENISCAL TEAR (R) KNEE</u>			<div style="border: 1px solid black; padding: 5px; text-align: center;"> RECEIVED OCT 03 2006 </div>
Treatment/Prognosis (Do not complete if for FMLA) <u>SURG. scheduled 10/4/06</u>			CCMSI-METRO

### Permanent & Stationary?

☐ Yes ☐ No

Time off work: 10-14-06 Through 10-19-06

Return to Full Duty: \_\_\_\_\_

\* Return to Modified Duty: \_\_\_\_\_ Estimated length of modified duty: \_\_\_\_\_

\* May return to modified duty with following restrictions:

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> No lifting over <input type="checkbox"/> 10 <input type="checkbox"/> 20 <input type="checkbox"/> 50 pounds | <input type="checkbox"/> No combat/allegation activities   |
| <input type="checkbox"/> No pulling, pushing or carrying   | <input type="checkbox"/> No operating tactical motor vehicle in the line of duty                   |
| <input checked="" type="checkbox"/> No repetitive motion in injured part   | <input type="checkbox"/> No reaching/working above shoulder  |
| body part: _____   | <input type="checkbox"/> No climbing stairs  |
| <input checked="" type="checkbox"/> No climbing ladders  | <input type="checkbox"/> Must wear spint/sling   |
| <input type="checkbox"/> Eye patch must be worn  | <input checked="" type="checkbox"/> Unable to answer and dispatch life threatening emergency calls |
| <input type="checkbox"/> Keep injury clean   | <input type="checkbox"/> Other: _____  |
| <input type="checkbox"/> Unable to carry or use weapon   |  |

<input type="checkbox"/> Discharged
<input type="checkbox"/> Condition Same
<input type="checkbox"/> Condition Improved
<input type="checkbox"/> Condition Worsened
<input type="checkbox"/> PT Prescribed
<input type="checkbox"/> Consultation Required
<input type="checkbox"/> RX may be used while working
<input type="checkbox"/> Further diagnostic studies required

Medication prescribed: (List) Persicet, Kelex

If medication is prescribed could the medication impair the employees ability to:

- Operate a motor vehicle safely in normal and emergency situations: Yes \_\_\_ No \_\_\_
- Carry and use assigned weapon: Yes \_\_\_ No \_\_\_
- Maintain mental capacity which allows the capability of making sound decisions: Yes \_\_\_ No \_\_\_

Required Training: Can employee perform the following job function?

- |                         |   |                |
|-------------------------|---|----------------|
| Drivers Training:       | <input type="checkbox"/> Yes <input type="checkbox"/> No                              | Remarks: _____ |
| Defensive Tactics/LVNR: | <input type="checkbox"/> Yes <input type="checkbox"/> No                              | Remarks: _____ |
| Range Qualification:    | <input type="checkbox"/> Yes - as long as employee follows restrictions listed above. |                |
|                         | <input type="checkbox"/> No Remarks: _____  |                |

### REHABILITATION P.T./O.T.

NOTE FOR PT APPOINTMENTS: Therapists may complete and sign only the portions below.

Job Description Provided: ☐ Yes ☐ No

Employee is: ☐ Improving ☐ Maintaining ☐ Regressing

Time In	Time Out	Next Appointment	Date	Time
Physician or Clinician Signature <u>[Signature]</u>		Date <u>10-3-06</u>		
Physician or Clinician Print Name <u>ALGINS</u>		Phone <u>255 45 77</u>		
Address		City	State	Zip

DIR5

ROA0012

00012

# LAS VEGAS METROPOLITAN POLICE DEPARTMENT MEDICAL EVALUATION FORM

Employee's Name	Job Classification <b>POLICE RECRUIT</b>	P #	Date of Injury <b>09/27/06</b>
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**ATTN. PHYSICIAN:** The Las Vegas Metropolitan Police Department offers a Structured Return-To-Work Program for injured/disabled employees during their medical recovery. Numerous tasks have been identified (Temporary Work Assignments) which are available and are designed to accommodate most injuries. Based on the detailed work restrictions provided below, a description of the Temporary Work Assignments will be offered to the employee. If you have questions or concerns, please contact the Health and Safety Services Section at 229-3696. Fax Number: 732-3848. Thank you for your cooperation.

## BELOW PORTION TO BE COMPLETED BY PHYSICIAN

Today's Date <b>9-29-06</b>	<input checked="" type="checkbox"/> First Report <input type="checkbox"/> Interim Report <input type="checkbox"/> Final Report	Disability Type <input type="checkbox"/> FMLA <input type="checkbox"/> Occupational <input type="checkbox"/> Non-Occupational	Work Status <input type="checkbox"/> Full Duty <input type="checkbox"/> Modified Duty <input type="checkbox"/> Unable to return to work
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Physician's Objective Findings (Do not complete if for FMLA)

**(+) tenderness & limitation from inability to bear weight due to pain (R) leg**

Treatment/Prognosis (Do not complete if for FMLA)

**Strain / Sprain (R) knee**

Permanent & Stationary?

☐ Yes ☒ No

Time off work: **9/30/06** Through **10/3/06**

Return to Full Duty:

• Return to Modified Duty: **10/3/06** Estimated length of modified duty:

• May return to modified duty with following restrictions:

- |   |   |
|---|---|
| <input type="checkbox"/> No lifting over <input type="checkbox"/> 10 <input type="checkbox"/> 20 <input type="checkbox"/> 50 pounds | <input type="checkbox"/> No combat/altercation activities                               |
| <input type="checkbox"/> No pulling, pushing or carrying  | <input type="checkbox"/> No operating a tactical motor vehicle in the line of duty      |
| <input type="checkbox"/> No repetitive motion to injured part   | <input type="checkbox"/> No reaching/working above shoulder                             |
| body part: <b>(R) knee</b>  | <input checked="" type="checkbox"/> No climbing stairs                                  |
| <input checked="" type="checkbox"/> No climbing ladders   | <input checked="" type="checkbox"/> Must wear splint/casting                            |
| <input type="checkbox"/> Eye patch must be worn   | <input type="checkbox"/> Unable to answer and dispatch life threatening emergency calls |
| <input type="checkbox"/> Keep injury clean  | <input checked="" type="checkbox"/> Other: <b>Non-weight bearing (R) leg</b>            |
| <input type="checkbox"/> Unable to carry or use weapon  |   |

<input type="checkbox"/> Discharged
<input type="checkbox"/> Conditional Release
<input type="checkbox"/> Continued Medical Care
<input type="checkbox"/> Continued Work Release
<input type="checkbox"/> Pre-Discharge
<input type="checkbox"/> Consultation Required
<input type="checkbox"/> May be used while working
<input type="checkbox"/> Other appropriate studies required

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OCT 03 2006  
CCMSI-METRO

Medication prescribed; (List)

If medication is prescribed could the medication impair the employees ability to:

1. Operate a motor vehicle safely in normal and emergency situations: Yes ☐ No ☒
2. Carry and use assigned weapon: Yes ☐ No ☒
3. Maintain mental capacity which allows the capability of making sound decisions: Yes ☐ No ☒

Required Training: Can employee perform the following job function?

- |                         |   |          |
|-------------------------|---|----------|
| Drivers Training:       | <input type="checkbox"/> Yes <input type="checkbox"/> No                              | Remarks: |
| Defensive Tactics/LVNR: | <input type="checkbox"/> Yes <input type="checkbox"/> No                              | Remarks: |
| Range Qualification:    | <input type="checkbox"/> Yes - as long as employee follows restrictions listed above. |          |
|                         | <input checked="" type="checkbox"/> No Remarks:                                       |          |

## REHABILITATION P.T./O.T.

**NOTE FOR PT APPOINTMENTS:** Therapists may complete and sign only the portions below.

Job Description Provided: ☐ Yes ☐ No

Employee is: ☐ Improving ☐ Maintaining ☐ Regressing

Time In	Time Out	Next Appointment	Date	Time
---------	----------	------------------	------	------

Physician or Clinician Signature

Date **9-29-06**

Physician or Clinician Print Name

**MARY BETITA, MSN, FNP, APRN, BC**

Phone

**UMC RANCHO QUICK CARE  
4531 N. RANCHO DRIVE  
LAS VEGAS, NV 89130  
TEL: 353-3800 / FAX: 645-1589**

Address

City

UNIVERSITY MEDICAL CENTER OF SOUTHERN NEVADA  
DEPARTMENT OF RADIOLOGY  
1800 W. CHARLESTON BLVD. LAS VEGAS, NV. 89102  
(702) 383-2241

Name: \_\_\_\_\_  
Sex: M Age: [REDACTED] Date of Birth: [REDACTED]  
Location: PCR - Medical Record Number: 001-868-671

Ordering Physician: RANDOLPH SHIRAISHI M.D.  
Order #: 90002 Order Date: 09/29/2006

\*\*\*Final Report\*\*\*

Exam Charge Date: Sep 29 2006 6:12PM  
PROCEDURE: QRN 0044 - RN KNEE 4 VIEWS OR MORE (RIGHT) -- 4249339

CLINICAL HISTORY: Pain

TECHNIQUE: A

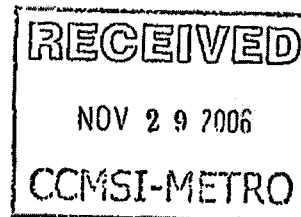
COMPARISON STUDIES: A

FINDINGS: Four views of the knee show no fracture, dislocation or other bone or joint injury. The articular surfaces and joint spaces are well preserved. Mineralization is normal. No soft tissue abnormalities are evident.

IMPRESSION:

NOTES:

*Mary Betita* 4/29/06  
MARY BETITA, MSN, FNP, APRN, BC



Interpreting Radiologist: THOMAS COSTELLO M.D.

Dictated: 9/29/2006 6:15P  
Final Report: 9/29/2006 6:15P

Patient: \_\_\_\_\_  
DOB: [REDACTED] Account Number: 008506407613 Medical Record Number: 001-868-671  
Order Number: 90002 RN KNEE 4 VIEWS OR MORE (RIGHT) Exam Charge Date: Sep 29 2006 6:12PM

The information contained in this document is privileged and confidential. If you are not the intended recipient, reproduction, dissemination, or distribution of this document is prohibited. If you have received this document by fax in error, please notify the UMC Radiology Department at (702) 383-2241.

Page 1

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ROA0014

00014



**GERALD L. HIGGINS, M.D., FAAOS**  
Diplomate, American Board of Orthopaedic Surgery

*General Orthopaedics  
Athletic Injuries  
Arthroscopic Surgery  
Joint Replacement  
Sports Medicine*

October 3, 2006

RE:  
DOI: 09-29-06  
EMP: LVMPD Academy

To Whom It May Concern:

s a [REDACTED] year old police recruit for the Las Vegas Metropolitan Police Department states that on 09-29-06 while doing physical training he jumped down and felt a pop about the right knee. He had inability to extend the knee. He had pain and swelling. He has had weakness and instability since then. He has pain with weight bearing.

Examination of the right knee reveals absence of the last 7° of extension. Passively this can lock in but there is pain in the medial joint line. There is medial joint line pain and a positive McMurray. Collaterals and cruciates appear to be intact clinically.

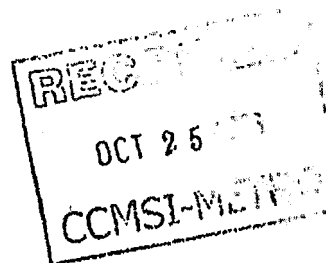
IMPRESSION: Buckethandle tear, medial semilunar cartilage

We will get permission for surgery. We will try to repair this if at all possible. This will knock him out of the academy for a while. Before he is running it will be certainly 90 days. If we do just partial meniscectomy we may be able to get him back. He is in the middle of the academy at this time. He is scheduled per approval for surgery on 10-04-06 at Southern Hills.

Thank you for allowing me to participate in the care and evaluation of [REDACTED]

Sincerely,

Gerald L. Higgins, M.D.  
GH/eb



8551 West Lake Mead Boulevard #251 Las Vegas, Nevada 89128 (702) 255-4577 (Pueblo Medical)

**DIR8**

ROA0015

00015

DATE OF SURGERY: 10/04/2006

PREOPERATIVE DIAGNOSIS:

Internal derangement of right knee with meniscal tear, possible bucket handle.

POSTOPERATIVE DIAGNOSIS:

Anterior cruciate ligament deficient, right knee with stable posterior horn meniscal tear.

OPERATIVE PROCEDURE:

Arthroscopy, partial debridement of remaining fibers of anterior cruciate ligament, partial synovectomy and medial meniscorrhesis.

SURGEON:

Gerald L Higgins, MD

ASSISTANT:

Jay Byrd, RN

ANESTHESIOLOGIST:

Dr. Young.

OPERATIVE PROCEDURE:

After adequate general anesthesia, the right leg was examined showing an interesting grade 1+ Lachman. I could not pivot shift. Collaterals intact. The knee was prepped and draped. Ancef 1 gram was given by IV push, prior to exsanguination of the leg with an Esmarch bandage, elevation of tourniquet to 350 mmHg. Medial and lateral portals were made adjacent to the patellar tendon joint line. Through a lateral port, a Stryker 30-degree diagnostic arthroscope was introduced. Examination of the suprapatellar pouch revealed thickening of the synovium. A suprapatellar synovectomy was carried out with a synovial shaver, neuro-patellofemoral tracking. Lateral gutter was pristine, lateral femoral guide and tibial plateau smooth, lateral cartilage probed and found to be intact. The intercondylar notch showed an interesting thickening of the ligament, which was debrided, and then an absolute void of an anterior cruciate ligament. Posterior cruciate ligament was certainly intact. There were some mild fibers there but certainly nothing of a more recent in nature. The medial joint was examined. Femoral cut and tibial plateau was smoothed grossly. A probe passed under the medial horn of the cartilage showing a stable tear along the junction of the meniscal femoral junction of the posterior horn of the medial meniscus. Using a rasp, this was rasped to cause some bleeding but the cartilage left alone. The wound was irrigated with copious amounts of saline solution. The arthroscopic instrumentation was removed and 20 milliliters of 0.5% Marcaine with 2 milligrams of Duramorph were injected intrasynovially. The port

SOUTHERN HILLS HOSPITAL  
AND MEDICAL CENTER  
9300 WEST SUNSET  
LAS VEGAS, NV 89148

H000054144 / H89670819897  
HIGGINS, GERALD L  
ADMITTED: 10/04/06 ROOM:

OPERATIVE REPORT

Nevada Market - PCI \*LIVE\* (PCI: OE Database COCSNV)

DRAFT COPY

Run: 11/08/06-10:20 by KOERSCHNER, TERESA L

Page 1 of 2

DIR9

ROA0016

00016



Gerald L. Higgins, M.D.  
Orthopedic Surgery  
8551 W. Lake Mead Blvd. Ste. 251  
Las Vegas, NV 89128  
(702) 255-4577

Patient

Account #

Body Part

40809-1

Right Knee

OCT - 3 2006 - Letter

0/10/06

comes in. He is post-op A&A of the knee.

We will get him on some outpatient physical therapy. Basically he has an ACL lax knee. No running or physical activity. We will try to get him an ACL derotational brace. We will call [REDACTED] to set this up. He will buy this on his own if it is not approved. We will check him in 2 weeks. I would like to get him through the academy if at all possible.

OCT 24 2006

is getting some muscle back. With the brace that he has received, he may increase activities with running. He can try contact activities but I'm not sure how he will get through them. We will consider ACL repair after the academy.

NOV 21 2006

is doing well. He is back to full activities and is doing well.

His muscle strength has returned. Range of motion is excellent. Patellofemoral tracking is excellent. He is actually more stable than before.

We will see him back in 6 weeks.

Feb 13, 2007

RECEIVED

MAR - 6 2006

is in the field now and is doing very well. He has an ACL deficient knee. He is back in the field work and as long as he can do everything with protection we will let him go.

I will check him again in the office in a couple of months. He may do the field work as he feels comfortable.

DIR10

ROA0017

00017

# LAS VEGAS METROPOLITAN POLICE DEPARTMENT MEDICAL EVALUATION FORM

Employee's Name [REDACTED] Social Security [REDACTED] Job Classification [REDACTED] P # [REDACTED] Date of Injury [REDACTED]

ATTN: PHYSICIAN: The Las Vegas Metropolitan Police Department offers a Structured Return-To-Work Program for injured/disabled employees during their medical recovery. Numerous tasks have been identified (Temporary Work Assignments) which are available and are designed to accommodate most injuries. Based on the detailed work restrictions provided below, a description of the Temporary Work Assignments will be offered to the employee. If you have questions or concerns, please contact the Health and Safety Services Section at 229-3696. Fax Number: 732-3848. Thank you for your cooperation.

## BELOW PORTION TO BE COMPLETED BY PHYSICIAN

Today's Date [REDACTED] ☐ First Report ☐ Interim Report ☒ Final Report Disability Type ☐ Occupational ☐ Non-Occupational Work Status ☐ Full Duty ☐ Modified Duty ☐ Unable to return to work ☐ FMLA ☐ FMLA

Physician's Objective Findings (Do not complete if for FMLA)

*Knee Stable*

Treatment/Prognosis (Do not complete if for FMLA)

*Released unless he has further problems*

Permanent & Stationary?

☐ Yes ☐ No

Time off work: 10/23/06 Through 10/23/06

Return to Full Duty:

\* Return to Modified Duty: 10/23/06 Estimated length of modified duty: 10/23/06

\* May return to modified duty with following restrictions:

- ☐ No lifting over ☐ 10 ☐ 20 ☐ 50 pounds
- ☐ No pulling, pushing or carrying
- ☐ No repetitive motion to injured part
- ☐ No climbing ladders
- ☐ Eye patch must be worn
- ☐ Keep injury clean
- ☐ Unable to carry or use weapon
- ☐ No combat/altercation activities
- ☐ No operating a tactical motor vehicle in the line of duty
- ☐ No reaching/working above shoulder
- ☐ No climbing stairs
- ☐ Must wear splint/sling
- ☐ Unable to answer and dispatch life threatening emergency calls
- ☐ Other: [REDACTED]

☒ Discharged

☐ Condition Same

☐ Condition Improved

☐ Condition Worsened

☐ Rx Prescribed

☐ Consultation Required

☐ RX may be used while working

☐ Further diagnostic studies required

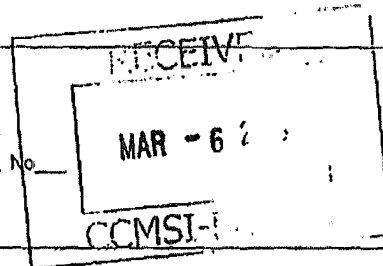
Medication prescribed: (List)

If medication is prescribed could the medication impair the employees ability to:

1. Operate a motor vehicle safely in normal and emergency situations: Yes    No
2. Carry and use assigned weapon: Yes    No
3. Maintain mental capacity which allows the capability of making sound decisions: Yes    No

Required Training: Can employee perform the following job function?

- Drivers Training: ☐ Yes ☐ No Remarks:
- Defensive Tactics/LVNR: ☐ Yes ☐ No Remarks:
- Range Qualification: ☐ Yes - as long as employee follows restrictions listed above. ☐ No Remarks:



## REHABILITATION PT./OT

NOTE FOR PT APPOINTMENTS: Therapists may complete and sign only the portions below.

Job Description Provided: ☐ Yes ☐ No Employee Is: ☐ Improving ☐ Maintaining ☐ Regressing

Time In    Time Out    Next Appointment PRN Date    Time   

Physician or Clinician Signature Gerald Higgins Date 2/13/07

Physician or Clinician Print Name GERALD HIGGINS Phone 255-4577

Address 8551 W Lake Mead #257 City Las Vegas State NV Zip 89128

TO AVOID PENALTY, THIS REPORT MUST BE COMPLETED AND MAILED TO THE INSURER WITHIN 6 WORKING DAYS OF RECEIPT OF THE C-4 FORM				Please Type or Print		EMPLOYER'S REPORT OF INDUSTRIAL INJURY OR OCCUPATIONAL DISEASE			
EMPLOYER	Employer's Name <b>Las Vegas Metro Police Department</b>			Nature of Business (mfg., etc.) <b>Law Enforcement</b>		SIC Code			
	Office Mail Address <b>P.O. Box 19450</b>			Location...if different from mailing Address <b>9850 W. Chayenne Ave., Las Vegas</b>		Telephone <b>(702) 828-3426</b>			
	City State Zip <b>Las Vegas, Nevada 89132-0450</b>			INSURER <b>Las Vegas Metro Police Department</b>		THIRD-PARTY ADMINISTRATOR <b>TRISTAR Risk Management</b>			
EMPLOYEE	First Name M.I. Last Name			Social Security		Birth date			
						Age <b>31</b>			
	Home Address (Number and Street)			Sex <b>Male</b>		Marital Status <b>Married</b>			
	City State Zip <b>Las Vegas, NV 89135</b>			Was the employee paid for the day of injury? (if applicable) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		How long has this person been employed by you in Nevada? <b>07/18/2006</b>			
	In which state was employee hired? <b>Nevada</b>			Employee's occupation (job title) when hired or disabled <b>COM - POI</b>		Department in which regularly employed: <b>NW23</b>			
	Telephone (7)			Is the injured employee a corporate officer? ... sole proprietor? ... partner? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Was employee in your employ when injured or disabled by occupational disease (O/D)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
ACCIDENT	Date of Injury (if applicable) <b>01/06/2008</b>		Time of Injury (Hours; Minute AM/PM) (if Applicable) <b>12:15</b>		Date employer notified of injury or O/D <b>01/06/2008</b>		Supervisor to whom injury or O/D reported <b>STEVE STUBBS</b>		
	Address or location of accident (Also provide city, county, state) (if applicable) <b>2833 Stirling Silver Las Vegas, NV 89128</b>						Accident on employer's premises? (if applicable) <b>No</b>		
	What was this employee doing when the accident occurred (loading truck, walking down stairs, etc.)? (if applicable) <b>Foot pursuit</b>								
	How did this injury or occupational disease occur? Include time employee began work. Be specific and answer in detail. Use additional sheet if necessary. <b>During a foot pursuit of a felony suspect I stepped in to a hole and twisted my right knee</b>								
INJURY	Specify machine, tool, substance, or object most closely connected with the accident (if applicable)			Witness		Was there more than one person injured in this accident? (if applicable) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
	Part of body injured or affected: <b>KNEE, RIGHT</b>		If fatal, give date of death		Witness				
	Nature of Injury or Occupational Disease (scratch, cut, bruise, strain, etc.) <b>STRAIN</b>			Witness		Did employee return to next scheduled shift after accident? (if applicable) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
	If validity of claim is doubted, state reason <b>NONE</b>			Location of Initial Treatment <b>Doctor's Care</b>					
	Treating Physician/chiropractor name:			Emergency Room <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Hospitalized <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
	IMPORTANT How many days per week does employee work? <b>4.00</b>		From <b>6:30</b> am <input checked="" type="checkbox"/> pm <input type="checkbox"/> To <b>4:30</b> am <input type="checkbox"/> pm <input checked="" type="checkbox"/>		Last day wages were earned <b>01/06/2008</b>				
Scheduled days off <input type="checkbox"/> S <input type="checkbox"/> M <input type="checkbox"/> T <input type="checkbox"/> W <input checked="" type="checkbox"/> T <input checked="" type="checkbox"/> F <input type="checkbox"/> S <input type="checkbox"/> Rotating <input type="checkbox"/>			Are you paying injured or disabled employee's wages during disability? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No						
LOSS OF TIME	Date employee was hired <b>07/18/2006</b>		Last day of work after injury or disability <b>01/06/2008</b>		Date return to work		Number of days lost <b>0</b>		
	Was the employee hired to work 40 hours per week? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		If not, for how many hours a week was the employee hired?		Did the employee receive unemployment compensation at anytime during the last 12 months? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Do Not Know				
	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 off work 5 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 employees 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: <input type="checkbox"/> S <input type="checkbox"/> T <input type="checkbox"/> W <input type="checkbox"/> F <input type="checkbox"/> S		Employee is paid: <input type="checkbox"/> WEEKLY <input checked="" type="checkbox"/> MONTHLY <input type="checkbox"/> OTHER		On the date of injury or disability the employee's wage was: \$ <b>32.06</b> per <input checked="" type="checkbox"/> Hr. <input type="checkbox"/> Day <input type="checkbox"/> Wk <input type="checkbox"/> Mo.				
IMPORTANT INFORMATION	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 <i>Larry Moreno</i> <b>LEST</b>		Date <b>01-09-08</b>		
	Claim is: <input type="checkbox"/> Accepted <input type="checkbox"/> Denied <input type="checkbox"/> Deferred <input type="checkbox"/> 3rd Party			Deemed Wage:		Account No.		Class Code	
	Claims Examiners' Signature <b>Barbara Zink</b>		Date <b>January 9, 2008</b>		Status Clerk <b>Moreno, Gabriela</b>		Date <b>January 9, 2008</b>		

Peccole Quick Care  
MK# 001-868-671 735 ADM 1/01/2000

COMPENSATION/REPORT OF INJURY  
FORM C-4  
BASE TYPE OR PRINT

TREATMENT

Tristar-735  
11176930

EMPLOYEE'S CLAIM - PROVIDE ALL INFORMATION REQUESTED

First Name	M.I.	Last Name	Birthdate	Sex	Claim Number (Insurer's use only)
				MOF	
Home Address			Age	Height	Weight
			31	6'6"	255
State			City	State	Zip
NV				NV	89155
Physical Address			City		
2407 CARNEGIE HALL			LV		
Telephone			Employee's Occupation (Job Title) When Injury or Occupational Disease Occurred		
702			POL		
Employer's Name/Company Name			Primary Language Spoken		
LJMPD			ENG		
Office Mail Address (Number and Street)			Telephone		
400 STEWART AVE			828-3111		
City			State		
LV			NV		
Zip			89101		
Date of Injury (if applicable)	Hour of Injury (if applicable)	Date Employer Notified	Last Day of Work After Injury or Occupational Disease		Supervisor to Whom Injury Reported
01/06/08	AM 12 (PM)	No Day Yr 01/06/08	Mo Day Yr 01/06/08		SGT STUBBS
Address or Location of Accident (if applicable)					
2833 STERLING BLVD LV, NV 89108					
What were you doing at the time of the accident? (if applicable)					
FOOT PURSUIT OF A FUGITIVE SUSPECT					
How did this injury or occupational disease occur? (Be specific and answer in detail. Use additional sheet if necessary.)					
WHILE IN A FOOT PURSUIT I STEPPED IN A HOLE AND TWISTED MY RT KNEE					
If you believe that you have an occupational disease, when did you first have knowledge of the disability and its relationship to your employment?					Witnesses to the Accident (if applicable)
NO					NONE
Nature of Injury or Occupational Disease			Part(s) of Body Injured or Affected		
N/A			RT KNEE		

I CERTIFY THAT THE ABOVE IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND THAT I HAVE PROVIDED THE INFORMATION IN ORDER TO OBTAIN THE BENEFITS OF NEVADA'S INDUSTRIAL INJURY AND OCCUPATIONAL DISEASES ACTS (NRS 639A TO 639D), INCLUDING OR EMPLOYMENT ON THIS. I HEREBY AUTHORIZE ANY PHYSICIAN, CHIROPRACTOR, SURGEON, PRACTITIONER, OR OTHER PERSON, ANY HOSPITAL, INCLUDING VETERANS ADMINISTRATION OR GOVERNMENTAL HOSPITAL, ANY MEDICAL SERVICE ORGANIZATION, ANY INSURANCE COMPANY, OR OTHER ORGANIZATION TO RELEASE TO EACH OTHER, ANY MEDICAL OR OTHER INFORMATION, INCLUDING BENEFITS PAID OR PAYABLE, PERTINENT TO THIS INJURY OR DISEASE, EXCEPT INFORMATION RELATIVE TO DIAGNOSIS, TREATMENT AND/OR COUNSELING OF AN INDIVIDUAL'S PSYCHOLOGICAL CONDITIONS, ALCOHOL, OR CONTRAINDICATIONS, FOR WHICH I MUST GIVE SPECIFIC AUTHORIZATION. A PHYSICIAN'S USE OF THIS AUTHORIZATION SHALL BE AS VALID AS THE ORIGINAL.

Date: 1/01/08 Place: UMC PECCOLE QUICK CARE Employee's Signature: [Signature]

THIS REPORT MUST BE COMPLETED AND MAILED WITHIN 3 WORKING DAYS OF TREATMENT

Place	PECCOLE RANCH QUICK CARE	Name of Facility	UNIVERSITY MEDICAL CENTER
Date	1/7/08	Diagnosis and Description of Injury or Occupational Disease	RT knee sprain
Hour	9:30 AM	Is there evidence that the injured employee was under the influence of alcohol and/or any other contraindicating substance at the time of the accident?	No
Treatment	Doctor / Ultrasound	Have you advised the patient to remain off work five days or more?	No
X-Ray Findings	None	Indicate dates: from to	
From information given by the employee, together with medical evidence, can you directly connect this injury or occupational disease as job incurred?	Yes	No	
Is additional medical care or treatment indicated?	Yes	No	
Do you know of any previous injury or disease contributing to this condition or occupational disease? Yes No (Circle if yes)			
Date	1/7/08	Print Doctor's Name	DR. J. LEAKS
Address		9320 WEST SAHARA	
City		LAS VEGAS, NEVADA 89117	
State		NEVADA	
Zip		89117	
Provider's Tax ID Number		88-6000436	
Telephone		(702) 383-3850	
Doctor's Signature		[Signature]	
INSURER'S USE ONLY			

ORIGINAL - TREATING PHYSICIAN OR CHIROPRACTOR

PAGE 2 - INSURER/TPA

PAGE 3 - EMPLOYER

PAGE 4 - EMPLOYEE

Form C-4 (rev. 9/00)

P. 210 6051 828 202 : 702

1101112307

11-2008 08:54 FROM DIR13

ROA0020

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**LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
OCCUPATIONAL INJURY/ILLNESS/EXPOSURE REPORT**

1. Event #:  
**080106-1471**

**PART ONE - STATEMENT OF INJURED EMPLOYEE**

2. NAME: [REDACTED] 3. PO: [REDACTED] 4. AGE: [REDACTED] 5. SEX: **M** 6. DATE OF HIRE: **07-18-06** 7. DATE OF BIRTH: [REDACTED] 8. SOCIAL SECURITY NUMBER: [REDACTED]

9. HOME MAILING ADDRESS (St, Street, Bldg/Apt. #, City, State & Zip):

**LV, NV 89135**

10. HOME PHONE NUMBER:

11. BUREAU OF ASSIGNMENT: **NW23** 12. CLASSIFICATION: **PO1** 13. MARITAL STATUS: ☒ Married ☐ Single 14. REGULAR WORK HOURS: **0630-1630** 15. RDO's: **WTF**

16. INJURY/ILLNESS/EXPOSURE: WHEN Date: **01-06-08** Time: **1215** 17. REPORTED TO SUPERVISOR: Date: **01-06-08** Time: **1220** 18. LEFT SHIFT: Date: **01-06-08** Time: **1630**

19. LOCATION OF OCCURRENCE (Give Sufficient Detail): **2833 Stirling Silver LV, NV 89128** 20. WAS FIRST AID PROVIDED? ☐ Yes ☒ No If yes, by whom?

21. ACTION: ☒ DOCTOR'S CARE ☐ E.R. CARE ONLY ☐ HOSPITALIZED ☒ NO ACTION TAKEN 22. BODY PART INJURED/EXPOSED: **Right Knee**

23. NATURE OF INJURY/EXPOSURE SUSTAINED: **Right Knee Pain** 24. LOST TIME: ☐ Yes ☒ No If yes, last day worked after injury: If yes, disability slip from physician attached? ☐ Yes ☐ No

25. HOW DID THE INJURY/ILLNESS/EXPOSURE OCCUR? (Note: If you are claiming an occupational disease, indicate the date on which the employee first became aware of the connection between the condition and employment.) **During a foot pursuit of a felony suspect I stepped in to a hole and twisted my right knee**

26. DID THE ACCIDENT HAPPEN IN THE NORMAL COURSE OF WORK? ☒ Yes ☐ No (If applicable) 27. HAS EMPLOYEE RETURNED TO WORK? ☒ Yes ☐ No If yes, what date?

28. HAVE YOU HAD PREVIOUS INJURY/EXPOSURE TO BODY PART MENTIONED? (Explain) **Yes, Meniscus tear in Oct 2006. Surgery in Oct 2006.**

29. HOW MIGHT THIS INJURY/ILLNESS/EXPOSURE HAVE BEEN PREVENTED? **Look at the ground for holes when running**

30. SPECIFY WHAT EQUIPMENT, OBJECTS OR SUBSTANCES WERE INVOLVED (INCLUDE PERSONAL PROTECTIVE EQUIPMENT USED): **Uniformed Police Equipment**

**RECEIVED**

31. WAS ANYONE ELSE INVOLVED? ☐ Yes ☒ No If yes, list names of others involved:

**JAN 09 2008**

32. WITNESSES TO INJURY/ILLNESS/EXPOSURE: **None**

**THIS IS A TRUE COPY OF THE ORIGINAL REPORT  
LAS VEGAS - METRO**

33. If this is due to abnormal physical result, this form does not need to be signed by your chain of supervisor. Please fax directly to Health & Safety at 828-1509 and call Health & Safety at 828-3699.

Employee's Signature: [REDACTED] Date: **01-06-08**

**PART TWO - REPORT OF INVESTIGATION BY SUPERVISOR**

34. WHY DID INJURY/ILLNESS/EXPOSURE OCCUR? **The officer was in a foot pursuit of a felony suspect**

35. WHAT UNSAFE CONDITION OR ACT CAUSED OR CONTRIBUTED TO INJURY/ILLNESS/EXPOSURE? **Running over unfamiliar terrain after a felony suspect**

36. CORRECTIVE ACTION TAKEN OR RECOMMENDED TO PREVENT RECURRENCE: **Be more careful of where you step**

37. IS THERE ANY REASON TO DOUBT THE VALIDITY OF THE CLAIM? ☐ Yes ☒ No If yes, what reason?

38. IF TRAFFIC ACCIDENT, WAS THE OTHER PARTY CITED? IF YES, ATTACH COPY OF THE TRAFFIC ACCIDENT REPORT. ☐ Yes ☒ No 39. EXPOSURE OFFICER'S REPORT MUST BE DICTATED 40. FAX A COPY OF THIS FORM TO HEALTH & SAFETY IMMEDIATELY AT 828-1509

SUPERVISOR'S NAME (Please print): **Sgt. Steve Stubbs** SUPERVISOR'S SIGNATURE: [REDACTED] DATE: **01-06-08**

**PART THREE - BUREAU COMMANDER/DIVISION CHIEF'S REVIEW/COMMENTS**

BUREAU COMMANDER'S SIGNATURE: [REDACTED] DATE: [REDACTED] DEPUTY CHIEF'S SIGNATURE: [REDACTED] DATE: [REDACTED]

For assistance with Workers' Compensation claims, you may contact the Office of the City Manager, Consumer Health Assistance, 308 E. 3rd St., Las Vegas, NV 89101. Fax: 828-225-1977. Web: <http://www.lasvegasnevada.gov> E-mail: [citymanager@lasvegasnevada.gov](mailto:citymanager@lasvegasnevada.gov)

Employee should sign, date and retain a copy. Original to Employer, Copy to Employee. TO FILE CLAIM FOR COMPENSATION, PLEASE SEE NEXT PAGE, BRIEF DESCRIPTION OF RIGHTS AND BENEFITS, SECTION ENTITLED, CLAIM FOR COMPENSATION (FORM C-4)

**Claim #08209074**

**Rec'd/Entr'd  
JAN 07 2008  
06:12A**

**DIR14**

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT**  
**Memorandum**

**Date:** February 25, 2008  
**To:** PAYROLL  
**Subject:** APPLICATION FOR LEAVE "Corrected"

Employee:  
SSN:  
Claim No: 08209074  
Date of Injury: 01/06/2008  
Body Part(s): KNEE, RIGHT

Please change the Type of Leave/Number of Hours/Dates as follows:

☐ Do NOT charge to Workers' Compensation

**DATES:**

☐ Charge to Workers' Compensation – Portion Non-Taxable

**DATES:** 02/06/08 thru 02/25/08

☐ Charge to Workers' Compensation – 100% Taxable

**DATES:**

Sincerely,



Evelyn Martina, Sr. LEST  
(702)828-8170

cc:

Health Detail/Risk Management Section (Employee's File)  
Tristar Risk Management Group (Claims Examiner)

**DIR15**

ROA0022

00022



**TRISTAR**  
RISK MANAGEMENT

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT**  
**Memorandum**

**Date:** June 30, 2008  
**To:** PAYROLL  
**Subject:** APPLICATION FOR LEAVE  
  
Employee:  
SSN:  
Claim No: 08209074  
Date of Injury: 01/06/2008  
Body Part(s): KNEE, RIGHT

Please change the Type of Leave/Number of Hours/Dates as follows:

- ☐ Do NOT charge to Workers' Compensation  
**DATES:**
- ☒ Charge to Workers' Compensation – Portion Non-Taxable  
**DATES:** 06/16/08 thru 06/25/08
- ☐ Charge to Workers' Compensation – 100% Taxable  
**DATES:**

Sincerely,

  
Evelyn Martina, Sr. LEST  
828-8170

cc: Health Detail (Employee's File)  
Tristar Risk Management Grp (Claim's Adjuster)

Memo to Payroll-LVMPD (4-07)

P.O. Box 19450 • Las Vegas, NV 89132-0450

**DIR16**

ROA0023

00023



January 11, 2010

Las Vegas, NV 89135

Re: Employee:  
Employer: Las Vegas Metro Police Department  
Claim No: 08209074  
Accident Date: 01/06/2008

Dear Mr

As a result of the evaluation with Rodney Perry, D.C. on 11/24/09, it has been determined that you suffered a permanent partial disability impairment of 7 percent on a whole body basis as a result of your 01/06/2008 right knee injury.

This award entitles you to installment payments beginning 01/01/10. Under the installment election, you will receive monthly installment payments of \$ 204.23. Total installment payments are estimated at \$ 90,213.05. In lieu of installment payments, you may elect to receive a lump sum settlement in the amount \$ 37,016.98.

The Election of Payment forms are enclosed for your review. If you accept this award, sign and date the appropriate form where indicated and return to my attention at the address listed below. You may wish to keep a copy for your records. A copy of the rating report is also enclosed for your review, as well as an explanation of your reopening rights. Please be advised, that your claim is now closed. If you qualify, rehabilitation benefits are still available to you.

Should you disagree with this determination, you may file the enclosed Request for Hearing (Form D-12a) with the Department of Administration, Hearings Division within seventy (70) days from the date of this letter.

If you should have any questions, please do not hesitate to contact me at (702)693-5923.

Sincerely,

Barbara Zink  
CLAIMS EXAMINER

cc: Las Vegas Metro Police Department

Enclosure(s): PD Award Calculation Worksheet  
Election of Method of Payment of Compensation  
Reaffirmation of Lump Sum Request  
Request for Hearing  
PPD Evaluation Report of Dr.  
Brief Description of Your Rights

PPD Offer to EE-LVMPD (Rev. 5-07)

P.O. Box 19450 • Las Vegas, NV 89132-0450

DIR17

ROA0024

00024



## **ADVANCED CHIROPRACTIC ORTHOPEDICS**

6837 W. Charleston Blvd. Las Vegas, Nevada 89117  
Telephone (702) 240-0520 Fax (702) 240-2072

**Rod Perry, D.C. F.A.C.O., C.I.C.E.**  
**Board Certified Chiropractic Orthopedist**

---

November 24, 2009

TriStar Risk Management  
P.O. Box 19450  
Las Vegas, NV 89132-0450  
Attn: Dusty Marshall – Senior Claims Examiner

### **IMPAIRMENT RATING EVALUATION**

CLAIMANT: CLAIM #: 08209074  
DOI: 01/06/08 EMPLOYER: LVMPD  
BODY PART TO BE EVALUATED: Right knee.

#### **INTRODUCTION:**

The above mentioned claimant entered the office today for the purpose of obtaining an impairment rating of his right knee. He was identified today by a Nevada driver's license and a copy is maintained for the chart.

#### **HISTORY OF INJURY:**

On 01/06/08 this gentleman was in a foot pursuit and stepped in a three foot hole and injured his right knee. He denies any other previous injuries to the right knee.

#### **CHRONOLOGY OF TREATMENT:**

01/06/08: Pecole Quick Care. Right knee strain. Antiinflammatory, Ultram and Morphine given to the patient.  
01/10/08: Seen by Dr. Patti. Acute internal derangement of the knee, medial and lateral meniscal suspected tears, possible ligamentous problems, possible tibial plateau fracture and infarction.  
01/17/08: MRI at Nevada Imaging. Proximal patella tendinosis suggestive of possible jumper's knee. The anterior and posterior cruciate, medial and collateral and quadriceps appear grossly intact. No discrete tears.  
01/24/08: Seen by Dr. Patti. High grade partial tear of the patella tendon and patella associated edema. Therapy would be appropriate.

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DEC 29 2009

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(CONT.) PAGE 2

01/31/08: Follow-up with Dr. Patti. I have asked him if he has had previous trouble with his knee pain. Doing any athletic injuries. The injury is legitimate and is high grade. We have not improved him despite this therapy.

02/06/08: Taken to the Parkway Surgical Center by Dr. Patti where he underwent a partial patellar tendon evulsion central, ACL proximal incomplete anterior medial meniscal superior anterior lateral meniscal tear and underwent partial lateral meniscectomy, partial medial meniscectomy, chondroplasty, central patella, lateral patella with radial frequency, shrinkage of the ACL, open repair of the patella tendon with patellar anchoring.

02/07/08: Follow-up postoperatively. No signs of infection, doing better.

03/03/08: Follow-up with Dr. Patti. Continued complaints. He has significant extensor lag, considerable pain from non-absorbable fibers in the sutures. Right now he is in better control. He is still on crutches.

03/24/08: Seen by Dr. Patti. Postoperatively. Good progress, good strength.

04/14/08: Follow-up postoperatively. Sensitivity over the patellar tendon. Examination reveals 50 degrees of erectus tightness, 45 degrees of quadriceps. I believe that he is having issues with this.

05/20/08: Seen by Dr. Miao. Continued complaints. Suggests further MRI to ascertain the prior repair.

06/06/08: Follow-up. MRI was reviewed. Demonstrates some color changes on the chondral surface of the patella. This is intermediate and specific. ACL has altered signals, but demonstrates fibers intact. Right knee post-arthroscopic debridement.

06/13/08: Continued complaints. Preoperative appointments will be made.

06/16/08: Underwent surgical intervention where he underwent an arthroscopic major synovectomy.

06/25/08: Follow-up. Went over issues with respect to his synovectomy and ACL repair. Basically his ACL is not functioning properly as well as signs of abnormalities in the chondral surfaces.

09/10/08: Follow-up. Continued complaints. First of all injection anterior lateral without difficulty. Patient just had a big of pain with the last injection. Continue therapy.

09/17/08: Had a second synovectomy anterior and lateral without difficulty. Range of motion still has extension lag.

09/24/08: Examination- No effusion. Sensitivity 0-130 with no restrictions. At this point he hopefully continues to not have any problems.

10/09/08: Seen by Dr. Tingy. Patient has complicated course of knee surgery. His current issues are primarily instability and pain. ACL reconstruction may be considered to treat the instability, treatment of the chondral injuries as well as femoral chondral defects may be appropriate.

10/22/08: Follow-up with Dr. Miao. He is functioning and doing better. At this time chondroplasty issues would probably get worse.

11/10/08: Follow-up with Dr. Tingy. Discussed the issue of reconstruction with allograft with or without microfracture of the patella and possibly medial femoral condyle. The patient would like to schedule for this.

RECEIVED

DEC 29 2009

John H. ...  
...

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(CONT.) PAGE 3

- 01/09/09: Follow-up. Seen status post ACL reconstruction, microfracture. He reports that with physical therapy his primary complaints are the suprapatellar region with contracture of the quadriceps.
- 01/22/09: Follow-up with Dr. Tingy. Examination- Large effusion of the joint knee, wounds are healed, negative anterior Drawer's sign, Lachman test, range of motion is 0-110 degrees.
- 03/06/09: Follow-up, status post ACL. He is unable to climb stairs. We had a conversation regarding his complex history and the prognosis. He may have some osteonecrosis. MRI would be appropriate.
- 03/13/09: Underwent MRI which shows intact ACL, free truncation edges of the medial meniscus, marked chondromalacia.
- 03/26/09: Follow-up with Dr. Tingy. At this time follow-up MRI is completed. No evidence of osteonecrosis of the patella.
- 04/20/09: Follow-up. Examination- 0-120 degrees. He has mild effusion.
- 05/22/09: Follow-up. Right ACL microfractures. Continued complaints. 0-125 degrees. No effusion.
- 06/19/09: Continued complaints. Multiple procedures. He was doing much better. There is not significant effusion. 0-125 degrees. Tinell's is positive in the knee.
- 09/21/09: Follow-up for his knee. Notes some occasional weakness. Significant atrophy of his quadriceps.

This is the extent of the medical records which have been provided.

#### PAST SURGERIES/MEDICAL HISTORY:

As indicated.

#### CURRENT MEDICATIONS:

None.

