

NEVADA WORKERS' COMPENSATION CHRONICLE



Department of Business & Industry (B&I)

Division of Industrial Relations (DIR)

A Publication of the Workers' Compensation Section (WCS)

Winter Edition (Dec.- Feb.) 2009-2010

This newsletter is not intended to provide legal advice to the reader. Legal opinions or interpretations of statutes and regulations referenced here should be sought from competent legal professionals.

NAIW - State Legal Help for Injured Nevadans

All Nevada workers are entitled to have legal representation in the State's workers' compensation system without having to pay costly fees and without sharing needed monetary benefits. The office of the Nevada Attorney for Injured Workers (NAIW) represents injured employees in litigation seeking benefits. The agency is appointed by an administrative law judge upon request by the injured worker. The agency also hosts a public assistance phone line providing information regarding workers' compensation benefits, as well as information about the process in the State of Nevada Department of Administration Hearings Division. Primarily, NAIW helps injured employees through the administrative process to obtain due benefits in accordance with Nevada law. NAIW was appointed in 1,441 new appeals in the fiscal year 2009; represented injured workers in 1189 hearings; and handled over 13,000 public assistance calls during that same time period.

The Administrative Hearings Division has two levels of appeal for workers' compensation cases. The first and most informal process is before the Hearing Officer. Upon appeal from that level to the Appeals Officer level, NAIW may be appointed to represent the claimant in that appeal without cost to the claimant. Of course, workers may choose to hire a private attorney instead of using appointed NAIW counsel.

 Nevada law ([NRS 616A.455](#)) empowers the NAIW, once appointed by an Appeals Officer or the administrator of the Division of Industrial Relations, to represent a claimant before the AO, the administrator, District Court or Supreme Court without charging injured workers a fee. NAIW may give free information regarding workers' rights and what to do when a determination is appealed, and what procedures exist for enforcing those ([continued on page 3](#))

Reviewing Occupational Disease Claim Procedures

Most of the focus on Nevada's workers' compensation system centers on Nevada Revised Statute 616, which addresses industrial injuries. However, in fiscal year 2007 there were 3,399 occupational disease claims filed in Nevada. [NRS 617](#) is the set of workers' comp laws that deal with occupational diseases. NRS 617.450 lists 22 specific occupational diseases along with a description of the disease contraction process.

The process for filing a claim for an occupational disease closely mimics procedures for industrial injury claims, although the notion of disease "disablement" (NRS 617.060), its timing, and discovery create different reporting considerations than with workplace injuries. The following procedures describe the occupational disease claim sequence; and filing requirements of the employee, employer and treating physician or chiropractor. References to Nevada law and information about the associated forms may be found on the Workers Compensation

Section Web site <http://dirweb.state.nv.us/wcs.htm> under "Nevada Law" & "Workers Compensation Forms" links in the left-hand column.

1. **Notice of Occupational Disease: (NRS 617.342)** – An employee or, in the event of the employee's death, one of his dependents, shall provide written notice of an occupational disease for which compensation is payable as soon as practicable, but within 7 days after attaining knowledge of the disability and its relationship to their employment. A C-1, "Notice of Injury or Occupational Disease" form filed with the employer satisfies this requirement.

2. **Employee's Claim for Compensation: (NRS 617.344)** – An employee or their representative shall ensure filing of a claim for compensation for an occupational disease within 90 days after obtaining knowledge of the disability and its relationship to their employment. In the event of death resulting from the occupational disease, a dependent or a person acting on their behalf ([continued on page 3](#))

HOT TOPIC

Hopefully that old saying "better late than never" even applies to DIR Administrators. I was named to this post back in March and have been meaning to get a few words into the WCS newsletter for a while now. As you can imagine, coming on board in the midst of a very challenging legislative session has been a whirlwind of nonstop activity, and it hasn't slowed down since.



Just a few words on my priorities and what those whose work brings them into contact with DIR can expect: I have established a fully-functional Administrator's satellite office in our Henderson building to use when I'm in the Las Vegas area, and I plan on being in southern Nevada quite regularly to meet face-to-face with DIR staff and the community we regulate. Above, I noted the challenges of assuming this position in the midst of a legislative session and hopefully many of you noticed that I believe in an active engagement policy with all workers' compensation stakeholders to assist our elected officials in crafting the most effective legislation possible. That engagement is not limited to just legislative years but is part of what I see as our ongoing responsibility, despite the fiscal challenges we all face, to make Nevada's workers' compensation system one of the best in the country.