#### PHYSICAL EXAMINATION:

This is a [REDACTED]-year-old LVMPD police officer who has continued complaints of the right knee with inability to jump, walk, go up and down stairs and fast twisting, jogging and kneeling all bother this gentleman. He has significant pain in the right knee.

Height: 6'6". Weight: 250 lb. Right hand dominant male.

Examination shows normal portals of entry with four portals and a 6 cm well healed midline incision. He measures 46.5 cm for his left quadriceps and 43 cm for his right. He measures 41 cm bilaterally for his calves. His range of motion of his right knee is +5-118. Left knee is 0-135. He is +4/5 for his quadriceps and has decrease in sensory in the lateral aspect of his leg. Anterior and posterior Drawer signs with a trace of an anterior Drawer sign as well as a trace of a pivot shift. McIntosh and McMurray were found to be negative. His neurovascular response of the lower extremities was found to be within normal limits.

DEC 29 2009

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(CONT.) PAGE 4

**SUMMARY OF IMPAIRMENT:**

This gentleman underwent a partial medial and lateral meniscectomy which is equivalent to a 4% whole person impairment according to Table 17-33. He also has 3.5 mm of atrophy, which is considered severe atrophy according to Table 17-6, page 530, which is equivalent to 5% whole person impairment. He has an ACL repair which he has a considered a mild laxity for a 3% whole person impairment according to Table 17-33 and he has range of motion from +5 degrees to 118 degrees which is equivalent to 4% according to Table 17-10. This gentleman has a flexion contracture of 5 degrees.


The DRE's can be combined together, but they cannot be combined with atrophy and they cannot be combined with the range of motion. The range of motion cannot be combined with the atrophy. Therefore the only two that can be combined is the partial medial and lateral meniscectomy for a 4% and the ACL repair for 3%, which is equivalent to 7% whole person impairment. The atrophy for 5% as well as the range of motion for 4% cannot be combined, although this is a higher impairment if these were able to be combined.

The patient should be awarded 7% whole person impairment and I ask that this claim be closed and adjudicated.

Today's impairment rating was performed in accordance with the AMA Guides of Evaluation of Permanent Impairments, Fifth Edition, Third Printing. All measurements were taken today were taken with a direct goniometer as indicated in the Fifth Edition, Third Printing.

If you have any further questions or concerns, please feel free to contact my office.

Sincerely,

  
Rod Perry, D.C., F.A.C.O., C.I.C.E.  
Board Certified Chiropractic Orthopedist  
Certified Medical Impairment Rater  
Certified Independent Chiropractic Evaluator  
American Board of Independent Medical Examiners  
RP: deg  
Dictated but not edited

RECEIVED

DEC 29 2009

DIR21

ROA0028

00028

Oct. 27. 2009 3:52PM

No. 5060 P. 1



October 27, 2009

Sent Via Fax: (702) 386-1219

DESERT ORTHOPAEDIC CENTER  
2800 E. Desert Inn Rd #100  
Las Vegas, NV 89121  
Attn: Dr Craig Tingey

Re: Employee: Las Vegas Metro Police Department  
Employer: 08209074  
Claim #: 01/06/2008  
Date of Injury:

Dear Dr Tingey,

We are requesting information regarding the current medical status of the above referenced injured worker. Please address the following:

1. Is the patient stable and has he/she reached maximum medical improvement?  
☒ YES ☐ NO
2. If not, what is the anticipated time frame for maximum medical improvement?  
\_\_\_\_\_
3. Has this patient been released to full duty? ☒ YES ☐ NO
4. If not, what are the current work restrictions? \_\_\_\_\_
5. Are these restrictions permanent? ☐ YES ☐ NO
6. Does he/she have a permanent residual impairment as a result of this industrial injury?  
☒ YES ☐ NO

Dr.'s Signature

Date

Sincerely,

Dusty Marshall/tn  
SENIOR CLAIMS EXAMINER

cc: LVMPD

PO BOX 19450 Las Vegas, Nevada 89132  
Phone: 702.693.6923 Fax: 702.693.4458

00000000

(K-A)

6121-98E-202 51:01 6002/82/12/28/2009 DIR22

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TO AVOID PENALTY, THIS REPORT MUST BE COMPLETED AND MAILED TO THE INSURER WITHIN 6 WORKING DAYS OF RECEIPT OF THE C-4 FORM				EMPLOYER'S REPORT OF INDUSTRIAL INJURY OR OCCUPATIONAL DISEASE			
City of Business <b>Las Vegas Metropolitan Police Department</b>		Nature of Business (mfg., etc.) <b>Law Enforcement</b>		FEIN <b>886000028</b>		OSHA Log #	
Office Mail Address <b>4008 S MARTIN LUTHER KING 435</b>		Location (if different from mailing address)				Telephone <b>702-828-3406</b>	
City <b>LAS VEGAS</b>		State <b>NV</b>		Zip <b>89106</b>		INSURER <b>LAMPD</b>	
First Name <b>[REDACTED]</b>		Last Name <b>[REDACTED]</b>		Birthdate <b>[REDACTED]</b>		Age <b>[REDACTED]</b>	
Home Address (Number and Street) <b>[REDACTED]</b>		Sex <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female		Marital Status <input type="checkbox"/> Single <input checked="" type="checkbox"/> Married <input type="checkbox"/> Divorced <input type="checkbox"/> Widowed		Primary Language Spoken <b>English</b>	
City <b>[REDACTED]</b>		State <b>NV</b>		Zip <b>[REDACTED]</b>		Was the employee paid for the day of injury? (if applicable) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
In which state was employee hired? <b>NV</b>		Employee's occupation (job title) when hired or disabled <b>POLICE OFFICERS AND DRIVERS</b>		Department in which regularly employed: <b>NORTH PATROL DIVISION</b>			
Date of injury (if applicable) <b>06-22-2012</b>		Date of injury (if not applicable) <b>22-10</b>		Date employee needed of injury or O.D. <b>06-22-2012</b>		Supervisor to whom injury or O.D. reported <b>SGT. JOHN</b>	
Address or location of accident (A 20 or more city, county, state) (if applicable) <b>LAS VEGAS</b>		Accident on employer's premises? (if applicable) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No					
What was this employee doing when the accident occurred (avoiding truck, walking down stairs, etc.)? (if applicable) <b>SITTING IN MY WHILE CONDUCTING A STOP</b>							
BACK SPINE AND NECK. TRAFFIC COLLISION. SUSPECT REAR ENDED STATIONARY POLICE VEHICLE WHILE OFFICERS WERE SITTING INSIDE.							
Source, machine, tool, substance, or object most directly connected with the accident (if applicable) <b>VEHICLE</b>				Witness <b>UNK...</b>		Was there more than one person injured in this accident? (if applicable) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Part of body injured or affected <b>MULTIPLE BODY PARTS - MULTIPLE BODY</b>				Witness <b>UNK...</b>			
Nature of injury or Occupational Disease (scratch, cut, bruise, strain, etc.) <b>SPECIFIC INJURY - SPRAIN/STRAIN</b>				Witness <b>UNK...</b>		Did employee return to next scheduled shift after accident? (if applicable) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
If ability of claims is doubtful, state reason <b>UNK</b>				Location of Inj. Treatment <b>UNK...</b>			
Treating physician/chiropractor name <b>UNK</b>				Emergency Room <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Hospitalized <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>IMPORTANT</b>		How many days per week does employee work? <b>4</b>		From <b>1500</b>		To <b>0100</b>	
Scheduled days off <b>S</b> <input checked="" type="checkbox"/> <b>M</b> <input checked="" type="checkbox"/> <b>T</b> <input checked="" type="checkbox"/> <b>W</b> <input type="checkbox"/> <b>T</b> <input type="checkbox"/> <b>F</b> <input type="checkbox"/> <b>S</b> <input type="checkbox"/>		Rotating <input type="checkbox"/>		Are you paying injured or disabled employee's wages during a strike? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
Date employee was hired <b>07-18-2006</b>		Last day of work after injury or disability <b>UNK</b>		Date of return to work <b>UNK</b>		Number of work days lost <b>UNK</b>	
Was the employee hired to work 40 hours per week? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		If not, for how many hours a week was the employee hired?		Did the employee receive unemployment compensation any time during the last 12 months? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		<input checked="" type="checkbox"/> Do not know	
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. 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 <b>1500 - 0100</b>		Employee <b>WEEKLY</b>		On the date of injury or disability the employee's wage was: <b>\$ UNK per hr</b>		Day <b>UNK</b> Mo <b>UNK</b>	
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 certify that this information is true and correct and that I am not providing false information to the State of Nevada. I understand that providing false information is a violation of Nevada law.				Employer's Signature and Title <b>[Signature]</b>		Date <b>6-23-12</b>	
Claims Examiner's Signature <b>[Signature]</b>				Account No <b>12034C229979</b>		Class Code	
Claims Examiner's Signature <b>[Signature]</b>				Status Code <b>[Signature]</b>		Date <b>6-26-12</b>	

Form C-3 (rev. 11/05)

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## **ADVANCED CHIROPRACTIC ORTHOPEDICS**

6837 W. Charleston Blvd. Las Vegas, Nevada 89117  
Telephone (702) 240-0520 Fax (702) 240-2072

Rod Perry, D.C. F.A.C.O., C.I.C.E.  
Board Certified Chiropractic Orthopedist

---

November 8, 2012

CCMSI  
P.O. Box 35350  
Las Vegas, NV 89133-5350

### **IMPAIRMENT RATING EVALUATION**

CLAIMANT: CLAIM #: 12D34C229979  
DOI: 06/22/12 EMPLOYER: L.V.M.P.D.  
BODY PART TO BE EVALUATED: Cervical spine, lumbar spine, right knee

#### **INTRODUCTION:**

The above mentioned claimant entered the office today for the purpose of obtaining an impairment rating of his cervical spine, lumbar spine and right knee. He was identified today by a Nevada driver's license and a copy is maintained for the chart. Of note, I am familiar with this gentleman. I have done a prior PPD of the right knee on him on 11/24/09. He was awarded 7% whole person impairment secondary to his injury date of 01/06/08. Apportionment will be an issue in this case for his right knee.

#### **HISTORY OF INJURY:**

On 06/22/12 the claimant states that he was a passenger in the front seat of a minivan and was unbelted. They were northbound on Charleston at Buffalo when they were struck from the rear. He stated that his right foot was on the door and it appeared that he hit his right lower extremity as well as left shoulder into the door. He states that he did have loss of consciousness. He does have a prior history of a lumbar microdiscectomy at the L4-L5 level in 2007. He complains of significant cervical pain that radiates up the right portion of his neck into his head, causing suboccipital headaches. He complains of lower back pain that radiates into the right lower gluteal region as well as the lateral aspect of his hip and the lateral aspect of his lower leg.

#### **CHRONOLOGY OF TREATMENT:**

06/22/12: UAC. CT scan of right knee obtained, CT scan of chest obtained. CT scan of lumbosacral spine obtained. MRI of cervical spine shows a C4-C5

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(CONT.) PAGE 2

- disc protrusion. MRI of the lumbar spine shows a small paracentral disc protrusion indenting the anterior thecal sac causing no significant spinal stenosis. Also a small annular tear noted along the posterior disc margin. L4-L5 central disc protrusion abutting the thecal sac causes no significant central narrowing. AP diameter 12 mm.
- 06/27/12: Admitted to HealthSouth Rehabilitation. Diagnosis: S/P understate rear end motor vehicle accident with loss of consciousness, bilateral upper extremity weakness, lower extremity paresthesias, spinal cord injury without radiologic abnormality. Right lower extremity traumatic paralysis.
- 07/06/12: Seen by Dr. Tingey. Radiographs and MRI of the patient show the ACL graft appears to be intact at the subchondral bone. Assessment: right knee pain S/P motor vehicle accident with a history of ACL reconstruction. Microfracture. Follow up in one month.
- 07/31/12: Seen by Dr. Gary Flangas for neurosurgical evaluation. Evaluation: gait normal. Range of motion found to be diminished in his neck as well as his lower back. DTRs 1/2 for biceps bilaterally, 2/2 for knees, 1/1 left ankle jerk, trace on the right. Sensory diminished S1 with some L5 involvement. 36 year old male involved in a motor vehicle accident has evidence of a central cord syndrome, which appears to be resolved. Currently he is experiencing signs and symptoms consistent with lumbar radiculopathy, paresthesia involving the right S1 and L5 distribution. Plan to return to light duty.
- 08/28/12: Seen by Dr. Flangas for follow up. He returns today complaining of right paraspinal cervicalgia as well as headaches. He usually uses Tylenol. He says stretching is helping him. He still has a decrease in range of motion. Neurologically, biceps one, triceps 2, left knee one, left ankle one, trace for right ankle.
- 09/05/12: Taken to surgery by Dr. Tingey where he underwent right knee arthroscopic chondroplasty, medial femoral condyle with two compartment synovectomy.
- 09/11/12: Right lower extremity Doppler.
- 09/02/12: Physical therapy.
- 10/18/12: Seen by Dr. Tingey. Range of motion of right knee 0-135 degrees. Well healed. No effusion. S/P chondroplasty as well as synovectomy.

This is the extent of the medical records which have been provided.

#### PAST SURGERIES/MEDICAL HISTORY:

As indicated.

#### CURRENT MEDICATIONS:

Singulair, Zyrtec

#### ALLERGIES:

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NKDA.

**PHYSICAL EXAMINATION:**

This is a ■■■-year-old male who is an L.V.M.P.D. officer

Height: 6'5". Weight: 270 lb. Right hand dominant male.

Inspection of the cervical spine shows no gross abnormalities. He measures 34 cm for his biceps and 33 cm for his forearms. DTRs are found to be 1+ for the upper extremities to include the biceps, triceps and brachioradialis. Muscle testing for the upper extremities is found to be ~5/5, including the intrinsic muscles of the hand. On sensory component there is some decrease in sensory in the right upper extremity, which is nondermatomal in nature.

Range of motion of the cervical spine using dual inclinometer method was obtained. Flexion is 60°/10, 60°/10, 58°/10, 50 degrees of flexion. Extension is 40°/10, 40°/10, 42°/10, 30 degrees of extension. Left lateral flexion is 50°/0, 50°/0, 52°/0 degrees. Right lateral is 40°/0, 40°/0, 38°/0 degrees. Left rotation is 70°/0, 70°/0, 75°/0 degrees. Right rotation is 50°/0, 50°/0, 48°/0 degrees. Palpable spasm is noted in the cervical spine, predominantly on the right side. Axial compression increases pain into the interscapular region as well as the suboccipital region on the right side of the cervical spine. No upper extremity abnormal neurological signs are present. Hoffmann's is found to be negative.

On evaluation of the lumbar spine a well healed midline incision is noted. He measures 47 cm for his quadriceps and 42 cm for his calves. DTRs are found to be 2+/4 for patella tendon and 1+/4 for the Achilles tendon bilaterally. He has a decrease in sensory along the L5-S1 distribution of the right lower extremity.

Dual inclinometer measurements of range of motion of the lumbar spine were obtained. Flexion is 50°/10, 50°/10, 48°/10, 40 degrees of flexion. Extension is 15°/0, 15°/0, 15°/0, extension 15 degrees. Right lateral flexion is 15°/0, 15°/0, 18°/0 degrees. Left lateral flexion is 30°/0, 30°/0, 30°/0 degrees. Palpable spasm is noted in the lumbar spine, predominantly worse on the right side. He has pain over the gluteal region on palpation. SLR is found to be positive at 42 degrees on the right. Muscle testing for the lower extremities is found to be ~5/5. Neurovascular response for the lower extremities is found to be within normal limits.

Inspection of the right knee shows normal portals of entry. Range of motion is 0-120, 0-120, 0-122 degrees. Anterior and posterior Drawer signs are negative. McMurray and MacIntosh tests are found to be negative.

Left knee (uninjured knee) range of motion: 0-130, 0-130, 0-130 degrees. Orthopedic evaluation is found to be within normal limits.

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## CONT.) PAGE 4

## SUMMARY OF IMPAIRMENT:

This gentleman had a prior lumbar surgical intervention, which included a microdiscectomy. The apportionment of a microdiscectomy would fall under a DRE Lumbosacral Category III for 10% whole person impairment. As for today's evaluation he must be rated using the range of motion model. He has recurrent disc herniation with radiculopathy documented by Dr. Flangas. He also has sensory component loss consistent with radiculopathy at the L5-S1 level. When we refer to the range of motion method he would fall under Table 15-7 HD, surgically treated disc without residual signs and symptoms for 8% whole person impairment. His range of motion loss in the lumbar spine is equivalent to 8% whole person impairment. He has loss of sensory component with loss of superficial tactile sensation in the L5 and S1 distribution. On Table 15-18 the L5 nerve root sensory component is worth 5% maximum sensory, as well as the S1, which is 5% maximum sensory. These are multiplied by 0.26, which is equivalent to 1.3% for lower extremity impairment. 1.3 is multiplied by 0.04 to come up with a whole person impairment. This is equivalent to 0.52, which is rounded up to 1% whole person impairment for the L5 nerve root as well as the S1 nerve root. We would combine 8% for the specific spine disorder with 8% for loss of range of motion, which is 15% whole person impairment. 15% would be combined with 1% whole person impairment for the right L5 nerve root sensory component, which is equivalent to 16% whole person impairment. We would combine 16% with the right S1 sensory impairment, which is 1%, for a total of 17% whole person impairment.

17% whole person impairment is now apportioned by a DRE Category for the prior surgical intervention of 10% whole person impairment, which is equivalent to 7% whole person impairment for the lumbar spine. This is combined with 5% whole person impairment, as he fits into a DRE Cervical Category II for significant loss of range of motion that is nonuniform in nature as well as muscular spasm. He has no signs of radiculopathy. 7% for the lumbar spine would be combined with 5% for the cervical spine for a total of 12% whole person impairment.

The right knee has full range of motion. There is no ratable impairment on this and this is a 0% award.

The patient should be awarded 12% whole person impairment and his claim should be closed and adjudicated.

Today's impairment rating was performed in accordance with the AMA Guides of Evaluation of Permanent Impairments, Fifth Edition, Third Printing. All measurements taken today were taken with a long arm goniometer for the right lower extremity and a dual inclinometer for the cervical and lumbar spine as indicated in the Fifth Edition, Third Printing.

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(CONT.) PAGE 5

If you have any further questions or concerns please feel free to contact my office.

Sincerely,

Rod Perry, D.C., F.A.C.O., C.C.C.F.  
Board Certified Chiropractic Orthopedist  
Fellow American Board of Chiropractic Orthopedists  
Qualified Impairment Rater State of Nevada  
RP:yz  
(Enclosed Document 2441)

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00036

## DESERT ORTHOPAEDIC CENTER

Patient Name :  
Medical Record Number : 1509322  
Date of Birth : [REDACTED]

DOS: October 18, 2012

**HISTORY OF PRESENT ILLNESS:** is seen for followup on his right knee, status post arthroscopic chondroplasty and synovectomy. He reports his pain is well controlled except for intermittent occasional pain when he fully extends his knee. He has been rehabbing his knee on his own. He states he is ready to return to full duty.

**PHYSICAL EXAMINATION:** Range of motion of the knee is 135-0 degrees. His incisions are well healed. There is no effusion.

**ASSESSMENT:** Right knee status post chondroplasty and synovectomy.

**PLAN:** The patient may return to full duty and may be considered maximally medically improved at this time. He may have a ratable impairment. He will follow up as needed.

Craig T. Tingey, M.D.  
(Dictated, but not edited)

m2/nbu

DD: 10/18/2012  
DT: 10/19/2012

cc Christina Cabrera  
Fax: 477-7019

RECEIVED

OCT 19 11

10/19/2012

NORTHWEST OFFICE  
8432 W. CENTENNIAL PKWY.  
LAS VEGAS, NV 89149  
(702) 849-3486 FAX (702) 859-3542

ALL APPOINTMENTS (702) 731-4085  
MAIN OFFICE  
2802 E. DESERT INN RD., SUITE 100  
LAS VEGAS, NV 89121  
(702) 731-1016 FAX (702) 731-1744

HORIZON RIDGE OFFICE  
2500 W. HORIZON RIDGE PKWY., SUITE 100  
HENDERSON, NV 89052  
(702) 263-9082 FAX (702) 237-9389

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## INSURER'S SUBSEQUENT INJURY CHECKLIST

Notice to Insurer: This form must be completed and provided with all supporting documentation for claims submitted for reimbursement from the Subsequent Injury Account.

### PART ONE

INJURED EMPLOYEE \_\_\_\_\_ DATE OF INJURY 6/22/12  
CLAIM NUMBER 12D34C229979 INSURER LVMPD  
THIRD-PARTY ADMINISTRATOR LVMPD EMPLOYER LVMPD  
SUBMITTED BY Nancy Helms, Esq. with LBBS ASSOCIATION ADMINISTRATOR \_\_\_\_\_  
INITIAL REQUEST Yes SUPPLEMENTAL REQUEST \_\_\_\_\_

Please check and complete applicable blanks. All supporting documentation must be submitted in chronological order, oldest information on top. This information must be bound in a file folder and sectioned according to this form.

Check one: Private Insurer ☐ Self-insured Employer ☒ Self-insured Association ☐

### PART TWO

X Letter of application to the Subsequent Injury Account specifying the statute pertinent to this application.

### PART THREE

a. X Medical documentation specifically showing that compensation for disability is substantially greater due to the combined effects of the preexisting impairment than that which would have resulted from the subsequent injury alone.

Doctor(s) providing medical documentation. Rod Perry, DC

X Medical documentation of the preexisting permanent physical impairment of 6% or greater, including prior PPD evaluation, if available.

Percentage	<u>7%</u>	Body Part	<u>Right Knee</u>
Percentage	_____	Body Part	_____
Percentage	_____	Body Part	_____

X Verification of the employer's knowledge of impairment at the time of hire or retention in employment after obtaining knowledge of impairment.

Date of hire	<u>7/18/06</u>
Date of employer's knowledge of impairment	<u>1/11/10</u>
Date of retention in employment	<u>1/11/10</u>

n/a Notification of a possible claim against the Subsequent Injury Account, submitted within 100 weeks of the date of injury.

Time lag \_\_\_\_\_ weeks.

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APR 10 2013

WCS

### DIR USE ONLY VERIFICATION

NRS 616B.557, 616B.578  
OR 616B.587

agtime \_\_\_\_\_ weeks.

D-37(1) rev 12/03

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State of Nevada  
**DEPARTMENT OF BUSINESS AND INDUSTRY**  
 Division of Industrial Relations  
 Workers' Compensation Section

*Explanation of Disallowance*  
*Subsequent Injury Account*  
 April 18, 2018

Claim Number: 12D34C229979  
 Date of Injury: 06-22-12  
 Insurer: Las Vegas Metropolitan Police Department  
 Employer: Las Vegas Metropolitan Police Department  
 Third-Party Administrator: CCMSI  
 Submitted by: Kim Price with Lewis Brisbois Bisgaard & Smith LLP

Total Reimbursement Requested: \$27,960.61

Item #	Amount Requested	Check Number	Date of Service	Type of Payment or Provider	Amount Disallowed	Explanation of Disallowance**
1	\$236.27	120207401	06-22-12	Desert Radiologists	\$236.27	No bill, EOB or report
2	\$282.15	120207401	06-23-12	Desert Radiologists	\$282.15	No bill, EOB or report
3	\$4,287.16	767	06-23 to 07-30-12	TTD	\$4,287.16	Off work status not related to the right knee
4	\$63,057.91	120209957	12-07-12	PPD	\$63,057.91	Impairment not related to the right knee
5	\$932.58	120207648	06-28 to 07-02-12	Viren Patel DO	\$932.58	No bill, EOB or report
6	\$226.03	120207839	06-22-12	Desert Radiologists	\$226.03	No bill, EOB or report
7	\$685.00	120207839	06-22-12	Desert Radiologists	\$685.00	No bill, EOB or report
8	\$575.00	120207869	06-23-12	Desert Radiologists	\$575.00	No bill, EOB or report
9	\$186.62	120208265	06-22-12	Desert Radiologists	\$186.62	No bill, EOB or report

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Page 2

Claim Number: 12D34C229979  
 Date of Injury: 06-22-12  
 Insurer: Las Vegas Metropolitan Police Department  
 Employer: Las Vegas Metropolitan Police Department  
 Third-Party Administrator: CCMSI  
 Submitted By: Kim Price with Lewis Brisbois Bisgaard & Smith LLP

Item #	Amount Requested	Check Number	Date of Service	Type of Payment or Provider	Amount Disallowed	Explanation of Disallowance**
10	\$149.73	120208271	07-23-12	SPORTS LLC	\$149.73	No bill, EOB or report
11	\$149.73	120208271	07-20-12	SPORTS LLC	\$149.73	No bill, EOB or report
12	\$250.57	120208273	07-31-12	Las Vegas Neurosurgery	\$250.57	No bill, EOB or report
13	\$120.81	120208678	08-28-12	Las Vegas Neurosurgery	\$120.81	No bill, EOB or report
14	\$93.16	120208680	08-03-12	Smart Comp	\$93.16	No bill, EOB or report
15	\$106.892	120208680	08-09-12	Smart Comp	\$106.82	No bill, EOB or report
16	\$106.82	120208680	08-16-12	Smart Comp	\$106.82	No bill, EOB or report
17	\$145.35	120208778	08-28-12	Desert Radiologists	\$145.35	No bill, EOB or report
18	\$159.60	120209076	08-28-12	Desert Radiologists	\$159.60	No bill, EOB or report
19	\$111.15	120209119	08-17-12	SPORTS LLC	\$111.15	No bill, EOB or report
20	\$133.00	120209119	08-24-12	SPORTS LLC	\$133.00	No bill, EOB or report
21	\$143.18	120209119	08-20-12	SPORTS LLC	\$143.18	No bill, EOB or report
22	\$111.15	120209119	08-31-12	SPORTS LLC	\$111.15	No bill, EOB or report
23	\$3,473.00	120209367	06-22 & 06-23-12	UMC	\$3,473.00	No bill, EOB or report

ROA0040

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Page 3

Claim Number: 12D34C229979  
 Date of Injury: 06-22-12  
 Insurer: Las Vegas Metropolitan Police Department  
 Employer: Las Vegas Metropolitan Police Department  
 Third-Party Administrator: CCMSI  
 Submitted By: Kim Price with Lewis Brisbois Bisgaard & Smith LLP

Item #	Amount Requested	Check Number	Date of Service	Type of Payment or Provider	Amount Disallowed	Explanation of Disallowance**
24	\$890.19	120210775	06-28 to 07-02-12	Farzan Farhangejad MD	\$890.19	No bill, EOB or report
25	\$143.18	120211484	08-30-12	SPORTS LLC	\$143.18	No bill, EOB or report
26	\$143.18	120211484	09-24-12	SPORTS LLC	\$143.18	No bill, EOB or report
27	\$1,858.08	120211559	06-22 & 06-23-12	UMC	\$1,858.08	No bill, EOB or report
28	\$3,488.23	120207647	06-22 & 06-23-12	UMC	\$3,488.23	Treatment not related to right knee per diagnosis codes
29	\$6,875.45	120207615	06-23-12	UMC	\$6,875.45	Treatment not related to right knee per diagnosis codes
30	\$37.44	120207646	06-24-12	Unsom-Dr. Browder	\$37.44	No reports for hospital visit
31	\$29.95	120207797	06-25-12	Unsom-Dr. Casey	\$29.95	No reports for hospital visit
32	\$29.95	120207646	06-26-12	Unsom-Dr. Casey	\$29.95	No reports for hospital visit
33	\$7,237.32	120207386	06-27-12	Rehab Hospital of Las Vegas	\$7,237.32	Treatment not related to right knee per diagnosis codes
34	\$44.86	120208272	06-27-12	Unsom-Dr. Casey	\$44.86	No report and treatment not related to right knee per diagnosis codes
35	\$195.00	120207792	07-09-12	SPORTS LLC	\$195.00	Treatment not related to right knee
36	\$149.58	120208271	07-13-12	SPORTS LLC	\$149.58	No report and treatment not related to right knee per diagnosis codes

ROA0041

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Page 4

Claim Number: 12D34C229979  
Date of Injury: 06-22-12  
Insurer: Las Vegas Metropolitan Police Department  
Employer: Las Vegas Metropolitan Police Department  
Third-Party Administrator: CCMSI  
Submitted By: Kim Price with Lewis Brisbois Bisgaard & Smith LLP

Item #	Amount Requested	Check Number	Date of Service	Type of Payment or Provider	Amount Disallowed	Explanation of Disallowance**
37	\$149.58	120207799	07-16-12	SPORTS LLC	\$149.58	No report and treatment not related to right knee per diagnosis codes
38	\$119.00	120208265	07-27-12	SPORTS LLC	\$119.00	No report and treatment not related to right knee per diagnosis codes
39	\$119.00	120208265	07-30-12	SPORTS LLC	\$119.00	No report and treatment not related to right knee per diagnosis codes
40	\$127.17	120211948	10-02-12	Las Vegas Neurosurgery	\$127.17	No EOB and treatment not related to right knee
41	\$693.90	120209891	11-08-12	Advanced Chiro Orthopedics-Dr. Perry	\$231.54	Additional body parts not related to right knee
				Total of Disallowance:	\$97,591.49	

\*\*When re-submitting disallowed amounts for consideration of reimbursement, please re-send all documents including bill, report and EOB regardless of what information has been requested.

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BRIAN SANDOVAL  
Governor

WCS Contact  
Information  
Main: 702-486-9080  
Fax: 702-980-0364  
<http://wcs.nv.gov>

STATE OF NEVADA



DEPARTMENT OF BUSINESS AND INDUSTRY  
DIVISION OF INDUSTRIAL RELATIONS  
WORKERS' COMPENSATION SECTION  
1301 N. Green Valley Parkway, Suite 200  
Henderson, Nevada 89074

CJ MANTHE  
Director

JOSEPH "JD"  
DECKER  
Administrator

CHARLES J. VERRE  
Chief Administrative  
Officer

MEMORANDUM

**TO:** The Board for Administration of Subsequent Injury Account for Self-Insured Employers

**FROM:** Charles J. Verre, Chief Administrative Officer, Workers' Compensation Section

**SUBJECT:** Administrator's Recommendation on Request for Reimbursement from the Subsequent Injury Account Pursuant to NRS 616B.557

Claim No: 12D34C229979  
Date of Injury: 06-22-12  
Insurer: Las Vegas Metropolitan Police Department  
Employer: Las Vegas Metropolitan Police Department  
Third-Party Administrator: CCMSI8  
Submitted By: Kim Price with Lewis Brisbois Bisgaard & Smith LLP

**DATE:** April 25, 2018 **AMENDED**

**ADMINISTRATOR'S RECOMMENDATION:**

It is the Administrator's recommendation to accept this request pursuant to NRS 616B.557 for the right KNEE only. The cervical and lumbar spine do not qualify for consideration and were not requested by the insurer.

**AMOUNT OF REIMBURSEMENT:**

The total amount requested for reimbursement is \$14,008.47. This amount was under by \$13,952.14 in medical expenses. There were amounts listed on the Paid Transaction sheets that were not included on the calculator tapes and some amounts that were, however, the amounts that were not requested were not crossed out so all amounts had to be considered. The amount that should have been requested for reimbursement is \$27,960.61. This claim had subrogation recovery that was included in the request. The amount of verified costs is \$<69,630.88>. Since there was subrogation recovery the amount to be considered is less than the actual amount spent on the claim. Disallowances under this claim are considered against all expenses prior to the reduction of the subrogation recovery, therefore, allowing no reimbursement at this time. An explanation of the disallowance is attached to this letter.

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Claim No: 12D34C229979

Insurer: Las Vegas Metropolitan Police Department

April 25, 2018 Recommendation Memorandum

**BACKGROUND:**

This request was received from Kim Price with Lewis Brisbois Bisgaard & Smith LLP on April 10, 2018.

**PRIOR HISTORY:**

This employee was hired by the Las Vegas Metropolitan Police Department (LVMPD) on July 18, 2006.

On September 29, 2006, while he was in the academy, this gentleman injured his right knee. The C-3 Form listed a right knee strain. The C-4 Form, dated September 29, 2006, listed sprain/strain of the right knee (pp.1-2).

The insurer submitted several documents to be considered for the requirement of employer knowledge of the pre-existing permanent physical impairment and they are as follows:

- Occupational Injury/Illness/Exposure Report from the LVMPD dated October 3, 2006 and signed by a supervisor. This report listed the right knee as the injured body part and was received by the employer on October 3, 2006 (pp.3);
- A LVMPD Officer's Report, dated September 29, 2006, that described the nature of the injury to the right knee. This form was received by the employer on October 3, 2006 (pp.4); and
- A LVMPD Medical Evaluation Form, dated October 3, 2006 and received by the employer on October 3, 2006 that noted a meniscal tear to the right knee (pp.5).

This is the extent of the employer's documents concerning this date of injury. The injured employee sought treatment at UMC and was diagnosed with sprain/strain of the right knee and x-rays were normal. He was taken off work through October 3, 2006 and then released to modified duty (pp.6-7).

The patient saw Dr. Higgins on October 3, 2006. His impression was a bucket handle tear, medial semilunar cartilage and he requested surgery. The patient had partial debridement of the anterior cruciate ligament (ACL) with partial synovectomy and medial meniscorrhesis on October 4, 2006 (pp.8-9).

In follow up reports, Dr. Higgins released the patient to full duty on October 23, 2006 and noted he was still working through the academy and an ACL repair after he was finished would be considered. The patient attended physical therapy and was given a knee brace. As of February 13, 2007, the patient had an ACL deficient knee. He was working in the field and could continue as long as he protected the knee. He was released from care (pp.10-11). This is the extent of the

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Claim No: 12D34C229979

Insurer: Las Vegas Metropolitan Police Department

April 25, 2018 Recommendation Memorandum

medical records for this date of injury. It should be noted the injured employee was not rated.

On January 6, 2008, during a foot pursuit, this employee fell into a hole and twisted his right knee. The C-3 Form indicated right knee strain and the January 7, 2008 C-4 Form also noted right knee strain. The C-4 Form was received by the employer on January 14, 2008 (pp.12-13).

The insurer submitted several documents to be considered for the requirement of employer knowledge of the pre-existing permanent physical impairment and they are as follows:

- A LVMPD Occupational Injury/Illness/Exposure Report, dated January 6, 2008 and signed by a supervisor. The form noted right knee pain with meniscus tear in Oct 2006 and surgery. This form was received by the employer on January 7, 2008 (pp.14);
- A February 25, 2008 Application for Leave for the right knee and off work status from February 2, 2008 through February 25, 2008. This was sent to the payroll department from a senior LEST with the employer. The form was also copied to the Risk Management Section for the employee's file (pp.15). Please note this form coincides with a surgical procedure;
- A June 30, 2008 Application for Leave for the right knee and off work status from June 16, 2008 through June 25, 2008. This form was sent to the payroll department from a senior LEST with the employer and also copied to the employee's file. This time frame also coincides with a surgery date (pp.16);
- A November 24, 2008 PPD evaluation penned by Dr. Perry. The report does not show that it was received by the employer (pp.18-21); and
- A January 11, 2010 PPD offer letter for 7% WPI for the 2008 right knee injury. This letter was copied to the employer however, there is no indication it was received by the employer (pp.17).

History for this injury was taken from the November 24, 2009 PPD evaluation penned by Dr. Perry. The injured employee had three additional surgeries under this claim and treated with Drs. Patti, Miao and Tingey. The last surgery was done in December 2008 with follow up under Dr. Tingey. Reporting under the PPD only goes through September 21, 2009 and the patient continued to follow up. He had been released to full duty and as of October 27, 2009, the patient had reached MMI and was stable and ratable (pp.22).

Dr. Perry evaluated this injured employee for permanent impairment and found 7% WPI and did not apportion for the prior injury or surgery. Please note that the rater was not furnished with any medical reporting prior to the 2008 date of injury and the patient denied any previous injuries to the right knee.

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Claim No: 12D34C229979

Insurer: Las Vegas Metropolitan Police Department

April 25, 2018 Recommendation Memorandum

**PRESENT CLAIM:**

This gentleman continued to work for the LVMPD and, on June 22, 2012, he was involved in a motor vehicle accident and injured his cervical and lumbar spine and right knee. The C-4 Form noted central cord syndrome (pp.23-24).

Medical reporting was taken from the November 8, 2012 PPD evaluation penned by Dr. Perry. The patient was taken to the hospital via ambulance, treated and released to follow up with Dr. Tingey for his knee and Dr. Flangas for the spine. MRI of the knee was done and the impression was sprain/strain with a history of ACL reconstruction and microfracture.

On September 5, 2012, the patient was taken to surgery for the right knee and underwent arthroscopic chondroplasty, medial femoral condyle with compartment synovectomy. He attended physical therapy and as of October 18, 2012, Dr. Tingey released him to full duty and he had reached MMI and was stable and ratable (pp.).

The injured employee was rated for the cervical and lumbar spine as well as the right knee. He was found to have 12% WPI, combined, for the cervical and lumbar spine and no additional impairment for the right knee (pp.25-29).

The claim was successfully subrogated and the insurer received reimbursement in the amount of \$83,325.00 to be applied to the claim.

**FINDINGS:**

A. NRS 616B.557 (1) states that if an employee of a self-insured employer has a permanent physical impairment from any cause or origin and incurs a subsequent disability by injury arising out of and in the course of his employment which entitles him to compensation for disability that is substantially greater by reason of the combined effects of the pre-existing impairment and the subsequent injury than that which would have resulted from the subsequent injury alone, the compensation due must be charged to the Subsequent Injury Account for Self-Insured Employers in accordance with regulations adopted by the Board.

Medical reporting supports a substantial increase in the costs of this claim for the right knee due to testing, evaluations and additional surgery.

Therefore, NRS 616B.557 (1) has been satisfied.

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Claim No: 12D34C229979

Insurer: Las Vegas Metropolitan Police Department

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B. NRS 616B.557 (3) states that as used in this section, "permanent physical impairment" means any permanent condition, whether congenital or caused by injury or disease, of such seriousness as to constitute a hindrance or obstacle to obtaining employment or to obtaining reemployment if the employee is unemployed. For the purposes of this section, a condition is not a "permanent physical impairment" unless it would support a rating of permanent impairment of 6 percent or more of the whole man if evaluated according to the American Medical Association's Guides to the Evaluation of Permanent Impairment as adopted and supplemented by the Division pursuant to NRS 616C.110.

This gentleman was rated at 7% WPI under his 2008 claim for the right knee.

Therefore, NRS 616B.557 (3) has been satisfied.

C. NRS 616B.557 (4) states that to qualify under this section for reimbursement from the Subsequent Injury Account for Self-Insured Employers, the self-insured employer must establish by written records that the self-insured employer had knowledge of the "permanent physical impairment" at the time the employee was hired or that the employee was retained in employment after the self-insured employer acquired such knowledge.

The file contained a LVMPD Medical Evaluation Form, dated October 3, 2006 and received by the employer on October 3, 2006 that noted a meniscal tear to the right knee.

Under the 2008 date of injury the employer submitted a LVMPD Occupational Injury/illness/Exposure Report, dated January 6, 2008 and signed by a supervisor. The form noted right knee pain with meniscus tear in Oct 2006 and surgery. This form was received by the employer on January 7, 2008.

There were also two applications for leave submitted by a senior LEST from the employer to the payroll department for leave time for the February and June 2008 surgery dates.

Therefore, NRS 616B.557(4) has been satisfied.

D. NRS 616B.557(5) states a self-insured employer shall notify the Board of any possible claim against the Subsequent Injury Account for Self-Insured Employers as soon as practicable, but not later than 100 weeks after the injury or death.

Subsection five does not need to be satisfied in order for this claim to be considered for reimbursement since the date of injury is after the October 1, 2007 change in the requirements of the statute.

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Claim No: 12D34C229979

Insurer: Las Vegas Metropolitan Police Department

April 25, 2018 Recommendation Memorandum

**WITNESSES:**

List of witnesses who may be called to testify on behalf of the DIR and a brief summary of the proposed testimony of each.

Jacque Everhart, Compliance/Audit Investigator, Workers' Compensation Section who may testify as to the basis of the Administrator's recommendation.

The Administrator reserves the right to call rebuttal and impeachment witnesses.

**NOTIFICATION TO APPLICANT:**

Applicants are advised that they should not take for granted a recommendation of the Administrator to the Board, whether positive or adverse to the self-insured employer. The Administrator's role is to make recommendations, only. The Board is the body which decides the application on the merits. Its authority is plenary. Consequently, the applicant should be fully advised that the Board is free to accept or reject in whole or in part, the recommendation of the Administrator. In addition, the Board may agree with the Administrator's recommendation to accept or reject the claim, but make its decision based upon grounds totally different than the basis for the Administrator's recommendation, provided the decision is supported by substantial evidence in the record before the Board and the Board is correct in its disposition as a matter of law. Applicants are advised, then, to appear and represent their position to the Board. Applicants are also further advised to review the pertinent statutes and regulations found at NAC 616B.770 *et. seq.*, and NRS 616B.545 *et. seq.*, and any other statutes, regulations and case law that might apply, to make their own assessment of what might be required of them.

**SUBROGATION RECOVERY NOTICE:**

Please note that pursuant to NRS 616C.215, if an insurer receives reimbursement from the Subsequent Injury Account, the Nevada Division of Industrial Relations (DIR) has a statutory lien upon the total amount paid by the employer or upon the total proceeds of any recovery from a third party. Additionally, NRS 616C.215(8) makes the injured worker, claimant's counsel and third-party insurer jointly and severally liable for any amount to which the Subsequent Injury Account is entitled if the party has knowledge of the lien and does not notify the Administrator, DIR, for the Subsequent Injury Account within 15 days after the date of recovery by way of actual receipt of the proceeds of the judgment or settlement.

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Claim No: 12D34C229979

Insurer: Las Vegas Metropolitan Police Department

April 25, 2018 Recommendation Memorandum

### CERTIFICATE OF SERVICE

Kim Price

Lewis Brisbois Bisgaard & Smith LLP

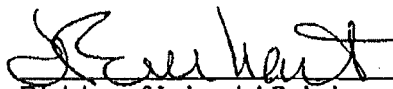
2300 W. Sahara Avenue, Suite 300, Box 28

Las Vegas, Nevada 89102

I certify that I am an employee of the Division of Industrial Relations, Workers' Compensation Section, and on 4/25, 2018 I served the attached Administrator's Recommendation Memorandum on the person(s) listed above:

<input checked="" type="checkbox"/>	By placing an original or true copy thereof in a sealed envelope, postage prepaid, placed for collection and mailing in the United States Mail, at Henderson, Nevada
<input type="checkbox"/>	By personal delivery
<input type="checkbox"/>	By Federal Express or other overnight delivery
<input type="checkbox"/>	By Certified Mail/Return Receipt Requested

Dated this 25 day of April, 2018

  
Division of Industrial Relations  
Workers' Compensation Section

**STATE OF NEVADA**  
Board for the Administration of the Subsequent Injury Account  
For Self-Insured Employers

**NOTICE OF MEETING**

The Board for the Administration of the Subsequent Injury Account for Self-Insured Employers will hold a public meeting on **June 27, 2018 at 10:00 a.m.**, at 3360 West Sahara Avenue, Suite 250, Las Vegas, Nevada, 89102, in the **Executive Video Conference Room**. The public is advised that some of the members of the Board may participate in the meeting *via* telephone.

**AGENDA**

**Notice:** (1) Items on the Agenda may be taken out of order; (2) The Board may combine two or more Agenda items for consideration; and (3) The Board may remove an item from the Agenda or delay discussion relating to an item on the Agenda at any time.

1. Roll Call.
- \*\*** 2. Public Comment-The opportunity for public comment is reserved for any matter listed below on the Agenda as well as any matter within the jurisdiction of the Board. No action on such an item may be taken by the Board unless and until the matter has been noticed as an action item. Comment from the public is limited to three minutes per person.
- \*** 3. Approval of Posting of Agenda. **For Possible Action**
- \*** 4. Approval of Agenda. **For Possible Action**
- \*** 5. Approval of the Minutes for April 25, 2018. **For Possible Action**
- \*** 6. Action on the recommendation of the Administrator of the Division of Industrial Relations, for approval of the following request(s) for reimbursement from the Subsequent Injury Account for Self-Insured Employers in the amount verified by the Administrator:
  - a. 12D34C229979 Las Vegas Metropolitan Police Department  
**For Possible Action**
  - b. 13D34C985171 Las Vegas Metropolitan Police Department  
**For Possible Action**

- \* 7. Action on the recommendation of the Administrator of the Division of Industrial Relations, for approval of the following supplemental request(s) for reimbursement from the Subsequent Injury Account for Self-Insured Employers in the amount verified by the Administrator:
  - a. 96853A375047 City of Reno  
**For Possible Action**
  - b. 07D34B894234 Las Vegas Metropolitan Police Department  
**For Possible Action**
  - c. 16C51G633168 City of North Las Vegas  
**For Possible Action**
  
- \* 8. Update on draft regulations: Review of draft regulations returned from the LCB. Consider whether to approve or return draft regulations to the LCB for further review based upon Board action or sign off on them as is or with minor corrections and proceed to the workshop phase of the regulation process. Direction to Board legal counsel. **For Possible Action**
  
- \* 9. Additional Items:
  - \*\* a. General matters of concern to Board members regarding matters not appearing on the agenda.
  - \*\* b. Old and new business.
  - \* c. Schedule of next meeting: July 18, 2018, August 15, 2018, September 19, 2018, October 17, 2018, November 14, 2018, December 12, 2018 **For Possible Action**
  
- \*\* 10. Public Comment-The opportunity for public comment is reserved for any matter within the jurisdiction of the Board. No action on such an item may be taken by the Board unless and until the matter has been noticed as an action item. Comment from the public is limited to three minutes per person.
  
- \* 11. Adjournment. **For Possible Action**

Single-asterisked items are matters upon which the Board may take possible action.

Double-asterisked items are matters upon which the Board may take no action until the matter itself has been specifically included on an agenda as an item upon which action may be taken.

Any person with a disability as defined by the Americans with Disabilities Act who requires special assistance to participate in the meeting may contact, at least two days prior to the meeting, Jacque Everhart at the Division of Industrial Relations, 1301 North Green Valley Parkway, Suite 200, Henderson, Nevada, 89074, or by calling (702) 486-9089 to arrange for reasonable accommodations.

This Notice has been posted at the following locations:

Division of Industrial Relations, 3360 W. Sahara Avenue, Suite 250, Las Vegas, Nevada, 89102.

Division of Industrial Relations, 400 West King Street, Suite 400, Carson City, Nevada, 89710.

Division of Industrial Relations, Occupational Safety and Health Enforcement Section, 4600 Kietzke Lane, Building F, Suite 153, Reno, Nevada, 89502.

Nevada Business Center, 3300 W. Sahara Avenue, Suite 425, Las Vegas, Nevada, 89102

This notice has also been posted at the following web site addresses:

State of Nevada, Department of Business and Industry, Industrial Relations (DIR) website at <http://dir.nv.gov/WCS/Hearings/>

Nevada Public Notices at <https://notice.nv.gov/>.

According to the provision of NRS 241.020(5), a copy of supporting (not privileged and confidential) material provided to the Board Members may be obtained upon request made to: Charles R. Zeh, Esq., The Law Offices of Charles R. Zeh, Esq., 575 Forest Street, Suite 200, Reno, Nevada, 89509, or by calling (775) 323-5700.

Copies of the supporting (not privileged and confidential) material may also be obtained upon request at the offices of the Division of Industrial Relations, Workers' Compensation Section located at 1301 N. Green Valley Parkway, Suite 200, Henderson, Nevada, 89074 or by calling (702) 486-9000.

Dated this 6th day of June, 2018

By: s/ CHARLES R. ZEH. ESQ.  
Charles R. Zeh, Esq.  
Counsel for the Board

**STATE OF NEVADA**  
Board for the Administration of the Subsequent Injury Account  
For Self-Insured Employers

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**AMENDED AGENDA**

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**For Possible Action**
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**For Possible Action**
  - c. 16C51G633168 City of North Las Vegas  
**For Possible Action**
- \* 8. Update on draft regulations: Review of draft regulations returned from the LCB. Consider whether to approve or return draft regulations to the LCB for further review based upon Board action or sign off on them as is or with minor corrections and proceed to the workshop phase of the regulation process. Direction to Board legal counsel. **For Possible Action**
- \* 9. Consider and approve the Small Business Impact Statement required as a part of the regulation amendment process. **For Possible Action**
- \* 10. Additional Items:
  - \*\* a. General matters of concern to Board members regarding matters not appearing on the agenda.
  - \*\* b. Old and new business.
  - \* c. Schedule of next meeting: July 18, 2018 regulation workshop/meeting, **August 20, 2018 please note change in date** for meeting and regulation hearing, September 19, 2018, October 17, 2018, November 14, 2018, December 12, 2018 **For Possible Action**
- \*\* 11. Public Comment-The opportunity for public comment is reserved for any matter within the jurisdiction of the Board. No action on such an item may be taken by the Board unless and until the matter has been noticed as an action item. Comment from the public is limited to three minutes per person.
- \* 12. Adjournment. **For Possible Action**

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Copies of the supporting (not privileged and confidential) material may also be obtained upon request at the offices of the Division of Industrial Relations, Workers' Compensation Section located at 1301 N. Green Valley Parkway, Suite 200, Henderson, Nevada, 89074 or by calling (702) 486-9000.

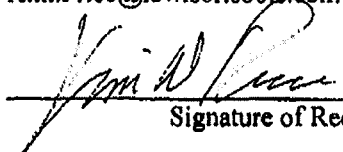
Dated this 18th day of June, 2018

By: s/ CHARLES R. ZEH. ESQ.  
Charles R. Zeh, Esq.  
Counsel for the Board

**WAIVER OF HAND DELIVERY AND  
CERTIFICATE OF RECEIPT OF NOTICE OF MEETING**

I, Kim D. Price, affirm under the penalty of perjury that on the  
8<sup>th</sup> day of June, 2018 at 8:58, a.m, I personally received,  
the Notice of Meeting for the meeting to be held on June 27, 2018 at 10:00 am, of the Board  
for the Administration of the Subsequent Injury Account for Self-Insured Employers. I  
further waive my right to hand delivery of said Agenda having received notice in time to  
appear and make a presentation for Las Vegas Metropolitan Police Department,  
13D34C985171 at said hearing.

Kim Price  
Lewis Brisbois Bisgaard & Smith LLP  
Kim.Price@lewisbrisbois.com

  
\_\_\_\_\_  
Signature of Receiver  
  
Associate  
\_\_\_\_\_  
Title

**Note:** After execution of this Certificate of Delivery of Agenda, please promptly return the  
original Certificate to Jacque Everhart via facsimile at (702) 990-0364 or by mail at the  
following address:

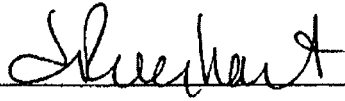
Jacque Everhart  
Workers' Compensation Section  
1301 North Green Valley Parkway, Suite 200  
Henderson, Nevada 89074

Should the Waiver not be received by Jacque Everhart for inclusion in the record by the time  
of the scheduled hearing, the matter will not be heard and will be rescheduled for hearing at a  
later date.



**CERTIFICATE OF PROVIDING E-MAIL OF SECOND AMENDED AGENDA TO  
WEB ADMINISTRATOR FOR POSTING ON THE DIVISION OF INDUSTRIAL  
RELATIONS, WCS, NOTICE OF MEETING WEBSITE**

I, Jacquie Everhart, affirm under the penalty of perjury that on the 18 day of  
June, 2018 at 1020 am/pm, I verified the posting of the Amended  
Agenda for the meeting to be held on **June 27, 2018**. The Agenda was posted to the Division  
of Industrial Relations, at <http://dir.nv.gov/WCS/Hearings/>



Signature

**CERTIFICATE OF PROVIDING E-MAIL OF THE SECOND AMENDED AGENDA  
FOR POSTING ON THE STATE OF NEVADA PUBLIC NOTICES WEBSITE**

I, Jacque Everhart, affirm under the penalty of perjury that on the 18 day of June, 2018 at 8:25 ampm, I posted an amended notice for the meeting to be held on **June 27, 2018**, of the Board for the Administration of the Subsequent Injury Account for Self-Insured Employers to the State of Nevada Public Notices Website, located at, <https://notice.nv.gov/>.

  
\_\_\_\_\_  
Signature

Compliance Audit Investigator III  
Subsequent Injury Coordinator

**CERTIFICATE OF POSTING OF SECOND AMENDED AGENDA**

I, Jacque Everhart, swear and affirm under the penalty of perjury that on the 18 day of June, 2018 at 840 ~~am~~pm, I personally posted the Agenda for the meeting to be held on **June 27, 2018**, of the Board for the Administration of the Subsequent Injury Account for Self-Insured Employers at the address listed below:

Division of Industrial Relations, 3360 W. Sahara Avenue, Suite 250, Las Vegas,  
Nevada 89102

  
Signature

**CERTIFICATE OF POSTING OF SECOND AMENDED AGENDA**

I, Sara Ganning, swear and affirm under the penalty of perjury that on the 18<sup>th</sup> day of June, 2018 at 8:22 AM pm, I personally posted the Agenda for the meeting to be held on June 27, 2018, of the Board for the Administration of the Subsequent Injury Account for Self-Insured Employers at the address listed below:

Division of Industrial Relations, 400 West King Street, Suite 400, Carson City,  
Nevada 89701

  
\_\_\_\_\_  
Signature AA3

**Note:** After execution of this Certificate of Posting and posting of the Agenda as shown in the Certificate of Posting, please promptly return the original Certificate to Jacque Everhart, Subsequent Injury Coordinator, Workers' Compensation Section either by e-mail directed to everhart@business.nv.gov, by facsimile sent to 702-990-0364 or via postal service to the Division of Industrial Relations, Workers' Compensation Section, 1301 N. Green Valley Parkway, Suite 200, Henderson, Nevada 89074.

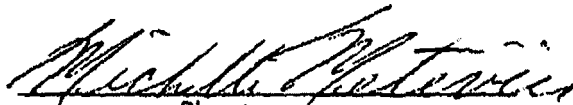
ROA0060

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**CERTIFICATE OF POSTING OF SECOND AMENDED AGENDA**

I, Michelle Metivier, swear and affirm under the penalty of perjury that on the 18 day of June, 2018 at 8:20, am, I personally posted the Amended Agenda for the meeting to be held on **June 27, 2018**, of the Board for the Administration of the Subsequent Injury Account for Self-Insured Employers at the address listed below:

Nevada Business Center, 3300 W. Sahara Avenue, Suite 425, Las Vegas, Nevada  
89102

  
Signature

Admn Asst  
Title

**Note:** After execution of this Certificate of Posting and posting of the Amended Agenda as shown in the Certificate of Posting, please promptly return the original Certificate to Jacque Everhart, Subsequent Injury Coordinator, Workers' Compensation Section either by e-mail directed to [everhart@business.nv.gov](mailto:everhart@business.nv.gov), by facsimile sent to 702-990-0364 or via postal service to the Division of Industrial Relations, Workers' Compensation Section, 1301 N. Green Valley Parkway, Suite 200, Henderson, Nevada 89074.

ROA0061

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**CERTIFICATE OF POSTING OF SECOND AMENDED AGENDA**

I, Nettie Plazola-May, swear and affirm under the penalty of perjury that on the 18th day of June, 2018 at 8:50 am/pm, I personally posted the Agenda for the meeting to be held on **June 27, 2018**, of the Board for the Administration of the Subsequent Injury Account for Self-Insured Employers at the address listed below:

Division of Industrial Relations, Occupational Safety and Health Enforcement  
Section, 4600 Kietzke Lane, Building F, Suite 153, Reno, Nevada, 89502

Nettie Plazola-May  
Signature

**Note:** After execution of this Certificate of Posting and posting of the Agenda as shown in the Certificate of Posting, please promptly return the original Certificate to Jacque Everhart, Subsequent Injury Coordinator, Workers' Compensation Section either by e-mail directed to [everhart@business.nv.gov](mailto:everhart@business.nv.gov), by facsimile sent to 702-990-0364 or via postal service to the Division of Industrial Relations, Workers' Compensation Section, 1301 N. Green Valley Parkway, Suite 200, Henderson, Nevada 89074.

**STATE OF NEVADA**  
**Board for the Administration of the**  
**Subsequent Injury Account for Self-Insured Employers**

**Meeting Minutes for June 27, 2018**

On June 27, 2018, a meeting of the Board for the Administration of the Subsequent Injury Account for Self-Insured Employers was convened. The meeting was duly noticed in compliance with the Nevada Open Meeting Law to take place at 3360 West Sahara Avenue, Suite 250, Las Vegas, Nevada 89102, in the Executive Video Conference Room, at the offices of the Division of Industrial Relations ("DIR"). Participating by phone were Vice-Chairman Michele Berrington and members Amy Wong and Cecilia Meyer. Chairman RJ LaPuz was absent due to his critically ill mother in the Phillippines. There is one vacant position on the Board. In accordance with the Nevada Open Meeting Law, each Board member participating in the meeting either had before him or her all written materials to be considered during the deliberations or was obliged to refrain from voting if not in possession of the materials.

**1. Roll Call.**

As Chairman LaPuz was absent, Vice-Chairman, Michele Berrington called the meeting to order at 10:00 a.m. Participating by phone were Vice-Chairman Michele Berrington and members Amy Wong and Cecilia Meyer. Chairman RJ LaPuz was absent due to his critically ill mother in the Phillippines. A quorum was present.

Also, present in person for the meeting were Jacque Everhart, the Liaison to the Board for the Administrator of the DIR, Christopher Eccles, Esq., DIR, and Charles R. Zeh, Esq., The Law Offices of Charles R. Zeh, Esq., legal counsel to the Board. Participating for all or a portion of the meeting by phone was Kim Price, Esq., Lewis Brisbois Bisgaard & Smith LLP and Kasey McCourtney, of CCMSI.

**2. Public Comment.**

Public comment was invited. None was offered.

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

Acting Chairman Berrington called this matter to be heard. It was moved by Amy Wong, seconded by Cecilia Meyer, to approve the posting of the Agenda for the meeting.  
**Motion adopted.**

**Vote: 3-0.**

June 27, 2018

1

July 16, 2018

ROA0063

00063

4. **Approval of the Agenda.**

Acting Chairman Berrington called this item to be considered. It was moved by Cecilia Meyer, seconded by Amy Wong, to approve the Agenda. **Motion adopted.**

**Vote: 3-0**

5. **Approval of the Minutes for April 25, 2018.**

Acting Chairman Berrington called this item to be heard. It was moved by Amy Wong, seconded by Cecilia Meyer, to approve the minutes as read. **Motion adopted.**

**Vote: 3-0**

6. **Action on the Recommendation of the Administrator of the Division of Industrial Relations for Approval of the Following Request(s) for Reimbursement from the Subsequent Injury Account for Self-Insured Employers in the Amount Verified by the Administrator.**

a. **12D34C229979**

**Las Vegas Metropolitan Police Department**

Acting Chairman Berrington called this matter next for hearing. The insurer and employer for this matter is the Las Vegas Metropolitan Police Department. The third-party administrator for this matter is CCMSI. The matter was submitted by Kim Price with Lewis Brisbois Bisgaard & Smith LLP.

The Administrator recommended acceptance of this request pursuant to NRS 616B.557 for the right knee only. The amount of reimbursement requested was \$14,008.47. The amount of reimbursement after costs were verified was a negative \$69,630.88.

Kim Price, Esq., of Lewis Brisbois Bisgaard & Smith LLP, appeared on behalf of the applicant.

As CCMSI is the third-party administrator for the self-insured employer, Cecilia Meyer advised that CCMSI is the third-party administrator for her employer, Carson City. She did not believe that this circumstance constituted a conflict of interest and advised, she would participate in the disposition of this matter.

Similarly, Amy Wong advised that CCMSI is the third-party administrator for her employer, the City of Henderson. She did not believe that this circumstance constituted a conflict of interest, either, and therefore, advised that she would participate in the disposition of this matter.

Also, Amy Wong advised that the law firm of Lewis Brisbois Bisgaard & Smith LLP represents her employer, the City of Henderson. She did not believe that this circumstance constituted a conflict of interest and, therefore, advised that this would not prevent her from participating in the disposition of this matter.



After the Administrator's liaison, Jacque Everhart, presented the Administrator's recommendation, discussion arose about the recommendation of a negative \$69,630.88 reimbursement recommendation. It was established that because there was this negative reimbursement recommendation due to the subrogation recovery in the amount of \$83,325.00, there would be no affirmative reimbursement unless and until the self-insured had paid out an additional amount of \$69,630.88 on this claim. Board counsel wanted it make clear to Mr. Price, for the applicant, that the size of the reimbursement could be appealed, just as claim acceptance could be the subject of appeal to the Board at this first bite stage of the case.

Kim Price, Esq., was asked if he had anything to add or respond to the Administrator's recommendation. He eventually stated he had nothing more to add, after questioning why the amount of the subrogation award was not apportioned to this claim only in the amount of the award attributable to the injured body part? The Administrator's liaison explained that the reason, in part, it was not apportioned was because the applicant included in the claim, the injured body parts included in the subrogation claim even though they were not a part of the body parts injured the subject of the industrial injury.

After deliberations on the question of the amount of reimbursement and the meaning of a negative reimbursement recommendation due to the applicant's subrogation recovery of the sum of \$83,325.00, it was moved by Amy Wong, seconded by Cecilia Meyer to accept the recommendation of the Administrator and approve the claim with a negative reimbursement of \$69,630.88, attributable to a subrogation recovery in the amount of \$83,325.00. **Motion adopted.**

**Vote: 3-0.**

**b. 13D34C985171**

**Las Vegas Metropolitan Police Department**

Acting Chairman Berrington called this matter next for hearing. The insurer and employer for this matter is the Las Vegas Metropolitan Police Department. The third-party administrator for this matter is CCMSI. The matter was submitted by Kim Price, Esq., for Lewis Brisbois Bisgaard & Smith LLP.

The Administrator recommended acceptance of this request pursuant to NRS 616B.557 for the left shoulder. The amount of reimbursement requested was \$23,464.84. The amount of reimbursement after costs were verified was \$17,411.53.

Kim Price, Esq., of Lewis Brisbois Bisgaard & Smith LLP, appeared on behalf of the applicant.

As CCMSI is the third-party administrator for the self-insured employer, Cecilia Meyer advised that CCMSI is the third-party administrator for her employer, Carson City. She did not believe that this circumstance constituted a conflict of interest and advised, she would participate in the disposition of this matter.

Similarly, Amy Wong advised that CCMSI is the third-party administrator for her employer, the City of Henderson. She did not believe that this circumstance constituted a conflict of interest, either and, therefore, advised that she would participate in the disposition of this matter.

Also, Amy Wong advised that the law firm of Lewis Brisbois Bisgaard & Smith LLP represents her employer, the City of Henderson. She did not believe that this circumstance constituted a conflict of interest and, therefore, advised that this would not prevent her from participating in the disposition of this matter.

After the Administrator's liaison, Jacque Everhart, presented the Administrator's recommendation, Kim Price, Esq., was asked if he had anything further to add. His reply was he had no further comment.

Accordingly, based upon the Board's deliberations on the claim, the Administrator's recommendation and good cause was appearing, it was moved by Cecilia Meyer, seconded by Amy Wong, to accept the Administrator's recommendation and approve payment of the claim in the verified amount of \$17,411.53. **Motion adopted.**

**Vote: 3-0.**

**7. Action on the Recommendation of the Administrator of the Division of Industrial Relations for Approval of the Following Supplemental Request(s) for Reimbursement from the Subsequent Injury Account for Self-Insured Employers in the Amount Verified by the Administrator from a Previous Meeting.**

**a. 96853A375047**

**City of Reno**

Acting Chairman Berrington called this matter next for hearing. The insurer and employer for this matter is the City of Reno. The matter was submitted by the third-party administrator, CCMSI. Kasey McCourtney appeared on behalf of the applicant.

The Administrator recommended acceptance of this eighth supplemental request pursuant to NRS 616B.557 for the heart. The amount of reimbursement requested was \$24,719.40. The amount of reimbursement after costs were verified was \$24,719.40.

As CCMSI is the third-party administrator for the self-insured employer, Cecilia Meyer advised that CCMSI is the third-party administrator for her employer, Carson City. She did not believe that this would create a conflict of interest and, therefore, would participate in the disposition of this matter.

Similarly, Amy Wong advised that CCMSI is the third-party administrator for her employer, the City of Henderson. She did not believe that this circumstance constituted a conflict of interest, either and, therefore, advised that she would participate in the disposition of this matter.

After the Administrator's liaison, Jacque Everhart, presented the Administrator's recommendation, Kasey McCourtney, was asked if she had anything further to add. She stated she had no further comment.

Accordingly, based upon the Administrator's recommendation, the exhibits attached to the Staff Report, the discussion before the Board and other good cause appearing, it was moved by Cecilia Meyer, seconded by Amy Wong, to approve this claim and to authorize payment of the claim in the verified amount of \$24,719.40. **Motion adopted.**

**Vote: 3-0.**

**b. 07D34B894234**

**Las Vegas Metropolitan Police Department**

Acting Chairman Berrington called this matter next for hearing. The insurer and employer for this matter is the Las Vegas Metropolitan Police Department. The third-party administrator for this matter is CCMSI. The matter was submitted by Kim Price, Esq., with Lewis Brisbois Bisgaard & Smith LLP.

The Administrator recommended acceptance of this third supplemental request for previously disallowed amounts and payments not already considered pursuant to NRS 616B.557 for the lumbar spine. The amount of reimbursement requested was \$44,443.19. The amount of reimbursement after costs were verified was \$12,967.82.

Kim Price, Esq., of Lewis Brisbois Bisgaard & Smith LLP, appeared on behalf of the applicant.

As CCMSI is the third-party administrator for the self-insured employer, Cecilia Meyer advised that CCMSI is the third-party administrator for her employer, Carson City. She did not believe that this circumstance constituted a conflict of interest and advised, she would participate in the disposition of this matter.

Similarly, Amy Wong advised that CCMSI is the third-party administrator for her employer, the City of Henderson. She did not believe that this circumstance constituted a conflict of interest, either and, therefore, advised that she would participate in the disposition of this matter.

Also, Amy Wong advised that the law firm of Lewis Brisbois Bisgaard & Smith LLP represents her employer, the City of Henderson. She did not believe that this circumstance constituted a conflict of interest and, therefore, advised that this would not prevent her from participating in the disposition of this matter.

After the Administrator's liaison, Jacque Everhart, presented the Administrator's recommendation, Kim Price, Esq., was asked if he had anything further to add. His reply was he had no further comment.

Accordingly, based upon the Board's deliberations on the claim, the Administrator's recommendation and good cause was appearing, it was moved by Cecilia Meyer,

seconded by Amy Wong, to accept the Administrator's recommendation and approve payment of the claim in the verified amount of \$12,967.82. **Motion adopted.**

**Vote: 3-0.**

Mr. Price then excused himself from further participation in the meeting.

c. **16C51G633168**

**City of North Las Vegas**

Acting Chairman Berrington called this matter next for hearing. The insurer and employer for this matter is the City of North Las Vegas. The matter was submitted by the third-party administrator, CCMSI. Kasey McCourtney appeared for CCMSI on behalf of the applicant.

The Administrator recommended acceptance of this first supplemental request for a previously disallowed amount pursuant to NRS 616B.557 for the right shoulder. The amount of reimbursement requested was \$1,767.10. The amount of reimbursement after costs were verified was \$1,767.10.

Amy Wong advised that CCMSI, the third-party administrator for this claim, is also the third-party administrator for her employer, the City of Henderson. She did not believe that this would create a conflict of interest and, therefore, would participate in the disposition of this matter.

Similarly, Cecilia Meyer advised that CCMSI is the third-party administrator for her employer, Carson City. She did not believe that this would create a conflict of interest and, therefore, would participate in the disposition of this matter.

After the Administrator's liaison, Jacque Everhart, presented the Administrator's recommendation, Kasey McCourtney was asked if she had anything further to add. She stated she had no further comment.

Accordingly, based upon the Board's deliberations on the claim, the Administrator's recommendation and good cause was appearing, it was moved by Amy Wong, seconded by Cecilia Meyer, to accept the Administrator's recommendation and approve payment of the claim in the verified amount of \$1,767.10. **Motion adopted.**

**Vote: 3-0.**

- 8. Update on Draft Regulations: Review of Draft Regulations Returned from the LCB. Consider Whether to Approve or Return Draft Regulations to the LCB for Further Review Based upon Board Action or Sign off on Them as Is or with Minor Corrections and Proceed to the Workshop Phase of the Regulation Process. Direction to Board Legal Counsel.**

Acting Chairman Berrington then called this matter for hearing. She called upon Board legal counsel to address the issue of the Board Regulations. Board counsel explained that

draft Regulations were before the Board. They had been vetted, already, by Board legal counsel with Asher Killian of the Legislative Counsel Bureau. There were three minor changes that needed to be made, if the Board concurs for the Board to have a clean copy to be submitted to the LCB for approval and then, to proceed with a workshop on the Regulations. Hopefully, thereafter, the Board could move onward to a hearing to approve a final copy of the Regulations to submit to the LCB for transmittal to the Legislative Commission for final approval, enacting the Regulations into the Nevada Administrative Code. The changes are to strike "primarily" from page 5, Section 4, change NRS 616B.578 to NRS 616B.557 on page 9, and strike "and number each of the pages in the claim sequentially" from page 16. These were the only changes and with these changes, it was moved by Amy Wong, seconded by Cecilia Meyer, to direct the Board legal counsel to inform the LCB to proceed with a revised final draft of the Regulations for use at the workshop and the hearing upon whether to adopt the draft Regulations as the final Regulations of the Board for inclusion in Nevada's Administrative Code. **Motion adopted.**

**Vote: 3-0.**

Board counsel advised that at the meeting of July 18, 2018, the workshop on the draft Regulations will be held, and that on August 20, 2018, a hearing will be held after notice of the intent to adopt final Regulations is given.

**9. Consider and Approve the Small Business Impact Statement Required as a Part of the Regulation Amendment Process.**

Acting Chairman Berrington then called this item for hearing, consideration of the draft Small Business Impact statement (SBI). She asked Board counsel to explain. He informed the Board that the SBI was an integral part of the regulatory scheme for the amendment of the Board's Regulations. The workshop could not proceed without the approval of an SBI. The SBI before the Board concluded that the draft Regulations would have no adverse impact upon small employers, defined as employers who employ 150 or fewer employees. The SBI also concluded that the draft Regulations will actually have a positive impact on small businesses. Upon review of the SBI and discussion of its contents, it was moved by Cecilia Meyer, seconded by Amy Wong, to approve the SBI. **Motion adopted.**

**Vote: 3-0.**

**10. Additional Items:**

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

Board counsel once again pleaded with Board members to recruit someone to fill the vacant fifth slot on the Board, given that with only four Board members, a quorum was a very fragile proposition.

**b. Old and New Business.**

There was no old or new business discussed.

**c. Schedule of Next Meeting.**

There are no changes in the dates set for meetings. The Board has tentatively scheduled the following meetings: , July 18, 2018, August 20, 2018, September 19, 2018, October 17, 2018, November 14, 2018 and December 12, 2018.

**11. Public Comment.**

There was no public comment.

**12. Adjournment.**

It was then moved by Cecilia Meyer, seconded by Amy Wong, to adjourn the meeting.  
**Motion Adopted.**

**Vote: 3-0.**

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# The Law Offices of Charles R. Zeh, Esq.

Attorneys and Counselors at Law

Charles R. Zeh, Esq.  
Robert G. Berry, Esq.  
Pete Cladianos III, Esq.  
James Barnes, Esq.

575 Forest Street, Suite 200  
Reno, Nevada 89509  
Phone (775) 323-5700  
Fax (775) 786-8183  
Office e-mail: Karen@crzehlaw.com

Sender's e-mail address  
CRZeh@aol.com

July 11, 2018

## Via U.S. Mail

Kim D. Price, Esq.  
Lewis Brisbois Bisgaard & Smith LLP  
2300 W. Sahara Avenue, Suite 300, Box 28  
Las Vegas, NV 89102

Re: *Subsequent Injury Request for Reimbursement*  
Claim No.: 12D34C229979  
Date of Injury: June 22, 2012  
Insurer: Las Vegas Metropolitan Police Department  
Employer: Las Vegas Metropolitan Police Department  
Third-Party Administrator: CCMSI  
Submitted by: Kim Price, Esq., with Lewis Brisbois Bisgaard & Smith LLP

Dear Mr. Price:

The Board for Administration of the Subsequent Injury Account for Self-insured Employers hereby notifies you that at the meeting on June 27, 2018, the Board voted to approve the request for reimbursement related to the above-referenced claim pursuant to NRS 616B.557. The Board also affirmed the Administrator's recommendation of verified costs in the amount of a negative \$69,630.88. This means, as explained during the course of the hearing, that the employer, by reason of the subrogated amount in this case, must expend an additional verifiable sum of \$69,630.88 on this claim before the employer might successfully pursue reimbursement.

If you disagree with the Board's decision, you may request a hearing within thirty (30) days of receipt of this letter. Your request should be submitted in writing to:

Board for Administration of the Subsequent Injury Account  
For Self-insured Employers  
c/o Charles R. Zeh, Esq.  
The Law Offices of Charles R. Zeh, Esq.  
575 Forest Street, Suite 200  
Reno, NV 89509

#2

Admitted in Minnesota and Nevada

Ex 3

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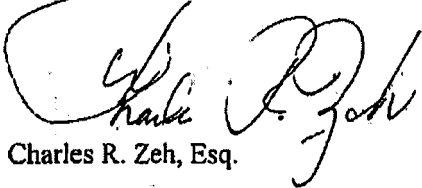
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Kim D. Price, Esq.  
Lewis Brisbois Bisgaard & Smith LLP  
July 11, 2018  
Page 2

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Sincerely,

THE LAW OFFICES OF CHARLES R. ZEH, ESQ.

  
Charles R. Zeh, Esq.

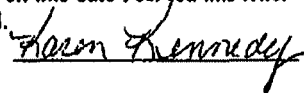
CRZ/kdk

cc: RJ LaPuz, Chairman, *Via facsimile*  
Jacque Everhart, DIR, *Via facsimile*

**CERTIFICATE OF SERVICE**

I certify that I am an employee of The Law Offices of  
Charles R. Zeh, Esq., and on this date I served this letter  
on the parties as indicated.

Date: 7.11.2018



S:\Clients\SIE\Letters\Notification\06 27 2018 Approvals R2.wpd

*Admitted in Minnesota and Nevada*

ROA0072

00072



# The Law Offices of Charles R. Zeh, Esq.

Attorneys and Counselors at Law

Charles R. Zeh, Esq.  
Robert G. Berry, Esq.  
Pete Cladianos III, Esq.  
James Barnes, Esq.

50 West Liberty Street, Suite 950  
Reno, Nevada 89501  
Phone (775) 323-5700  
Fax (775) 786-8183  
Office e-mail: Karen@Crzehlaw.com

Sender's e-mail address  
CRZeh@aol.com

October 8, 2018

Kim Price, Esq.  
Lewis Brisbois Bisgaard & Smith LLP  
2300 W. Sahara Avenue, Suite 300, Box 28  
Las Vegas, Nevada 89102

Re: *Subsequent Injury Request for Reimbursement*  
Claim No.: 12D34C229979  
Date of Injury: June 22, 2012  
Insurer: Las Vegas Metropolitan Police Department  
Employer: Las Vegas Metropolitan Police Department  
Third-Party Administrator: CCMSI  
Application Submitted by: Kim Price, Esq.

Dear Mr. Price:

This is to provide preliminary confirmation that at the meeting of the Board for the Administration of the Subsequent Injury Account for Self-Insured Employers, held on September 26, 2018, the Board voted to uphold the recommendation of the Administrator, DIR, thereby affirming the Administrator's recommendation to accept the claim of your client, the Las Vegas Police Department, but awarding a negative compensation in the amount of <\$69,630.88>P. Under the statutory and regulatory framework for the Board, legal counsel shall draft findings of fact, conclusions of law and a decision (decision) memorializing the action of the Board. I will be drafting the proposed decision for the Board's review and approval, as soon as time and circumstances reasonably permit. Completion of the final draft will turn upon the length of time it takes for the Court Reporter to provide me a copy of the transcript of the hearing on this matter.

As I understand it, your client has the option of appealing the decision of the Board to the District Court once a written decision has been signed and approved by the Board. Accordingly, the time to file your notice of appeal to the District Court does not begin to run until you are provided a copy of the written decision once approved by the Board. I admonish you, however, to review the Nevada Revised Statutes and Nevada Administrative Code, to make your own determination on these matters.

*Admitted in Minnesota and Nevada*

ROA0073

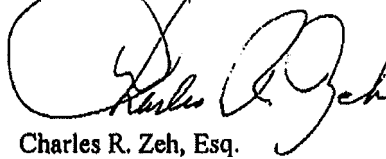
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Kim Price, Esq.  
Lewis Brisbois Bisgaard & Smith LLP  
October 8, 2018  
Page 2  
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Should you have any questions, please do not hesitate to inquire.

Sincerely,

THE LAW OFFICES OF CHARLES R. ZEH, ESQ.



Charles R. Zeh, Esq.

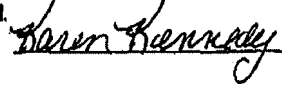
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cc: Michele Berrington, Chairman, and Board members  
Donald C. Smith, Esq., Administrator's legal counsel  
Jacque Everhart, Administrator's liaison to the Board

**CERTIFICATE OF SERVICE**

I certify that I am an employee of The Law Offices of  
Charles R. Zeh, Esq., and on this date I served this letter  
on the parties as indicated.

Date: 10-8-2018



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*Admitted in Minnesota and Nevada*

ROA0074

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Kim D. Price  
2300 W. Sahara Avenue, Suite 300, Box 28  
Las Vegas, Nevada 89102  
Kim.Price@lewisbrisbois.com  
Direct: 702.583.6005

August 10, 2018

33307-150

VIA E-MAIL

Charles R. Zeh, Esq.  
Board of Administration of the Subsequent  
Injury Account for Self-Insured Employers  
The Law Offices of Charles R. Zeh, Esq.  
575 Forest Street  
Suite 200  
Reno NV 89509  
E-Mail: CRZeh@aol.com

RECEIVED

AUG 10 2018

WCS

Re: Claim No. 12D34C229979  
DOI: 06/22/2012  
Insurer: LVMPD  
Employer: LVMPD  
TPA: CCMSI

Dear Mr. Zeh:

We are in receipt of the July 11, 2018 correspondence notifying us that the Board voted to approve the request for reimbursement from the Subsequent Injury Account for Self-Insured Employers.

Please be advised that we are appealing the Board's recommendation of verified costs in the amount of a negative \$69,630.88. We disagree with the amount of the subrogation that was applied to the expenditures submitted with the initial Subsequent Injury Application.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kim D. Price', is written over the word 'Sincerely,'.

Kim D. Price for  
LEWIS BRISBOIS BISGAARD & SMITH LLP

KDP:db

cc: RJ LaPuz  
Jacque Everhart  
Lisa Koehler, Claim Representative CCMSI  
Jeff Roch, Risk Management LVMPD

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**STATE OF NEVADA**  
**Board for the Administration of the Subsequent Injury Account**  
**For Self-Insured Employers**

**NOTICE OF MEETING**

The Board for the Administration of the Subsequent Injury Account for Self-Insured Employers will hold a public meeting on September 26, 2018 at 10:00 a.m., at 3360 W. Sahara Avenue, Suite 250, Las Vegas, Nevada 89102. The public is advised that some of the members of the Board may participate in the meeting *via* telephone.

**AGENDA**

- Notice:** (1) Items on the Agenda may be taken out of order; (2) The Board may combine two or more Agenda items for consideration; and (3) The Board may remove an item from the Agenda or delay discussion relating to an item on the Agenda at any time.
1. Roll Call.
  - \*\* 2. Public Comment. The opportunity for public comment is reserved for any matter listed below on the Agenda as well as any matter within the jurisdiction of the Board. No action on such an item may be taken by the Board unless and until the matter has been noticed as an action item. Comment from the public is limited to three minutes per person.
  - \* 3. Election of Officers. In light of the resignation of the Chairman, RJ LaPuz, from the Board, the Board is required by statute to conduct elections for a replacement to complete the resigning Chairman's term of office. The Board will, therefore, take nominations to fill the position of Chairman of the Board and to conduct an election for Chairman. Depending upon the outcome of the Chairman's election, the Board may also take nominations and hold an election for a position of Board Vice-Chairman. **For Possible Action**
  - \* 4. Approval of Posting of Agenda. **For Possible Action**
  - \* 5. Approval of Agenda. **For Possible Action**
  - \* 6. Approval of the Minutes for August 20, 2018. **For Possible Action**

- \* 7. Action on the recommendation of the Administrator of the Division of Industrial Relations for denial of the following request(s) for reimbursement from the Subsequent Injury Account for Self-Insured Employers. The following request(s) for reimbursement, which the Board will hear *de novo*, is a contested case which will be adjudicated pursuant to the Nevada Administrative Procedures Act, NRS 233B.010, et seq.:
- a. 12D34C229979 Las Vegas Metropolitan Police Department
- For Possible Action
- \* 8. Action on the recommendation of the Administrator of the Division of Industrial Relations, for approval of the following request(s) for reimbursement from the Subsequent Injury Account for Self-Insured Employers in the amount verified by the Administrator:
- a. 15F78G682594 Carlin Surface Operations  
For Possible Action
- \* 9. Action on the recommendation of the Administrator of the Division of Industrial Relations, for approval of the following supplemental request(s) for reimbursement from the Subsequent Injury Account for Self-Insured Employers in the amount verified by the Administrator:
- a. 15F02G240097 City of Las Vegas  
For Possible Action
- \* 10. Reconsider Action Regarding Draft Regulations. The Board will discuss the amendment to the draft regulations adopted at the August 20, 2018, meeting, to consider whether to Agendize this item for further action at subsequent meetings of the Board, whether to leave the amendment as is, or take such other action and give such other direction to the Staff and Board Counsel in light of the discussion of this item, which relates to the Action taken regarding Section 16, paragraph 5, page 17, dealing with incomplete applications for reimbursement and the Administrator's control over such incomplete applications for reimbursement. For Possible Action
- \* 11. Additional Items:
- \*\* a. General matters of concern to Board members regarding matters not appearing on the agenda.
- \*\* b. Old and new business.
- \* c. Schedule of next meeting: October 17, 2018, November 13, 2018 and December 10, 2018. For Possible Action

- \*\* 12. Public Comment-**The opportunity for public comment is reserved for any matter within the jurisdiction of the Board. No action on such an item may be taken by the Board unless and until the matter has been noticed as an action item. Comment from the public is limited to three minutes per person.

- \* 13. Adjournment. For Possible Action**

Single-asterisk items are matters upon which the Board may take possible action.

Double-asterisk items are matters upon which the Board may take no action until the matter itself has been specifically included on an agenda as an item upon which action may be taken.

Any person with a disability as defined by the Americans with Disabilities Act who requires special assistance to participate in the meeting may contact, at least two days prior to the meeting, Jacque Everhart at the Division of Industrial Relations, 3360 W. Sahara Avenue, Suite 250, Las Vegas, Nevada 89102, or by calling Jacque Everhart at (702) 486-9089 to arrange for reasonable accommodations.

This Notice has been posted at the following locations:

Division of Industrial Relations, 3360 W. Sahara Avenue, Suite 250, Las Vegas, Nevada 89102

Division of Industrial Relations, 400 West King Street, Suite 400, Carson City, Nevada, 89710

Division of Industrial Relations, Occupational Safety and Health Enforcement Section, 4600 Kietzke Lane, Building F, Suite 153, Reno, Nevada, 89502

Nevada Business Center, 3300 W. Sahara Avenue, Suite 425, Las Vegas, Nevada, 89102

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

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


Nevada Public Notices at <https://notice.nv.gov/>.

According to the provision of NRS 241.020(5), a copy of supporting (not privileged and confidential) material provided to the Board Members may be obtained upon request made to: Charles R. Zeh, Esq., The Law Offices of Charles R. Zeh, Esq., 50 West Liberty Street, Suite 950, Reno, Nevada, 89501, or by calling (775) 323-5700.

Copies of the supporting (not privileged and confidential) material may also be obtained upon request at the offices of the Division of Industrial Relations, Workers' Compensation Section located at 3360 W. Sahara Avenue, Suite 250, Las Vegas, Nevada 89102 or by calling (702) 486-9080.

Dated this 1<sup>st</sup> day of September, 2018.

By:

  
s/ CHARLES R. ZEH, Esq.  
Charles R. Zeh, Esq.  
Counsel for the Board

**STATE OF NEVADA**  
Board for the Administration of the Subsequent Injury Account  
For Self-Insured Employers

**NOTICE OF HEARING**

To: Kim D. Price, Esq.  
Lewis Brisbois Bisgaard & Smith LLP  
2300 W. Sahara Avenue, Suite 300, Box 28  
Las Vegas, NV 89102  
Facsimile: 702.366.9563

The Board for the Administration of the Subsequent Injury Account for Self-insured Employers hereby gives notice that it will hold a public meeting on September 26, 2018, 10:00 a.m., at 3360 West Sahara Avenue, Suite 250, Las Vegas, Nevada, at which time the Board will consider on its stacked calendar the following claim(s):

**Action on the recommendation of the Administrator of the Division of Industrial Relations for denial of the following request(s) for reimbursement from the Subsequent Injury Account for Self-Insured Employers. The following request(s) for reimbursement, which the Board will hear *de novo*, is a contested case which will be adjudicated pursuant to the Nevada Administrative Procedures Act, NRS 233B.010, et seq., in Claim No. 12D34C229979, Las Vegas Metropolitan Police Department.**

Dated this 10<sup>th</sup> day of September, 2018.

By: /s/ Charles R. Zeh, Esq.  
Charles R. Zeh, Esq.  
Counsel for the Board

**RECEIVED**

SEP 10 2018

**WCS**

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**WAIVER OF HAND DELIVERY AND  
CERTIFICATE OF RECEIPT OF NOTICE OF HEARING**

I, Kim Price, Esq., Lewis Brisbois Bisgaard & Smith LLP, affirm under the penalty of perjury that on the 10 day of September, 2018, at 1:30 a.m.(p.m.), I personally received, the Notice of Hearing for the meeting to be held on September 26, 2018, at 10:00 a.m., of the Board for the Administration of the Subsequent Injury Account for Self-Insured Employers. I further waive my right to hand delivery of said Agenda having received notice via fax in time to appear and make a presentation regarding SIF Claim No. 12D34C229979 at said hearing.

Kim D. Price, Esq.  
Lewis Brisbois Bisgaard & Smith LLP  
2300 W. Sahara Avenue, Suite 300, Box 28  
Las Vegas, NV 89102

  
Signature of Receiver

Note: After execution of this *Waiver of Hand Delivery and Certificate of Receipt of Notice of Hearing*, please promptly return the original Certificate to Charles R. Zeh, Esq., via facsimile at (775) 786-8183 or by mail at the following address:

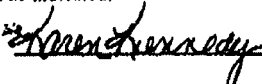
Charles R. Zeh, Esq.  
The Law Offices of Charles R. Zeh, Esq.  
50 West Liberty Street, Suite 950  
Reno, NV 89501

Should the Waiver not be received by Charles R. Zeh, Esq., for inclusion in the record by the time of the scheduled hearing, the matter will not be heard and will be rescheduled for hearing at a later date.

**CERTIFICATE OF SERVICE**

I certify that I am an employee of The Law Offices of Charles R. Zeh, Esq., and on this date I served this document on the person as indicated.

Date: 9-10-2018

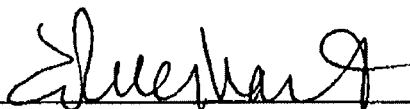


S:\Charles\STB\Waivers\9.26.2018 Waiver.mpd

**CERTIFICATE OF POSTING OF AGENDA**

I, Jacque Everhart, swear and affirm under the penalty of perjury that on the 17 day of September, 2018 at 4:00, am/pm, personally posted the Agenda for the meeting to be held on **September 26, 2018**, of the Board for the Administration of the Subsequent Injury Account for Self-Insured Employers at the address listed below:

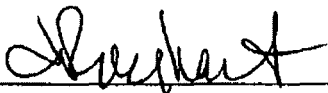
Division of Industrial Relations, 3360 W. Sahara Avenue, Suite 250, Las Vegas,  
Nevada 89102



Signature  
Compliance Audit Investigator III  
Subsequent Injury Coordinator

**CERTIFICATE OF VERIFICATION OF POSTING OF THE AGENDA ON THE  
DIVISION OF INDUSTRIAL REALTIONS WEBSITE**

I, Jacque Everhart, affirm under the penalty of perjury that on the 18 day of  
September, 2018 at 225 am~~pm~~ I verified the posting of the Agenda for the  
meeting of the Self-Insured Board for **September 26, 2018** was posted to the Division of  
Industrial Relations website, <http://dir.nv.gov/WCS/Hearings/>.



Signature  
Compliance Audit Investigator III  
Subsequent Injury Coordinator

**CERTIFICATE OF PROVIDING E-MAIL OF THE AGENDA FOR POSTING ON  
THE STATE OF NEVADA PUBLIC NOTICES WEBSITE**

I, Jacque Everhart, affirm under the penalty of perjury that on the 18 day of September, 2018 at 225 am pm, I posted a notice for the meeting to be held on September 26, 2018 of the Board for the Administration of the Subsequent Injury Account for Self-Insured Employers to the State of Nevada Public Notices Website, located at, <https://notice.nv.gov/>.



Signature

Compliance Audit Investigator III  
Subsequent Injury Coordinator

**CERTIFICATE OF POSTING OF AGENDA**

I, Valerie Wharton, swear and affirm under the penalty of perjury that on the 17<sup>th</sup> day of Sept., 2018 at 3:55 am/pm I personally posted the Agenda for the meeting to be held on September 26, 2018 of the Board for the Administration of the Subsequent Injury Account for Self-Insured Employers at the address listed below:

Division of Industrial Relations, 400 West King Street, Suite 400, Carson City,  
Nevada 89701

V. Wharton  
Signature

AA II  
Title

**Note:** After execution of this Certificate of Posting and posting of the Agenda as shown in the Certificate of Posting, please promptly return the original Certificate to Jacque Everhart, Subsequent Injury Coordinator, Workers' Compensation Section either by e-mail directed to [everhart@business.nv.gov](mailto:everhart@business.nv.gov), by facsimile sent to 702-990-0364 or via postal service to the Division of Industrial Relations, Workers' Compensation Section, 1301 N. Green Valley Parkway, Suite 200, Henderson, Nevada 89074.