In this edition's "Confusion Corner" the WCS complaint process is detailed to provide you the most effective way of getting your complaints to us ([continued on page 3](#))

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CONFUSION CORNER

THE COMPLAINT PROCESS WORKS FOR YOU

A cursory scan of business news reveals a common theme in the race to survive: improving customer service. Here in Nevada, to ensure optimum service for all stakeholders, the Workers' Compensation Section has many avenues for those in the system - injured employees, employers, health care providers and insurers/Third Party Administrators (TPAs) - to make complaints to the State's Workers' Compensation Section. WCS receives almost 1,200 complaints annually, and they are taken very seriously.

In fact, the WCS Web site has easy-to-use complaint report forms for Northern <http://dirweb.state.nv.us/Forms/wscmpcc.pdf> and Southern regional <http://dirweb.state.nv.us/FORMS/wscmplv.pdf> complaints. Those with insurer/TPA complaints need to remember that using the proper complaint form is based on the physical location of the insurer or TPA - not where the injury took place, the complainant's residence or the employer's address. Nevada's basic north-south boundary runs from southwest to northeast, through Tonopah and Ely.

WCS receives a variety of complaints every month ranging from issues in determining the correct average monthly wage, employers' failing to follow legal guidelines or late payments or responses by an insurer or TPA. The auditors who follow up these complaints strongly advise complainants to use the correct complaint forms provided to document the basic information of their complaint. Complaints should be specific, concise and legible and include necessary documentation. For example, if the complaint concerns a specific letter or decision, include a copy of that letter or decision. WCS determinations are made based on the "file of record" (i.e. the claim file).

If the complaint concerns a possible benefit penalty, a specific process is required by NRS 616D.120 and ensures that the WCS investigation will be completed within 90 days. Though not required by law, WCS strives to resolve other complaints within 90 days as well.



FRAUD WATCH

MEDICAL PROVIDER FRAUD: IS NEVADA REALLY CRIME FREE?



Having recently returned from the annual National Fraud Directors Conference, I am left to wonder how fortunate we are in Nevada not to suffer the problems faced by other states when it comes to fraud committed by health care providers. Unfortunately, I do not believe for one minute that the lack of referrals for investigation or prosecution is an indication that our workers' compensation system is free of such fraud.

Provider fraud can take many different forms. The more obvious forms include inflated billing or billing for services not provided. Such fraud is difficult to detect because the injured worker never sees the billings. Another common form of fraud is the over prescription of medications that are then sold on the street. Often times the physician knowingly is involved in the drug diversion.

Many insurance carriers or third-party administrators have told me the problem is policed by removing questionable health care providers from their provider list. This practice may solve an immediate problem for the compensation provider, but it fails to address the bigger fraud picture. Such unscrupulous providers do not stop with just committing workers' compensation fraud. There is a great deal of cross over into the areas of general insurance fraud and Medicare/Medicaid fraud. Cheats do not stop with just one form of third-party provider system.

We need to take a stronger stand against fraudulent health care providers. The only way to fight such fraud is with diligent data mining of your claims and the sharing of information so patterns can be analyzed.

I am interested in forming a task-force of industry representatives to meet and discuss various issues involved with health care provider fraud within the workers' compensation system. I am drafting your support. Please email me at BKunzi@ag.nv.gov with your contact information if you are interested in participating. Working together is the only way to tackle this form of fraud that costs us billions of dollars a year nationally.

Anyone suspecting this type of fraud or any fraud associated with workers' compensation should contact the Attorney General's fraud hotline at **1-800-266-8688**. Other information about detecting workers' compensation fraud is also available on our Web site: <http://ag.state.nv.us/org/bcj/wcfu/wcfu.htm>

Brian Kunzi, Director, Workers' Compensation Fraud Unit



The WCS Medical Units, North and South, also process a steady stream of complaints from injured workers and their attorneys; insurers/TPAs; and medical providers. Complaints range from billing issues to medical care to improper or incomplete Form C-4s (Employee's Claim for Compensation/Report of Initial Treatment). While the Medical Units also encourage complaints on the "Complaint Report," they will act on any complaint received in writing if complainants include the nature of the complaint, substantiating copies of documentation, the complainant's name and address along with name and address information for whom the complaint is against, as well as the name or names of those whom they've been working with to resolve the problem. The name of the workers' compensation insurer and the claim number are also required.