**CERTIFICATE OF POSTING OF AGENDA**

I, Nettie Plazola-May, swear and affirm under the penalty of perjury that on the 17th day of September, 2018 at 4:09, am/pm, I personally posted the Agenda for the meeting to be held on September 26, 2018, of the Board for the Administration of the Subsequent Injury Account for Self-Insured Employers at the address listed below:

Division of Industrial Relations, Occupational Safety and Health Enforcement  
Section, 4600 Kietzke Lane, Building F, Suite 153, Reno, Nevada, 89502

Nettie Plazola-May  
Signature

AA II  
Title

**Note:** After execution of this Certificate of Posting and posting of the Agenda as shown in the Certificate of Posting, please promptly return the original Certificate to Jacque Everhart, Subsequent Injury Coordinator, Workers' Compensation Section either by e-mail directed to [everhart@business.nv.gov](mailto:everhart@business.nv.gov), by facsimile sent to 702-990-0364 or via postal service to the Division of Industrial Relations, Workers' Compensation Section, 1301 N. Green Valley Parkway, Suite 200, Henderson, Nevada 89074.

### **CERTIFICATE OF POSTING OF AGENDA**

I, Lola Egan, swear and affirm under the penalty of perjury that on the 17th day of September, 2018 at 4:00, pm, I personally posted the Agenda for the meeting to be held on September 26, 2018, of the Board for the Administration of the Subsequent Injury Account for Self-Insured Employers at the address listed below:

Nevada Business Center, 3300 W. Sahara Avenue, Suite 425, Las Vegas, Nevada  
89102

  
\_\_\_\_\_  
Signature

Administrative Assistant  
\_\_\_\_\_  
Title

**Note:** After execution of this Certificate of Posting and posting of the Agenda as shown in the Certificate of Posting, please promptly return the original Certificate to Jacque Everhart, Subsequent Injury Coordinator, Workers' Compensation Section either by e-mail directed to [everhart@business.nv.gov](mailto:everhart@business.nv.gov), by facsimile sent to 702-990-0364 or via postal service to the Division of Industrial Relations, Workers' Compensation Section, 1301 N. Green Valley Parkway, Suite 200, Henderson, Nevada 89074.

**WAIVER OF HAND DELIVERY AND  
CERTIFICATE OF RECEIPT OF NOTICE OF MEETING**

I, Kasey McCourtney, affirm under the penalty of perjury that on the 17<sup>th</sup> day of September, 2018 at 3:54 pm, I personally received, the Notice of Meeting for the meeting to be held on **September 26, 2018 at 10:00 am**, of the Board for the Administration of the Subsequent Injury Account for **Self-Insured Employers**. I further waive my right to hand delivery of said Agenda having received notice in time to appear and make a presentation for **City of Las Vegas, 15F02G240097** at said hearing.

Kasey McCourtney  
CCMSI  
kmccourtney@ccmsi.com



---

Signature of Receiver

Recovery Specialist

---

Title

**Note:** After execution of this Certificate of Delivery of Agenda, please promptly return the original Certificate to Jacque Everhart via facsimile at (702) 990-0364 or by mail at the following address:

Jacque Everhart  
Workers' Compensation Section  
1301 North Green Valley Parkway, Suite 200  
Henderson, Nevada 89074

Should the Waiver not be received by Jacque Everhart for inclusion in the record by the time of the scheduled hearing, the matter will not be heard and will be rescheduled for hearing at a later date.

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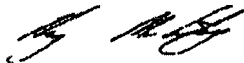
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**WAIVER OF HAND DELIVERY AND  
CERTIFICATE OF RECEIPT OF NOTICE OF MEETING**

I, Kasey McCourtney, affirm under the penalty of perjury that on the 17<sup>th</sup> day of September, 2018 at 3:54 pm, I personally received, the Notice of Meeting for the meeting to be held on September 26, 2018 at 10:00 am, I personally received, the Notice of Meeting for the meeting to be held on September 26, 2018 at 10:00 am, of the Board for the Administration of the Subsequent Injury Account for **Self-Insured Employers**. I further waive my right to hand delivery of said Agenda having received notice in time to appear and make a presentation for Carlin Surface Operations, **15F78G682594** at said hearing.

Kasey McCourtney  
CCMSI  
kmccourtney@ccmsi.com



---

Signature of Receiver

Recovery Specialist

---

Title

**Note:** After execution of this Certificate of Delivery of Agenda, please promptly return the original Certificate to Jacque Everhart via facsimile at (702) 990-0364 or by mail at the following address:

Jacque Everhart  
Workers' Compensation Section  
1301 North Green Valley Parkway, Suite 200  
Henderson, Nevada 89074

Should the Waiver not be received by Jacque Everhart for inclusion in the record by the time of the scheduled hearing, the matter will not be heard and will be rescheduled for hearing at a later date.

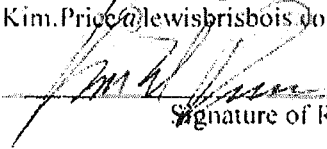
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**WAIVER OF HAND DELIVERY AND  
CERTIFICATE OF RECEIPT OF NOTICE OF MEETING**

I, KIM D. PRICE, affirm under the penalty of perjury that on the  
17<sup>th</sup> day of SEPTEMBER, 2018 at 5:07 P. m, I personally received,  
the Notice of Meeting for the meeting to be held on **September 26, 2018 at 10:00 am**, of the  
Board for the Administration of the Subsequent Injury Account for **Self-Insured Employers**.  
I further waive my right to hand delivery of said Agenda having received notice in time to  
appear and make a presentation for Las Vegas Metropolitan Police Department,  
**12D34C229979** at said hearing.

Kim Price, Esq.  
Lewis Brisbois Bisgaard & Smith LLP  
Kim.Price@lewisbrisbois.com

  
\_\_\_\_\_  
Signature of Receiver  
  
Associate  
\_\_\_\_\_  
Title

**Note:** After execution of this Certificate of Delivery of Agenda, please promptly return the  
original Certificate to Jacque Everhart via facsimile at (702) 990-0364 or by mail at the  
following address:

Jacque Everhart  
Workers' Compensation Section  
1301 North Green Valley Parkway, Suite 200  
Henderson, Nevada 89074

Should the Waiver not be received by Jacque Everhart for inclusion in the record by the time  
of the scheduled hearing, the matter will not be heard and will be rescheduled for hearing at a  
later date.

**Karen Kennedy**

---

**From:** Bateman, Dawn <Dawn.Bateman@lewisbrisbois.com>  
**Sent:** Monday, September 24, 2018 12:48 PM  
**To:** 'Jacque Everhart'  
**Cc:** crzeh@aol.com; Karen Kennedy; dmarshall@ccmsi.com; Lisa Koehler (lkoehler@ccmsi.com); Price, Kim  
**Subject:** Hearing 09/26/2018 - Claim 12D34C229979  
**Attachments:** Ltr of Application - 1st Supp SIA - JE.pdf; Subrogation Offset Memo.pdf; PPD Evaluations.pdf

Hi Jacque,

Attached are the following documents for the September 26, 2018 hearing.

1. First Supplement to Letter of Application.
2. Subrogation Offset Memo.
3. PPD Evaluations dated November 24, 2009 and November 8, 2012.

Thank you.



**Dawn Bateman**  
**Workers' Compensation Paralegal**  
Dawn.Bateman@lewisbrisbois.com

T: 702.693.4378 F: 702.366.9563

2300 West Sahara Avenue  
Suite 300, Box 28, Las Vegas, NV 89102 | [LewisBrisbois.com](http://LewisBrisbois.com)

**Representing clients from coast to coast. View our locations nationwide.**

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Page 1  
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EX-2  
HIS



Kim D. Price  
2300 W. Sahara Avenue, Suite 300, Box 28  
Las Vegas, Nevada 89102  
Kim.Price@lewisbrisbois.com  
Direct: 702.583.6005

September 24, 2018

33307-150

**VIA E-MAIL**

Jacque Everhart  
Division of Industrial Relations  
Workers' Compensation Section  
3360 West Sahara Avenue, Suite 250  
Las Vegas, NV 89102

**Re: Claim No. 12D34C229979  
DOI: 06/22/2012  
Insurer: LVMPD  
Employer: LVMPD  
TPA: CCMSI**

**First Supplement to Letter of Application for  
Reimbursement from the Subsequent Injury Account**

Dear Ms. Everhart:

Pursuant to NRS 616B.557, and on behalf of the Self Insured Employers, please accept this first supplement of documents for consideration during the de novo hearing of Employers request for reimbursement from the Subsequent Injury Account for Self-Insured Employers.

Attached is our Subrogation Offset Memorandum and the PPD Evaluations which we submit for consideration to recalculate the amount of verified costs and proper subrogation in this matter.

Sincerely,

  
Kim D. Price for  
LEWIS BRISBOIS BISGAARD & SMITH LLP

KDP:db

cc: Charles Zeh, Esq. - via email  
Lisa Koehler, Claim Representative CCMSI  
Jeff Roch, Risk Management LVMPD

2

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4817-3852-3508.1

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September 24, 2018

SIA

**SUBROGATION OFFSET MEMORANDUM**

**Claim No. 12D34C229979  
DOI 06/22/2012**

At the June 27, 2018 Board meeting, the Board for Administration of the Subsequent Injury Account for self-insured Employers voted to approve the initial request for reimbursement. The Board also affirmed the Administrator's recommendation of verified costs in the amount of a negative \$69,630.88.

On July 11, 2018, Charles R. Zeh, Esq. submitted a letter confirming the above results of the Board meeting.

We are appealing the amount of verified costs based on the following:

November 24, 2009:  
Impairment Rating Evaluation by Rod Perry, DC.  
Body part to be evaluated: Right Knee.

**Summary of Impairment:**

Claimant underwent a partial medial and lateral meniscectomy which is equivalent to a 4% WPI. He also has 3.5mm of atrophy, which is considered severe atrophy, which is equivalent to 5% WPI. He has an ACL repair which he has a considered mild laxity for 3% WPI and range of motion from +5 degrees to 118 degrees which is equivalent to 4% and has a flexion contracture of 5 degrees.

The DRE's can be combined together, but they cannot be combined with atrophy and they cannot be combined with the range of motion. Therefore, the only two that can be combined is the partial medial and lateral meniscectomy for a 4% and the ACL repair for 3% which is equivalent to 7% WPI. The atrophy for 5% and range of motion for 4% cannot be combined. The claimant was awarded 7% WPI.

November 8, 2012:  
Impairment Rating Evaluation by Rod Perry, DC.  
Body part to be evaluated: Cervical Spine, Lumbar Spine and Right Knee.

3

**Summary of Impairment:**

Claimant had a prior lumbar surgical intervention which included a microdiscectomy. The apportionment of a microdiscectomy would fall under a DRE Lumbosacral Category III for 10% WPI.

Today's evaluation must be rated using the range of motion model. Surgically treated disc w/o residual signs and symptoms for 8% WPI. His range of motion loss in the lumbar spine is equivalent to 8% WPI. He has loss of sensory component with loss of superficial tactile sensation in the L5 and S1 distribution. The L5 nerve root sensory component is worth 5% maximum sensory, as well as the S1 which is 5% maximum sensory. We would combine 8% for the specific spine disorder with 8% for loss of range of motion, which is 15% WPI. 15% would be combined with 1% WPI for the right L5 nerve root sensory component, which is equivalent to 16% WPI. We would combine 16% with the right S1 sensory impairment, which is 1% for a total of 17% WPI.

17% WPI for the lumbar spine. This combined with 5% WPI for the cervical spine for significant loss of range of motion that is non-uniform in nature as well as muscular spasm. He has no signs of radiculopathy. The right knee has full range of motion. There is no ratable impairment on this and this is 0% award.

Based on the two PPD Evaluations see below.

Right Knee : 7% WPI for doi on 01/06/2008.  
                  0% for doi on 06/22/2012.  
                  Total 7% WPI

Lumbar Spine : 10% WPI for doi in 2007. /  
                  17% WPI for doi on 06/22/2012.  
                  Total 27% WPI

Cervical Spine : 5% WPI for doi on 06/22/2012.  
                  Total 5% WPI

Combined total percentage for all injuries is 39% WPI

**Subrogation:**

CCMSI received the sum of \$83,325 to satisfy the worker's compensation lien for the medical and disability expenditures paid out.

Based on the whole person impairment percentages listed above we believe that only \$14,998.50 of the subrogation payment is attributed to the right knee injury. The remaining \$68,326.50 should be attributed to the lumbar and cervical spine injuries.

These amounts were determined by totaling the percentage for all pre-existing and subsequent injuries [39%WPI] then dividing 7% [right knee WPI] by 39% equaling 18% for the right knee and multiplying 18% times \$83,325.00 for a total of \$14,998.50.

The total percentage for the lumbar and cervical spine is 32% WPI. You then divide 32% by 39% equaling 82% for a total of \$68,326.50. This amount should be attributed to the lumbar and cervical spine injuries only.

Therefore, the SIA Application submitted should reflect this new subrogation amount for the right knee when determining the amount of verified costs. The lumbar and cervical spine are not qualifying body parts for purposes of the Subsequent Injury Claim and the amount of the subrogation payment attributed to those injuries should not be considered.

Therefore, based on the amount

Medical Expenses:	\$13,592.16
TTD Expenses:	<u>\$ 1,805.12</u>
Subtotal:	\$15,397.12
Subrogation - Right Knee:	<u>-\$14,998.50</u>
Grand Total Expenditures	\$ 398.78

## **ADVANCED CHIROPRACTIC ORTHOPEDICS**

6837 W. Charleston Blvd. Las Vegas, Nevada 89117  
Telephone (702) 240-0520 Fax (702) 240-3072

**Rod Perry, D.C. F.A.C.O., C.I.C.E.**  
**Board Certified Chiropractic Orthopedist**

November 24, 2009

TriStar Risk Management  
P.O. Box 19450  
Las Vegas, NV 89132-0450  
Attn: Dusty Marshall -- Senior Claims Examiner

### **IMPAIRMENT RATING EVALUATION**

CLAIMANT: [REDACTED] CLAIM #: 08209074  
DOI: 01/06/08 EMPLOYER: LVMPD  
BODY PART TO BE EVALUATED: Right knee.

#### **INTRODUCTION:**

The above mentioned claimant entered the office today for the purpose of obtaining an impairment rating of his right knee. He was identified today by a Nevada driver's license and a copy is maintained for the chart.

#### **HISTORY OF INJURY:**

On 01/06/08 this gentleman was in a foot pursuit and stepped in a three foot hole and injured his right knee. He denies any other previous injuries to the right knee.

#### **CHRONOLOGY OF TREATMENT:**

01/06/08: Pecole Quick Care. Right knee strain. Antinflammatory, Ultram and Morphine given to the patient.  
01/10/08: Seen by Dr. Patti. Acute internal derangement of the knee, medial and lateral meniscal suspected tears, possible ligamentous problems, possible tibial plateau fracture and infarction.  
01/17/08: MRI at Nevada Imaging. Proximal patella tendinosis suggestive of possible jumper's knee. The anterior and posterior cruciate, medial and collateral and quadriceps appear grossly intact. No discrete tears.  
01/24/08: Seen by Dr. Patti. High grade partial tear of the patella tendon and patella associated edema. Therapy would be appropriate.

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DEC 29 2009

6 [Signature]  
[Illegible text]

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(CONT.) PAGE 2

01/31/08: Follow-up with Dr. Patti. I have asked him if he has had previous trouble with his knee pain. Doing any athletic injuries. The injury is legitimate and is high grade. We have not improved him despite this therapy.

02/06/08: Taken to the Parkway Surgical Center by Dr. Patti where he underwent a partial patellar tendon evulsion central, ACL proximal incomplete anterior medial meniscal superior anterior lateral meniscal tear and underwent partial lateral meniscectomy, partial medial meniscectomy, chondroplasty, central patella, lateral patella with radial frequency, shrinkage of the ACL, open repair of the patella tendon with patellar anchoring.

02/07/08: Follow-up postoperatively. No signs of infection, doing better.

03/03/08: Follow-up with Dr. Patti. Continued complaints. He has significant extensor lag, considerable pain from non-absorbable fibers in the sutures. Right now he is in better control. He is still on crutches.

03/24/08: Seen by Dr. Patti. Postoperatively. Good progress, good strength.

04/14/08: Follow-up postoperatively. Sensitivity over the patellar tendon. Examination reveals 30 degrees of erectus tightness, 45 degrees of quadriceps. I believe that he is having issues with this.

05/20/08: Seen by Dr. Miao. Continued complaints. Suggests further MRI to ascertain the prior repair.

06/06/08: Follow-up. MRI was reviewed. Demonstrates some color changes on the chondral surface of the patella. This is intermediate and specific. ACL has altered signals, but demonstrates fibers intact. Right knee post-arthroscopic debridement.

06/13/08: Continued complaints. Preoperative appointments will be made.

06/16/08: Underwent surgical intervention where he underwent an arthroscopic major synovectomy.

06/25/08: Follow-up. Went over issues with respect to his synovectomy and ACL repair. Basically his ACL is not functioning properly as well as signs of abnormalities in the chondral surfaces.

09/10/08: Follow-up. Continued complaints. First of all injection anterior lateral without difficulty. Patient just had a big of pain with the last injection. Continue therapy.

09/17/08: Had a second synovectomy anterior and lateral without difficulty. Range of motion still has extension lag.

09/24/08: Examination- No effusion. Sensitivity 0-130 with no restrictions. At this point he hopefully continues to not have any problems.

10/09/08: Seen by Dr. Tingy. Patient has complicated course of knee surgery. His current issues are primarily instability and pain. ACL reconstruction may be considered to treat the instability, treatment of the chondral injuries as well as femoral chondral defects may be appropriate.

10/22/08: Follow-up with Dr. Miao. He is functioning and doing better. At this time chondroplasty issues would probably get worse.

11/10/08: Follow-up with Dr. Tingy. Discussed the issue of reconstruction with allograft with or without microfracture of the patella and possibly medial femoral condyle. The patient would like to schedule for this.

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(CONT.) PAGE 3

- 01/09/09: Follow-up. Seen status post ACL reconstruction, microfracture. He reports that with physical therapy his primary complaints are the suprapatellar region with contracture of the quadriceps.
- 01/22/09: Follow-up with Dr. Tingy. Examination- Large effusion of the joint knee, wounds are healed, negative anterior Drawer's sign, Lachman test, range of motion is 0-110 degrees.
- 03/06/09: Follow-up, status post ACL. He is unable to climb stairs. We had a conversation regarding his complex history and the prognosis. He may have some osteonecrosis. MRI would be appropriate.
- 03/13/09: Underwent MRI which shows intact ACL, free truncation edges of the medial meniscus, marked chondromalacia.
- 03/26/09: Follow-up with Dr. Tingy. At this time follow-up MRI is completed. No evidence of osteonecrosis of the patella.
- 04/20/09: Follow-up. Examination- 0-120 degrees. He has mild effusion.
- 05/22/09: Follow-up. Right ACL microfractures. Continued complaints. 0-125 degrees. No effusion.
- 06/19/09: Continued complaints. Multiple procedures. He was doing much better. There is not significant effusion. 0-125 degrees. Tinel's is positive in the knee.
- 09/21/09: Follow-up for his knee. Notes some occasional weakness. Significant atrophy of his quadriceps.

This is the extent of the medical records which have been provided.

#### PAST SURGERIES/MEDICAL HISTORY:

As indicated.

#### CURRENT MEDICATIONS:

None.

#### PHYSICAL EXAMINATION:

This is a 33-year-old LVMPD police officer who has continued complaints of the right knee with inability to jump, walk, go up and down stairs and fast twisting, jogging and kneeling all bother this gentleman. He has significant pain in the right knee.

Height: 6'6". Weight: 250 lb. Right hand dominant male.

Examination shows normal portals of entry with four portals and a 6 cm well healed midline incision. He measures 46.5 cm for his left quadriceps and 43 cm for his right. He measures 41 cm bilaterally for his calves. His range of motion of his right knee is +5-118. Left knee is 0-135. He is +4/5 for his quadriceps and has decrease in sensory in the lateral aspect of his leg. Anterior and posterior Drawer signs with a trace of an anterior Drawer sign as well as a trace of a pivot shift. McIntosh and McMurray were found to be negative. His neurovascular response of the lower extremities was found to be within normal limits.

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(CONT.) PAGE 4

**SUMMARY OF IMPAIRMENT:**

This gentleman underwent a partial medial and lateral meniscectomy which is equivalent to a 4% whole person impairment according to Table 17-33. He also has 3.5 mm of atrophy, which is considered severe atrophy according to Table 17-6, page 530, which is equivalent to 5% whole person impairment. He has an ACL repair which he has a considered a mild laxity for a 3% whole person impairment according to Table 17-33 and he has range of motion from +5 degrees to 118 degrees which is equivalent to 4% according to Table 17-10. This gentleman has a flexion contracture of 5 degrees.

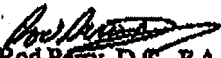
The DRE's can be combined together, but they cannot be combined with atrophy and they cannot be combined with the range of motion. The range of motion cannot be combined with the atrophy. Therefore the only two that can be combined is the partial medial and lateral meniscectomy for a 4% and the ACL repair for 3%, which is equivalent to 7% whole person impairment. The atrophy for 5% as well as the range of motion for 4% cannot be combined, although this is a higher impairment if these were able to be combined.

The patient should be awarded 7% whole person impairment and I ask that this claim be closed and adjudicated.

Today's impairment rating was performed in accordance with the AMA Guides of Evaluation of Permanent Impairments, Fifth Edition, Third Printing. All measurements were taken today were taken with a direct goniometer as indicated in the Fifth Edition, Third Printing.

If you have any further questions or concerns, please feel free to contact my office.

Sincerely,

  
Rod Perry, D.C., F.A.C.O., C.I.C.E.  
Board Certified Chiropractic Orthopedist  
Certified Medical Impairment Rater  
Certified Independent Chiropractic Evaluator  
American Board of Independent Medical Examiners  
RP: deg  
Dictated but not edited

RECEIVED  
DEC 29 2009

Chiropractic  
Los Angeles

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00099

**ADVANCED CHIROPRACTIC ORTHOPEDICS**

6837 W. Charleston Blvd. Las Vegas, Nevada 89117  
Telephone (702) 240-0520 Fax (702) 240-2072

Rod Parry, D.C. F.A.C.O., C.I.C.E.  
Board Certified Chiropractic Orthopedist

November 8, 2012

CCMSI  
P.O. Box 35350  
Las Vegas, NV 89133-5350

**IMPAIRMENT RATING EVALUATION**

CLAIMANT: [REDACTED] CLAIM #: 12D34C229979  
DOI: 06/22/12 EMPLOYER: L.V.M.P.D.  
BODY PART TO BE EVALUATED: Cervical spine, lumbar spine, right knee.

**INTRODUCTION:**

The above mentioned claimant entered the office today for the purpose of obtaining an impairment rating of his cervical spine, lumbar spine and right knee. He was identified today by a Nevada driver's license and a copy is maintained for the chart. Of note, I am familiar with this gentleman. I have done a prior PPD of the right knee on him on 11/24/09. He was awarded 7% whole person impairment secondary to his injury date of 01/06/08. Apportionment will be an issue in this case for his right knee.

**HISTORY OF INJURY:**

On 06/22/12 the claimant states that he was a passenger in the front seat of a minivan and was unbelted. They were northbound on Charleston at Buffalo when they were struck from the rear. He stated that his right foot was on the door and it appeared that he hit his right lower extremity as well as left shoulder into the door. He states that he did have loss of consciousness. He does have a prior history of a lumbar microdiscectomy at the L4-L5 level in 2007. He complains of significant cervical pain that radiates up the right portion of his neck into his head, causing suboccipital headaches. He complains of lower back pain that radiates into the right lower gluteal region as well as the lateral aspect of his hip and the lateral aspect of his lower leg.

**CHRONOLOGY OF TREATMENT:**

06/22/12: UMC. CT scan of right knee obtained, CT scan of chest obtained, CT scan of lumbosacral spine obtained. MRI of cervical spine shows a C4-C5

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[REDACTED] (CONT.) PAGE 2

- disc protrusion. MRI of the lumbar spine shows a small paracentral disc protrusion indenting the anterior thecal sac causing no significant spinal stenosis. Also a small annular tear noted along the posterior disc margin. L4-L5 central disc protrusion abutting the thecal sac causes no significant central narrowing. AP diameter 12 mm.
- 06/27/12: Admitted to HealthSouth Rehabilitation. Diagnosis: S/P understate rear end motor vehicle accident with loss of consciousness, bilateral upper extremity weakness, lower extremity paresthesias, spinal cord injury without radiologic abnormality. Right lower extremity traumatic paralysis.
- 07/06/12: Seen by Dr. Tingey. Radiographs and MRI of the patient show the ACL graft appears to be intact at the subchondral bone. Assessment: right knee pain S/P motor vehicle accident with a history of ACL reconstruction. Microfracture. Follow up in one month.
- 07/31/12: Seen by Dr. Gary Flangas for neurosurgical evaluation. Evaluation: gait normal. Range of motion found to be diminished in his neck as well as his lower back. DTRs 1/2 for biceps bilaterally, 2/2 for knees, 1/1 left ankle jerk, trace on the right. Sensory diminished S1 with some L5 involvement. 36 year old male involved in a motor vehicle accident has evidence of a central cord syndrome, which appears to be resolved. Currently he is experiencing signs and symptoms consistent with lumbar radiculopathy, paresthesia involving the right S1 and L5 distribution. Plan to return to light duty.
- 08/28/12: Seen by Dr. Flangas for follow up. He returns today complaining of right paraspinal cervicalgia as well as headaches. He usually uses Tylenol. He says stretching is helping him. He still has a decrease in range of motion. Neurologically, biceps one, triceps 2, left knee one, left ankle one, trace for right ankle.
- 09/05/12: Taken to surgery by Dr. Tingey where he underwent right knee arthroscopic chondroplasty, medial femoral condyle with two compartment synovectomy.
- 09/11/12: Right lower extremity Doppler.
- 09/02/12: Physical therapy.
- 10/18/12: Seen by Dr. Tingey. Range of motion of right knee 0-135 degrees. Well healed. No effusion. S/P chondroplasty as well as synovectomy.

This is the extent of the medical records which have been provided.

**PAST SURGERIES/MEDICAL HISTORY:**

As indicated.

**CURRENT MEDICATIONS:**

Singulair, Zyrtec.

**ALLERGIES:**

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[REDACTED] (CONT.) PAGE 3

NKDA.

**PHYSICAL EXAMINATION:**

This is a 36-year-old male who is an L.V.M.P.D. officer.

Height: 6'6". Weight: 270 lb. Right hand dominant male.

Inspection of the cervical spine shows no gross abnormalities. He measures 34 cm for his biceps and 33 cm for his forearms. DTRs are found to be 1+ for the upper extremities to include the biceps, triceps and brachioradialis. Muscle testing for the upper extremities is found to be +5/5, including the intrinsic muscles of the hand. On sensory component there is some decrease in sensory in the right upper extremity, which is nondermatomal in nature.

Range of motion of the cervical spine using dual inclinometer method was obtained. Flexion is 60/10, 60/10, 58/10, 50 degrees of flexion. Extension is 40/10, 40/10, 42/10, 30 degrees of extension. Left lateral flexion is 50/0, 50/0, 52/0 degrees. Right lateral is 40/0, 40/0, 38/0 degrees. Left rotation is 70/0, 70/0, 75/0 degrees. Right rotation is 50/0, 50/0, 48/0 degrees. Palpable spasm is noted in the cervical spine, predominantly on the right side. Axial compression increases pain into the interscapular region as well as the suboccipital region on the right side of the cervical spine. No upper extremity abnormal neurological signs are present. Hoffmann's is found to be negative.

On evaluation of the lumbar spine a well healed midline incision is noted. He measures 47 cm for his quadriceps and 42 cm for his calves. DTRs are found to be 2+/4 for patella tendon and 1+/4 for the Achilles tendon bilaterally. He has a decrease in sensory along the L5-S1 distribution of the right lower extremity.

Dual inclinometer measurements of range of motion of the lumbar spine were obtained. Flexion is 50/10, 50/10, 48/10, 40 degrees of flexion. Extension is 15/0, 15/0, 15/0, extension 15 degrees. Right lateral flexion is 15/0, 15/0, 18/0 degrees. Left lateral flexion is 30/0, 30/0, 30/0 degrees. Palpable spasm is noted in the lumbar spine, predominantly worse on the right side. He has pain over the gluteal region on palpation. SLR is found to be positive at 42 degrees on the right. Muscle testing for the lower extremities is found to be +5/5. Neurovascular response for the lower extremities is found to be within normal limits.

Inspection of the right knee shows normal portals of entry. Range of motion is 0-120, 0-120, 0-122 degrees. Anterior and posterior Drawer signs are negative. McMurray and MacIntosh tests are found to be negative.

Left knee (uninjured knee) range of motion: 0-130, 0-130, 0-130 degrees. Orthopedic evaluation is found to be within normal limits.

(CONT.) PAGE 4

## SUMMARY OF IMPAIRMENT:

This gentleman had a prior lumbar surgical intervention, which included a microdiscectomy. The apportionment of a microdiscectomy would fall under a DRE Lumbosacral Category III for 10% whole person impairment. As for today's evaluation he must be rated using the range of motion model. He has recurrent disc herniation with radiculopathy documented by Dr. Flangas. He also has sensory component loss consistent with radiculopathy at the L5-S1 level. When we refer to the range of motion method he would fall under Table 15-7 IID, surgically treated disc without residual signs and symptoms for 8% whole person impairment. His range of motion loss in the lumbar spine is equivalent to 8% whole person impairment. He has loss of sensory component with loss of superficial tactile sensation in the L5 and S1 distribution. On Table 15-18 the L5 nerve root sensory component is worth 5% maximum sensory, as well as the S1, which is 5% maximum sensory. These are multiplied by 0.26, which is equivalent to 1.3% for lower extremity impairment. 1.3 is multiplied by 0.04 to come up with a whole person impairment. This is equivalent to 0.52, which is rounded up to 1% whole person impairment for the L5 nerve root as well as the S1 nerve root. We would combine 8% for the specific spine disorder with 8% for loss of range of motion, which is 15% whole person impairment. 15% would be combined with 1% whole person impairment for the right L5 nerve root sensory component, which is equivalent to 16% whole person impairment. We would combine 16% with the right S1 sensory impairment, which is 1%, for a total of 17% whole person impairment.

17% whole person impairment is now apportioned by a DRE Category for the prior surgical intervention of 10% whole person impairment, which is equivalent to 7% whole person impairment for the lumbar spine. This is combined with 5% whole person impairment, as he fits into a DRE Cervical Category II for significant loss of range of motion that is nonuniform in nature as well as muscular spasm. He has no signs of radiculopathy. 7% for the lumbar spine would be combined with 5% for the cervical ending for a total of 12% whole person impairment.

The right knee has full range of motion. There is no notable impairment on this and this is a 0% award.

The patient should be awarded 12% whole person impairment and his claim should be closed and adjudicated.

Today's impairment rating was performed in accordance with the AMA Guides of Evaluation of Permanent Impairments, Fifth Edition, Third Printing. All measurements taken today were taken with a long arm goniometer for the right lower extremity and a dual inclinometer for the cervical and lumbar spine as indicated in the Fifth Edition, Third Printing.

11/29/2012 08:00

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PAGE 07/07

[REDACTED] (CONT.) PAGE 5

If you have any further questions or concerns, please feel free to contact my office.

Sincerely,

Rod Perry, D.C., F.A.C.O., C.I.C.E.  
Board Certified Chiropractic Orthopedist  
Fellow American Board of Chiropractic Orthopedists  
Qualified Impairment Rater State of Nevada  
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December 28, 2012

Pengilly, Robins, Slater  
Attn: Craig Slater, Esq  
1755 Village Center Circle  
Las Vegas, NV 89134-0562

Re: Employee: [REDACTED]  
Employer: Las Vegas Metro Police Department  
Claim#: 12D34C229879  
Date of Injury: 6/22/12  
Your Insured: Michael Gross / File #441-001

Dear Mr. Slater:

I am writing you as the Workers' Compensation administrator for the above employer, and in reference to the injury outlined above. As of this date, we have not received any responses regarding the status of our final subrogation lien in the amount of \$108,165.81.

Please be advised that the Las Vegas Metropolitan Police Department is looking to you for full recovery of all medical and disability expenditures in accordance with the Workers' Compensation benefits.

At this time, [REDACTED] has concluded his medical treatment regarding his injuries. Attached is the print out of Paid Transactions for this claim at this time. The final lien amount is 108,165.81. When a reimbursement check is disbursed, please make the check payable to Las Vegas Metro Police Department and mail the check to this office at the P.O. Box below for processing.

I would like to thank you in advance for your full cooperation in this matter. If you require a copy of our medical file, please forward to us a signed authorization from the employee in order to complete your request.

If you have any questions, please contact me at (702) 477-7016.

Sincerely,

*Christina Cabrera*

Christina Cabrera  
Claims Representative

Cc: LVMPD

CANNON COCHRAN MANAGEMENT SERVICES, INC. - P.O. Box 35350 - Las Vegas, NV 89133-5350  
(866) 446-7424 Fax: (702) 933-4861 www.ccmstf.com

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**PENGILLY ROBBINS SLATER**

1755 VILLAGE CENTER CIRCLE  
LAS VEGAS, NV 89134-0562  
(702) 880-6665  
(702) 880-0004 FAX

JAMES W. PENGILLY, ESQ.  
ROBERT T. ROBBINS, ESQ.  
CRAIG D. SLATER, ESQ.  
ELIZABETH B. LOWELL, ESQ.  
JESSIE N. TANOFF, ESQ.  
ANITA J. LARADA, REG.

January 2, 2013

Sent via email

CCMSI

Attn: Christina Cabrera

PO Box 35350

Las Vegas, NV 89133

[ccabrera@ccmsi.com](mailto:ccabrera@ccmsi.com)

RE: [REDACTED] *adv. Michael Goss*

Our Client: [REDACTED]

Your Claim No.: 12D34C229979

Our File No.: 441-001

Dear Ms. Cabrera:

Please accept this as [REDACTED] written request for a reduction of the final lien. A reduction in this matter is requested because the insurance limits available are insufficient to resolve this claim. Specifically, the responsible driver carried insurance with a limit of \$250,000. The carrier, Liberty Mutual, recognizing the extent of [REDACTED] injuries, has agreed to pay the policy limits. Attached hereto is correspondence from Liberty Mutual wherein they offer to pay the policy limits in exchange for a release of liability. Given the extent of [REDACTED] injuries, this sum was insufficient to fully compensate [REDACTED] for his injuries. The medical bills incurred by [REDACTED] for his injuries amount to approximately \$78,000. Additionally, he had approximately \$11,000 in lost income and was rated for permanent injuries. In light of the foregoing, we conservatively estimate that the value of [REDACTED] claim exceeds \$325,000. Because the limits of insurance are insufficient I hereby request that CCMSI reduce their lien.

Specifically, I propose that the settlement funds be split into thirds. My firm, [REDACTED], and CCMSI each will receive a 33% split the settlement proceeds. As a result, each of us would receive the sum of \$83,325.00. If you are in agreement with this plan, I anticipate that payment from the carrier can be submitted within 15 days and that payment will be made directly to CCMSI.

Should you have any questions, please feel free to contact me.

PENGILLY ROBBINS SLATER

CRAIG SLATER, ESQ.  
[cslater@pengillylawfirm.com](mailto:cslater@pengillylawfirm.com)

CDS/sah

Enc.: Correspondence from Liberty Mutual.

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## STATE OF NEVADA

### Board for the Administration of the Subsequent Injury Account For Self-Insured Employers

## NOTICE OF MEETING

The Board for the Administration of the Subsequent Injury Account for Self-Insured Employers will hold a public meeting on August 19, 2020, 10:00 a.m., at 3360 West Sahara Avenue, Suite 250, Las Vegas, Nevada, 89102, in the Executive Video Conference Room. Due to concerns with COVID-19, the meeting will be conducted via telephone. The telephone number to participate is (702) 486-5260 or (775) 687-0999 depending on area code. The collaboration code for the meeting is: 69089#.

## AGENDA

**Notice:** (1) Items on the Agenda may be taken out of order; (2) the Board may combine two or more Agenda items for consideration; and (3) the Board may remove an item on the Agenda at any time.

1. Roll Call.

\*\* 2. Public Comment. The opportunity for public comment is reserved for any matter listed below on the Agenda as well as any matter within the jurisdiction of the Board. No action on such an item may be taken by the Board unless and until the matter has been noticed as an action item. Comment from the public is limited to three minutes per person.

\* 3. Election of Chair and Vice-Chair of the Board. **For Possible Action**

\* 4. Approval of Agenda. **For Possible Action**

\* 5. Approval of Minutes for March 18, 2020. **For Possible Action**

\* 6. Action on a Recommendation of the Administrator of the Division of Industrial Relations for Approval of the following request(s) for reimbursement from the Subsequent Injury Account for Self-Insured Employers.

a. 19C52F913662

City of Henderson  
**For Possible Action**

b. 14G28Y02217

Nevada Energy Inc.  
**For Possible Action**

c. 1665253W001

Southwest Airlines Co.  
**For Possible Action**

\* 7. Action on a Recommendation of the Administrator of the Division of Industrial Relations for Approval of the following supplemental request(s) for reimbursement from the Subsequent Injury Account for Self-Insured Employers.

- |                   |  |
|-------------------|--|
| a. 96853A375047   | City of Reno<br><b>For Possible Action</b>                       |
| b. 4D656356313329 | Caesar's Entertainment, Inc.<br><b>For Possible Action</b>       |
| c. 00G28Y029597   | Nevada Energy Inc.<br><b>For Possible Action</b>                 |
| d. 07475T976184   | City of Sparks<br><b>For Possible Action</b>                     |
| e. 09515A588697   | Nevada System for Higher Education<br><b>For Possible Action</b> |

\* 8. Approval and/or modification of Draft Decision of Findings of Fact, Conclusions of Law and Determination of Board, concerning Las Vegas Metropolitan Police Department, Claim No. 12D34C229979. **For Possible Action**

\* 9. Additional Items:

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

\*\* b. Old and New business.

\* c. Schedule of Next Meeting. The following dates have been scheduled in advance but are subject to change at any time: September 23, 2020, October 21, 2020, November 10, 2020 and December 9, 2020. **For Possible Action**

\*\* 10. Public Comment. The opportunity for public comment is reserved for any matter within the jurisdiction of the Board. No action on such an item can be taken by the Board unless and until the matter has been agendized as an action item. Comment from the public is limited to three minutes per person.

\* 11. Adjournment. **For Possible Action**

Single-asterisked items are matters upon which the Board may take possible action.

Double-asterisked items are matters upon which the Board take no action until the matter itself has been specifically included on an agenda as an item upon which action may be taken.

Any person with a disability as defined by the Americans with Disabilities Act who requires special assistance to participate in the meeting may contact, at least two days prior to the meeting, Vanessa Skrinjaric at the Division of Industrial Relations, 3360 West Sahara Avenue, Suite 250, Las Vegas, Nevada 89102, or by calling (702) 486-9098 to arrange for reasonable accommodations.

This Notice has been posted at the following locations:

Division of Industrial Relations, 3360 West Sahara Avenue, Suite 250, Las Vegas  
Nevada 89102

Division of Industrial Relations, 400 West King Street, Suite 400, Carson City, Nevada  
89710

Division of Industrial Relations, Occupational Safety and Health Enforcement Section,  
4600 Kietzke Lane, Building F, Suite 153, Reno, Nevada 89502

Nevada Business Center, 3300 W. Sahara Avenue, Suite 425, Las Vegas, Nevada 89102

This Notice has also been posted at the following website addresses:

Division of Industrial Relations, Workers' Compensation Section, Notice of Meeting at  
<http://dir.nv.gov/wcs/hearings>

Nevada Public Notices at <https://notice.nv.gov>

Copies of the supporting (not privileged and confidential) material may be obtained upon request at the office of the Division of Industrial Relations, Workers' Compensation Section located at 3360 West Sahara Avenue, Suite 250, Las Vegas, Nevada 89102 or by calling (702) 486-9098.

**CERTIFICATE OF VERIFICATION OF POSTING OF THE AGENDA ON THE  
DIVISION OF INDUSTRIAL REALTIONS WEBSITE**

I, Vanessa Skrinjaric, affirm under the penalty of perjury that on the 28<sup>th</sup> day of July, 2020 at 8:00 am (PM), I verified the posting of the Agenda for the meeting of the Self-Insured Board for **August 19, 2020**, was posted to the Division of Industrial Relations website, <http://dir.nv.gov/WCS/Hearings/>.

V. A

Signature  
Compliance Audit Investigator III  
Subsequent Injury Coordinator

**CERTIFICATE OF PROVIDING E-MAIL OF THE AGENDA FOR POSTING ON  
THE STATE OF NEVADA PUBLIC NOTICES WEBSITE**

I, Vanessa Skrinjaric, affirm under the penalty of perjury that on the 28<sup>th</sup> day of July, 2020 at 1:00 am/pm, I posted a notice for the meeting to be held on **August 19, 2020** of the Board for the Administration of the Subsequent Injury Account for Self-Insured Employers to the State of Nevada Public Notices Website, located at, <https://notice.nv.gov/>.



\_\_\_\_\_  
Signature  
Compliance Audit Investigator III  
Subsequent Injury Coordinator

### CERTIFICATE OF POSTING OF AGENDA

I, Layne Roberts, swear and affirm under the penalty of perjury that on the 27<sup>th</sup> day of July, 2020 at 4:27, am/pm, I personally posted the Agenda for the meeting to be held on August 19, 2020 of the Board for the Administration of the Subsequent Injury Account for Self-Insured Employers at the address listed below:

Division of Industrial Relations, 400 West King Street, Suite 400, Carson City,  
Nevada 89703

Layne Roberts  
Signature  
AA III  
Title

**Note:** After execution of this Certificate of Posting and posting of the Agenda as shown in the Certificate of Posting, please promptly return the original Certificate to Vanessa Skrinjaric, Subsequent Injury Coordinator, Workers' Compensation Section either by e-mail directed to [vskrinjaric@dir.nv.gov](mailto:vskrinjaric@dir.nv.gov), by facsimile sent to 702-486-8713 or via postal service to the Division of Industrial Relations, Workers' Compensation Section, 3360 W. Sahara Avenue, Suite 250, Las Vegas, Nevada 89102.



### CERTIFICATE OF POSTING OF AGENDA

I, Michelle Metivier, swear and affirm under the penalty of perjury that on the 28 day of July, 2020 at 8:15, am, I personally posted the Agenda for the meeting to be held on **August 19, 2020**, of the Board for the Administration of the Subsequent Injury Account for Self-Insured Employers at the address listed below:

Nevada Business Center, 3300 W. Sahara Avenue, Suite 425, Las Vegas, Nevada  
89102

Michelle Metivier  
Signature

AA2  
Title

**Note:** After execution of this Certificate of Posting and posting of the Agenda as shown in the Certificate of Posting, please promptly return the original Certificate to Vanessa Skrinjaric, Subsequent Injury Coordinator, Workers' Compensation Section either by e-mail directed to [vskrinjaric@dir.nv.go](mailto:vskrinjaric@dir.nv.go), by facsimile sent to 702-486-8713 or via postal service to the Division of Industrial Relations, Workers' Compensation Section, 3360 W. Sahara Avenue, Suite 250, Las Vegas, Nevada 89102.

### CERTIFICATE OF POSTING OF AGENDA

I, Nettie Plazola-May, swear and affirm under the penalty of perjury that on the 28th day of July, 2020 at 12:51, am/pm, I personally posted the Agenda for the meeting to be held on August 19, 2020, of the Board for the Administration of the Subsequent Injury Account for Self-Insured Employers at the address listed below:

Division of Industrial Relations, Occupational Safety and Health Enforcement  
Section, 4600 Kietzke Lane, Building F, Suite 153, Reno, Nevada, 89502

Nettie Plazola-May  
Signature

AA II  
Title

**Note:** After execution of this Certificate of Posting and posting of the Agenda as shown in the Certificate of Posting, please promptly return the original Certificate to Vanessa Skrinjaric, Subsequent Injury Coordinator, Workers' Compensation Section either by e-mail directed to [vskrinjaric@dir.nv.gov](mailto:vskrinjaric@dir.nv.gov), by facsimile sent to 702-486-8713 or via postal service to the Division of Industrial Relations, Workers' Compensation Section, 3360 W. Sahara Avenue, Suite 250, Las Vegas, Nevada 89102.

**WAIVER OF HAND DELIVERY AND  
CERTIFICATE OF RECEIPT OF NOTICE OF MEETING**

I, Marisa Mayfield, affirm under the penalty of perjury that on the 28<sup>th</sup> day of July, 2020 at 8:53, A m, I personally received, the Notice of Meeting for the meeting to be held on August 19, 2020 at 10:00 am, of the Board for the Administration of the Subsequent Injury Account for Self-Insured Employers. I further waive my right to hand delivery of said Agenda having received notice in time to appear and make a presentation for Caesar's Entertainment, Inc., 4D656356313329, at said hearing.