A WCS Medical Unit begins an investigation within five working days after receiving a complaint, and it can take up to six weeks for a determination - much of that investigative time depends on the response from the company or individual the complaint is lodged against. A 30-day response time is normally given, and once a response is received, assuming no additional information is required, WCS normally makes a determination within a week. The Carson City Medical Unit chief is Sherry Crance, (775) 684-7255; her counterpart in Henderson is Gigi Pick, (702) 486-9104. *

Direct comments or suggestions about this newsletter to: *Mike Brooks, Editor*, or *Terry Simi, Assistant Editor*, in the Workers' Compensation Section, Henderson Office (702) 486-9019 or to: WCShelp@business.nv.gov

(NAIW, cont. from page 1)

rights. Through the public assistance line, NAIW may also provide information to injured workers who have been offered a vocational rehabilitation lump sum buy-out.

The process is fairly straightforward. Once an injured worker has appealed a determination to the Appeals Office from the Hearings Office, that worker must be informed by the insurer of his or her right to be represented by NAIW ([NRS 616C.050](#)) The worker may then request an appointment of NAIW and the order of appointment is signed and forwarded to NAIW. Then an NAIW attorney is assigned the case, an initial interview is set, and the case preparation begins. NAIW attorneys are bound to the same attorney-client relationship, as a privately retained attorney. NAIW attorneys handle only workers' compensation matters.

The current NAIW, Evan Beavers, assumed this position on July 1, after being appointed by Governor Gibbons. Mr. Beavers speaks to and visits with groups interested in Nevada's workers' compensation system and provides information regarding this state agency and this state system.

For more than 20 years, NAIW services have been available to Nevada's injured workers. The Nevada legislature recognized that such a service to injured workers ensured a fair hearing and enabled the Appeals Officer to sit as an impartial jurist to make a fair decision. Hearings are thus procedurally organized with evidence compiled in advance and presented in an efficient manner for administrative adjudication.

The NAIW litigation caseload is predominantly at the Appeals Officer level, but the agency may also handle cases in the state district courts and in the Nevada Supreme Court. In addition, NAIW handles appeals from the Division of Industrial Relations complaints process for non-compliance with workers' compensation statutes and regulations. NAIW also handles appeals from determinations made by the Division of Industrial Relations regarding noncompliance with orders of the Hearing Officers, Appeals Officers, District or Supreme courts.

NAIW performs its legal services for injured workers from two offices: Carson City (775-684-7555) and Las Vegas (702-486-2830). The NAIW Web page is located at <http://naiw.nv.gov/>. To help inform the public, NAIW has developed a pamphlet: "Important Points about Your Hearing." The pamphlet gives basic procedural information and sets out necessary elements of proof for some common workers' compensation disputes. It is available on the NAIW Web site in English and Spanish.*

DIR Administrative Chief Names New OSHA Head

In September, 2009, DIR Administrator, Donald Jayne, announced the appointment of Steve Coffield as the new Chief Administrative Officer of the [Nevada Occupational Safety and Health Division](#). Mr. Coffield assumed his duties on September 7. He has more than 32 years of safety and health experience in both the private and public sectors, including 13 years with Nevada OSHA where he has been an enforcement officer, enforcement supervisor and acting Chief Administrative Officer. *

(Hot Topic, cont. from page 1)

so that we can take action. Last year we resolved more than 1,100 workers' compensation-related complaints, and I don't foresee a reduction this year.

One of the reasons that I have fought so hard to fill vacant DIR positions is to ensure prompt and thorough investigations of every complaint that we receive. One very crucial position that is currently vacant is the Southern District Manager slot in our Henderson office. It is encouraging that we have received so many highly-qualified applications for this vital leadership position. And while I cannot tell you as we go to press who that new manager will be, I can tell you that we are putting renewed emphasis on full payment of all fines and penalties.