Dalton L. Hooks, Jr., Esq.  
dalton@hmc.law

Marisa Mayfield  
Signature of Receiver

Subsequent Injury Specialist  
Title

**Note:** After execution of this Certificate of Delivery of Agenda, please promptly return the original Certificate to Vanessa Skrinjaric, via email at [vskrinjaric@dir.nv.gov](mailto:vskrinjaric@dir.nv.gov), via facsimile at (702) 486-8713 or by mail at the following address:

Vanessa Skrinjaric  
Workers' Compensation Section  
3360 W. Sahara Avenue, Suite 250  
Las Vegas, NV 89102

Should the Waiver not be received by Vanessa Skrinjaric for inclusion in the record by the time of the scheduled hearing, the matter will not be heard and will be rescheduled for hearing at a later date.

**WAIVER OF HAND DELIVERY AND  
CERTIFICATE OF RECEIPT OF NOTICE OF MEETING**

I, Marisa Mayfield, affirm under the penalty of perjury that on the 28th day of July, 2020 at 8:53, A m, I personally received, the Notice of Meeting for the meeting to be held on **August 19, 2020 at 10:00 am**, of the Board for the Administration of the Subsequent Injury Account for **Self-Insured Employers**. I further waive my right to hand delivery of said Agenda having received notice in time to appear and make a presentation for **Southwest Airlines Co., 1665253W001**, at said hearing.

Dalton L. Hooks, Jr., Esq.  
dalton@hmc.law

Marisa C. Mayfield  
Signature of Receiver  
Subsequent Injury Specialist  
Title

**Note:** After execution of this Certificate of Delivery of Agenda, please promptly return the original Certificate to Vanessa Skrinjaric, via email at [vskrinjaric@dir.nv.gov](mailto:vskrinjaric@dir.nv.gov), via facsimile at (702) 486-8713 or by mail at the following address:


Vanessa Skrinjaric  
Workers' Compensation Section  
3360 W. Sahara Avenue, Suite 250  
Las Vegas, NV 89102

Should the Waiver not be received by Vanessa Skrinjaric for inclusion in the record by the time of the scheduled hearing, the matter will not be heard and will be rescheduled for hearing at a later date.

**WAIVER OF HAND DELIVERY AND  
CERTIFICATE OF RECEIPT OF NOTICE OF MEETING**

I, Kasey McCourtney, affirm under the penalty of perjury that on the 27<sup>th</sup> day of July, 2020 at 4:30, pm, I personally received, the Notice of Meeting for the meeting to be held on **August 19, 2020 at 10:00 am**, of the Board for the Administration of the Subsequent Injury Account for **Self-Insured Employers**. I further waive my right to hand delivery of said Agenda having received notice in time to appear and make a presentation for **City of Henderson, 19C52F913662**, at said hearing.

Kasey McCourtney  
KMccCourtney@ccmsi.com



---

Signature of Receiver

Recovery Specialist

---

Title

**Note:** After execution of this Certificate of Delivery of Agenda, please promptly return the original Certificate to Vanessa Skrinjaric, via email at [vskrinjaric@dir.nv.gov](mailto:vskrinjaric@dir.nv.gov), via facsimile at (702) 486-8713 or by mail at the following address:

Vanessa Skrinjaric  
Workers' Compensation Section  
3360 W. Sahara Avenue, Suite 250  
Las Vegas, NV 89102

Should the Waiver not be received by Vanessa Skrinjaric for inclusion in the record by the time of the scheduled hearing, the matter will not be heard and will be rescheduled for hearing at a later date.

**WAIVER OF HAND DELIVERY AND  
CERTIFICATE OF RECEIPT OF NOTICE OF MEETING**

I, Kasey McCourtney, affirm under the penalty of perjury that on the 27<sup>th</sup> day of July, 2020 at 4:30, pm, I personally received, the Notice of Meeting for the meeting to be held on **August 19, 2020 at 10:00 am**, of the Board for the Administration of the Subsequent Injury Account for **Self-Insured Employers**. I further waive my right to hand delivery of said Agenda having received notice in time to appear and make a presentation for **City of Reno, 96853A375047**, at said hearing.

Kasey McCourtney  
KMccCourtney@ccmsi.com



---

Signature of Receiver

Recovery Specialist

---

Title

**Note:** After execution of this Certificate of Delivery of Agenda, please promptly return the original Certificate to Vanessa Skrinjaric, via email at [vskrinjaric@dir.nv.gov](mailto:vskrinjaric@dir.nv.gov), via facsimile at (702) 486-8713 or by mail at the following address:

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Kasey McCourtney  
KMccCourtney@ccmsi.com



---

Signature of Receiver

Recovery Specialist

---

Title

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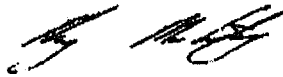
Vanessa Skrinjaric  
Workers' Compensation Section  
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Las Vegas, NV 89102

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Kasey McCourtney  
KMcCourtney@ccmsi.com



---

Signature of Receiver

Recovery Specialist

---

Title

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3360 W. Sahara Avenue, Suite 250  
Las Vegas, NV 89102

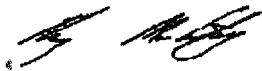
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Kasey McCourtney  
KMccCourtney@ccmsi.com



---

Signature of Receiver

Recovery Specialist

---

Title

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Kasey McCourtney  
KMccCourtney@ccmsi.com



---

Signature of Receiver

Recovery Specialist

---

Title

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Workers' Compensation Section  
3360 W. Sahara Avenue, Suite 250  
Las Vegas, NV 89102

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Kasey McCourtney  
KMccCourtney@ccmsi.com



---

Signature of Receiver

Recovery Specialist

---

Title

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Kasey McCourtney  
KMccourtney@ccmsi.com



---

Signature of Receiver

Recovery Specialist

---

Title

**Note:** After execution of this Certificate of Delivery of Agenda, please promptly return the original Certificate to Vanessa Skrinjaric, via email at [yskrinjaric@dir.nv.gov](mailto:yskrinjaric@dir.nv.gov), via facsimile at (702) 486-8713 or by mail at the following address:

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Workers' Compensation Section  
3360 W. Sahara Avenue, Suite 250  
Las Vegas, NV 89102

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**STATE OF NEVADA**  
**BOARD FOR ADMINISTRATION OF THE SUBSEQUENT**  
**INJURY ACCOUNT FOR SELF-INSURED EMPLOYERS**

In re: Subsequent Injury Request for Reimbursement

Claim No: 12D34C229979

Date of Injury: 06-22-12

Insurer: Las Vegas Metropolitan Police Department

Employer: Las Vegas Metropolitan Police Department

Third-Party Administrator: CCMSI8

Submitted by: Kim Price with Lewis Brisbois Bisgaard &  
Smith LLP

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
DETERMINATION OF THE BOARD**

This matter came before the State of Nevada, Board for the Administration of the Subsequent Injury Account for Self-Insured Employers ("Board") for consideration and decision upon appeal by the applicant from the Subsequent Injury Account ("Account"). In its preliminary decision, the Board upheld the recommendation of the Administrator, Division of Industrial Relations, State of Nevada ("Administrator") to accept the claim pursuant to NRS 616.557 for the right knee. The cervical and lumbar spine do not qualify for consideration and were not requested by the insurer.

This appeal was heard in a *de novo* hearing conducted on September 28, 2018. At the conclusion of the meeting, the Board voted to affirm the recommendation of the Administrator. The total amount requested for reimbursement is \$14,008.47. This amount was under by \$13,952.14 in medical expenses. The amount that should have been requested for reimbursement is \$27,960.61. This claim had subrogation recovery that was included in the request. The amount of verified claim costs subject to reimbursement pursuant to NAC 616B.7702(1)(b) is \$<69,630.88>. Since there was subrogation recovery the amount to be considered is less than the verified costs spent on the claim. Disallowances under this claim are considered against all expenses prior to the reduction of the subrogation recovery, therefore, allowing no reimbursement.

The employee was hired by the Las Vegas Metropolitan Police Department (LVMPD) on July 18, 2006. On September 29, 2006, he injured his right knee. The C-3 Form listed a right knee strain. The C-4 Form, dated September 29, 2006, listed sprain/strain of the right knee. The injured employee

1 sought treatment at UMC and was diagnosed with sprain/strain of the right knee and x-rays were  
2 normal. He was taken off work through October 3, 2006 and then released to modified duty. The  
3 patient saw Dr. Higgins on October 3, 2006. His impression was a bucket handle tear, medial  
4 semilunar cartilage and he requested surgery. The patient had partial debridement of the anterior  
5 cruciate ligament (ACL) with partial synovectomy and medial meniscorrhesis on October 4, 2006. In  
6 follow up reports, Dr. Higgins released the patient to full duty on October 23, 2006 and an ACL repair  
7 after he was finished would be considered. The patient attended physical therapy and was given a knee  
8 brace. As of February 13, 2007, the patient had an ACL deficient knee. He was working in the field  
9 and could continue as long as he protected the knee. He was released from care.

10 On January 6, 2008, during a foot pursuit, this employee fell into a hole and twisted his right  
11 knee. The C-3 Form indicated right knee strain, and the January 7, 2008 C-4 Form also noted right  
12 knee strain. The C-4 Form was received by the employer on January 14, 2008. The injured employee  
13 had three additional surgeries under this claim and treated with Drs. Patti, Miao and Tingey. The last  
14 surgery was done in December 2008 with follow up under Dr. Tingey. Reporting under the PPD only  
15 goes through September 21, 2009 and the patient continued to follow up. He had been released to full  
16 duty and as of October 27, 2009, the patient had reached MMI and was stable and ratable. Dr. Perry  
17 evaluated this injured employee for permanent impairment and found 7% WPI and did not apportion for  
18 the prior injury or surgery. The rater was not furnished with any medical reporting prior to the 2008  
19 date of injury and the patient denied any previous injuries to the right knee.

20 In regards to the present claim, on June 22, 2012, he was involved in a motor vehicle accident  
21 and injured his cervical and lumbar spine and right knee. The C-4 Form noted central cord syndrome.  
22 Medical reporting was taken from the November 8, 2012 PPD evaluation penned by Dr. Perry. The  
23 patient was taken to the hospital via ambulance, treated and released to follow up with Dr. Tingey for  
24 his knee and Dr. Flangas for the spine. MRI of the knee was done and the impression was sprain/strain  
25 with a history of ACL reconstruction and microfracture. On September 5, 2012, the patient was taken  
26 to surgery for the right knee and underwent arthroscopic chondroplasty, medial femoral condyle with  
27 compartment synovectomy. He attended physical therapy and as of October 18, 2012, Dr. Tingey  
28 released him to full duty and he had reached MMI and was stable and ratable.

1 The injured employee was rated for the cervical and lumbar spine as well as the right knee. He  
2 was found to have 12% WPI, combined, for the cervical and lumbar spine and no additional impairment  
3 for the right knee. The claim was successfully subrogated and the insurer received reimbursement in  
4 the amount of \$83,325.00 to be applied to the claim.

5 Based on NRS 616C.215(2) and (5), where, as here, the insurer or the Administrator is  
6 subrogated to the proceeds from the recovery against a third party by the injured worker, the insurer is  
7 entitled to lien the entire award, leaving no room for apportionment. In the alternative, if there were  
8 apportionment, the figure offered by the applicant under its apportionment theory was not established.  
9 The Board finds NRS 616C.215(2) and (5) applies in this matter and finds that based on the facts of this  
10 case apportionment is not appropriate.

11 In the same vein as this case, if the injured employee receives compensation, the insurer, or in  
12 case of claims involving a subsequent injury account the Administrator, has a right of action against the  
13 person so liable to pay damages and is subrogated to the rights of the injured employee.  
14 NRS 616C.215(2)(B). NRS 616C.215(5) further provides that in any case where the insurer or the  
15 Administrator is subrogated to the rights of the injured employee, the insurer or the Administrator has a  
16 lien upon the total proceeds of any recovery from some person other than the employer. The injured  
17 employee is not entitled to double recovery for the same injury (NRS 616C.215(5)), nor can a self-  
18 insured employer recover more than the amount of its total claim expenditures (NRS 616C.215(4)). As  
19 such, the self-insured employer is required to offset the total amounts received through subrogation.  
20 The subrogation recovery by the self-insured employer exceeds the amount of reimbursement that was  
21 approved in this case.

#### 22 FINDINGS OF FACT

- 23 1. The employee was hired by the Las Vegas Metropolitan Police Department (LVMPD)  
24 on July 18, 2006.
- 25 2. On September 29, 2006, he injured his right knee.
- 26 3. The C-3 Form listed a right knee strain.
- 27 4. The C-4 Form, dated September 29, 2006, listed sprain/strain of the right knee.
- 28

1        23.    The rater was not furnished with any medical reporting prior to the 2008 date of injury  
2 and the patient denied any previous injuries to the right knee.

3        24.    On June 22, 2012, he was involved in a motor vehicle accident and injured his cervical  
4 and lumbar spine and right knee.

5        25.    The C-4 Form noted central cord syndrome.

6        26.    Medical reporting was taken from the November 8, 2012 PPD evaluation penned by  
7 Dr. Perry.

8        27.    The patient was taken to the hospital via ambulance, treated and released to follow up  
9 with Dr. Tingey for his knee and Dr. Flangas for the spine.

10       28.    MRI of the knee was done and the impression was sprain/strain with a history of ACL  
11 reconstruction and microfracture.

12       29.    On September 5, 2012, the patient was taken to surgery for the right knee and underwent  
13 arthroscopic chondroplasty, medial femoral condyle with compartment synovectomy.

14       30.    He attended physical therapy and as of October 18, 2012, Dr. Tingey released him to full  
15 duty and he had reached MMI and was stable and ratable.

16       31.    The injured employee was rated for the cervical and lumbar spine as well as the right  
17 knee.

18       32.    He was found to have 12% WPI, combined, for the cervical and lumbar spine and no  
19 additional impairment for the right knee.

20       33.    The claim was successfully subrogated and the insurer received reimbursement in the  
21 amount of \$83,325.00 to be applied to the claim.

22       34.    The total amount requested for reimbursement is \$14,008.47.

23       35.    This amount was under by \$13,952.14 in medical expenses.

24       36.    The amount that should have been requested for reimbursement is \$27,960.61.

25       37.    This claim had subrogation recovery that was included in the request.

26       38.    The amount of verified claim costs subject to reimbursement pursuant to  
27 NAC 616B.7702(1)(b) is \$<69,630.88>.



39. Since there was subrogation recovery the amount to be considered is less than the verified costs spent on the claim.

40. If any of the foregoing findings is more appropriately construed as a conclusion of law, it may be so construed.

### CONCLUSIONS OF LAW

1. Based on NRS 616C.215(2) and (5), where, as here, the insurer or the Administrator is subrogated to the proceeds from the recovery against a third party by the injured worker, the insurer is entitled to lien the entire award, leaving no room for apportionment.

2. In the alternative, if there were apportionment, the figure offered by the applicant under its apportionment theory was not established.

3. The Board finds NRS 616C.215(2) and (5) applies in this matter and finds that based on the facts of this case apportionment is not appropriate.

4. Disallowances under this claim are considered against all expenses prior to the reduction of the subrogation recovery, therefore, allowing no reimbursement.

5. If the injured employee receives compensation, the insurer, or in case of claims involving a subsequent injury account the Administrator, has a right of action against the person so liable to pay damages and is subrogated to the rights of the injured employee. NRS 616C.215(2)(B).

6. NRS 616C.215(5) further provides that in any case where the insurer or the Administrator is subrogated to the rights of the injured employee, the insurer or the Administrator has a lien upon the total proceeds of any recovery from some person other than the employer.

7. The injured employee is not entitled to double recovery for the same injury (NRS 616C.215(5)), nor can a self-insured employer recover more than the amount of its total claim expenditures (NRS 616C.215(4)).

8. As such, the self-insured employer is required to offset the total amounts received through subrogation.

9. The subrogation recovery by the self-insured employer exceeds the amount of reimbursement that was approved in this case.

10. If any of the foregoing conclusions is more appropriately construed as a finding of fact, it may be so construed.

## ORDER

IT IS, THEREFORE, ORDERED the application for reimbursement for the above-referenced claim is APPROVED.

Dated this 19th day of August, 2020.

# BOARD FOR ADMINISTRATION OF THE SUBSEQUENT INJURY ACCOUNT FOR SELF-INSURED EMPLOYERS

BY: /s/ Cecilia Meyer  
Cecilia Meyer, Chair

**In re: Subsequent Injury Request for Reimbursement**

**Claim No: 12D34C229979**  
**Date of Injury: 06-22-12**  
**Insurer: Las Vegas Metropolitan Police Department**  
**Employer: Las Vegas Metropolitan Police Department**  
**Third-Party Administrator: CCMSI**  
**Submitted by: Kim Price with Lewis Brisbois Bisgaard & Smith LLP**

**PLEASE TAKE NOTICE** that the FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DETERMINATION OF THE BOARD was entered on August 19, 2020 in the above-captioned matter, a copy of which is attached hereto.

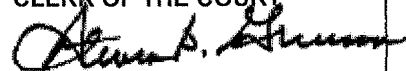
By: /s/ Donald J. Bordelove  
Donald J. Bordelove  
Deputy Attorney General  
Office of the Attorney General  
555 E. Washington Ave., Suite 3900  
Las Vegas, NV 89101  
dbordelove@ag.nv.gov  
*Attorneys for the Board*

1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that  
3 on this 1st day of September, 2020, I served a copy of the **NOTICE OF DECISION** by mailing via US  
4 Certified Mail a true copy to the following:

5 Via US Certified Mail No. 7014 2120 0003 0405 4432  
6 Kasey McCourtney  
7 P.O. Box 35350  
8 Las Vegas, NV 89133  
9  
10

11 /s/ Michele Caro  
12 Employee of the State of Nevada  
13 Office of the Attorney General  
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CASE NO: A-20-821892-J  
Department 14

1 **PTJR**  
DANIEL L. SCHWARTZ  
2 Nevada Bar No. 005125  
Daniel.Schwartz@lewisbrisbois.com  
3 **JOEL P. REEVES**  
Nevada Bar No. 13231  
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**KIM D. PRICE**  
5 Nevada Bar No. 7873  
Kim.Price@lewisbrisbois.com  
6 **LEWIS BRISBOIS BISGAARD & SMITH LLP**  
2300 W. Sahara Avenue, Suite 300, Box 28  
7 Las Vegas, Nevada 89102  
Telephone: 702.893.3383  
8 Facsimile: 702.366.9563

9 Attorneys for LVMPD and CCMSI

10  
11 **DISTRICT COURT**  
12 **CLARK COUNTY, NEVADA**

13 **LAS VEGAS METROPOLITAN POLICE**  
14 **DEPARTMENT; and CANNON COCHRAN**  
15 **MANAGEMENT SERVICES, INC.,**

16 **Petitioners,**

17 **vs.**

18 **STATE OF NEVADA BOARD FOR THE**  
19 **ADMINISTRATION OF THE**  
20 **SUBSEQUENT INJURY ACCOUNT FOR**  
21 **SELF-INSURED EMPLOYERS.**

22 **Respondent.**

Case No.

**PETITION FOR JUDICIAL REVIEW**

Arbitration Exemption Claimed:  
Review of Administrative Decision

23 COMES NOW, Petitioners, Las Vegas Metropolitan Police Department ("LVMPD") and  
24 Cannon Cochran Management Services, Inc. ("CCMSI") by and through their attorneys, DANIEL  
25 L. SCHWARTZ, ESQ., JOEL P. REEVES, ESQ., and KIM D. PRICE, ESQ., of LEWIS  
26 BRISBOIS BISGAARD & SMITH LLP, in the above-entitled Petition for Judicial Review and  
27 petitions this Court for judicial review of the Findings of Fact, Conclusions of Law, and  
28 Determination of the State of Nevada Board for the Administration of the Subsequent Injury

1 Account for Self-Insured Employers ("BOARD"), mailed on August 27, 2020, a copy of which is  
2 attached hereto as Exhibit "1."

3 The instant Petition for Judicial Review is filed pursuant to NRS 616C.370, NRS  
4 616B.557, and Chapter 233B of the Nevada Revised Statutes which mandates that judicial review  
5 shall be the sole and exclusive authorized judicial proceeding in contested industrial insurance  
6 claims for compensation for injury or death.  
7

8 The decision of the BOARD was in violation of constitutional or statutory provisions, was  
9 in excess of the authority of the BOARD, was based upon errors of law, is arbitrary or capricious  
10 in nature, and constitutes an abuse of discretion. The Petitioners, LVMPD and CCMSI,  
11 specifically request, pursuant to NRS 233B.133, that this Court receive written briefs and hear oral  
12 argument.  
13

14 DATED this 24 day of September, 2020.

15 Respectfully submitted,

16 LEWIS BRISBOIS BISGAARD & SMITH

17  
18 By: \_\_\_\_\_

19 DANIEL L. SCHWARTZ, ESQ.

20 Nevada Bar No. 5125

21 JOEL P. REEVES, ESQ.

22 Nevada Bar No. 13231

23 KIM D. PRICE, ESQ.

24 Nevada Bar No. 7873

25 2300 W. Sahara Avenue, Suite 300, Box 28

26 Las Vegas, Nevada 89102

27 Telephone: 702.893.3383

28 Facsimile: 702.366.9563

Attorneys for Petitioners

LVMPD and CCMSI

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that on September 25, 2020, a true and correct copy of the foregoing **PETITION FOR JUDICIAL REVIEW** was duly mailed, postage prepaid and addressed to the following:

LVMPD  
Jeff Roch  
Director of Risk Management  
400 South MLK Blvd.  
Las Vegas, Nevada 89106  
Petitioner

CCMSI  
Dusty Marshall  
Claims Supervisor  
PO Box 35350  
Las Vegas, Nevada 89133  
Petitioner

Donald J. Bordelove  
Deputy Attorney General  
Office of the Attorney General  
555 East Washington Avenue, Suite 3900  
Las Vegas, Nevada 89101  
Attorneys for Respondent

State of Nevada  
Attorney General Aaron Ford  
100 North Carson Street  
Carson City, Nevada 89701  
Attorneys for Respondent

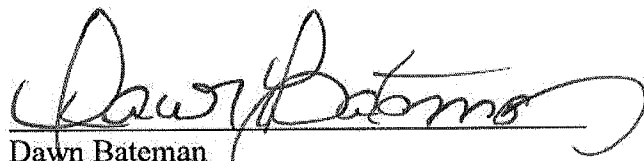
Industrial Relations (DIR)  
Christopher Eccles, Esq.  
3360 West Sahara Avenue, Suite 250  
Las Vegas, Nevada 89102

Industrial Relations (DIR)  
Division Headquarters  
400 West King Street, Suite 400  
Carson City, Nevada 89703

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Department of Business and Industry  
Director Terry Reynolds  
1830 College Parkway, Suite 100  
Carson City, Nevada 89706

  
Dawn Bateman  
Employee of Lewis Brisbois Bisgaard & Smith



**EXHIBIT “1”**

**EXHIBIT “1”**

1 STATE OF NEVADA  
2 BOARD FOR THE ADMINISTRATION OF THE SUBSEQUENT  
3 INJURY ACCOUNT FOR SELF-INSURED EMPLOYERS  
4

5 In re: Subsequent Injury Request for Reimbursement

6 Claim No: 12D34C229979

7 Date of Injury: 06-22-12

8 Insurer: Las Vegas Metropolitan Police Department

9 Employer: Las Vegas Metropolitan Police Department

10 Third-Party Administrator: CCMSIS

11 Submitted by: Kim Price with Lewis Brisbois Bisgaard &  
12 Smith LLP

FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
DETERMINATION OF THE  
BOARD

13 PLEASE TAKE NOTICE that the FINDINGS OF FACT, CONCLUSIONS OF LAW, AND  
14 DETERMINATION OF THE BOARD was entered on August 19, 2020 in the above-captioned matter,  
15 a copy of which is attached hereto.

16 Dated: August 27, 2020.

17 AARON D. FORD  
18 Attorney General

19 By: /s/ Donald J. Bordelove

20 Donald J. Bordelove

21 Deputy Attorney General

22 Office of the Attorney General

23 555 E. Washington Ave., Suite 3900

24 Las Vegas, NV 89101

25 dbordelove@ag.nv.gov

26 Attorneys for the Board  
27  
28

CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on this 27th day of August 2020, I served the NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DETERMINATION OF THE BOARD by depositing for mailing at General Services, State of Nevada, in a sealed envelope, postage prepaid a true copy to the following:

Certified Mail No. 7019 0160 0000 0498 4588

Connie Ford

Sierra Nevada Administrators

P.O. Box 15750

Las Vegas, NV 89114

Certified Mail No. 7019 0160 0000 0498 4571

Christopher Eccles, Esq.

Division of Industrial Relations

3360 W. Sahara Ave., Ste. 250

Las Vegas, NV 89102

Certified Mail No. 7019 0160 0000 0498 4564

Kim Price, Esq.

Lewis Brisbois Bisgaard & Smith

2300 W. Sahara Ave., Ste. 300

Las Vegas, NV 89102

/s/ Michele Caro

Employee of the State of Nevada  
Office of the Attorney General

1 STATE OF NEVADA  
2 BOARD FOR ADMINISTRATION OF THE SUBSEQUENT  
3 INJURY ACCOUNT FOR SELF-INSURED EMPLOYERS  
4

5 In re: Subsequent Injury Request for Reimbursement

6 Claim No: 12D34C229979

7 Date of Injury: 06-22-12

8 Insurer: Las Vegas Metropolitan Police Department

9 Employer: Las Vegas Metropolitan Police Department

10 Third-Party Administrator: CCMSI8

11 Submitted by: Kim Price with Lewis Brisbois Bisgaard &  
12 Smith LLP

FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
DETERMINATION OF THE BOARD

13 This matter came before the State of Nevada, Board for the Administration of the Subsequent  
14 Injury Account for Self-Insured Employers ("Board") for consideration and decision upon appeal by the  
15 applicant from the Subsequent Injury Account ("Account"). In its preliminary decision, the Board  
16 upheld the recommendation of the Administrator, Division of Industrial Relations, State of Nevada  
17 ("Administrator") to accept the claim pursuant to NRS 616.557 for the right knee. The cervical and  
18 lumbar spine do not qualify for consideration and were not requested by the insurer.

19 This appeal was heard in a *de novo* hearing conducted on September 28, 2018. At the  
20 conclusion of the meeting, the Board voted to affirm the recommendation of the Administrator. The  
21 total amount requested for reimbursement is \$14,008.47. This amount was under by \$13,952.14 in  
22 medical expenses. The amount that should have been requested for reimbursement is \$27,960.61. This  
23 claim had subrogation recovery that was included in the request. The amount of verified claim costs  
24 subject to reimbursement pursuant to NAC 616B.7702(1)(b) is \$<69,630.88>. Since there was  
25 subrogation recovery the amount to be considered is less than the verified costs spent on the claim.  
26 Disallowances under this claim are considered against all expenses prior to the reduction of the  
27 subrogation recovery, therefore, allowing no reimbursement.

28 The employee was hired by the Las Vegas Metropolitan Police Department (LVMPD) on July  
18, 2006. On September 29, 2006, he injured his right knee. The C-3 Form listed a right knee strain.  
The C-4 Form, dated September 29, 2006, listed sprain/strain of the right knee. The injured employee

1 sought treatment at UMC and was diagnosed with sprain/strain of the right knee and x-rays were  
2 normal. He was taken off work through October 3, 2006 and then released to modified duty. The  
3 patient saw Dr. Higgins on October 3, 2006. His impression was a bucket handle tear, medial  
4 semilunar cartilage and he requested surgery. The patient had partial debridement of the anterior  
5 cruciate ligament (ACL) with partial synovectomy and medial meniscorrhesis on October 4, 2006. In  
6 follow up reports, Dr. Higgins released the patient to full duty on October 23, 2006 and an ACL repair  
7 after he was finished would be considered. The patient attended physical therapy and was given a knee  
8 brace. As of February 13, 2007, the patient had an ACL deficient knee. He was working in the field  
9 and could continue as long as he protected the knee. He was released from care.

10 On January 6, 2008, during a foot pursuit, this employee fell into a hole and twisted his right  
11 knee. The C-3 Form indicated right knee strain, and the January 7, 2008 C-4 Form also noted right  
12 knee strain. The C-4 Form was received by the employer on January 14, 2008. The injured employee  
13 had three additional surgeries under this claim and treated with Drs. Patti, Miao and Tingey. The last  
14 surgery was done in December 2008 with follow up under Dr. Tingey. Reporting under the PPD only  
15 goes through September 21, 2009 and the patient continued to follow up. He had been released to full  
16 duty and as of October 27, 2009, the patient had reached MMI and was stable and ratable. Dr. Perry  
17 evaluated this injured employee for permanent impairment and found 7% WPI and did not apportion for  
18 the prior injury or surgery. The rater was not furnished with any medical reporting prior to the 2008  
19 date of injury and the patient denied any previous injuries to the right knee.

20 In regards to the present claim, on June 22, 2012, he was involved in a motor vehicle accident  
21 and injured his cervical and lumbar spine and right knee. The C-4 Form noted central cord syndrome.  
22 Medical reporting was taken from the November 8, 2012 PPD evaluation penned by Dr. Perry. The  
23 patient was taken to the hospital via ambulance, treated and released to follow up with Dr. Tingey for  
24 his knee and Dr. Flangas for the spine. MRI of the knee was done and the impression was sprain/strain  
25 with a history of ACL reconstruction and microfracture. On September 5, 2012, the patient was taken  
26 to surgery for the right knee and underwent arthroscopic chondroplasty, medial femoral condyle with  
27 compartment synovectomy. He attended physical therapy and as of October 18, 2012, Dr. Tingey  
28 released him to full duty and he had reached MMI and was stable and ratable.

1 The injured employee was rated for the cervical and lumbar spine as well as the right knee. He  
2 was found to have 12% WPI, combined, for the cervical and lumbar spine and no additional impairment  
3 for the right knee. The claim was successfully subrogated and the insurer received reimbursement in  
4 the amount of \$83,325.00 to be applied to the claim.

5 Based on NRS 616C.215(2) and (5), where, as here, the insurer or the Administrator is  
6 subrogated to the proceeds from the recovery against a third party by the injured worker, the insurer is  
7 entitled to lien the entire award, leaving no room for apportionment. In the alternative, if there were  
8 apportionment, the figure offered by the applicant under its apportionment theory was not established.  
9 The Board finds NRS 616C.215(2) and (5) applies in this matter and finds that based on the facts of this  
10 case apportionment is not appropriate.

11 In the same vein as this case, if the injured employee receives compensation, the insurer, or in  
12 case of claims involving a subsequent injury account the Administrator, has a right of action against the  
13 person so liable to pay damages and is subrogated to the rights of the injured employee.  
14 NRS 616C.215(2)(B). NRS 616C.215(5) further provides that in any case where the insurer or the  
15 Administrator is subrogated to the rights of the injured employee, the insurer or the Administrator has a  
16 lien upon the total proceeds of any recovery from some person other than the employer. The injured  
17 employee is not entitled to double recovery for the same injury (NRS 616C.215(5)), nor can a self-  
18 insured employer recover more than the amount of its total claim expenditures (NRS 616C.215(4)). As  
19 such, the self-insured employer is required to offset the total amounts received through subrogation.  
20 The subrogation recovery by the self-insured employer exceeds the amount of reimbursement that was  
21 approved in this case.

#### 22 FINDINGS OF FACT

- 23 1. The employee was hired by the Las Vegas Metropolitan Police Department (LVMPD)  
24 on July 18, 2006.
- 25 2. On September 29, 2006, he injured his right knee.
- 26 3. The C-3 Form listed a right knee strain.
- 27 4. The C-4 Form, dated September 29, 2006, listed sprain/strain of the right knee.
- 28

1           5.     The injured employee sought treatment at UMC and was diagnosed with sprain/strain of  
2 the right knee and x-rays were normal.

3           6.     He was taken off work through October 3, 2006 and then released to modified duty.

4           7.     The patient saw Dr. Higgins on October 3, 2006.

5           8.     His impression was a bucket handle tear, medial semilunar cartilage and he requested  
6 surgery.

7           9.     The patient had partial debridement of the anterior cruciate ligament (ACL) with partial  
8 synovectomy and medial meniscorrhesis on October 4, 2006.

9           10.    In follow up reports, Dr. Higgins released the patient to full duty on October 23, 2006  
10 and an ACL repair after he was finished would be considered.

11          11.    The patient attended physical therapy and was given a knee brace.

12          12.    As of February 13, 2007, the patient had an ACL deficient knee.

13          13.    He was working in the field and could continue as long as he protected the knee.

14          14.    He was released from care.

15          15.    On January 6, 2008, during a foot pursuit, this employee fell into a hole and twisted his  
16 right knee.

17          16.    The C-3 Form indicated right knee strain, and the January 7, 2008 C-4 Form also noted  
18 right knee strain.

19          17.    The C-4 Form was received by the employer on January 14, 2008.

20          18.    The injured employee had three additional surgeries under this claim and treated with  
21 Drs. Patti, Miao and Tingey.

22          19.    The last surgery was done in December 2008 with follow up under Dr. Tingey.

23          20.    Reporting under the PPD only goes through September 21, 2009 and the patient  
24 continued to follow up.

25          21.    He had been released to full duty and as of October 27, 2009, the patient had reached  
26 MMI and was stable and ratable.

27          22.    Dr. Perry evaluated this injured employee for permanent impairment and found 7% WPI  
28 and did not apportion for the prior injury or surgery.

1       23.    The rater was not furnished with any medical reporting prior to the 2008 date of injury  
2 and the patient denied any previous injuries to the right knee.

3       24.    On June 22, 2012, he was involved in a motor vehicle accident and injured his cervical  
4 and lumbar spine and right knee.

5       25.    The C-4 Form noted central cord syndrome.

6       26.    Medical reporting was taken from the November 8, 2012 PPD evaluation penned by  
7 Dr. Perry.

8       27.    The patient was taken to the hospital via ambulance, treated and released to follow up  
9 with Dr. Tingey for his knee and Dr. Flangas for the spine.

10      28.    MRI of the knee was done and the impression was sprain/strain with a history of ACL  
11 reconstruction and microfracture.

12      29.    On September 5, 2012, the patient was taken to surgery for the right knee and underwent  
13 arthroscopic chondroplasty, medial femoral condyle with compartment synovectomy.

14      30.    He attended physical therapy and as of October 18, 2012, Dr. Tingey released him to full  
15 duty and he had reached MMI and was stable and ratable.

16      31.    The injured employee was rated for the cervical and lumbar spine as well as the right  
17 knee.

18      32.    He was found to have 12% WPI, combined, for the cervical and lumbar spine and no  
19 additional impairment for the right knee.

20      33.    The claim was successfully subrogated and the insurer received reimbursement in the  
21 amount of \$83,325.00 to be applied to the claim.

22      34.    The total amount requested for reimbursement is \$14,008.47.

23      35.    This amount was under by \$13,952.14 in medical expenses.

24      36.    The amount that should have been requested for reimbursement is \$27,960.61.

25      37.    This claim had subrogation recovery that was included in the request.

26      38.    The amount of verified claim costs subject to reimbursement pursuant to  
27 NAC 616B.7702(1)(b) is \$<69,630.88>.

28



1 39. Since there was subrogation recovery the amount to be considered is less than the  
2 verified costs spent on the claim.

3 40. If any of the foregoing findings is more appropriately construed as a conclusion of law,  
4 it may be so construed.

### 5 CONCLUSIONS OF LAW

6 1. Based on NRS 616C.215(2) and (5), where, as here, the insurer or the Administrator is  
7 subrogated to the proceeds from the recovery against a third party by the injured worker, the insurer is  
8 entitled to lien the entire award, leaving no room for apportionment.

9 2. In the alternative, if there were apportionment, the figure offered by the applicant under  
10 its apportionment theory was not established.

11 3. The Board finds NRS 616C.215(2) and (5) applies in this matter and finds that based on  
12 the facts of this case apportionment is not appropriate.

13 4. Disallowances under this claim are considered against all expenses prior to the reduction  
14 of the subrogation recovery, therefore, allowing no reimbursement.

15 5. If the injured employee receives compensation, the insurer, or in case of claims  
16 involving a subsequent injury account the Administrator, has a right of action against the person so  
17 liable to pay damages and is subrogated to the rights of the injured employee. NRS 616C.215(2)(B).

18 6. NRS 616C.215(5) further provides that in any case where the insurer or the  
19 Administrator is subrogated to the rights of the injured employee, the insurer or the Administrator has a  
20 lien upon the total proceeds of any recovery from some person other than the employer.

21 7. The injured employee is not entitled to double recovery for the same injury  
22 (NRS 616C.215(5)), nor can a self-insured employer recover more than the amount of its total claim  
23 expenditures (NRS 616C.215(4)).

24 8. As such, the self-insured employer is required to offset the total amounts received  
25 through subrogation.

26 9. The subrogation recovery by the self-insured employer exceeds the amount of  
27 reimbursement that was approved in this case.

1 10. If any of the foregoing conclusions is more appropriately construed as a finding of fact,  
2 it may be so construed.

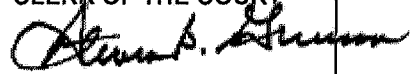
3 ORDER

4 IT IS, THEREFORE, ORDERED the application for reimbursement for the above-referenced  
5 claim is APPROVED.

6 Dated this 19th day of August, 2020.

7 BOARD FOR ADMINISTRATION OF  
8 THE SUBSEQUENT INJURY ACCOUNT  
9 FOR SELF-INSURED EMPLOYERS

10 BY: /s/ Cecilia Meyer  
11 Cecilia Meyer, Chair  
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**NOIP**

Donald C. Smith, Esq.  
Nevada Bar No.: 000413  
Jennifer J. Leonescu  
Nevada Bar No.: 006036  
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[donalddsmith@dir.nv.gov](mailto:donalddsmith@dir.nv.gov)  
[jleonescu@dir.nv.gov](mailto:jleonescu@dir.nv.gov)  
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*Counsel for Division of Industrial Relations*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

LAS VEGAS METROPOLITAN POLICE  
DEPARTMENT, and CANNON  
COCHRAN MANAGEMENT SERVICES,  
INC.

Case No: A-20-821892-J

Petitioners,

Dept. No: 15

v.

STATE OF NEVADA BOARD FOR THE  
ADMINISTRATION OF THE SUBSEQUENT  
INJURY ACCOUNT FOR SELF-INSURED  
EMPLOYERS,

Respondent.

**RESPONDENT DIVISION OF INDUSTRIAL RELATIONS' NOTICE**

**AND**

**STATEMENT OF INTENT TO PARTICIPATE – NRS 233B.130(3)**

1 By way of this document and service thereof to all other parties named above and in  
2 accordance with §233B.130(3) of the Nevada Revised Statutes, Respondent Division of  
3 Industrial Relations hereby gives notice of and proclaims its intent to participate in the Petition  
4 for Judicial Review filed by the above captioned Petitioner on September 24, 2020.

5 Dated this \_\_\_\_13<sup>th</sup> \_\_\_\_ day of October, 2020 and respectfully submitted by:

6  
7 /s/ Christopher A. Eccles

8 Christopher A. Eccles, Esq.  
9 Division Counsel  
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## CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the State of Nevada, Department of Business and Industry, Division of Industrial Relations (DIR), and that on this date, I caused to be served a true and correct copy of the document described herein by the method indicated below, and addressed to the following:

**Document Served:**

Respondent Division of Industrial Relations' Notice and Statement of Intent to Participate – A-20-821892-J NRS 233B.130(3)

<b>Person(s) Served:</b> Daniel L. Schwartz, Esq. Joel P. Reeves, Esq. Kim D. Price, Esq. Lewis Brisbois Bisgaard & Smith 2300 W. Sahara Ave. Ste. 300, Box 28 Las Vegas, NV 89102 <i>Counsel for Petitioners LVMPD and CCMSI</i>	<b>U.S. Mail</b> <input checked="" type="checkbox"/> via State Mail room (regular or certified) circle one <input type="checkbox"/> deposited directly with U.S. Mail Service <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Interdepartmental Mail <input type="checkbox"/> Messenger Service Facsimile fax number: _____ <input type="checkbox"/> Electronic Service
<b>Person(s) Served:</b> LVMPD c/o Jeff Roch Director of Risk Mgmt. 400 S. Martin Luther King Blvd. Las Vegas, NV 89106 <i>Petitioner</i>	<b>U.S. Mail</b> <input checked="" type="checkbox"/> via State Mail room (regular or certified) circle one <input type="checkbox"/> deposited directly with U.S. Mail Service <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Interdepartmental Mail <input type="checkbox"/> Messenger Service Facsimile fax number: _____
<b>Person(s) Served:</b> CCMSI c/o Dusty Marshall Claims Supervisor P.O. Box 35350 Las Vegas, NV 89133 <i>Petitioner</i>	<b>U.S. Mail</b> <input checked="" type="checkbox"/> via State Mail room (regular or certified) circle one <input type="checkbox"/> deposited directly with U.S. Mail Service <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Interdepartmental Mail <input type="checkbox"/> Messenger Service Facsimile fax number: _____

**Person(s) Served:**

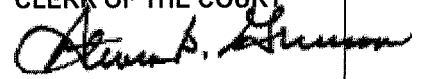
Donald J. Bordelove, Esq.  
Deputy Attorney General  
Office of the Attorney General  
555 E. Washington Ave.  
Ste. 3900  
Las Vegas, NV 89101  
*Counsel for Respondent Board for  
the Administration of the  
Subsequent Injury Account for  
Self-Insured Employers*

**U.S. Mail**

☐ via State Mail room (regular or certified) circle one  
☐ deposited directly with U.S. Mail Service  
☐ Overnight Mail  
☒ Interdepartmental Mail  
☐ Messenger Service  
☐ Facsimile fax number: \_\_\_\_\_  
☐ Electronic Service

DATED this \_\_\_\_13<sup>th</sup>\_\_ day of October, 2020.

  
\_\_\_\_\_  
State of Nevada Employee



1 **STAT**  
2 **AARON D. FORD**  
3 **Attorney General**  
4 **Donald J. Bordelove (Bar No. 12561)**  
5 **Deputy Attorney General**  
6 **State of Nevada**  
7 **Office of the Attorney General**  
8 **555 E. Washington Ave., #3900**  
9 **Las Vegas, NV 89101**  
10 **(702) 486-3094 (phone)**  
11 **(775) 684-1108 (fax)**  
12 **E-mail: dbordelove@ag.nv.gov**

13 **Attorneys for Respondent**  
14 ***Board for the Administration of the Subsequent***  
15 ***Injury Account for Self-Insured Employers***  
16

17 **DISTRICT COURT**  
18 **CLARK COUNTY, NEVADA**  
19

20 **LAS VEGAS METROPOLITAN POLICE**  
21 **DEPARTMENT; and CANNON**  
22 **COCHRAN MANAGEMENT SERVICE,**  
23 **INC.,**

24 **Petitioners,**

25 **vs.**

26 **STATE OF NEVADA BOARD FOR THE**  
27 **ADMINISTRATION OF THE**  
28 **SUBSEQUENT INJURY ACCOUNT FOR**  
**SELF-INSURED EMPLOYERS,**

**Respondent.**

Case No. A-20-821892-J  
Dept. No. 15

**STATEMENT OF INTENT TO PARTICIPATE**

**COMES NOW Respondent, the Board for Administration of the Subsequent Injury Account for Self-Insured Employers, by and through its counsel, and hereby notifies this Court of its intent to participate in this judicial review.**

...

...

...

1 This filing is made as required by NRS 233B.130 and without any waiver of the  
2 procedural, statutory, and jurisdictional defects in Petitioners' filings.

3 Dated: October 14, 2020.

4  
5 AARON D. FORD  
6 Attorney General

7 By: /s/ Donald J. Bordelove  
8 Donald J. Bordelove (Bar. No. 12561)  
9 Deputy Attorney General  
10 *Attorneys for the Board*  
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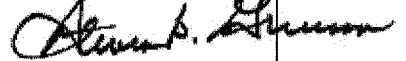


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1 **TRANS**

2 **AARON D. FORD**

3 Attorney General

4 Donald J. Bordelove (Bar No. 12561)

5 Deputy Attorney General

6 State of Nevada

7 Office of the Attorney General

8 555 E. Washington Ave., #3900

9 Las Vegas, NV 89101

10 (702) 486-3094 (phone)

11 (775) 684-1108 (fax)

12 E-mail: dbordelove@ag.nv.gov

13 Attorneys for Respondent

14 *Board for the Administration of the Subsequent*  
15 *Injury Account for Self-Insured Employers*

16 **DISTRICT COURT**  
17 **CLARK COUNTY, NEVADA**

18 LAS VEGAS METROPOLITAN POLICE )  
19 DEPARTMENT; and CANNON COCHRAN )  
20 MANAGEMENT SERVICES, INC., )

21 Petitioners, )

22 v. )

23 ) Case No.: A-20-821892-J

24 STATE OF NEVADA BOARD FOR THE )  
25 ADMINISTRATION OF THE )  
26 SUBSEQUENT INJURY ACCOUNT FOR )  
27 SELF-INSURED EMPLOYERS, )

28 Respondent. )

29 **TRANSMITTAL OF RECORD ON APPEAL IN ACCORDANCE WITH THE**  
30 **NEVADA ADMINISTRATIVE PROCEDURE ACT**

31 Pursuant to NRS 233B.131, the STATE OF NEVADA BOARD FOR THE  
32 ADMINISTRATION OF THE SUBSEQUENT INJURY ACCOUNT FOR SELF-  
33 INSURED EMPLOYERS (SIA) now files the entire record of the proceedings under review

1 by this Court as a result of the Petition for Judicial Review pursuant to NRS 233B.130 filed  
2 by LAS VEGAS METROPOLITAN POLICE DEPARTMENT and CANNON COCHRAN  
3 MANAGEMENT SERVICES, INC., Respondents.

4 **DESCRIPTION**

**BATES NO(S).**

5 ADMINISTRATOR'S RECOMMENDATION  
6 DATED APRIL 18, 2018

ROA 0001-0042

7 ADMINISTRATOR'S AMENDED  
8 RECOMMENDATION DATED APRIL 25, 2018

ROA 0043-0049

9 NOTICE OF MEETING FOR  
10 JUNE 27, 2018

ROA0050-0052

11 NOTICE OF MEETING FOR  
12 JUNE 27, 2018 (AMENDED)

ROA0053-0055

13 WAIVER OF HAND DELIVERY AND  
14 CERTIFICATE OF RECEIPT OF NOTICE OF  
15 MEETING DATED JUNE 8, 2018

ROA0056

16 WAIVER OF HAND DELIVERY AND  
17 CERTIFICATE OF RECEIPT OF NOTICE OF  
18 MEETING DATED JUNE 18, 2018

ROA0057

19 WAIVER OF HAND DELIVERY AND  
20 CERTIFICATE OF RECEIPT OF NOTICE OF  
21 MEETING DATED JUNE 8, 2018

ROA0058

22 WAIVER OF HAND DELIVERY AND  
23 CERTIFICATE OF RECEIPT OF NOTICE OF  
24 MEETING DATED JUNE 18, 2018

ROA0059

25 WAIVER OF HAND DELIVERY AND  
26 CERTIFICATE OF RECEIPT OF NOTICE OF  
27 MEETING DATED JUNE 18, 2018

ROA0060

28 WAIVER OF HAND DELIVERY AND  
CERTIFICATE OF RECEIPT OF NOTICE OF  
MEETING DATED JUNE 18, 2018

ROA0061

WAIVER OF HAND DELIVERY AND  
CERTIFICATE OF RECEIPT OF NOTICE OF  
MEETING DATED JUNE 18, 2018

ROA0062

1	MEETING MINUTES FOR	ROA0063-0070
2	JUNE 27, 2018	
3	BOARD COUNSEL LETTER TO KIM PRICE, ESQ.	ROA0071-0072
4	DATED JULY 11, 2018	
5	BOARD COUNSEL LETTER TO KIM PRICE, ESQ.	ROA0073-0074
6	DATED OCTOBER 8, 2018	
7	KIM PRICE, ESQ. LETTER TO BOARD COUNSEL	ROA0075
8	DATED AUGUST 10, 2018	
9	NOTICES, CERTIFICATIONS & WAIVERS	ROA0076-0090
10	FOR MEETING ON	
11	SEPTEMBER 26, 2018	
12	EXHIBIT #5	ROA0091-0106
13	DATED SEPTEMBER 24, 2018	
14	CERTIFICATES OF POSTING OF AGENDA	ROA0107-0123
15	AND WAIVERS FOR AUGUST 2020	
16	FINDINGS OF FACT, CONCLUSIONS OF LAW,	ROA0124-0130
17	AND DETERMINATION OF THE BOARD	
18	DATED AUGUST 19, 2020	
19	NOTICE OF DECISION	ROA0130-0132
20	DATED SEPTEMBER 1, 2020	

21 Submitted by:  
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STATE OF NEVADA – DEPT OF BUSINESS & INDUSTRY – DIVISION OF INDUSTRIAL RELATIONS

# Workers' Compensation Section

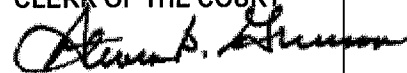
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## CERTIFICATION

I, Vanessa Skrinjaric, an employee of the State of Nevada, Division of Industrial Relations, Workers' Compensation Section, hereby certify that the documents submitted herewith comprise the record of the administrative proceeding, which is the subject of Case No. Case No. A-20-821892-J in Department XV of the Eight Judicial District Court, in and for Clark County, Nevada, which are attached hereto as Bates ROA 0001-0132.

/s/ VANESSA SKRINJARIC

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15 *Injury Account for Self-Insured Employers*

16 DISTRICT COURT  
17 CLARK COUNTY, NEVADA

18 LAS VEGAS METROPOLITAN POLICE  
19 DEPARTMENT; and CANNON  
20 COCHRAN MANAGEMENT SERVICE,  
21 INC.,

22 Petitioners,

23 vs.

24 STATE OF NEVADA BOARD FOR THE  
25 ADMINISTRATION OF THE  
26 SUBSEQUENT INJURY ACCOUNT FOR  
27 SELF-INSURED EMPLOYERS,

28 Respondent.

Case No. A-20-821892-J  
Dept. No. 15

**NOTICE OF TRANSMITTAL OF ADMINISTRATIVE RECORD ON APPEAL**

22 In accordance with NRS 233B.133(1)(b), the State of Nevada, Board of the  
23 Administration of the Subsequent Injury Account for Self-Insured Employers by and  
24 through counsel, Attorney General Aaron D. Ford and Deputy Attorney General Donald  
25 J. Bordelove, hereby provide Notice that the Administrative Record on Appeal and  
26 Certification of Official Records of the Nevada Division of Industrial Relations, Workers'

27 ...

28 ...

1 Compensation Section was filed with the court on November 9, 2020 a copy of which is  
2 attached hereto.

3 Dated this 10th day of November 2020.

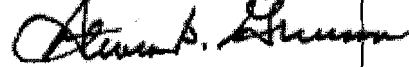
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/s/ Michele Caro  
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11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 LAS VEGAS METROPOLITAN POLICE  
14 DEPARTMENT; and CANNON COCHRAN  
15 MANAGEMENT SERVICES, INC.,

16 Petitioners,

17 v.

18 STATE OF NEVADA BOARD FOR THE  
19 ADMINISTRATION OF THE SUBSEQUENT  
20 INJURY ACCOUNT FOR SELF-INSURED  
21 EMPLOYERS,

22 Respondents.

CASE NO.: A-20-821892-J

DEPT. NO.: 14

22 **PETITIONERS' OPENING BRIEF**

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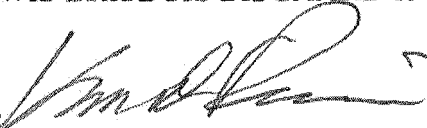
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COME NOW, Petitioners, LAS VEGAS METROPOLITAN POLICE DEPARTMENT and CANNON COCHRAN MANAGEMENT SERVICES, INC. (hereinafter collectively referred to as "Petitioners"), by and through their attorneys, DANIEL L. SCHWARTZ, ESQ., and LEWIS BRISBOIS BISGAARD & SMITH LLP, and, and files their Opening Brief in the above-referenced matter.

DATED this 5 day of April, 2021.

Respectfully submitted.

LEWIS BRISBOIS BISGAARD & SMITH LLP

By:   
 DANIEL L. SCHWARTZ, ESQ.  
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I.

STATEMENT OF THE CASE

The present appeal results from the Board for Administration of the Subsequent Injury Account for Self-Insured Employers" (hereinafter referred to as "Board") August 19, 2020, Findings of Fact, Conclusions of Law, and Determination for Claim Number 12D34C229979, for consideration and decision upon appeal by the Petitioners from the Subsequent Injury Account (hereinafter referred to as "SIA"). (ROA0124-ROA0130).

After an employer/insurer submits its application to the Respondent Division of Industrial Relations, (hereinafter referred to as "DIR"), the DIR's Administrator issues a recommendation to the Board regarding whether the application fulfills the statutory requirements and qualifies for second injury account reimbursement. The DIR's recommendation makes specific findings regarding whether the applicant met the requirements for each individual subsection of NRS 616B.557.

In addition, the DIR's Administrator determines which expenses can be "verified," which means that the appropriate documentation has been submitted to substantiate the allowed expenses. The Administrator's Recommendation attaches an Explanation of Disallowance which lists the expenses that could not be verified or did not qualify for second injury account reimbursement. (ROA0039-ROA0042).

On April 10, 2018, Petitioner, the self-insured Employer, submitted a request for second injury account reimbursement in the amount of Fourteen Thousand Eight Dollars and Forty-Seven Cents (\$14,008.47). The only body part eligible for second injury account recovery was the right knee. Petitioners intentionally omitted all other medical expenses associated with treatment of the non-qualifying cervical and lumbar spine from the second injury account recovery request.

The DIR concluded that Petitioners had satisfied all of the requirements of NRS 616B.557 and were therefore entitled to second injury account recovery. (ROA0001-ROA0007). In its analysis, the DIR indicated that the application amount was under by \$13,952.14 in medical expenses and that the amount that should have been requested for reimbursement was \$27,960.61.

1 Notably, this amount reflects those expenses Petitioners intentionally omitted from the  
2 reimbursement request because the cervical and lumbar spine do not qualify for second account  
3 recovery; only those expenses associated with the right knee injury are subject to second injury  
4 account reimbursement and were the only expenses requested.

5           The Board voted to accept the recommendation that Petitioners had satisfied the  
6 statutory requirements for, and were entitled to, second injury account recovery. However, the  
7 Board then indulged in error that resulted in a significantly prejudicial finding that it would allow  
8 no reimbursement because the entire subrogation amount, \$83,325.00, was to be offset against the  
9 requested amount of recovery for the right knee only. Rather than apportioning the share of  
10 subrogation that reimbursed for treatment of the lumbar and cervical spine, expenses that  
11 Petitioners — properly — did not include in the recovery application, the Board charged the  
12 Petitioners with expending at least the entire subrogation amount towards treatment of the right  
13 knee before it would permit monetary reimbursement. Notably, no Nevada law or regulation  
14 empowers or supports the DIR's or the Board's requirement of full expenditure of all subrogation  
15 received prior to second injury account reimbursement for the right knee only. Because claimant  
16 was discharged from treatment years ago, Petitioners will never expend any additional monies  
17 towards right knee treatment. In light of the DIR's and Board's error, although Petitioners are  
18 unquestionably entitled to second injury account recovery, actual monetary reimbursement can not  
19 and will never occur. In other words, the Board ruled that unless and until Petitioners had paid at  
20 least the total cost of the subrogation on treatment of the right knee, it would not approve any  
21 reimbursement. This is clear prejudicial error in that Petitioners are restricted to requesting  
22 reimbursement for only the right knee — and properly excluded cervical and lumbar spine expenses  
23 from the request — but the Board required that the entire subrogation amount, received for all body  
24 parts, be offset against the right knee expenses alone. Of course, the subrogation paid  
25 contemplated all injured body parts — not just injuries to the right knee. Petitioners allowed for this  
26 distinction and properly prepared the recovery application. To adopt the Board's erroneous  
27 position unnecessarily and unfairly penalizes and punishes Petitioners who are barred from  
28 recovery of expenditures that rightfully qualify for second injury account recovery.

1 All parties agree that Petitioners have satisfactorily complied with the statutory  
2 requirements for second injury account recovery and are unquestionably entitled to such recovery.  
3 Petitioners aver that the Board should have apportioned the subrogated amount relative to the  
4 qualified second injury recovery against only that portion of the subrogation amount that  
5 corresponds directly to the right knee – and not demand Petitioners offset the entire subrogated  
6 amount against the right knee recovery alone. Adopting the Board's position ensures that despite  
7 satisfying all of the statutory requirements for reimbursement, Petitioners will never see a dime.

## 8 II.

### 9 STATEMENT OF THE ISSUES

10 1. Whether substantial rights of Petitioners have been prejudiced as set forth in  
11 NRS 233B.135(3) because the Findings of Fact, Conclusions of Law, and Determination of the  
12 Board, filed on August 19, 2020, was:

- 13 (a) in violation of constitutional or statutory provisions;
- 14 (b) in excess of statutory authority of the agency;
- 15 (c) made upon unlawful procedure;
- 16 (d) affected by other error of law;
- 17 (e) clearly erroneous in view of the reliable, probative and substantial evidence  
18 on the whole record; or
- 19 (f) arbitrary or capricious or characterized by abuse of discretion; and

20 2. Whether the Findings of Fact, Conclusions of Law, and Determination of the Board  
21 was based upon substantial evidence as required by NRS 233B.125.

## 22 III.

### 23 STATEMENT OF FACTS

24 On April 10, 2018, Petitioners, Las Vegas Metropolitan Police Department and  
25 Cannon Cochran Management Services, Inc. (hereinafter collectively referred to as "Petitioners"),  
26 submitted a request for second injury account reimbursement in the amount of Fourteen Thousand,  
27 Eight Dollars and Forty-Seven Cents (\$14,008.47) to Respondent DIR. This requested amount



1 represents the expenses Petitioners expended in treatment of claimant's second right knee injury,  
2 only.

3 Claimant incurred the first right knee industrial injury on September 29, 2006.  
4 Claimant underwent partial debridement of the anterior cruciate ligament with partial  
5 synovectomy and medial meniscorrhesis. Claimant was released to full duty work on October 23  
6 to continue at the Academy. Claimant was discharged from care in February 2007 with an ACL  
7 deficient knee, and did not undergo a disability evaluation.

8 On January 6, 2008, during a foot pursuit, claimant fell into a hole and twisted his  
9 right knee, resulting in a meniscal tear and three surgeries. After being discharged from care to  
10 full duty work, claimant was determined to carry a seven percent (7%) right knee disability, with  
11 no apportionment for the prior knee injury.

12 On June 22, 2012, claimant was involved in a motor vehicle accident, injuring his  
13 cervical and lumbar spine, and right knee.

14 On September 5, 2012, claimant underwent right knee arthroscopic chondroplasty,  
15 medial femoral condyle with compartment synovectomy.

16 On October 18, 2020, claimant was discharged from care at maximum medical  
17 improvement.

18 As a result of his discharge, claimant underwent a disability evaluation and was  
19 found to carry a combined twelve percent (12%) whole person impairment for cervical and lumbar  
20 spine, and zero percent (0%) additional disability for right knee.

21 Petitioners successfully subrogated the motor vehicle accident claim and received  
22 reimbursement of \$83,325.00 for treatment of claimant's cervical spine, lumbar spine, and right  
23 knee.

24 Given that the claimant carried a preexisting seven percent (7%) right knee  
25 impairment and had again injured his right knee, Petitioners determined potential for second injury  
26 account recovery. In preparing the application, Petitioners intentionally omitted medical costs for  
27 treatment of cervical and lumbar spine, with recovery for no other body part sought aside from  
28 those expenses associated with the one qualifying component, the right knee.

1 On April 18, 2018, Petitioners, through counsel, were provided with the  
2 Administrator's Recommendation to accept the SIA Application. (ROA0001-ROA0042).  
3 Administrator recommended acceptance of the application and of second injury account recovery.  
4 The Recommendation also carries a disallowance listing of those line items for which insufficient  
5 supporting documentation or ineligibility was alleged. Pertinent to the instant matter,  
6 Administrator concluded that because the subrogation recovery (for all injuries) was considerably  
7 more than the treatment costs for the right knee alone, *Petitioners were not entitled to any actual*  
8 *monetary recovery.*

9 On June 27, 2018 the case was first heard before the Board. (ROA0063-ROA0070).

10 In its preliminary decision, the Board upheld the recommendation of the  
11 Administrator to accept the claim pursuant to NRS 616B.557 for the right knee and adopted the  
12 Administrator's disallowances and application of subrogation against requested recovery without  
13 any apportionment for treatment of non-qualifying body parts. (ROA0001-ROA0042).

14 On July 11, 2018, Petitioners received the Board's letter notifying Petitioners of the  
15 Board's June 27, 2018, vote to approve the request for reimbursement, while also affirming the  
16 Administrator's recommendation of verified costs in the amount of negative \$69,630.88.00.  
17 (ROA0071-ROA0072). This negative number reflects both the entire subrogation amount  
18 received for cervical, lumbar, and right knee injuries from claimant's motor vehicle accident, as  
19 well as those expenses for which the DIR alleged inadequate supporting documentation.

20 On August 10, 2018 Petitioners tendered correspondence to the Board's counsel  
21 advising that Petitioners were appealing the holding of verified costs in the amount of a negative  
22 \$69,630.88. (ROA0075).

23 On September 24, 2018 Petitioners provided supplemental documents for the  
24 September 26, 2018, *de novo* hearing. (ROA0091-ROA0106).

25 On September 26, 2018 the Board conducted the *de novo* hearing.

26 On August 19, 2020 the Board held a meeting to approve and/or modify the draft  
27 Decision of Findings of Fact, Conclusions of Law and Determination of the Board. (ROA0107-  
28 ROA0109).

1 On September 2, 2020, Petitioners received the Determination of the Board.

2 On September 24, 2020 Petitioners filed the Petition for Judicial Review.

3 **JURISDICTION**

4 Petitioners have timely petitioned for Judicial Review of the Board for  
5 Administration of the Subsequent Injury Account for Self-Insured Employer's August 19, 2020,  
6 Findings of Fact, Conclusions of Law, and Determination.

7 **A. STANDARD OF REVIEW**

8 Judicial review of a final decision of an agency is governed by NRS 233B.135.

9 **NRS 233B.135 Judicial review: Manner of conducting; burden  
10 of; standard for review.**

11 1. Judicial review of a final decision of an agency must be:

(a) Conducted by the court without a jury; and

12 (b) Confined to the record.

In cases concerning alleged irregularities in procedure before an  
13 agency that are not shown in the record, the court may receive  
14 evidence concerning the irregularities.

15 2. The final decision of the agency shall be deemed  
reasonable and lawful until reversed or set aside in whole or in part  
16 by the court. The burden of proof is on the party attacking or  
17 resisting the decision to show that the final decision is invalid  
pursuant to subsection 3.

18 3. The court shall not substitute its judgment for that of the  
agency as to the weight of evidence on a question of fact. The court  
19 may remand or affirm the final decision or set it aside in whole or in  
20 part if substantial rights of the petitioner have been prejudiced  
because the final decision of the agency is:

(a) In violation of constitutional or statutory provisions;

(b) In excess of the statutory authority of the agency;

21 (c) Made upon unlawful procedure;

(d) Affected by other error of law;

22 (e) Clearly erroneous in view of the reliable, probative and  
substantial evidence on the whole record; or

(f) Arbitrary or capricious or characterized by abuse of  
discretion.

23 The well-recognized standard of review is whether there is substantial evidence to  
24 support the underlying decision. The reviewing court should limit its review of administrative  
25 decisions to determine if they are based upon substantial evidence. North Las Vegas v. Public  
26 Service Common., 83 Nev. 278, 291, 429 P.2d 66 (1967); McCracken v. Fancy, 98 Nev. 30, 639  
27 P.2d 552 (1982). Substantial evidence is that quantity and quality of evidence which a reasonable  
28 man would accept as adequate to support a conclusion. See, Maxwell v. SIIS, 109 Nev. 327, 331,

1 849 P.2d 267, 270 (1993); and Horne v. SIIS, 113 Nev. 532, 537, 936 P.2d 839 (1997).

2 When reviewing administrative decisions, the Court has held that on factual  
3 determinations, the findings and ultimate decisions of an administrative officer are not to be  
4 disturbed unless they are clearly erroneous or otherwise amount to an abuse of discretion. Nevada  
5 Industrial Comm'n. v. Reese, 93 Nev. 115, 560 P.2d 1352 (1977). An administrative  
6 determination regarding a question of fact will not be set aside unless it is against the manifest  
7 weight of the evidence. Nevada Indus. Comm'n. v. Hildebrand, 100 Nev. 47, 51, 675 P.2d 401  
8 (1984). A decision by an appeals officer that is based upon the credibility of Respondent and  
9 other witnesses is "not open to appellate review." Brocas v. Mirage Hotel & Casino, 109 Nev.  
10 579, 585, 854 P.2d 862, 867 (1993). Here, there is no dispute that Petitioners have satisfied the  
11 statutory requirements for second injury account recovery. The issue is the Board's clear error in  
12 application of Nevada law.

13 **A. THE REQUIREMENTS FOR SECOND INJURY ACCOUNT RECOVERY**

14 Pursuant to Nevada law, a second injury account reimbursement request *will be*  
15 *approved* if a self-insured employer fulfills the statutory requirements of NRS 616B.557, which  
16 mandate:

17 **NRS 616B.557 Payment of cost of additional compensation**  
18 **resulting from subsequent injury of employee of self-insured**  
**employer. Except as otherwise provided in NRS 616B.560:**

19 *1. If an employee of a self-insured employer has a*  
20 *permanent physical impairment from any cause or origin and*  
21 *incurs a subsequent disability by injury arising out of and in the*  
22 *course of his or her employment which entitles the employee to*  
23 *compensation for disability that is substantially greater by reason of*  
*the combined effects of the preexisting impairment and the*  
*subsequent injury than that which would have resulted from the*  
*subsequent injury alone, the compensation due must be charged to*  
*the Subsequent Injury Account for Self-Insured Employers in*  
*accordance with regulations adopted by the Board.*

24 *2. If the subsequent injury of such an employee results in his*  
25 *or her death and it is determined that the death would not have*  
*occurred except for the preexisting permanent physical impairment,*  
*the compensation due must be charged to the Subsequent Injury*  
*Account for Self-Insured Employers in accordance with regulations*  
26 *adopted by the Board.*

27 *3. As used in this section, "permanent physical impairment"*  
28 *means any permanent condition, whether congenital or caused by*  
*injury or disease, of such seriousness as to constitute a hindrance or*  
*obstacle to obtaining employment or to obtaining reemployment if*

1 the employee is unemployed. For the purposes of this section, a  
2 condition is not a "permanent physical impairment" unless it would  
3 support a rating of permanent impairment of 6 percent or more of  
4 the whole person if evaluated according to the American Medical  
5 Association's Guides to the Evaluation of Permanent Impairment as  
6 adopted and supplemented by the Division pursuant to NRS  
7 616C.110.

8 4. To qualify under this section for reimbursement from the  
9 Subsequent Injury Account for Self-Insured Employers, the self-  
10 insured employer must establish by written records that the self-  
11 insured employer had knowledge of the "permanent physical  
12 impairment" at the time the employee was hired or that the  
13 employee was retained in employment after the self-insured  
14 employer acquired such knowledge.

15 5. A self-insured employer must submit to the Board a claim  
16 for reimbursement from the Subsequent Injury Account for Self-  
17 Insured Employers.

18 6. The Board shall adopt regulations establishing procedures  
19 for submitting claims against the Subsequent Injury Account for  
20 Self-Insured Employers. The Board shall notify the self-insured  
21 employer of its decision on such a claim within 120 days after the  
22 claim is received.

23 7. An appeal of any decision made concerning a claim  
24 against the Subsequent Injury Account for Self-Insured Employers  
25 must be submitted directly to the district court. (Emphases added.)

26 Notably, to date, no research has identified any Nevada law or regulation that  
27 addresses the apportionment of subrogation for second injury account purposes. Research appears  
28 to confirm that the DIR and Board simply and improperly formulated new and additional account  
recovery requirements and imposed the same to justify denying reimbursement to the Petitioners.  
Yet, if Petitioners are limited by statute to reimbursement of costs incurred in treatment of the  
right knee only, it must necessarily follow that the Board is similarly constrained to consideration  
of only the apportioned subrogation calculated to address right knee treatment costs. The  
Administrator issued a recommendation of approval of the right knee second injury account  
recovery application. The Board did, in fact, rule that Petitioners had amply satisfied the statutory  
requirements and were entitled to reimbursement. Consequently, the underlying facts of the case  
are not at issue. Controversial is the Board's clear error in the application of, and/or improper  
promulgation of, Nevada law by offsetting the entirety of subrogation received for cervical spine,  
lumbar spine, and right knee injuries rather than delegating that portion of right knee subrogation  
against the requested amount for recovery that specifically excluded cervical and lumbar treatment  
costs. The Board improperly refused to allocate that portion of the subrogation received to address

1 right knee injuries and to charge only that amount against the right knee reimbursement requested.  
2 Such a fundamental error requires this Tribunal's intervention.

3 **B. THIS COURT CAN SET ASIDE A CLEARLY ERRONEOUS DECISION THAT**  
4 **CONSTITUTES AN ERROR OF LAW OR IS NOT SUPPORTED BY**  
5 **SUBSTANTIAL EVIDENCE.**

6 A court may set aside, in whole or in part, a final decision of an administrative  
7 agency where substantial rights of the Petitioners have been prejudiced because the final decision  
8 is in violation of statutory provisions, affected by other error of law, clearly erroneous in view of  
9 the reliable, probative and substantial evidence on the whole record, or arbitrary, capricious or  
10 characterized by abuse of discretion. NRS 233B.135(3).

11 **1. This Court Can Set Aside a Decision That is Based on Incorrect Conclusions**  
12 **of Law and is Free to Address Purely Legal Questions Without Deference to**  
13 **the Appeals Officer's Decision.**

14 The Nevada Supreme Court has acknowledged and applied these statutory  
15 principles holding, for example, that a reviewing court may set aside an agency decision if the  
16 decision was based upon an incorrect conclusion of law or otherwise affected by an error of law.  
17 State Indus. Ins. Sys. v. Giles, 110 Nev. 216, 871 P.2d 920 (1994); Jessop v. State Indus. Ins. Sys.,  
18 107 Nev. 888, 822 P.2d 116 (1991); see, also, NRS 233B.135(3)(d). Further, the Nevada Supreme  
19 Court stated that appellate review on questions of law is *de novo*, and that the reviewing court is  
20 free to address purely legal questions without deference to the agency's decision. Giles, *supra*;  
21 Mirage v. State, Dep't of Admin., 110 Nev. 257, 871 P.2d 317 (1994); American Int'l Vacations  
22 v. MacBride, 99 Nev. 324, 326, 661 P.2d 1301, 1302 (1983); see, also, State Dep't of Motor  
23 Vehicles v. Torres, 105 Nev. 558, 560, 799 P.2d 959, 960-961 (1989).

24 **2. This Court Can Set Aside a Decision That is Not Supported by Substantial**  
25 **Evidence.**

26 In determining whether an administrative decision is supported by substantial  
27 evidence, the methodology of the District Court is also well-defined. First, for each issue  
28 appealed, the pertinent rule of law is identified. Thereafter, the Record on Appeal is reviewed to  
determine whether the agency's decision on each issue is supported by substantial factual  
evidence. State Dep't of Motor Vehicles v. Torres, *supra*. If the decision of the administrative

1 agency on the appealed issue is supported by substantial factual evidence, the District Court must  
2 affirm the decision of the agency as to that issue. On the other hand, a decision by an  
3 administrative agency that lacks support in the form of substantial evidence is deemed arbitrary or  
4 capricious and, thus, an abuse of discretion that warrants reversal. NRS 233B.135(3); Titanium  
5 Metals Corp. v. Clark County, 99 Nev. 397, 399, 663 P.2d 355, 357 (1983).

6 Substantial evidence has been defined as that quantity and quality of evidence  
7 which a reasonable man could accept as adequate to support a conclusion. State Emp't Sec. Dep't  
8 v. Hilton Hotels Corp., 102 Nev. 606, 608 at n.1, 729 P.2d 497 (1986). Additionally, substantial  
9 evidence is not to be considered in isolation from opposing evidence, but evidence that survives  
10 whatever in the record fairly detracts from its weight. Universal Camera Corp. v. NLRB, 340 U.S.  
11 474, 477, 488 (1951); Container Stevedoring Co. v. Director, OWCP, 935 F.2d 1544, 1546 (9<sup>th</sup>  
12 Cir. 1991). This latter point is clearly the significance of the requirement in NRS 233B.135(3)(e)  
13 which directs the reviewing court to consider the whole record.

14 A decision that is affected by error of law cannot be found to be supported by  
15 substantial evidence. A decision that lacks support in the form of substantial evidence is arbitrary  
16 or capricious and, thus, an abuse of discretion that warrants reversal. Titanium Metals, supra. In  
17 this case, the Board's decision is based on errors of law and not supported by substantial evidence.  
18 The Board's Decision was clearly erroneous in view of the reliable, probative and substantial  
19 evidence in the record.

20 NRS 616A.010(2) and (4) are clear that Nevada no longer has liberal construction.  
21 Issues must be decided on their merits, and not according to the common law principle that  
22 requires statutes governing workers' compensation to be liberally construed. That means workers'  
23 compensation statutes must not be interpreted or construed broadly or liberally in favor of any  
24 party.

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1 IV.

2 LEGAL ARGUMENT

3 A. THE BOARD'S CLEARLY ERRONEOUS DECISION DOES NOT FURTHER  
4 THE LEGISLATIVE INTENT AND EXPRESSED PURPOSE OF SECOND  
5 INJURY ACCOUNT LEGISLATION

6 1. The Board's Decision Does Not Further the Legislative Intent and Stated Purpose  
7 of the Second Injury Accounts and is Properly Overturned

8 Due to the absence of case law in Nevada addressing the State's various subsequent  
9 injury accounts, the Court must look to other jurisdictions for guidance. There it is revealed that  
10 the rationale for creating such funds is three-fold. First, subsequent injury funds were created to  
11 help prevent discrimination against disabled persons by easing the impact which the threat of a  
12 subsequent injury holds to an employer by providing a pooled source of funds to underwrite the  
13 cost of a subsequent injury which might occur. Secure in the knowledge that a pooled subsequent  
14 injury fund exists, employers are encouraged to employ or retain in its employ the already  
15 disabled/injured worker. Subsequent injury accounts were created to relieve employers from the  
16 hardship of liability for those consequences of compensable injury not attributable to the injured  
17 worker's current employment. Finally, it is the intent of the subsequent injury account that  
18 "[e]ach employer's premium should reflect his own cost experience in order to reward, and  
19 thereby encourage, safety as well as to avoid an unfair burden on other employers." Jussila v.  
20 Department of Labor and Industries, 370 P.2d 582, 586 (Wash., 1962). See also Hernandez v.  
21 Gerber Group 608 A.2d 87, 89 (Conn., 1992), Jacques v. H.O. Penn Machinery Co., 166 Conn.  
22 352, 356, 349 A.2d 847 (Conn., 1974).

23 It is well settled that the interpretation of a statute begins with the wording of the  
24 statute itself, as the place of origin for its meaning. Nevada Dep't. of Bus. And Industry v. Granite  
25 Co., 118 Nev. 83, 40 P.3d 423, 426 (2002). The words used are assigned their plain and ordinary  
26 meaning. Barrick Goldstrike Mines v. Peterson, 116 Nev. 541, 545 (2000). In interpreting a  
27 statute, where the legislature's intent is clear, "that is the end of the matter; for the court as well as  
28 the agency [or in this case, the Board] must give effect to the unambiguously expressed intent of  
Congress [or the Legislature]." Chevron USA, Inc. v. Natural Resources Defense Council, Inc.,



1 467 U.S. 837, 843-844 (1984).

2 Couched in other terms, the first and most important step in construing a statute is  
3 the statutory language itself. Chevron USA v. Natural Res. Def. Council, 467 U.S. 837, 843-844,  
4 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984). The Supreme Court instructs to look to the text of the  
5 statute to 'determine whether the language at issue has a plain and unambiguous meaning with  
6 regard to the particular dispute in the case.' Robinson v. Shell Oil Co., 519 U.S. 337, 340, 117  
7 S.Ct. 843, 136 L.Ed.2d 808 (1997). If from the plain meaning of the statute congressional [and  
8 therefore also legislative] intent is clear, that is the end of the matter. Chevron, 467 U.S. at 843,  
9 104 S.Ct.2778. Royal Foods Co., Inc. v. RJR Holdings, Inc., TGI Fridays, etc., 252 F.3d 1102,  
10 1107 (9<sup>th</sup> Cir.,2001). Royal also advises that there is a strong presumption that the plain language  
11 of the statute expresses congressional [and therefore legislative] intent, which is 'rebutted only in  
12 rare and exceptional circumstances, when a contrary legislative intent is clearly expressed.'  
13 Ardestani v. INS, 502 U.S. 129, 135-136, 112 S.Ct. 55, 116 L.Ed.2d 496 (1991)(citations  
14 omitted); see also United States v. Ron Pair Enters., Inc., 489 U.S. 235, 242, 109 S.Ct. 1026, 103  
15 L.Ed.2d 290 (1989).

16 Royal concludes that even where the express language of a statute appears  
17 unambiguous, a court must look beyond that plain language where a literal interpretation of this  
18 language would thwart the purpose of the overall statutory scheme. United States v. Jersey Shore  
19 State Bank, 781 F.2d. 974 977 (3d Cir., 986), aff'd, 479 U.S. 442, 107 S.Ct. 782, 93 L.Ed.2d 800  
20 (1987), would lead to an absurd result, Id., or would otherwise produce a result 'demonstrably at  
21 odds with the intentions of the drafters,' Demarest v. Manspeaker, 498 U.S. 184, 190, 111 S.Ct.  
22 599, 112 L.Ed. 2d 608 (1991) (quoting Griffin v. Oceanic Contractors, Ltd., 458 U.S. 564, 571,  
23 102 S.Ct. 3245, 73 L.Ed.2d 973 (1982). Id at 1108.

24 While perhaps it is the Board's prerogative to select inferences from the evidence  
25 which are most reasonable, DIR. Workers Compensation v. Newport News, 134 F.3d 134, 143 (4<sup>th</sup>  
26 Cir.1998), where those selected inferences lead to a breach of the legislative intent underlying  
27 second injury recovery accounts and to an absurd result, the determination is, perforce, clearly  
28 erroneous.

1 In the matter at hand, the DIR found that Petitioners had satisfied all of the  
2 requirements of NRS 616B.557 and were entitled to second injury account reimbursement.  
3 (ROA0001-ROA0042). In its analysis, the DIR indicated that the application amount was under  
4 by \$13,952.14 in medical expenses and that the amount that should have been requested for  
5 reimbursement was \$27,960.61. This amount, of course, consists of those expenses Petitioner  
6 intentionally omitted from the reimbursement request as they reflect costs incurred in treatment of  
7 the cervical and lumbar spine. Despite satisfying all of the statutory requirements for recovery,  
8 the Board allowed no reimbursement of expenses because the entire subrogation amount of  
9 \$83,325.00 was deducted against the amount requested in recovery, leaving Petitioners in a  
10 negative balance for second injury account reimbursement purposes. Clearly such an erroneous  
11 decision cannot accomplish the intent underlying second injury account recoveries. Petitioner  
12 acknowledge that expenses paid for treatment of lumbar and cervical spine do not qualify for SIA  
13 reimbursement, excluded those costs from the application, and sought recovery for only those  
14 expenses associated with the right knee. Yet, despite undisputed entitlement to recovery, because  
15 of the impossible prerequisite for reimbursement arbitrarily imposed by the DIR and the Board,  
16 Petitioners are denied recovery of costs to which they are statutorily entitled.

17 This untenable position appears to be clear error in that, while Petitioners are  
18 restricted to reimbursement for right knee expenses only, the entire subrogation amount was offset  
19 against the expenses incurred for the right knee alone. Of course, the subrogation was calculated  
20 to recompense for all body parts injured in the motor vehicle accident — not just for treatment of  
21 the right knee. Just as obvious is that the cost of treatment of a single body part will never exceed  
22 the combined costs of treatment of three discreet body parts. As such, the DIR and Board have  
23 imposed a precondition on recovery that is sanctioned by no law, regulation, statute, or guideline.  
24 Petitioner accounted for those other expenses and specifically did not seek recovery for treatment  
25 of those non-qualifying body parts. Nevertheless, the Board elected to offset the entire  
26 subrogation amount against the amount requested, and ruled that while Petitioners were, in fact,  
27 absolutely entitled to second injury account recovery, it would not confirm any fund payments  
28 until Petitioners had expended at least the entire subrogation amount *in treatment of the right*

1 *knee*. Notably, the claimant was discharged from care to full duty work at maximum medical  
2 improvement with zero percent (0%) additional disability from this second right knee injury.  
3 Consequently, Petitioners will never expend at least the amount of the subrogation on right knee  
4 treatment and, under the DIR's and Board's erroneous interpretation of Nevada law and *sua*  
5 *sponte* creation and imposition of new recovery requirements, will never recover the costs paid to  
6 treat claimant's second industrial accident right knee accident.

7 This absurd situation is a direct product of the Board's failure to abide by the  
8 above-stated three-fold legislative intent underlying of second injury accounts and improper  
9 promulgation of new and additional recovery regulations. Such accounts are intended to  
10 incentivize continued employment of disabled workers by providing a means to recover costs  
11 associated with treatment of a second injury from a common pool of funds. By formulating and  
12 imposing new recovery requirements and unrealistically demanding that the subrogation received  
13 for all body parts be offset against treatment costs for the right knee only, the Board fails to fulfill  
14 the underlying legislative intent. As such, the Board's determination must fail.

## VI.

## CONCLUSION

Based upon the foregoing, Petitioners, respectfully asks this Honorable Court to grant

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1 Petitioners' Petition for Judicial Review

2 Dated this 2 day of April, 2021.

3 Respectfully submitted,

4 **LEWIS, BRISBOIS, BISGAARD & SMITH,**  
5 **LLP**

6 By: 

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9 *Management Services, Inc.*

1 CERTIFICATE OF COMPLIANCE

2 I hereby certify that I have read this appellate brief and, to the best of my  
3 knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I  
4 further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in  
5 particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record  
6 to be supported by appropriate references to the record on appeal. I understand that I may be  
7 subject to sanctions in the event that the accompanying brief is not in conformity with the  
8 requirements of the Nevada Rules of Appellate Procedure.

9 DATED this 5 day of April, 2021.

10  
11 Respectfully submitted,

12  
13 LEWIS BRISBOIS BISGAARD & SMITH LLP

14  
15 By 

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21 *Police Department and Cannon Cochran*

22 *Management Services, Inc.*

**CERTIFICATE OF MAILING**

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on the 5<sup>th</sup> day of April, 2021, service of the attached **PETITIONERS' OPENING BRIEF** was made this date by depositing a true copy of the same for mailing, first class mail, and/or via electronic service as follows:

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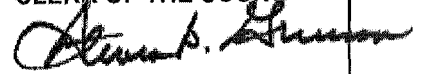
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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

LAS VEGAS METROPOLITAN POLICE  
DEPARTMENT, and CANNON  
COCHRAN MANAGEMENT SERVICES,  
INC.

Petitioners,

vs.

STATE OF NEVADA BOARD FOR THE  
ADMINISTRATION OF THE SUBSEQUENT  
INJURY ACCOUNT FOR SELF-INSURED  
EMPLOYERS,

Respondents.

Case No.: A-20-821892-J

Dept No.: 15

Hearing Requested

**RESPONDENT DIVISION OF INDUSTRIAL RELATIONS'**  
**MOTION TO DISMISS PETITIONERS' PETITION FOR JUDICIAL REVIEW, OR**  
**IN THE ALTERNATIVE MOTION TO STRIKE "PETITIONERS OPENING BRIEF"**  
**AND MOTION TO EXTEND TIME TO FILE REPLY MEMORANDUM OF POINTS**  
**AND AUTHORITIES**

COMES NOW Respondent, Division of Industrial Relations ("Division" or "DIR") by  
and through its undersigned counsel and hereby moves this Honorable Court for an order

1 dismissing Petitioners' Petition for Judicial Review ("PJR") filed on September 24, 2020 on  
2 two bases: (1) Petitioners never filed the transcript of the underlying administrative proceeding  
3 as required by Nevada Revised Statute ("NRS") 233B.131(1)(a), and (2) Petitioners failed to  
4 file their Memorandum of Points and Authorities within 40 days following the Board's Notice  
5 of Transmittal of the Record pursuant to NRS 233B.133(1).

6 In the alternative, Respondent moves for an order striking "Petitioners' Opening Brief"  
7 because Petitioner failed to file a copy of the transcript as required by NRS 233B.131(1)(a), and  
8 therefore the record of the underlying administrative proceeding is incomplete; and for an order  
9 granting its Motion to Extend Time to File Its Reply Memorandum of Points and Authorities.

10 This Motion is made and based upon the Points and Authorities attached hereto, NRS  
11 233B.131 through NRS 233B.135, the exhibits attached hereto, the records and pleadings on  
12 file in this matter, and such oral argument as may be adduced at the hearing of this Motion.

13 **I. MOTION TO DISMISS PETITIONERS' PETITION FOR JUDICIAL REVIEW**

14 **A. PRELIMINARY STATEMENT**

15 Petitioners never filed the transcript of the underlying administrative proceeding. They  
16 are about 175 days late and counting. Making matters worse, they late-filed their Opening  
17 Brief—it is 105 days late—but, without any citations to the transcript, it is so deficient that it is  
18 useless for purposes of judicial review. Petitioners never filed the transcript, and essentially it  
19 is as if they never filed an Opening Brief. Without excuse, Petitioners blew both mandatory  
20 statutory deadlines in NRS 233B and their PJR should be dismissed. Exhibit "1" attached  
21 hereto (Affidavit of Division Counsel).

22 **B. STATEMENT OF FACTS**

23 Petitioners seek judicial review of the "Findings of Fact, Conclusions of Law, and  
24 Determination of the Board" dated August 19, 2020 by the Board for the Administration of the  
25 Subsequent Injury Account for Self-Insured Employers (the "Board") in Claim No.  
26 12D34C229979. Administrative Record on Appeal ("ROA") 0124-0132.

27 ///



1 The Board administers the Subsequent Injury Account, which is a workers'  
2 compensation program created to encourage self-insured employers to hire and retain workers  
3 with certain qualifying preexisting permanent physical impairments. NRS 616B.557(1)-(4); *N.*  
4 *Lake Tahoe Fire Prot. Dist. V. Bd. of Admin.*, 431 P.3d 39, 43, 2018 Nev. LEXIS 107, at \*\*8  
5 (2018) (analyzing the requirements for reimbursement under NRS 616B.578, which applies to  
6 the Board for the Administration of the Subsequent Injury Account for Associations of Self-  
7 Insured Public or Private Employers, but is otherwise analogous to NRS 616B.557).

8 Statutes and regulations regarding the Board are located at NRS 616B.545 through  
9 616B.560, and Nevada Administrative Code ("NAC") 616B.770 through 616B.7714.

10 The Board's process when administratively deciding claims for reimbursement is not  
11 adversarial in the first place. The applicant submits a claim to the Division for review and  
12 analysis. NAC 616B.7702. Upon review and analysis of the applicant's claim, the Division  
13 produces a written recommendation to the Board concerning acceptance or denial of the claim.  
14 NAC 616B.7704(1)(a). Simultaneously, the Division serves the applicant with its written  
15 recommendation, including the documents which the Division believes supports its  
16 recommendation. NAC 616B.7704(1)(b).

17 Next, the Board schedules and notices a public meeting. ROA 0053-0056. The agenda  
18 includes the Division's recommendation concerning acceptance or denial of the claim as an  
19 action item. ROA 53 (agenda item \* 6.a. on the Board's June 27, 2018 agenda is the action on  
20 the Division's recommendation). If the Division's recommendation is adverse to the applicant,  
21 then the applicant may request a contested hearing before the Board by filing a written request  
22 with the Board's legal counsel within 30 days. NAC 616B.7706(1).

23 If the applicant timely requests a contested hearing, the Board then schedules and notices  
24 another public meeting. ROA 0075-0081. The agenda includes the Division's recommendation  
25 concerning acceptance or denial of the claim as an action item, but this time the agenda item is  
26 expressly noticed as a *de novo* hearing in a contested case. ROA 0077 (agenda item \* 7.a. on  
27 the Board's September 26, 2018 agenda is the action in the *de novo* contested case).

Specifically, agenda item \* 7 states in pertinent part:

The following request(s) for reimbursement, which the Board will hear *de novo*, is a contested case which will be adjudicated pursuant to the Nevada Administrative Procedures Act, NRS 233B.010, et seq.:

- a. 12D34C229979 Las Vegas Metropolitan Police Department  
For Possible Action

ROA 0077 (emphasis in original).

NRS 233B.121 through NRS 122B.150 provide the statutory framework for the adjudication of contested cases. NRS 233B.121(8) states that: Oral proceedings, or any part thereof, must be transcribed on the request of any party..." Here, the *de novo* contested hearing on Petitioners' claim was an oral proceeding under NRS 233B.121. The proceeding was transcribed by a court reporter pursuant to the request of the Board's former counsel, Charles R. Zeh, Esq. Under NRS 233B.131(1)(a), "Within 45 days after the service of the petition for judicial review or such time as is allowed by the court: The party who filed the petition for judicial review shall submit to the reviewing court an original or certified copy of the transcript of the evidence resulting in the final decision of the agency."

Here, Petitioners filed the PJR on September 24, 2020. Thus, pursuant to NRS 233B.131(1)(a), Petitioners had a statutory duty to file the original or certified copy of the transcript with the court by November 9, 2020. Without excuse, Petitioners have not filed the transcript—they are about 175 days late and counting. The record is incomplete because Petitioners failed to file the transcript. Also, Petitioners' deficient Opening Brief is late-filed.

One might argue that the Board's September 26, 2018 hearing and deliberation of this *de novo* contested case, as memorialized in the court reporter's certified transcript, is the most important part of this administrative record. Without the "whole record" how is this Court able to determine whether the Board's final decision was lawful? NRS 233B.135(3)(e) (describing that the court may remand, affirm, or set aside in whole or in part the agency's final decision if the final decision is "clearly erroneous in view of the reliable, probative and substantial evidence

1 on the whole record..." (emphasis added.)).

2 Additionally, under NRS 233B.133(1), a petitioner who is seeking judicial review must  
3 serve and file a memorandum of points and authorities within 40 days after the agency gives  
4 written notice to the parties that the record of the proceeding under review has been filed. The  
5 Board filed the ROA on November 9, 2020. The Board filed its Notice of Transmittal of the  
6 ROA the next day, November 10, 2020. The Petitioners did not file a Motion to Extend Time  
7 showing an excusable neglect for extending the time to file their Memorandum of Points and  
8 Authorities. *Toman v. Nev. Transp. Auth.*, Case No.: CV18-00461, 2018 Nev. Dist. LEXIS  
9 974, at \*3 (Second Judicial Dist. Ct. of Nev. Sept. 17, 2018). Rather, Petitioners late-filed a  
10 deficient Opening Brief on April 5, 2021. The Petitioners Opening Brief is 105 days late and  
11 their PJR should be dismissed.<sup>1</sup>

12 **C. PROCEDURAL HISTORY**

13 On April 10, 2018, Petitioners filed a claim for reimbursement with the Division. ROA  
14 0044.

15 On April 25, 2018, the Division issued its amended recommendation regarding the  
16 claim. ROA 0043-0049.

17 On June 27, 2018, the Board held a public meeting and acted on the Division's amended  
18 recommendation to approve the claim. ROA 0053 (action item \* 6.a.).

19 On July 11, 2018, Mr. Zeh, the Board's former counsel, notified Petitioners regarding  
20 the Board's action at its June 27, 2018 agenda. ROA 0071-0072.

21 On August 10, 2018, Mr. Price, Petitioners' counsel, notified Mr. Zeh regarding his  
22 clients' appeal of the Board's action at its June 27, 2018 agenda. ROA 0075.

23 On September 10, 2018 (ROA 0081) and again on September 17, 2018 (ROA 0090) Mr.  
24 Price waived his right to hand delivery of the Board's agenda set for September 26, 2018 and  
25 acknowledged that he had time to appear and make a presentation regarding this claim at said  
26

27 <sup>1</sup> It is 146 days from November 10, 2020 (the date the Board gave notice of filing the ROA) to April 5, 2020 (the  
28 date Petitioners filed their Opening Brief). Under NRS 233B.133(1), the Petitioners had 40 days from November  
10, 2020 to file their memorandum of points and authorities; thus, the deadline to file was December 21, 2020.

1 agenda.

2 On September 24, 2018, Mr. Price submitted to the Division the Petitioners' "First  
3 Supplement to Letter of Application for Reimbursement from the Subsequent Injury Account."  
4 ROA 0092-0106.

5 On September 26, 2018, the Board held an agenda which included as an action item the  
6 *de novo* hearing pursuant to NRS 233B regarding the Division's recommendation for the claim.  
7 ROA 0076-0079 (action item \* 7.a.). A court reported was present and transcribed the oral  
8 proceedings regarding action item \* 7.a. Counsel for Petitioners, Mr. Kim Price, attended and  
9 represented Petitioners at the Board's meeting.

10 On August 19, 2020, the Board held an agenda at which the Draft Findings of Fact,  
11 Conclusions of Law and Determination of the Board was included as an action item. ROA  
12 0107-0109 (action item \* 8 at ROA 0108).

13 The Board's Chair, Cecilia Meyer, signed the Findings of Fact, Conclusions of Law and  
14 Determination of the Board on August 19, 2020. ROA 0124-0132 (signed at ROA 0130).

15 During the pendency of this case, the Board's contract with Mr. Zeh ended and the  
16 Board retained new legal counsel, Mr. Donald Bordelove, Deputy Attorney General.

17 On September 1, 2020, Mr. Bordelove signed the Notice of Entry of the Board's  
18 Findings of Fact, Conclusions of Law and Determination of the Board. ROA 0131.

19 On September 24, 2020, Petitioners, through counsel, filed their PJR, designated Case  
20 No. A-20-821892-J.

21 On October 13, 2021, the Division filed its Notice of Intent to Participate pursuant to  
22 NRS 233B.130(3).

23 On November 10, 2020, the Board filed its Notice of Transmittal of Administrative  
24 Record on Appeal.

25 Petitioners, as the party who filed the PJR, "shall transmit to the reviewing court an  
26 original or certified copy of the transcript of the evidence resulting in the final decision of the  
27 agency." NRS 233B.131(1)(a). To date, Petitioners have failed to file the transcript. Thereby,  
28

1 the record is incomplete.

2 The Division has not stipulated, and is not aware of any stipulation, by which the parties  
3 agreed to shorten the administrative record. NRS 233B.131(1) (stating that “the record may be  
4 shortened by stipulation of the parties to the proceedings”).

5 Instead, Petitioners late-filed an Opening Brief—it is 105 days late—which lacks any  
6 citations to the transcript of the Board’s September 26, 2018 *de novo* hearing in this  
7 administrative contested case.

8 **D. APPLICABLE STATUTES**

9 **NRS 233B.131 Transmittal of record of proceedings to**  
10 **reviewing court by party and agency; shortening of or**  
11 **corrections or additions to record; additional evidence;**  
12 **modification of findings and decision by agency based on**  
13 **additional evidence.**

14 **1. Within 45 days after the service of the petition for**  
15 **judicial review or such time as is allowed by the court:**

16 **(a) The party who filed the petition for judicial review shall**  
17 **transmit to the reviewing court an original or certified copy of**  
18 **the transcript of the evidence resulting in the final decision of**  
19 **the agency.**

20 **(b) The agency that rendered the decision which is the subject**  
21 **of the petition shall transmit to the reviewing court the original or a**  
22 **certified copy of the remainder of the record of the proceeding under**  
23 **review.**

24 **↪ The record may be shortened by stipulation of the parties to**  
25 **the proceedings. A party unreasonably refusing to stipulate to limit**  
26 **the record, as determined by the court, may be assessed by the court**  
27 **any additional costs. The court may require or permit subsequent**  
28 **corrections or additions to the record.**

1 If, before submission to the court, an application is made to  
the court for leave to present additional evidence, and it is shown to  
the satisfaction of the court that the additional evidence is material  
and that there were good reasons for failure to present it in the  
proceeding before the agency, the court may order that the  
additional evidence and any rebuttal evidence be taken before the  
agency upon such conditions as the court determines.

3. After receipt of any additional evidence, the agency:

(a) May modify its findings and decision; and

(b) Shall file the evidence and any modifications, new findings  
or decisions with the reviewing court.

(Added to NRS by 1989, 1649; A 2015, 710)

(Emphasis added.)

**NRS 233B.133 Form and deadlines for serving and filing memorandum of points and authorities and replies; extensions; request for hearing or matter deemed submitted.**

1. A petitioner or cross-petitioner who is seeking judicial review must serve and file a memorandum of points and authorities within 40 days after the agency gives written notice to the parties that the record of the proceeding under review has been filed with the court.

2. The respondent or cross-petitioner shall serve and file a reply memorandum of points and authorities within 30 days after service of the memorandum of points and authorities.

3. The petitioner or cross-petitioner may serve and file reply memoranda of points and authorities within 30 days after service of the reply memorandum.

4. Within 7 days after the expiration of the time within which the petitioner is required to reply, any party may request a hearing. Unless a request for hearing has been filed, the matter shall be deemed submitted.

5. All memoranda of points and authorities filed in proceedings involving petitions for judicial review must be in the form provided for appellate briefs in Rule 28 of the Nevada Rules of Appellate Procedure.

6. The court, for good cause, may extend the times allowed in this section for filing memoranda.

(Added to NRS by 1989, 1649)

(Emphasis added.)

**NRS 233B.135 Judicial review: Manner of conducting; burden of proof; standard for review.**

1. Judicial review of a final decision of an agency must be:

(a) Conducted by the court without a jury; and

(b) Confined to the record.

→ In cases concerning alleged irregularities in procedure before an agency that are not shown in the record, the court may receive evidence concerning the irregularities.

2. The final decision of the agency shall be deemed reasonable and lawful until reversed or set aside in whole or in part by the court. The burden of proof is on the party attacking or resisting the decision to show that the final decision is invalid pursuant to subsection 3.

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

(a) In violation of constitutional or statutory provisions;

(b) In excess of the statutory authority of the agency;

- (c) Made upon unlawful procedure;
- (d) Affected by other error of law;
- (e) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) Arbitrary or capricious or characterized by abuse of discretion.

4. As used in this section, "substantial evidence" means evidence which a reasonable mind might accept as adequate to support a conclusion.

(Added to NRS by 1989, 1650; A 2015, 710)

(Emphasis added.)

## **E. STANDARDS OF REVIEW**

### **1. Transmittal of record of proceedings to reviewing court by party and agency**

Pursuant to NRS 233B.131(1)(a): Within 45 days after the service of the petition for judicial review or such time as is allowed by the court, the party who filed the petition for judicial review shall transmit to the reviewing court an original or certified copy of the transcript of the evidence resulting in the final decision of the agency.

Here, without excuse Petitioners never filed the transcript. Petitioners filed their PJR on September 24, 2020. The Petitioners statutory deadline to file the transcript was Monday, November 9, 2020. At the date of this writing, Petitioners are about 175 days late and counting. Nor have Petitioners filed a motion demonstrating good cause or stipulation with this Court for additional time to file the transcript.

### **2. Deadline for serving and filing memorandum of points and authorities**

Pursuant to NRS 233B.133(1): A petitioner who is seeking judicial review must serve and file a memorandum of points and authorities within 40 days after the agency gives written notice to the parties that the record of the proceeding under review has been filed with the court. Pursuant to NRS 233B.133(6): The court, for good cause, may extend the times allowed in this section for filing memoranda.

Here, without excuse, Petitioners did not serve or file a memorandum of points and

1 authorities withing 40 days after the agency gave written notice that the record of the proceeding  
2 under review had been filed with this Court. The Board filed the Notice of Transmittal on  
3 November 10, 2020. The Petitioners' statutory deadline to file the memorandum was Monday,  
4 December 21, 2020. They filed their "Opening Brief" on April 5, 2021—about 105 days late.

5 Petitioners did not file a motion to extend the time for filing their memorandum or show  
6 good cause why this Court should do so. Moreover, as detailed below, without citations to the  
7 underlying administrative transcript, Petitioners' Opening Brief is useless for purposes of  
8 judicial review. Given these facts, it is as if no memorandum has been filed.

9 **F. ARGUMENT**

10 **1. Without excuse, Petitioners have not filed the transcript of the**  
11 **Board's September 26, 2018 *de novo* hearing. This Court should**  
12 **dismiss Petitioners' PJR.**

13 On September 24, 2020, Petitioners filed the instant PJR before this Court. Without  
14 excuse, Petitioners have not filed the transcript of the Board's September 26, 2018 hearing,  
15 which is required by NRS 233B.131(1). The Petitioners had a statutory duty to file the transcript  
16 by November 9, 2020. Petitioners are about 175 days late and counting...

17 NRS 233B.131(1)(a) unambiguously mandates that the Petitioner "shall transmit" to the  
18 court an original or certified copy of the transcript of the evidence resulting in the final agency  
19 decision. The Nevada Supreme Court has determined that "[t]he word 'shall' is a term of  
20 command; it is imperative or mandatory, not permissive or directory." *Great Basin Water*  
21 *Network v. Taylor*, 234 P.3d 912, 2010 Nev. LEXIS 21, at \*\*12 (2010) (citing *Blaine Equip.*  
22 *Co. v. State, Purchasing Div.*, 122 Nev. 860, 867, 138 P.3d 820, 824 (2006) (alternation in  
23 original) (quoting *Adkins v. Oppio*, 105 Nev. 34, 37, 769 P.2d 62, 64 (1989)).

24 Petitioners' failure to file the transcript with the court, as mandated by statute, is grounds  
25 for dismissal. *Kame v. Employment Sec. Dep't*, 105 Nev. 22, 25, 769 P.2d 66, 68 (1989)  
26 (holding that strict compliance with statutory requirements is a precondition to jurisdiction for  
27 judicial review). The Division did not stipulate to shorten the record in any manner, let alone  
28



1 stipulate to omit perhaps the most important part of the whole record—the transcript of the  
2 Board’s *de novo* hearing and deliberation in the underlying administrative proceeding.

3 **2. Without excuse, Petitioners late-filed their deficient Opening Brief.**

4 **This Court should dismiss Petitioners’ PJR.**

5 On November 10, 2020, Board counsel filed the Notice of Transmittal of Administrative  
6 Record on Appeal. Pursuant to NRS 233B.133(1), the Petitioners had a statutory duty to file  
7 and serve a memorandum of points and authorities within 40 days of November 10, 2020. NRS  
8 233B.133(1) plainly and unambiguously states that a petitioner “**must serve and file**” the  
9 memorandum within 40 days. Here, Petitioners’ deadline to file and serve the memorandum  
10 was Monday, December 21, 2020. Failure to timely file the memorandum is grounds for  
11 dismissal.

12 Matters of statutory interpretation are reviewed *do novo*. *Nev. State Bd. of Architecture*  
13 *v. Eighth Judicial Dist. Court*, 449 P.3d 1262, 1264, 2019 Nev LEXIS 59, at \*\*5-6 (2019). A  
14 premature petition for judicial review does not vest the court with jurisdiction. *Id.* at 1263,  
15 2019 Nev. LEXIS at \*\*1-2. In the instant case, the Petitioners’ failure to file the transcript—  
16 and their failure to file a memorandum with citations to the transcript—does not vest this Court  
17 with jurisdiction. Indeed, this Court lacks jurisdiction to conduct judicial review and should  
18 dismiss this PJR.

19 Strict compliance with the procedures of NRS 233B, the Administrative Procedures Act,  
20 is a prerequisite for this Court’s jurisdiction to attach. “[n]ot every administrative decision  
21 is reviewable.” *Private Investigator’s Licensing Bd. v. Atherley*, 98 Nev. 514, 515, 654 P.2d  
22 1019 (1982). Only those decisions that are challenged according to NRS 233B’s procedures  
23 invoke the district court’s jurisdiction. *Id.* “**When a party seeks judicial review of an**  
24 **administrative decision, strict compliance with the statutory requirements for such review**  
25 **is a precondition to jurisdiction by the court of judicial review,”** and “[n]oncompliance  
26 **with the requirements is grounds for dismissal.”** *Kame*, 105 Nev. at 25, 769 P.2d at 68  
27 (emphasis added) (quoting *Teepe v. Review Bd. of Indiana Emp. Sec. Div.*, 200 N.E.2d 538, 539

(Ind. Ct. App. 1964); *see also* *Ultsch v. Ill. Mun. Ret. Fund*, 226 Ill.2d 169, 178, 874 N.E.2d 1, at \*\*7 (Ill. 2007) (stating that “Because review of a final administrative decision may be obtained only as provided by statute, a court exercises ‘special statutory jurisdiction’ when it reviews an administrative decision. Special statutory jurisdiction is limited to the language of the statute conferring it and the court has no powers from any other source. A party seeking to invoke a court’s special statutory jurisdiction must strictly comply with the procedures prescribed by the statute.”) (internal citation omitted).

Without excuse for good cause shown, Petitioners late-filed their Opening Brief on April 5, 2021. Worse, Petitioner’s late-filed Opening Brief is useless because it lacks citations to the transcript of the Board’s September 26, 2018 *de novo* hearing. Indeed, the record before the Court is not the “whole record” as required by NRS 233B.135(3)(e) because Petitioner never filed the transcript.

Over 220 days have passed since Petitioners filed their PJR. Because Petitioners failed to file the transcript and instead late-filed a deficient Opening Brief without citations to the transcript, this Court is in no position to conduct judicial review based upon the whole record. NRS 233B.135.

**3. The Court should dismiss Petitioners’ PJR.**

**a. Analysis of the District Court’s Order in the *Toman* case**

Petitioners late-filed a deficient Opening Brief. The Opening Brief is deficient because it lacks citations to the transcript of the Boards September 26, 2018 *de novo* hearing. Petitioners have not alleged any excusable neglect for their failure to file the transcript, which is about 175 days late and counting. NRS 233B.131(1)(a). Petitioners have not alleged any excusable neglect for late-filing their deficient Opening Brief, which was filed 105 days after the deadline. NRS 233B.133(1).

In *Toman*, Mr. Toman filed his Petition for Judicial Review on March 6, 2018. *Toman v. Nev. Transp. Auth.*, Case No.: CV18-00461, 2018 Nev. Dist. LEXIS 974, at \*2 (Second Judicial Dist. Ct. of Nev. Sept. 17, 2018). On April 4, 2018, the Court granted the parties’

1 stipulation to stay the proceedings pending the outcome of Toman's Petition for  
2 Reconsideration filed with the Nevada Transportation Authority ("NTA"). *Id.* On April 12,  
3 2018, the NTA denied Toman's Motion for Reconsideration. *Id.* On May 17, 2018, Toman  
4 filed the Transcript of the Hearing pursuant to NRS 233B.131(1)(a). *Id.* On May 22, 2018 the  
5 NTA gave notice that it filed the Record of the Proceeding with the Court as required by NRS  
6 233B.131(1)(b). *Id.* On July 25, 2018 the NTS moved to dismiss Toman's PJR because Toman  
7 had not filed his Memorandum of Points and Authorities within forty days following the NTA's  
8 Notice of Transmittal of the Record. *Id.*

9 The District Court granted the NTA's Motion to Dismiss. *Id.* at \*4-5. Toman appealed.  
10 The Nevada Supreme Court **denied** Toman's Petition for Judicial Review.<sup>2</sup>

11 In granting the NTA's Motion to Dismiss, the District Court analyzed applicable  
12 provisions of NRS 233B. *Id.* at \*3-4. Mr. Toman argued that he believed the Court would lift  
13 the stay and then set forth a briefing schedule, and therefore, good cause existed for his not  
14 filing the Memorandum of Points and Authorities timely. *Id.* at \*4. The Court found this  
15 argument unpersuasive because Mr. Toman timely filed the Record of the Proceedings as  
16 required by NRS 233B.131 and timely received the required notice of transmittal of the record  
17 from the NTA, yet he did not think the Memorandum of Points and Authorities would need to  
18 be filed within the statutorily required timeframes. *Id.* Furthermore, the Court found that there  
19 was no good cause to enlarge time to file the Memorandum of Points and Authorities as required  
20 pursuant to NRS 233B.133(6). *Id.*

21 The Court reasoned: "Strict compliance with statutory requirements is required for this  
22 Court to have jurisdiction over the appeal of an administrative decision and noncompliance with  
23 statutory requirements is grounds for dismissal." *Id.*

24 In the case at bar, the fact remains that Petitioners did not comply with NRS  
25 233B.131(1)(a)—the Petitioners never filed the transcript. The fact remains that Petitioners did  
26 not comply with NRS 233B.133(1)—the Petitioners filed a deficient Opening Brief 105 days

27  
28 <sup>2</sup> Order Denying Petition for Judicial Review, Case No. 77156, filed March 4, 2020.

late. The fact remains that the Petitioners' late-filed Opening Brief is useless because without citations to the Board's *de novo* proceeding, the Court cannot perform its role of judicial review based upon the whole record. There can be no doubt that the transcript of the Board's *de novo* hearing is a material part of the whole record in the underlying administrative proceeding.

Essentially, the Petitioners' Opening Brief is so deficient that it's as if no Opening Brief has been filed. Petitioners never moved to extend time or demonstrated excusable neglect. NRS 233B.133(6). The fact remains that Petitioners have not complied with statutory requirements at all for filing the transcript or their memorandum, let alone strictly complied with NRS 233B's procedural requirements, which is required to invoke this Court's jurisdiction. *Toman*, 2018 Nev. Dist. LEXIS 974, at \*4.

**b. Analysis of the District Court's Order in the *In re DOT* case**

In *In re DOT*, the Plaintiffs (unsuccessful applicants for retail recreational cannabis establishment licenses) filed a complaint and a petition for judicial review against the Department of Taxation ("DOT") and sought an order requiring the DOT to supplement the administrative record and for other relief. *In re DOT*, Case No. A-19-787004-B *et seq.*, 2020 Nev. Dist. LEXIS 1221, at \*1 (Eighth Judicial Dist. Ct. of Nev. Aug. 28, 2020). The Court denied Plaintiffs' motion. *Id.* at \*5-6.

The Court's analysis began by citing the legal standard that "A petition for judicial review is ordinarily 'confined to the record' before the agency when it made its decision. NRS 233B.135(1)(b)." *Id.* at \*3. Regarding the Plaintiffs' request to supplement the record, the Court stated: "NRS 233B.131(1) requires the submission of two categories of documents: (1) the 'transcript of the evidence resulting in the final [agency] decision'; and (2) the 'record of the proceeding under review.'" *Id.* at \*4. The Court noted that "Here, there is no applicable 'transcript,' so NRS 233B.131(1) requires only the 'record of the proceeding under review.'" *Id.* There was no "transcript" because "The 'proceeding under review' is the [DOT's] determination on the [Plaintiffs'] license applications, and the record is therefore the documents that the Department considered in grading the applications." *Id.*

1 In the case at bar, in contrast to *In re DOT* case, there is a “transcript of the evidence  
2 resulting in the final decision of the agency.” NRS 233B.131(1)(a). The Board’s September  
3 26, 2018 meeting regarding the *de novo* hearing on Petitioners’ claim for reimbursement was  
4 recorded and transcribed by a certified court reporter. There was no transcript in the *In re DOT*  
5 case because the proceeding under review was limited to the evaluation of the Plaintiffs’  
6 applications and all documents pertaining to that evaluation were included in the record. *In re*  
7 *DOT*, 2020 Nev. Dist. LEXIS 1221, at \*3. In short, Petitioners failed without excuse to file the  
8 transcript with this Court within 45 days of serving their PJR as required by NRS  
9 233B.131(1)(a).

10 Here, one category of documents—the transcript of the Board’s *de novo* contested  
11 hearing—that comprises the whole record for purposes of judicial review has not been timely  
12 submitted. Again, Petitioners are about 175 days late in filing the transcript and have not  
13 complied (strictly or substantially) with NRS 233B’s procedural requirements. This Court lacks  
14 jurisdiction over Petitioners’ PJR. Thus, this Court should grant the Division’s Motion to  
15 Dismiss Petitioners’ PJR.

16 **c. Analysis of the *Schulz Partners* case**

17 In *Schulz Partners*, appellant Schulz Partners appealed from a district court order  
18 denying and dismissing a combined petition for judicial review and complaint. *Schulz Partners,*  
19 *LLC v. State ex re. Bd. of Equalization*, Case No. 53128, 2011 Nev. Unpub. LEXIS 500, at \*1  
20 (July 28, 2011) (unpublished disposition). The State respondents filed a motion to dismiss on  
21 November 5, 2008 and filed a second motion to dismiss on December 1, 2008. *Id.* at \*2. In  
22 between the filing of those motions to dismiss, on November 6, 2008, Schulz and the State  
23 stipulated to extend the time for filing the administrative record pertaining to the petition for  
24 judicial review until 30 days after notice of entry of the order resolving the motion to dismiss.  
25 *Id.* at \*2-3. “The district court denied Schulz’s petition [for judicial review] and dismissed the  
26 complaint before the filing of the administrative record.” *Id.* at \*3. The Nevada Supreme Court  
27 reversed the district court “to the extent it denies Schulz’s petition for judicial review without  
28

benefit of the complete administrative record.” *Id.* at \*6 (internal footnote omitted).

Here, as in *Schulz*, the Court lacks the benefit of the complete administrative record because Petitioners never filed the transcript of the underlying administrative proceeding under review. It is the Division’s position that it would be error for this Court to deny the Division’s Motion to Dismiss and to rule on the merits of the Petitioners’ PJR without the transcript. But in contrast to the *Schulz* case, the Division never stipulated (or was asked to stipulate) to extend the time for filing the transcript of the administrative record. Petitioners simply never filed the transcript as required by NRS 233B.131(1)(a). As such, Petitioners’ Opening Brief is useless for purposes of judicial review which must be based upon the whole record. NRS 233B.135(1)(b) and (3)(e). Accordingly, this Court lacks jurisdiction and should grant the Division’s Motion to Dismiss Petitioners’ PJR.

**4. Statutes that provide a time limit for filing, such as NRS 233B.131(1)(a) and NRS 233B.133(1)—are jurisdictional, not procedural—and require strict compliance.**

The Nevada Supreme Court has held that a rule providing a time limit for filing an administrative appeal is not procedural, but jurisdictional. *K-Kel, Inc. v. State, Dep’t of Taxation*, 134 Nev. 78, 80-81, 412 P.3d 15, 17 (2018) (recognizing that the statutory time period for filing a petition for judicial review under NRS Chapter 233B as jurisdictional). Moreover, the Court has consistently treated time limitations set forth in workers’ compensation statutes as “establishing a jurisdictional bar to further review when the required action is not taken within the time period delineated by those statutes.” *Williams v. United Parcel Servs.*, 129 Nev. 386, 390, 302 P.3d 1144, 1146 (2013) (quoting *Seino v. Employers Ins. Co. of Nev.*, 121 Nev. 146, 150, 111 P.3d 1107, 1110 (2005) (“Statutory periods for requesting administrative review of workers’ compensation determinations are mandatory and jurisdictional.”); *Reno Sparks Convention Visitors Auth. v. Jackson*, 112 Nev. 62, 66-7, 910 P.2d 267, 270 (1996) (recognizing that the failure to appeal administrative determination within prescribed time period precluded consideration of the appeal)).

1           Additionally, the Nevada Supreme Court has held that it will look to the rule's language,  
2 and consider policy and equity principles, in order to determine if a rule's provisions require  
3 strict or substantial compliance. *Markowitz v. Saxon Special Servicing*, 129 Nev. 660, 664, 310  
4 P.3d 569, 571-72 (2013) (citing *Leyva v. Nat'l Default Servicing Corp.*, 127 Nev. 470, 475-76,  
5 255 P.3d 1275, 1278 (2011)). "Generally, a rule is mandatory and requires strict compliance  
6 when its language states a specific 'time and manner' for performance." *Id.* (citing *Leven v.*  
7 *Frey*, 123 Nev. 399, 408 n.31, 168 P.3d 712, 718 n.31 (2007)). "Time and manner refers to  
8 when performance must take place and the way in which the deadline must be met." *Id.* (citing  
9 *Village League to Save Incline Assets, Inc. v. State Bd. of Equalization*, 124 Nev. 1079, 1088,  
10 194 P.3d 1254, 1260 (2008)). In contrast to time and manner provisions, form and content  
11 provisions "dictate who must take action and what information that party is required to  
12 provide." *Id.* (citing *Einhorn v. BAC Home Loans Servicing, LP*, 128 Nev. 689, 696, 290 P.3d  
13 249, 254 (2012) (stating that "who brings which documents ... is a matter of 'form'")).  
14 "Because they do not implicate notice, form and content-based rules are typically directory and  
15 may be satisfied by substantial compliance..." *Id.* at 664-65.

16           Here, Petitioners filed their PJR on September 24, 2020. The Certificate of Service on  
17 Petitioners' PJR states that the PJR was mailed on September 25, 2020. Thus, pursuant to NRS  
18 233B.131(1), the clock started ticking for Petitioners to transmit a copy of the transcript to the  
19 reviewing court within 45 days. Petitioners never filed the transcript. Petitioners are about 175  
20 days beyond the statutory time limit for filing the transcript. Petitioners never moved to extend  
21 the time to file the transcript, nor did they seek a stipulation to extend the time. The Court  
22 should dismiss their PJR.

23           Moreover, the Board filed its Notice of Transmittal of Administrative Record on Appeal  
24 on November 10, 2020. The Petitioners were served with the Notice of Transmittal of the ROA  
25 via the Court's electronic filing system ("EFS"). The Certificate of Service on the Notice of  
26 Transmittal of the ROA states, "EFS users will be served electronically via email." Thus,  
27 pursuant to NRS 233B.133(1), the clock started ticking for Petitioners to serve and file a  
28

1 memorandum of points and authorities within 40 days from November 10, 2020. Petitioners,  
2 without excuse, late-filed a deficient Opening Brief (i.e., a brief devoid of citations to the  
3 transcript) on April 5, 2021. The Petitioners' Opening Brief was filed 105 days late. Again,  
4 the Court should dismiss their PJR for non-compliance with strict statutory time limits.

5 NRS 233B.131(1)(a) and NRS 233B.133(1) are "time and manner" rules. They state  
6 deadlines for performance. Petitioners were subject to those deadlines of 45 days and 40 days,  
7 respectively. It cannot reasonably be argued that these rules are not mandatory "time and  
8 manner" rules that require strict performance under *Markowitz* and other cases cited herein.

9 **G. CONCLUSION**

10 That Petitioners never filed the transcript and late-filed a deficient Opening Brief cannot  
11 be disputed. The applicable statutes in NRS 233B require strict compliance with jurisdictional  
12 statutory deadlines. This Court should dismiss Petitioners' PJR.

13 **II. MOTION TO STRIKE "PETITIONERS' OPENING BRIEF"**

14 **A. STATEMENT OF FACTS AND PROCEDURAL HISTORY**

15 A full recitation of the facts and procedural history is provided in section I. B. and C.  
16 hereinabove. For brevity, the Division incorporates the facts and procedural history herein by  
17 reference.

18 **B. APPLICABLE STATUTES**

19 The applicable statutes are provided in section I. D. hereinabove. For brevity, the  
20 Division incorporates the statutes herein by reference.

21 **C. ARGUMENT**

22 Petitioners filed the PJR on September 24, 2020. Pursuant to NRS 233B.131(1)(a),  
23 Petitioners had a duty to file the original or certified copy of the transcript with the court by  
24 November 9, 2020. Without excuse, Petitioners have not filed the transcript—they are about  
25 175 days late and counting. The record is incomplete because Petitioners failed to file the  
26 transcript. Similarly, Petitioners' Opening Brief is late-filed—it is 105 days late. NRS  
27 233B.133(1).



1 Making matters worse, the Petitioners' Opening Brief is useless for purposes of judicial  
2 review because it lacks citations to the transcript of the Board's underlying administrative  
3 proceeding.

4 Judicial review is confined to the record. NRS 233B.135(1)(b). Here, the record is  
5 incomplete because Petitioners never filed the transcript. NRS 233B.131(1)(a). The Court's  
6 manner of conducting judicial review involves determining whether the agency's decision is  
7 "clearly erroneous in view of the reliable, probative and substantial evidence on the whole  
8 record..." NRS 233B. 135(3)(e) (emphasis added). The Court cannot reasonably conduct  
9 judicial review without the transcript of the Board's meeting that is the subject of this PJR. Nor  
10 can the Court reasonably conduct judicial review given that the Petitioners' Opening Brief is  
11 devoid of citations to the transcript.

#### 12 D. CONCLUSION

13 Petitioners, without excuse, blew both mandatory statutory deadlines in NRS  
14 233B.131(1)(a) and 233B.133(1) and this Court lacks jurisdiction over this PJR. The Court  
15 should thus dismiss the PJR. Petitioners have not alleged, let alone demonstrated, good cause  
16 for their noncompliance with mandatory statutory deadlines.

17 If, however, the Court finds good cause and does not grant the Division's Motion to  
18 Dismiss, the Division respectfully requests that the Court strike Petitioners' Opening Brief from  
19 the record and order Petitioners to file an original or certified copy of the transcript forthwith.

### 20 III. MOTION TO EXTEND TIME FOR THE DIVISION TO FILE ITS REPLY 21 MEMORANDUM OF POINTS AND AUTHORITIES

#### 22 A. STATEMENT OF FACTS AND PROCEDURAL HISTORY

23 A full recitation of the facts and procedural history is provided in section I. B. and C.  
24 hereinabove. For brevity, the Division incorporates the facts and procedural history herein by  
25 reference.

26 ///



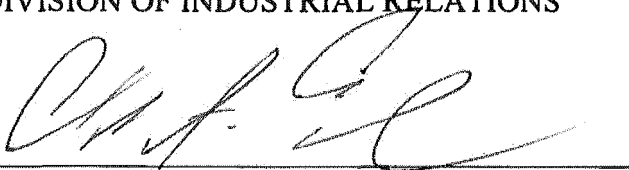
IV. RELIEF REQUESTED

The Division respectfully requests as follows:

- (1) That this Court grant its Motion to Dismiss Petitioners' Petition for Judicial Review; or if the Court denies said Motion,
- (2) That this Court grant its Motion to Strike Petitioners' Opening Brief from the record; and
  - a. That this Court order Petitioners' to file the transcript forthwith, and
  - b. That this Court order that the Division has 30 days to file its Reply Memorandum of Points and Authorities from the date Petitioners file their Memorandum pursuant to NRS 233B.133(2).

DATED this 4<sup>th</sup> day of May, 20 21.

DIVISION OF INDUSTRIAL RELATIONS



Donald C. Smith, Esq.

Jennifer J. Leonescu, Esq.

Christopher A. Eccles, Esq.

Division of Industrial Relations

3360 W. Sahara Ave., Ste. 250

Las Vegas, NV 89102

*Attorneys for Respondent Division of Industrial Relations*

## CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the State of Nevada, Department of Business and Industry, Division of Industrial Relations (DIR), and that on this date, I caused to be served a true and correct copy of the document described herein by the method indicated below, and addressed to the following:

**Document Served: Respondent Division of Industrial Relations' Motion Dismiss Petitioners' Petition for Judicial Review, or in the alternative Motion to Strike "Petitioners' Opening Brief" and Motion to Extend Time to File Reply Memorandum of Points and Authorities**

<b>Person(s) Served:</b>  Daniel L. Schwartz, Esq. Joel P. Reeves, Esq. Kim D. Price, Esq. Lewis Brisbois Bisgaard & Smith 2300 W. Sahara Ave. Ste. 300, Box 28 Las Vegas, NV 89102 <i>Counsel for Petitioners LVMPD and CCMSI</i>	<b>U.S. Mail</b>  _____ via State Mail room (regular or certified) circle one _____ deposited directly with U.S. Mail Service _____ Overnight Mail _____ Interdepartmental Mail _____ Messenger Service _____ Facsimile fax number: _____ _____ Electronic Service
<b>Person(s) Served:</b>  LVMPD c/o Jeff Roch Director of Risk Mgmt. 400 S. Martin Luther King Blvd. Las Vegas, NV 89106 <i>Petitioner</i>	<b>U.S. Mail</b>  _____ via State Mail room (regular or certified) circle one _____ deposited directly with U.S. Mail Service _____ Overnight Mail _____ Interdepartmental Mail _____ Messenger Service _____ Facsimile fax number: _____
<b>Person(s) Served:</b>  CCMSI c/o Dusty Marshall Claims Supervisor P.O. Box 35350 Las Vegas, NV 89133 <i>Petitioner</i>	<b>U.S. Mail</b>  _____ via State Mail room (regular or certified) circle one _____ deposited directly with U.S. Mail Service _____ Overnight Mail _____ Interdepartmental Mail _____ Messenger Service _____ Facsimile fax number: _____

**Person(s) Served:**

Donald J. Bordelove, Esq.  
Deputy Attorney General  
Office of the Attorney General  
555 E. Washington Ave.  
Ste. 3900  
Las Vegas, NV 89101  
*Counsel for Respondent Board for  
the Administration of the  
Subsequent Injury Account for  
Self-Insured Employers*

**U.S. Mail**

☐ via State Mail room (regular or certified) circle one  
☐ deposited directly with U.S. Mail Service  
☐ Overnight Mail  
☐ Interdepartmental Mail  
☐ Messenger Service  
☐ Facsimile fax number: \_\_\_\_\_  
☐ Electronic Service

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
State of Nevada Employee

# EXHIBIT “1”

1 **AFFIDAVIT OF CHRISTOPHER ECCLES, ESQ. IN SUPPORT OF RESPONDENT**  
2 **DIVISION OF INDUSTRIAL RELATIONS' MOTION TO DISMISS PETITIONERS'**  
3 **PETITION FOR JUDICIAL REVIEW, OR IN THE ALTERNATIVE MOTION TO**  
4 **STRIKE PETITIONERS' OPENING BRIEF AND MOTION TO EXTEND TIME TO**  
5 **FILE REPLY MEMORANDUM OF POINTS AND AUTHORITIES**

6 STATE OF NEVADA                     )  
7   ) ss  
8 COUNTY OF CLARK                   )

9 I, Christopher Eccles, being first duly sworn hereby depose and state as follows:

10 1. I am over eighteen years of age and competent to testify to matters stated herein.  
11 The statements herein are based on my personal knowledge, except as to any matters stated on  
12 information and belief.

13 2. I am an attorney employed as Division Counsel by the State of Nevada,  
14 Department of Business and Industry, Division of Industrial Relations, duly licensed to practice  
15 before all courts in the State of Nevada, and I am the attorney of record for Respondent Division  
16 of Industrial Relations ("Division"), in Case No. A-20-821892-J, Department No. 15, Eighth  
17 Judicial District Court, Clark County, Nevada.

18 3. I make this affidavit in support of the Division's Motion to Dismiss Petitioners'  
19 Petition for Judicial Review ("PJR"), or in the alternative, Motion to Strike "Petitioners' Opening  
20 Brief" and Motion to Extend Time to File Reply Memorandum of Points and Authorities.

21 4. Petitioners never filed the transcript of the underlying administrative hearing  
22 conducted by the Board for the Administration of the Subsequent Injury Account for Self-Insured  
23 Employers (the "Board") heard by the Board as a *de novo* contested case on September 26, 2018.

24 5. Pursuant to Nevada Revised Statute ("NRS") 233B.131(1)(a), Petitioners had a  
25 mandatory statutory deadline to file an original or certified copy of the transcript to the court  
26 within 45 days after they filed their PJR. On information and belief, the transcript is about 175  
27 days late and counting.

28 6. I attended said Board hearing as did counsel for Petitioners, Mr. Kim Price, and  
on information and belief the hearing was transcribed by a certified court reporter.

7. On April 5, 2021, Petitioner's late-filed an Opening Brief that is devoid of citations to the transcript. On information and belief, Petitioners' Opening Brief was filed about 106 days after the deadline in NRS 233B.133(1).

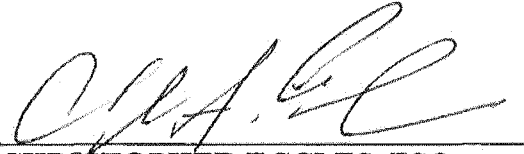
8. On information and belief, said Opening Brief is deficient for purposes of judicial review because it lacks any citations to the transcript, and because judicial review must be based on the whole record as referenced in NRS 233B.135(3)(e).

9. Counsel for Petitioners did not request that the Division stipulate to shorten the record of these proceedings. NRS 233B.131(1)(b).

10. Counsel for Petitioners did not file a motion with this Court to extend the mandatory statutory deadlines in NRS 233B.131(1)(a) and NRS 233B.133(1). Nor did counsel for Petitioners request that the undersigned agree to extend said statutory deadlines.

FURTHER AFFIANT SAYETH NAUGHT.

Executed this 4<sup>th</sup> day of May, 2021.

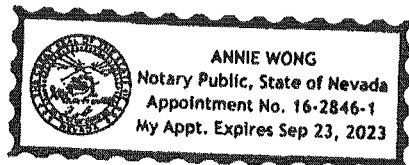
  
**CHRISTOPHER ECCLES, ESQ.**  
Division Counsel  
Division of Industrial Relations

Subscribed and Sworn to before me

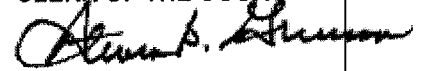
this 4<sup>th</sup> day of May, 2021.

  
\_\_\_\_\_  
Notary Public in and for Said State and County

(SEAL)







1 **JOIN**

2 AARON D. FORD

3 Attorney General

4 Donald J. Bordelove (Bar No. 12561)

5 Deputy Attorney General

6 State of Nevada

7 Office of the Attorney General

8 555 E. Washington Ave., #3900

9 Las Vegas, NV 89101

10 (702) 486-3094 (phone)

11 (775) 684-1108 (fax)

12 E-mail: dbordelove@ag.nv.gov

13 Attorneys for Respondent

14 *Board for the Administration of the Subsequent*

15 *Injury Account for Self-Insured Employers*

16 **DISTRICT COURT**

17 **CLARK COUNTY, NEVADA**

18 LAS VEGAS METROPOLITAN POLICE  
19 DEPARTMENT; and CANNON  
20 COCHRAN MANAGEMENT SERVICE,  
21 INC.,

22 Petitioners,

23 vs.

24 STATE OF NEVADA BOARD FOR THE  
25 ADMINISTRATION OF THE  
26 SUBSEQUENT INJURY ACCOUNT FOR  
27 SELF-INSURED EMPLOYERS,

28 Respondent.

Case No. A-20-821892-J

Dept. No. 15

**JOINDER TO MOTIONS TO DISMISS AND STRIKE**

COMES NOW Respondent, the Board for Administration of the Subsequent Injury Account for Self-Insured Employers, by and through its counsel, and hereby joins Respondent's, Division of Industrial Relations, Motion to Dismiss Petitioners' Petition for

1 Judicial Review, or in the Alternative, Motion to Strike "Petitioners Opening Brief" and  
2 Motion to Extend Time to File Reply Memorandum of Points and Authorities.

3 Dated: May 11, 2021.  
4

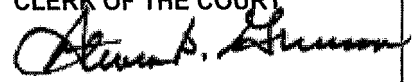
5 AARON D. FORD  
6 Attorney General

7 By: /s/ Donald J. Bordelove  
8 Donald J. Bordelove (Bar. No. 12561)  
9 Deputy Attorney General  
10 *Attorneys for the Board*  
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1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of the Office of the Attorney General, State of Nevada,  
3 and that on May 11, 2021 I filed the foregoing **JOINDER TO MOTIONS TO DISMISS**  
4 **AND STRIKE** via this Court's electronic filing system. EFS users will be served  
5 electronically via email.  
6

7 /s/ Michele Caro  
8 An employee of the Office of the Attorney General  
9  
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1 **BRF**  
2 DANIEL L. SCHWARTZ, ESQ.  
3 Nevada Bar No. 005125  
4 Email: Daniel.Schwartz@lewisbrisbois.com  
5 KIM D. PRICE, ESQ.  
6 Nevada Bar No. 007873  
7 Email: Kim.Price@lewisbrisbois.com  
8 LEWIS BRISBOIS BISGAARD & SMITH LLP  
9 2300 W. Sahara Ave. Ste. 900  
10 Las Vegas, Nevada 89102  
11 Telephone: 702-893-3383  
12 Facsimile: 702-366-9689

13 Attorneys for Petitioners  
14 *Las Vegas Metropolitan Police*  
15 *Department and Cannon Cochran*  
16 *Management Services, Inc.*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 LAS VEGAS METROPOLITAN POLICE  
14 DEPARTMENT; and CANNON COCHRAN  
15 MANAGEMENT SERVICES, INC.,

CASE NO.: A-20-821892-J

DEPT. NO.: 14

16 Petitioners,

17 v.

18 STATE OF NEVADA BOARD FOR THE  
19 ADMINISTRATION OF THE SUBSEQUENT  
20 INJURY ACCOUNT FOR SELF-INSURED  
21 EMPLOYERS,

22 Respondents.

23 **PETITIONERS' OPPOSITION TO MOTION TO DISMISS PETITIONERS' PETITION**  
24 **FOR JUDICIAL REVIEW, OR IN THE ALTERNATIVE, MOTION TO STRIKE**  
25 **"PETITIONER'S OPENING BRIEF" AND MOTION TO EXTEND TIME TO FILE**  
26 **REPLY MEMORANDUM OF POINTS AND AUTHORITIES**

27 DANIEL L. SCHWARTZ, ESQ.  
28 KIM D. PRICE, ESQ.  
LEWIS BRISBOIS BISGAARD & SMITH LLP  
2300 W. Sahara Avenue, Suite 900, Box 28  
Las Vegas, Nevada 89102-4375  
*Attorneys for Petitioners*

DONALD J. BORDELOVE, ESQ.  
OFFICE OF ATTORNEY GENERAL  
555 EAST WASHINGTON AVENUE  
SUITE 3900  
LAS VEGAS, NEVADA 89101  
*Attorney for Respondents*

1 COME NOW the Petitioners, LAS VEGAS METROPOLITAN POLICE  
2 DEPARTMENT and CANNON COCHRAN MANAGEMENT SERVICES, INC., (hereinafter  
3 referred to as the "Petitioners"), by and through their attorneys, DANIEL L. SCHWARTZ, ESQ.,  
4 and KIM D. PRICE, ESQ. and LEWIS, BRISBOIS, BISGAARD & SMITH, LLP, and files this  
5 Opposition to Respondents' Motion to Dismiss Petitioners' Petition for Judicial Review, or in the  
6 Alternative, Motion to Strike "Petitioners' Opening Brief" and Motion to Extend Time to File  
7 Reply Memorandum of Points and Authorities." This Opposition is made and based upon the  
8 papers and pleading on file herein, the attached Points and Authorities, and any argument of  
9 counsel at any hearing on this matter.

10 DATED this 17<sup>th</sup> day of May, 2021.

11 Respectfully submitted,

12 **LEWIS BRISBOIS BISGAARD & SMITH LLP**

13  
14  
15 By: 

DANIEL L. SCHWARTZ, ESQ.

Nevada Bar No. 005125

KIM D. PRICE, ESQ.

Nevada Bar No. 007873

2300 W. Sahara Ave. Ste. 900

Las Vegas, Nevada 89102

Phone: 702-893-3383

Fax: 702-366-9689

*Attorneys for Petitioners*

1 **OPPOSITION TO MOTION TO DISMISS PETITIONERS' PETITION FOR JUDICIAL**  
2 **REVIEW, OR IN THE ALTERNATIVE, MOTION TO STRIKE "PETITIONER'S**  
3 **OPENING BRIEF" AND MOTION TO EXTEND TIME TO FILE REPLY**  
4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 **I.**

6 **STATEMENT OF FACTS**

7 The present appeal results from the Board for Administration of the Subsequent  
8 Injury Account for Self-Insured Employers' (hereinafter referred to as " the Board") August 19,  
9 2020, Findings of Fact, Conclusions of Law, and Determination for Claim Number  
10 12D34C229979. (ROA0124-ROA0130).

11 On September 21, 2020, Petitioner's counsel underwent radical prostatectomy and  
12 is currently under treatment for that medical condition.

13 On September 24, 2020, Petitioners submitted the subject Petition for Judicial  
14 Review and attendant Initial Appearance Fee Disclosure to the Eighth Judicial District Court.

15 On May 5, 2021, Respondent Division of Industrial Relations filed the instant  
16 Motion to Dismiss and Strike.

17 On May 11, 2021, Respondent Board of Administration of the Subsequent Injury  
18 Account for Self-Insurer Employers filed a Joinder to the Motion to Dismiss and Strike.

19 The subject Motion to Dismiss is scheduled to be heard on June 7, 2021.

20 **II.**

21 **LEGAL ARGUMENT**

22 **1. The Record on Appeal Has Been Filed – No Further Action Is Required**

23 The Motion to Dismiss Petitioners' Petition for Judicial Review, or in the  
24 Alternative, Motion to Strike "Petitioners' Opening Brief" and Motion to Extend Time to File  
25 Reply Memorandum of Points and Authorities" (hereinafter collectively referred to as "the  
26 Motion") seeks to strike Petitioners' Petition based on the "failure to comply with NRS  
27 233B.131's mandate to submit 'an original or certified copy of the transcript of the evidence  
28 resulting in the final decision of the agency.'" This matter should not be dismissed. Respondents'  
Motion hinges on its reliance on NRS 233B.131(1)(a). However, NRS 233B.131(1)(b) is what

controls the record in workers' compensation Petitions for Judicial Review. The law provides in pertinent part:

**NRS 233B.131 Transmittal of record of proceedings to reviewing court by party and agency; shortening of or corrections or additions to record; additional evidence; modification of findings and decision by agency based on additional evidence.**

1. Within 45 days after the service of the petition for judicial review or such time as is allowed by the court:

(a) The party who filed the petition for judicial review shall transmit to the reviewing court an original or certified copy of the transcript of the evidence resulting in the final decision of the agency.

(b) The agency that rendered the decision which is the subject of the petition shall transmit to the reviewing court the original or a certified copy of the remainder of the record of the proceeding under review.

The record may be shortened by stipulation of the parties to the proceedings. A party unreasonably refusing to stipulate to limit the record, as determined by the court, may be assessed by the court any additional costs. The court may require or permit subsequent corrections or additions to the record.

The issue before the Court is a review of the SIA Board's denial of reimbursement for repayment from the second injury account fund for treatment and benefits extended by Petitioner to claimant under workers compensation. The undersigned recognizes that NRS 233B.131(a) purports to put the onus on petitioners to file "an original or certified copy of the transcript of the evidence resulting in the final decision of the agency." However, as noted above, section (b) requires the agency to file the *complete* record on appeal which includes everything filed below. It is this record on appeal that is the basis for this Court's review. (See NRS 233B.135(1)(b) "Judicial review of a final decision of an agency must be...Confined to the record.") Although NRS 233B.131(a) does indeed have language referencing petitioners submitting a transcript of evidence to this Court, it is the *complete* Record on Appeal filed by the agency that rendered the decision which that is the basis for deciding this Petition.

Thus, if it is Respondents' position that the *complete* Record on Appeal has not been filed, Appellants would submit that it is actually Respondents as the rendering agency that have shirked their duty under NRS 233B.131(b).

///

1                   2.     **The Timely Filing of the Opening Brief is Not Jurisdictional**

2                   Respondents argue that the timely filing of briefing is a jurisdictional issue such  
3 that dismissal is required. Or at the very least that the Opening Brief be struck. This position  
4 misapprehends the statutory guidance.

5                   NRS 233B.133 provides:

6                   **NRS 233B.133 Form and deadlines for serving and filing**  
7                   **memorandum of points and authorities and replies; extensions;**  
8                   **request for hearing or matter deemed submitted.**

9                   1. A petitioner or cross-petitioner who is seeking judicial  
10 review must serve and file a memorandum of points and authorities  
11 within 40 days after the agency gives written notice to the parties  
12 that the record of the proceeding under review has been filed with  
13 the court.

14                   2. The respondent or cross-petitioner shall serve and file a  
15 reply memorandum of points and authorities within 30 days after  
16 service of the memorandum of points and authorities.

17                   3. The petitioner or cross-petitioner may serve and file reply  
18 memoranda of points and authorities within 30 days after service of  
19 the reply memorandum.

20                   4. Within 7 days after the expiration of the time within which  
21 the petitioner is required to reply, any party may request a hearing.  
22 Unless a request for hearing has been filed, the matter shall be  
23 deemed submitted.

24                   5. All memoranda of points and authorities filed in  
25 proceedings involving petitions for judicial review must be in the  
26 form provided for appellate briefs in Rule 28 of the Nevada Rules of  
27 Appellate Procedure.

28                   6. *The court, for good cause, may extend the times allowed in  
this section for filing memoranda.*

19                   It must also be noted that the Nevada Supreme Court has many times over held that  
20 the courts of this state should decide cases on the merits "whenever possible." Kahn v. Orme, 108  
21 Nev. 510, 835 P.2d 790, 793 (1992). Here, Petitioners were delayed in filing the Opening Brief  
22 due to circumstances beyond the undersigned's control and the undersigned respectfully requests  
23 that the Court excuse the same in good faith and allow this case to be decided upon the merits.  
24 This Petition for Judicial Review was filed within the same time frame during which the  
25 undersigned was advised of his diagnosis of prostate cancer and undertook treatment for that  
26 condition. The recovery from the same was not nearly as prompt as the undersigned would have  
27 desired or as initially projected by his healthcare providers. This protracted treatment caused the  
28 subject delay in filing the brief. It was absolutely not the intention of the undersigned to insult the



1 Court, these proceedings, nor Respondents. Nor did the undersigned believe that Respondents  
2 would take such offense at the untimely submission of the Petitioners' Opening Brief as no party  
3 has incurred any injury, harm, prejudice, or grievance from the brief delay. However, since  
4 offense has been taken, Petitioner would humbly request that this Court excuse the late filing of  
5 the brief and retro-actively extend the time to file the same. There is no harm to any party flowing  
6 from the timing of the filing of the Opening Brief and Petitioner respectfully request that the same  
7 be excused.

8 Finally, Petitioners present no Opposition to Respondents' Motion to Extend Time  
9 to File Reply Memorandum of Points and Authorities.

10 **III.**

11 **CONCLUSION**

12 WHEREFORE, LAS VEGAS METROPOLITAN POLICE DEPARTMENT and  
13 CANNON COCHRAN MANAGEMENT SERVICES, INC., respectfully asks this Honorable  
14 Court to deny Respondents' Motion To Dismiss Petitioners' Petition For Judicial Review, Or In  
15 The Alternative , Motion To Strike "Petitioner's Opening Brief". There is no Opposition to the  
16 Motion To Extend Time To File Reply Memorandum Of Points And Authorities.

17 Dated this 17<sup>th</sup> day of May, 2021.

18 Respectfully submitted,

19 **LEWIS, BRISBOIS, BISGAARD & SMITH,**  
20 **LLP**

21 By: 

**DANIEL L. SCHWARTZ, ESQ.**

Nevada Bar No. 5125

KIM D. PRICE, ESQ.

Nevada Bar No. 7873

2300 W. Sahara Ave. Ste. 900

Las Vegas, Nevada 89102

Phone: 702-893-3383

Fax: 702-366-9689

26 *Attorneys for Petitioners, Las Vegas Metropolitan*  
27 *Police Department and Cannon Cochran*  
28 *Management Services, Inc.*

**CERTIFICATE OF MAILING**

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on the 19<sup>th</sup> day of May, 2021, service of the attached **PETITIONERS' OPPOSITION TO MOTION TO DISMISS PETITIONERS' PETITION FOR JUDICIAL REVIEW, OR IN THE ALTERNATIVE , MOTION TO STRIKE "PETITIONER'S OPENING BRIEF" AND MOTION TO EXTEND TIME TO FILE REPLY MEMORANDUM OF POINTS AND AUTHORITIES**, was made this date by depositing a true copy of the same for mailing, first class mail, and/or via electronic service as follows:

LVMPD  
Jeff Roch  
Director of Risk Management  
400 South MLK Blvd.  
Las Vegas, Nevada 89106  
Petitioner

CCMSI  
Dusty Marshall  
Claims Supervisor  
PO Box 35350  
Las Vegas, Nevada 89133  
Petitioner

Donald J. Bordelove  
Deputy Attorney General  
Office of the Attorney General  
555 East Washington Avenue, Suite 3900  
Las Vegas, Nevada 89101  
Attorneys for Respondent

State of Nevada  
Attorney General Aaron Ford  
100 North Carson Street  
Carson City, Nevada 89701  
Attorneys for Respondent

Industrial Relations (DIR)  
Christopher Eccles, Esq.  
3360 West Sahara Avenue, Suite 250  
Las Vegas, Nevada 89102

Industrial Relations (DIR)  
Division Headquarters  
400 West King Street, Suite 400  
Carson City, Nevada 89703

(CONTINUED)

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Department of Business and Industry  
Director Terry Reynolds  
1830 College Parkway, Suite 100  
Carson City, Nevada 89706



An employee of LEWIS BRISBOIS BISGAARD &  
SMITH LLP

**AFFIRMATION**  
**Pursuant to NRS 239B.030**

The undersigned does hereby affirm that the preceding PETITIONERS' OPPOSITION TO MOTION TO DISMISS PETITIONERS' PETITION FOR JUDICIAL REVIEW, OR IN THE ALTERNATIVE, MOTION TO STRIKE "PETITIONER'S OPENING BRIEF" AND MOTION TO EXTEND TIME TO FILE REPLY MEMORANDUM OF POINTS AND AUTHORITIES:

☒ Does not contain the Social Security number of any person.

- OR -

☐ Contains the Social Security number of a person as required by:

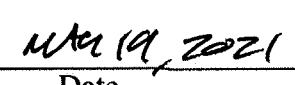
A. A specific state or federal law, to wit:

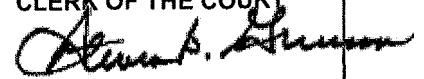
(State specific law.)

- or -

B. For the administration of a public program or for an application for a federal or state grant.

  
\_\_\_\_\_  
Kim D. Price, Esq.  
*Attorneys for Respondents*

  
\_\_\_\_\_  
Date



**RPLY**

Donald C. Smith, Esq.  
Nevada Bar No.: 000413  
Jennifer J. Leonescu  
Nevada Bar No.: 006036  
Christopher A. Eccles, Esq.  
Nevada Bar No.: 009798  
State of Nevada  
Department of Business and Industry  
Division of Industrial Relations  
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[donaldsmith@dir.nv.gov](mailto:donaldsmith@dir.nv.gov)  
[jleonescu@dir.nv.gov](mailto:jleonescu@dir.nv.gov)  
[ceccles@dir.nv.gov](mailto:ceccles@dir.nv.gov)  
*Attorneys for Respondent Division of Industrial Relations*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

LAS VEGAS METROPOLITAN POLICE  
DEPARTMENT, and CANNON  
COCHRAN MANAGEMENT SERVICES,  
INC.

Petitioners,

vs.

STATE OF NEVADA BOARD FOR THE  
ADMINISTRATION OF THE SUBSEQUENT  
INJURY ACCOUNT FOR SELF-INSURED  
EMPLOYERS,

Respondents.

Case No.: A-20-821892-J

Dept. No.: 15

Hearing: June 7, 2021

9:00 AM

RJC, Ct. Rm. 11D

**RESPONDENT DIVISION OF INDUSTRIAL RELATIONS'**  
**REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS**  
**MOTION TO DISMISS PETITIONERS' PETITION FOR JUDICIAL REVIEW, OR**  
**IN THE ALTERNATIVE, MOTION TO STRIKE "PETITIONERS OPENING BRIEF"**  
**AND MOTION TO EXTEND TIME TO FILE REPLY MEMORANDUM OF POINTS**  
**AND AUTHORITIES**

COMES NOW Respondent, Division of Industrial Relations ("Division" or "DIR") by

1 and through its undersigned counsel and pursuant to the Eighth Judicial District Court Rules  
2 ("EDCR") 2.20(g) hereby files this above-captioned Reply Memorandum.

3 **REPLY MEMORANDUM OF POINTS AND AUTHORITIES**

4 **I. PRELIMINARY STATEMENT**

5 To concisely frame the two issues for the motion hearing, the Division files this Reply.

6 First, there is no "good cause" language in Nevada Revised Statute ("NRS")  
7 233B.131—therefore, this Court has no statutory authority to extend the 45-day deadline for  
8 Petitioner to file the original or certified transcript of the underlying administrative hearing.  
9 This Court lacks jurisdiction and should dismiss Petitioners' Petition for Judicial Review  
10 ("PJR").

11 Second, there is a "good cause" provision in NRS 233B.133(6) whereby the Court may  
12 extend the times allowed by this section for filing memoranda. The burden is on Petitioner to  
13 show good cause. Petitioner, however, failed to properly analyze whether good cause existed.

14 The Division contends that this Court lacks jurisdiction to hear this PJR because  
15 Petitioner failed to file the transcript. Should the Court somehow determine that it has  
16 jurisdiction to hear this PJR without the transcript, the Division contends that Petitioner has not  
17 shown good cause for the Court to excuse their late-filed memorandum of points and authorities  
18 ("Opening Brief").

19 **II. ARGUMENT**

20 **A. The record is incomplete due to Petitioners' failure to file the transcript.**  
21 **This Court has no statutory authority in NRS 233B.131 to extend the 45-**  
22 **day deadline for Petitioners' to file the transcript. This Court lacks**  
**jurisdiction over Petitioners' PJR.**

23 NRS Chapter 233B is titled the Nevada Administrative Procedure Act. Sections  
24 233B.121 through 233B.150 is titled Adjudication of Contested Cases. Within said sections,  
25 the term "good cause" is used only twice. The term is first used in NRS 233B.130(5):

26 **NRS 233B.130 Judicial review; requirements for petition and**  
27 **cross-petition; statement of intent to participate; petition for**  
28 **rehearing or reconsideration; service; dismissal of certain**

agencies and persons from proceedings concerning final decision of State Contractors' Board; exclusive means.

...  
5. The petition for judicial review and any cross-petitions for judicial review must be served upon the agency and every party within 45 days after the filing of the petition, unless, upon a showing of good cause, the district court extends the time for such service. If the proceeding involves a petition for judicial review or cross-petition for judicial review of a final decision of the State Contractors' Board, the district court may, on its own motion or the motion of a party, dismiss from the proceeding any agency or person who:

(a) Is named as a party in the petition for judicial review or cross-petition for judicial review; and

(b) Was not a party to the administrative proceeding for which the petition for judicial review or cross-petition for judicial review was filed.

6. The provisions of this chapter are the exclusive means of judicial review of, or judicial action concerning, a final decision in a contested case involving an agency to which this chapter applies.

NRS 233B.130(5)-(6) (emphasis added).

The term "good cause" is used a second time in NRS 233B.133(6):

**NRS 233B.133 Form and deadlines for serving and filing memorandum of points and authorities and replies; extensions; request for hearing or matter deemed submitted.**

...  
6. The court, for good cause, may extend the times allowed in this section for filing memoranda.

NRS 233B.133(6) (emphasis added).

In *Spar*, Michael DeBoard filed a claim for unemployment insurance benefits with respondent State of Nevada, Employment Security Division ("ESD"), and named appellant Spar Business Services, Inc. ("Spar") as his employer. *Spar Bus. Servs. v. Olson*, 448 P.3d 539, 541, 2019 Nev. LEXIS 49, \*\*2 (2019). Appellant Spar timely filed a petition for judicial review of an administrative decision, and pursuant to NRS 233B.130(5), appellant then had 45 days to serve its petition. *Id.* at 541, 2019 Nev. LEXIS at \*\*1. Appellant neglected to do so, and the trial court dismissed its petition. *Id.* As a matter of first impression, the Nevada Supreme Court

1 held that “the 45-day service requirement in NRS 233B.130(5) is not a jurisdictional  
2 requirement because the statute affords the district court discretion to extend the time frame  
3 upon a showing of good cause.” *Id.* at 541, 2019 Nev. LEXIS at \*\*1-2.

4 In contrast to NRS 233B.130(5), which expressly affords the district court discretion to  
5 extend time upon a showing of good cause, NRS 233B.131 does not afford the district court  
6 any discretion to alter the 45-day time frame for the party who filed the PJR to transmit to the  
7 reviewing court an original or certified copy of the transcript. NRS 233B.131(1)(a).

8 Absent express statutory authority to alter the 45-day time frame to file the transcript,  
9 the Petitioners’ must strictly comply with the Nevada Administrative Procedure Act’s  
10 jurisdictional requirements. *Spar*, 448 P.3d at 542, 2019 LEXIS at \*\*4-5 (citing *Kame v.*  
11 *Employment Sec. Dep’t*, 105 Nev. 22, 25 769 P.2d 66, 68 (1989)); see also *Rural Tel. Co. v.*  
12 *PUC*, 133 Nev. 387, 390, 398 P.3d 909, 912 (2017) (noting that no statutory authority to adjust  
13 timelines for filing a memorandum of points and authorities exists in NRS 703.373).

14 The *Spar* Court noted that the authorization to alter a time frame is notably absent in  
15 NRS 233B.130(2), and thereby reasoned that “NRS 233B.130(5)’s plain language illustrates  
16 that the time for serving a petition for judicial review, unlike the requirements listed under NRS  
17 233B.130(2), is not a jurisdictional requirement.” *Id.* at 542, 2019 LEXIS at \*\*5 (see *Cromer*  
18 *v. Wilson*, 126 Nev. 106, 109, 225 P.3d 788, 790 (2010)).

19 Applying the holding and reasoning in *Spar* to the instant matter, the plain language of  
20 NRS 233B.131 is a jurisdictional requirement because it does not allow for a district to alter the  
21 45-day time frame by which Petitioners “**shall transmit** to the reviewing court an original or  
22 certified copy of the transcript of the evidence resulting in the final decision of the agency.”  
23 NRS 233B.131(1)(a) (emphasis added). Put differently, the authorization to alter a time frame  
24 is notably absent in NRS 233B.130(2) and NRS 233B.131.

25 Petitioners had a statutory duty to strictly comply with NRS 233B.131 and failed to do  
26 so. Thus, this Court lacks jurisdiction to exercise judicial review.

27 ...



1           **B.     Petitioners have not met their burden to show “good cause” why this Court**  
2           **should extend their deadline to file their Opening Brief under NRS**  
3           **233B.133(6).**

4           Pursuant to the plain language of NRS 233B.133(6) and the Nevada Supreme Court’s  
5 reasoning in *Spar*, the district court, for good cause, may extend the times allowed for filing  
6 memoranda. NRS 233B.133(6) expressly grants the district court authority to consider whether  
7 good cause exists to extend the time for Petitioners to file their Opening Brief. Assuming that  
8 in the instant matter, the district court determines that it has jurisdiction, the Division will  
9 analyze whether Petitioners have shown good cause to excuse the fact that their Opening Brief  
10 was filed 105 days late.

11           In *Spar*, the Nevada Supreme Court affirmed the district court’s order dismissing  
12 petitioner’s petition for judicial review because appellant petitioner did not demonstrate good  
13 cause for the late service of its petition for judicial review. *Spar*, 448 P.3d at 541, 2019 LEXIS  
14 at \*\*2. A district court’s good cause determination is reviewed by an appellate court for an  
15 abuse of discretion. *Id.* at 541, 2019 LEXIS at \*\*3-4 (*see Heat & Frost Insulators & Allied*  
16 *Workers Local 16 v. Labor Comm’r*, 134 Nev. Adv. Rep. 1, 5, 408 P.3d 156, 160 (2018)).

17           *Spar* argued that it demonstrated good cause for its late service because it mistakenly  
18 relied on the 120-day service of process period in NRCP 4(i). *Id.* at 542-43, 2019 LEXIS at  
19 \*\*7. *Spar* also argued that it was waiting for *pro hac vice* status for its out-of-state counsel  
20 before serving the ESD, and that the district court should have found good cause because *Spar*’s  
21 mistake did not prejudice the ESD. *Id.* at 543, 2019 LEXIS at \*\*7-8. The Nevada Supreme  
22 Court has held that in evaluating a motion to dismiss a timely filed petition for judicial review  
23 for failure to timely serve the petition, the district court must consider whether there is good  
24 cause to extend the service deadline if the petitioner asserts such good cause exists. *Id.* (*see*  
25 *Heat & Frost*, 134 Nev. Adv. Rep. at 5, 408 P.3d at 160 (concluding that the district court had  
26 jurisdiction to determine whether good cause warranted extending time to serve a petition for  
27 judicial review); *Fitzpatrick v. State ex rel. Dep’t of Commerce, Ins. Div.*, 107 Nev. 486, 489,

1 813 P.2d 1004, 1006 (1991) (holding the district court erred in concluding that it lacked  
2 jurisdiction to consider a petition without considering “the merits of [the petitioner’s] claim that  
3 he had good cause for filing a tardy memorandum of points and authorities in support of the  
4 timely filed petition for judicial review”)).

5 In affirming the district court’s dismissal, the Nevada Supreme Court noted that Spar’s  
6 attorneys, the out-of-state and local counsel, previously complied with the service requirements  
7 for a petition for judicial review and that the motion to associate Spar’s out-of-state counsel was  
8 filed after this service, thereby undermining its argument that it was waiting for *pro hac vice*  
9 status for its out-of-state counsel prior to serving ESD. *Id.* at 543, 2019 LEXIS at \*\*8.

10 Here, counsel for Petitioners ostensibly argues that his September 21, 2020 surgery and  
11 treatment demonstrates good cause. Petitioners’ Opposition, 3:10-11; 5:24-28. The Division’s  
12 position is that Petitioners have asserted good cause exists to excuse their late-filed Opening  
13 Brief and that pursuant to Nevada Supreme Court case law, if the district court reaches this  
14 issue, it must make a good cause determination. *Heat & Frost*, 408 P.3d at 160, 2018 Nev.  
15 LEXIS 1 at \*\*7 (see *Scrimmer v. Eighth Judicial Dist. Court*, 116 Nev. 507, 513, 998 P.2d 1190,  
16 1193-94 (2000) (explaining that in the context of untimely NRCP 4 service, “[t]he  
17 determination of good cause is within the district court’s discretion”); *Zugel v. Miller*, 99 Nev.  
18 100, 101, 659 P.2d 296, 297 (1983) (stating, when addressing an untimely filing, that “[t]his  
19 court is not a fact-finding tribunal” and “that function is best performed by the district court”)).

20 The term “good cause” is not defined in NRS 233B.133(6). The NRCP govern  
21 proceedings under NRS Chapter 233B when not in conflict with the statutes. *Prevost v. State*  
22 *Dep’t of Admin.*, 134 Nev. 326, 328 n.3, 418 P.3d 675, 676 n.3 (2018). Thus, the Division’s  
23 analysis of good cause is largely based upon the considerations listed in the *Scrimmer* case.

24 In *Scrimmer*, the Nevada Supreme Court concluded that several considerations may  
25 govern a district court’s analysis of good cause under NRCP 4(i). *Scrimmer*, 116 Nev. at 516-17,  
26 998 P.2d at 1195-96. *Service* of a summons and complaint under NRCP 4(e) (formerly NRCP  
27 4(i); amended; effective March 1, 2019) is not the same as *filing* memoranda under NRS  
28

1 assistance with meeting pending deadlines; counsel has not claimed that he  
2 was the only person at his firm who could have drafted the Opening Brief.

3 d. Further, it appears from a search of the Eighth Judicial District Court Portal  
4 that counsel is listed as counsel of record for other petitions for judicial  
5 review. *Spar*, 448 P.3d at 543, 2019 LEXIS at \*\*8 (noting that counsel had  
6 previously complied with the service requirements for a petition for judicial  
7 review).

8 e. In conclusion regarding this consideration, the Petitioner filed their Opening  
9 Brief 105 days late, and based on the above facts, it seems that counsel has  
10 not shown diligence in timely filing it.

11 (4) Difficulties encountered by counsel - This consideration applies in that counsel  
12 stated that he had a serious medical issue.

13 (5) The running of the applicable statute of limitations - This consideration likely does  
14 not apply because Petitioners filed their PJR within 30 days after the final decision  
15 of the agency pursuant to NRS 233B.130(2)(d).

16 (6) The parties' good faith attempts to settle the litigation during the 120-day period –  
17 This consideration does not apply because Petitioners filed their PJR within 30 days  
18 after the final decision of the agency pursuant to NRS 233B.130(2)(d).

19 (7) The lapse of time between the end of the 120-day period and the actual service of  
20 process on the defendant – This consideration applies in that a long period of time  
21 passed—105 days—between Petitioners' 40-day deadline to file the Opening Brief  
22 under NRS 233B.133(1) and the date they filed the Opening Brief.

23 (8) The prejudice to the defendant caused by the plaintiff's delay in serving process –  
24 This consideration may apply to the extent that the membership of the Board has  
25 changed since the Board issued its Order; moreover, the Administrator's designee  
26 who drafted the recommendation to the Board for the underlying administrative  
27 hearing is now retired.

(9) The defendant's knowledge of the existence of the lawsuit – This consideration does not apply because the Respondent Division filed its Notice and Statement of Intent to Participate on October 13, 2020.

(10) Any extensions of time for service granted by the district court – This consideration does not apply because the court has not granted any extensions; counsel for Petitioners has instead requested a retroactive extension of time. Petitioners' Opposition, 6:3-5.

In sum, it appears that only considerations 3, 4, 7, and 8 from *Scrimmer* apply to the instant matter. Factors 3, 7, and 8 favor the Division while factor 4 favors Mr. Price. On balance, Petitioners have not shown good cause for late-filing their Opening Brief.

**C. Petitioners attempt to mislead this Court by deleting the word “remainder” from the phrase “remainder of the record” in NRS 233B.131(1)(b). Worse, Petitioners have falsely claimed that the statute contains the word “complete” instead of the word “remainder.”**

Petitioners' arguments are beyond the pale. They argue that their non-compliance with a rather simple statutory duty is the Respondents' fault. Petitioners' Opposition, 4:25-27. Oddly, they also argue that their non-compliance with NRS 233B.131(1)(a) does not matter because “NRS 233B.131(1)(b) is what controls the record in workers' compensation Petitions for Judicial Review.” Petitioners' Opposition, 3:27-4:1. Such a conclusion is contrary to the plain language of the statute. In fact, Petitioners cite no legal authority for this conclusion. “It is appellant's responsibility to present relevant authority and cogent argument; issues not so present need not be addressed by this court.” *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6, (1987).

Worse, Petitioners falsely claim that “section (b) [of NRS 233B.131] requires the agency to file the *complete* record on appeal which includes everything filed below.” Petitioners' Opposition, 4:18-20 (emphasis in original). The word “complete” is nowhere to be found in NRS 233B.131. Petitioners just made it up. Indeed, the plain language states that:

1 “The agency that rendered the decision which is the subject of the petition shall transmit to the  
2 reviewing court the original or a certified copy of the remainder of the record of the proceeding  
3 under review.” NRS 233B.131(1)(b) (emphasis added). Given that the agency’s duty under  
4 NRS 233B.131(1)(b) is to transmit to the reviewing court the remainder of the record, and that  
5 Petitioners have a separate duty under a separate subparagraph of NRS 233B.131(1) to transmit  
6 to the reviewing court an original or certified copy of the transcript, it seems obvious that each  
7 party has a separate statutory duty when it comes to transmitting parts of the record to the  
8 reviewing court. *In re DOT*, Case No. A-19-787004-B *et seq.*, 2020 Nev. Dist. LEXIS 1221,  
9 at \*4 (Eighth Judicial Dist. Ct. of Nev. Aug. 28, 2020) (recognizing that NRS 233B.131(1)  
10 requires the submission of two categories of documents).

11 The Division’s position is that it would be reversible error for this Court to do as  
12 Petitioners request—engage in judicial review without the certified transcript of the underlying  
13 administrative proceeding in the record. NRS 233B.135(3)(e)-(f); *Nassiri v. Chiropractic*  
14 *Physicians’ Bd. of Nev.*, 130 Nev. 245, 248, 327 P.3d 487, 489 (2014) (noting that the Nevada  
15 Supreme Court reviews the factual determinations of administrative agencies for clear error in  
16 view of the reliable, probative, and substantial evidence on the whole record for an abuse of  
17 discretion). The transcript of the arguments presented by counsel to the Board, and the Board’s  
18 deliberations related thereto, may be the most important part of the whole underlying  
19 administrative record. Moreover, NRS 233B.135(3) states that a court, when exercising its  
20 judicial review function, “shall not substitute its judgment for that of the agency as to the weight  
21 of evidence on a question of fact.” Without the certified transcript of the underlying  
22 administrative proceeding in the record, this court has no ability to determine whether it is  
23 substituting its judgment for that of the agency regarding the agency’s Findings of Fact located  
24 at ROA 0126-0129.

25 One may wonder why the legislature amended NRS 233B.131 in 2015 such that the  
26 party who filed the PJR shall transmit to the reviewing court the copy of the transcript. A  
27 colloquy between Senator Joe P. Hardy, Vice Chair of the Senate Committee on Government  
28

Affairs, and those supporting Assembly Bill 53 sheds some light on the topic:

**Senator Hardy:**

Preponderance of the evidence is the lowest standard of proof in administrative hearings, and substantial evidence is a lower standard in the court.

**Mr. Kandt (Special Assistant Attorney General, Office of the Attorney General):**

Yes. The standard in the court is the standard of review. The court employs that to review the agency's determination, and the court gives deference to the agency's findings.

Section 5 of the bill revises NRS 233B.121 [sic] to provide that a party who files a petition for judicial review of a contested case is responsible for paying the transcription fee for the underlying hearing which is at issue in the petition. The costs associated with the transcription of a hearing are expensive, and since the agency is not the party bringing forth the permissive petition, the costs associated with the transcription should be borne by the party filing the action. This change makes the Administrative Procedure Act consistent with NRS 622A...

...

**Tom Conner (Chief Administrative Law Judge, Office of Administrative Services, Department of Motor Vehicles):**

The Department of Motor Vehicles supports A.B. 53. I submitted written testimony (Exhibit D). Section 5 of the bill is important. Statute requires the agency to produce the transcript on appeal. The bill would transfer the cost to the petitioner where it should be. We should not require the agency to spend tax money to produce the transcript on appeal.

**Senator Hardy:**

Are you in favor of the bill as it stands?

**Mr. Conner:**

Yes.

Hearing on AB 53 Before the Senate Committee on Government Affairs, 78<sup>th</sup> Sess. (Nev., April 24, 2015, at 5-6).

Finally, should this Court determine that it has subject matter jurisdiction, and that it may perform judicial review despite the record being incomplete, the Court should presume that the missing portion of the record, i.e, the transcript, supports the Board's decision. *Cuzze v. Univ. & Cmty. Coll. Sys.*, 123 Nev. 598, 172 P.3d 131 (2007) ("In this appeal, involving a

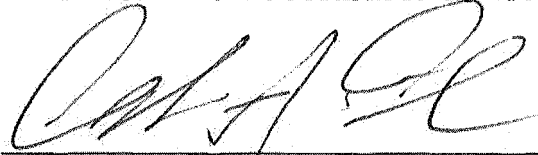
deficient record, we reiterate our oft-stated rule that appellant bears the responsibility of ensuring an accurate and complete record on appeal and that missing portions of the record are presumed to support the district court's decision.").

### III. CONCLUSION

The Division requests that the Court grant its Motion to Dismiss Petitioners' PJR. Petitioners had a duty to strictly comply with NRS 233B.131(1)(a), but they have not complied with their duty; and, no language in said statute permits this Court to extend the time for Petitioners to file the transcript.

DATED this 25<sup>th</sup> day of May, 2021.

DIVISION OF INDUSTRIAL RELATIONS



Donald C. Smith, Esq.

Jennifer J. Leonescu, Esq.

Christopher A. Eccles, Esq.

Division of Industrial Relations

3360 W. Sahara Ave., Ste. 250

Las Vegas, NV 89102

*Attorneys for Respondent Division of Industrial Relations*

## CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the State of Nevada, Department of Business and Industry, Division of Industrial Relations (DIR), and that on this date, I caused to be served a true and correct copy of the document described herein by the method indicated below, and addressed to the following:

**Document Served: Respondent Division of Industrial Relations' Reply Memorandum of Points and Authorities in Support of its Motion Dismiss Petitioners' Petition for Judicial Review, or in the alternative Motion to Strike "Petitioners' Opening Brief" and Motion to Extend Time to File Reply Memorandum of Points and Authorities**

<b>Person(s) Served:</b> Daniel L. Schwartz, Esq. Joel P. Reeves, Esq. Kim D. Price, Esq. Lewis Brisbois Bisgaard & Smith 2300 W. Sahara Ave. Ste. 300, Box 28 Las Vegas, NV 89102 <i>Counsel for Petitioners LVMPD and CCMSI</i>	<b>U.S. Mail</b> <input type="checkbox"/> via State Mail room (regular or certified) circle one <input type="checkbox"/> deposited directly with U.S. Mail Service <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Interdepartmental Mail <input type="checkbox"/> Messenger Service Facsimile fax number: _____ <input checked="" type="checkbox"/> Electronic Service
<b>Person(s) Served:</b> LVMPD c/o Jeff Roch Director of Risk Mgmt. 400 S. Martin Luther King Blvd. Las Vegas, NV 89106 <i>Petitioner</i>	<b>U.S. Mail</b> <input checked="" type="checkbox"/> via State Mail room (regular or certified) circle one <input type="checkbox"/> deposited directly with U.S. Mail Service <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Interdepartmental Mail <input type="checkbox"/> Messenger Service Facsimile fax number: _____
<b>Person(s) Served:</b> CCMSI c/o Dusty Marshall Claims Supervisor P.O. Box 35350 Las Vegas, NV 89133 <i>Petitioner</i>	<b>U.S. Mail</b> <input checked="" type="checkbox"/> via State Mail room (regular or certified) circle one <input type="checkbox"/> deposited directly with U.S. Mail Service <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Interdepartmental Mail <input type="checkbox"/> Messenger Service Facsimile fax number: _____



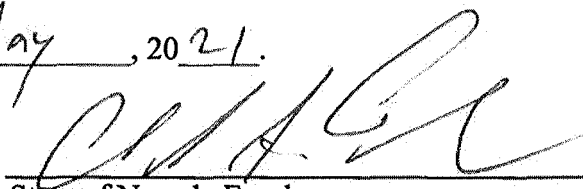
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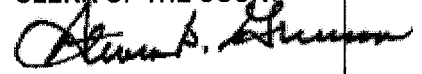
Donald J. Bordelove, Esq.  
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Office of the Attorney General  
555 E. Washington Ave.  
Ste. 3900  
Las Vegas, NV 89101  
*Counsel for Respondent Board for  
the Administration of the  
Subsequent Injury Account for  
Self-Insured Employers*

**U.S. Mail**

☐ **via State Mail room** (regular or certified) circle one  
☐ **deposited directly with U.S. Mail Service**  
☐ **Overnight Mail**  
☐ **Interdepartmental Mail**  
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☐ **Facsimile fax number:** \_\_\_\_\_  
☒ **Electronic Service**

DATED this 25<sup>th</sup> day of May, 2021.

  
\_\_\_\_\_  
State of Nevada Employee



1 **JOIN**

2 **AARON D. FORD**

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14 *Board for the Administration of the Subsequent*  
15 *Injury Account for Self-Insured Employers*

16 **DISTRICT COURT**

17 **CLARK COUNTY, NEVADA**

18 **LAS VEGAS METROPOLITAN POLICE**  
19 **DEPARTMENT; and CANNON**  
20 **COCHRAN MANAGEMENT SERVICE,**  
21 **INC.,**

22 **Petitioners,**

23 **vs.**

24 **STATE OF NEVADA BOARD FOR THE**  
25 **ADMINISTRATION OF THE**  
26 **SUBSEQUENT INJURY ACCOUNT FOR**  
27 **SELF-INSURED EMPLOYERS,**

28 **Respondent.**

Case No. A-20-821892-J  
Dept. No. 15

**JOINDER TO REPLY IN SUPPORT OF MOTIONS TO DISMISS AND  
STRIKE**

COMES NOW Respondent, the Board for Administration of the Subsequent Injury Account for Self-Insured Employers, by and through its counsel, and hereby joins Respondent's, Division of Industrial Relations, Reply in Support of its Motion to Dismiss Petitioners' Petition for Judicial Review, or in the Alternative, Motion to Strike "Petitioners

1 Opening Brief” and Motion to Extend Time to File Reply Memorandum of Points and  
2 Authorities.

3 Dated: June 1, 2021.

5 AARON D. FORD  
6 Attorney General

7 By: /s/ Donald J. Bordelove  
8 Donald J. Bordelove (Bar. No. 12561)  
9 Deputy Attorney General  
10 *Attorneys for the Board*  
11  
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**DISTRICT COURT  
CLARK COUNTY, NEVADA****Worker's Compensation Appeal****COURT MINUTES****June 07, 2021**

---

A-20-821892-J      Las Vegas Metropolitan Police Department, Petitioner(s)  
vs.  
State of Nevada Department of Business & Industry, Respondent(s)

---

**June 07, 2021      09:00 AM      All Pending Motions**

**HEARD BY:**      Hardy, Joe      **COURTROOM:** RJC Courtroom 11D

**COURT CLERK:** Hansen-McDowell, Kathryn

**RECORDER:**      Yarbrough, Matt

**REPORTER:**

**PARTIES PRESENT:**

Christopher Eccles

**Attorney for Respondent**

Kim D. Price

**Attorney for Petitioner**

**JOURNAL ENTRIES**

RESPONDENT DIVISION OF INDUSTRIAL RELATIONS' MOTION TO DISMISS PETITIONER'S PETITION FOR JUDICIAL REVIEW, OR IN THE ALTERNATIVE MOTION TO STRIKE "PETITIONERS OPENING BRIEF" AND MOTION TO EXTEND TIME TO FILE REPLY MEMORANDUM OF POINTS AND AUTHORITIES . . . JOINDER TO MOTIONS TO DISMISS AND STRIKE

Arguments by counsel regarding the compliance of submitting the transcript due by 11/09/2020 needed for the judicial review. COURT stated its FINDINGS and ORDERED, Motion GRANTED. Mr. Eccles to prepare the order, circulate it to opposing counsel and submit it to the department in box.

*Thomas S. Linn*  
CLERK OF THE COURT

**ORDG**

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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

LAS VEGAS METROPOLITAN POLICE  
DEPARTMENT, and CANNON  
COCHRAN MANAGEMENT SERVICES,  
INC.

Petitioners,  
vs.

STATE OF NEVADA BOARD FOR THE  
ADMINISTRATION OF THE SUBSEQUENT  
INJURY ACCOUNT FOR SELF-INSURED  
EMPLOYERS,

Respondents.

Case No.: A-20-821892-J  
Dept. No.: 15

**ORDER GRANTING  
RESPONDENT DIVISION OF  
INDUSTRIAL RELATIONS'  
MOTION TO DISMISS  
PETITIONERS' PETITION  
FOR JUDICIAL REVIEW**

The matters before the Court are Respondent Nevada Division of Industrial Relations' ("Division") Motion to Dismiss Petitioners' Petition for Judicial Review, and Respondent State of Nevada Board for the Administration of the Subsequent Injury Account for Self-Insured Employers' ("Board") Joinder thereto. The Court, having reviewed the papers and pleadings on file in this matter and having heard the oral arguments of counsel on June 7, 2021, and good cause appearing, hereby rules as follows:

I. FINDINGS

1. Respondent Division moved to dismiss Petitioners' Petition for Judicial Review on two bases: first, Petitioners failed to transmit to the reviewing court an original or certified copy of the transcript of the evidence resulting in the final decision of the agency as required by NRS 233B.131(1)(a), and second, Petitioners failed to timely file their Memorandum of Points and Authorities as required by NRS 233B.133(1).

2. NRS 233B.131(1)(a) provides that "Within 45 days after the service of the petition for judicial review or such time as is allowed by the court: (a) The party who filed the petition for judicial review **shall** transmit to the reviewing court an original or certified copy of the transcript of the evidence resulting in the final decision of the agency." (Emphasis added).

3. NRS 233B.131(1)(b) provides that "Within 45 days after the service of the petition for judicial review or such time as is allowed by the court: (b) The agency that rendered the decision which is the subject of the petition shall transmit to the reviewing court the original or a certified copy of the **remainder** of the record of the proceeding under review." (Emphasis added).

4. Petitioners filed their Petition for Judicial Review on September 24, 2020. Thus, pursuant to the controlling statute, NRS 233B.131(1)(a), Petitioners' deadline to transmit the transcript to the Court was November 9, 2020.

5. It is undisputed that the Petitioners never transmitted the transcript to the Court.

6. It is undisputed that the Petitioners filed their Opening Brief 105 days late and that said Brief lacks citations to the transcript of the administrative proceeding under review.

7. The record of the underlying administrative proceeding is incomplete due to Petitioners' failure to transmit the transcript to the Court.

8. As a result of the incomplete record, and of Petitioners' failure to cite to the transcript in their late-filed Opening Brief, this Court cannot conduct a judicial review based upon the whole record as required by NRS 233B.135.

...

10. The requirements of NRS 233B.131(1)(a) and (b) are mandatory because the statute employs the word “shall.” Thus, the Petitioners’ failure to transmit the transcript to the court renders their Petition for Judicial Review subject to dismissal.

11. NRS 233B.131(1)(a) is plain and unambiguous, yet Petitioners failed to comply with their 45-day statutory deadline. Moreover, Petitioners position, in their written Opposition to the Division's Motion to Dismiss, and during the oral argument—that they are not required to transmit the transcript to the court—is contradicted by the plain and unambiguous language of the statute. As of June 7, 2021—the date of the hearing on the Division's Motion to Dismiss—Petitioners were 211 days past their statutory deadline to transmit the transcript to the Court.

13           12.    Good cause for a delay in transmitting the transcript, however, may be shown  
14 pursuant to NRS 233B.131 because the statute allows the court to alter the 45-day deadline.  
15 Thus, the 45-day deadline is not jurisdictional.

13. Petitioners' argument that Respondents were statutorily required to file the *complete* record of the underlying administrative proceeding is contradicted by the structure and plain and unambiguous language of NRS 233B.131, the controlling statute. Petitioners' position is erroneous as a matter of law. Indeed, the legislative history of the 2015 amendment to NRS 233B.131 shows that the underlying policy for requiring petitioners to transmit the transcript to the court was to decrease the burden on taxpayers.

14. Petitioners have not met their burden to show good cause for their ongoing delay to transmit the transcript to the Court.

15. Mr. Price did not provide the Court with an affidavit or declaration specifying how his medical condition affected his ability to comply with statutory requirements during the intervening 211 days. The Court assumes that he had a serious medical condition but finds the effects of the condition vague.



16. Moreover, two other attorneys from Mr. Price's law firm are listed on the Court's electronic service list for this case.

17. Petitioners bear the burden to show good cause, but they have not met their burden under the *Scrimmer* factors. *Scrimmer v. Eighth Judicial Dist. Court*, 116 Nev. 507, 516-17, 998 P.2d 1190, 1195-96 (2000).

18. Furthermore, Petitioners' extensive unexcused delay is mooted by their position that they are not statutorily required to transmit the transcript to the Court.

## II. ORDER

IT IS HEREBY ORDERED AND ADJUDGED THAT:

1. The Respondent Division's Motion to Dismiss Petitioners' Petition for Judicial Review and the Board's Joinder thereto are GRANTED.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ Dated this 21st day of June, 2021

HON. JUDGE JOE HARDY, JR.

F18 060 65D6 31EC  
Joe Hardy  
District Court Judge

Respectfully submitted by:  
DIVISION OF INDUSTRIAL RELATIONS

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Approved as to form and content by:  
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1 CSERV

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA  
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5  
6 Las Vegas Metropolitan Police  
7 Department, Petitioner(s)

CASE NO: A-20-821892-J

DEPT. NO. Department 15

8 vs.

9 State of Nevada Department of  
10 Business & Industry,  
11 Respondent(s)

12 **AUTOMATED CERTIFICATE OF SERVICE**

13 This automated certificate of service was generated by the Eighth Judicial District  
14 Court. The foregoing Order Granting was served via the court's electronic eFile system to all  
15 recipients registered for e-Service on the above entitled case as listed below:

16 Service Date: 6/21/2021

17 Michele Caro	mcaro@ag.nv.gov
18 Donald Bordelove	dbordelove@ag.nv.gov
19 Daniel Schwartz	daniel.schwartz@lewisbrisbois.com
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