That new Southern District Manager will have a few words in this Hot Topic spot when the spring newsletter rolls around in March. But I plan on returning to these pages from time to time to report on how we're doing in meeting our goals. In the meantime, if you encounter any workers' compensation issue that you feel just can't be resolved by my staff for some reason, feel free to contact me directly:

(775) 684-7260; djayne@business.nv.gov

- Donald E. Jayne, DIR, Administrator

HOW TO CONTACT WCS

HENDERSON

Ph: (702) 486-9080 / Fax: (702) 990-0364

CARSON CITY

Ph: (775) 684-7270 / Fax: (775) 687-6305

<http://dirweb.state.nv.us/WCS/wcs.htm>
WCSHelp@business.nv.gov

(Occ. Disease, cont. from page 1)

shall ensure filing of the claim within 1 year after the employee's death. The Claim for Compensation must be completed by the employee and treating physician or chiropractor, and filed by the treating physician or chiropractor. The correct form is a C-4, "Employee's Claim for Compensation/ Report of Initial Treatment."

3. **Duty of Treating Physician or Chiropractor: (NRS 617.352)** – A treating physician or chiropractor shall, within 3 working days after first providing treatment to an employee with an occupational disease, complete and file a C-4 form, claim for compensation, with the employer and the employer's insurer.

4. **Duty of the Employer: (NRS 617.354)** – Within 6 working days after receiving a C-4 form for compensation from the treating physician or chiropractor, an employer shall complete and file with his insurer or third party administrator a C-3, "Employer's Report of Industrial Injury or Occupational Disease." Additionally, a D-8, "Employer's Wage Verification Form" must be completed and filed with the insurer within 6 working days of receipt of the C-4 Form if requested by the insurer (if the C-4 indicates the employee will be off work for 5 days or more in a 20 day period).

5. **Duty of the Insurer: (NRS 617.356)** – An insurer shall accept or deny the submitted claim within 30 working days after the claim is received. Documents required by the insurer include both the C-3 and C-4 Forms, and D-8 if required. Insurers must also report certain occupational disease claims to WCS.

In short, procedures for reporting of both industrial injuries and occupational diseases are essentially the same. But the timing for diagnosing, treatment, etc. may differ. *

STATE OF NEVADA
Holiday Office Closures:

Christmas
Friday, December 25, 2009

New Year's Day
Friday, January 1, 2010

Martin Luther King Day
Monday, January 18, 2010

Presidents' Day
Monday, February 15, 2010

REPORTING REMINDERS

~Deadline for WCS Claims Activity Report submission extended to 12/18/09~
FY09 WCS Workers' Compensation Claims Activity Report and Insurer Information Form pursuant to [NRS 616B.009](#) and [NAC 616B.016](#) are due **December 18, 2009 (extended from December 4, 2009)**. Blank forms and instructions were distributed via e-mail on October 16, 2009 and can be found on our Web site at <http://dirweb.state.nv.us/WCS/wcs.htm> or by e-mailing us at WCSRA@business.nv.gov.

Failure to submit the required reports may result in administrative fines. Questions may be directed to WCS Research and Analysis at (702) 486-9080. *

WCS EDUCATION COMMITTEE

Mike Brooks, Chair, WCS
 Dock Williams, WCS
 Ken Webb, WCS
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 Cindi Rivera, Certified Vocational Srvc
 Kelly Spina, EMPLOYERS



FORM FOCUS: D-11

Reaffirmation/Retraction of Lump Sum Request

The D-11 form is used for injured workers to reaffirm or retract, in writing, their decision to receive a lump sum payment for a permanent partial disability award. Lump sum payments are limited to 25 percent of a disability award. Insurers must pay in installments that portion of an injured worker's disability more than 25 percent. *

Subsequent Injury Account Saves Employers Money

The Subsequent Injury Accounts encourage employers to hire workers with a permanent physical impairment. The costs of any qualified subsequent injury are paid from the appropriate subsequent injury account. (NRS 616B.557-590) For more information on contact Jacque Everhart at 702 486-9089 or everhart@business.nv.gov *

WCS Mission Statement

The purpose of the Workers' Compensation Section (WCS) is to impartially serve the interests of Nevada employers and employees by providing assistance, information, and a fair and consistent regulatory structure focused on:

- Ensuring the timely and accurate delivery of workers' compensation benefits.
- Ensuring employer compliance with the mandatory coverage provisions.

New Faces on WCS Education Committee

The Workers' Compensation Section staff and Education Committee welcome two new members to the WCS Education Committee. **Kelly Spina** is a Las Vegas native who began his workers' compensation career at Nevada's State Industrial Insurance System in 1991 where he held various positions including underwriting, medical bill paying, medical only and lost time claims examiner and ultimately claims supervisor. Currently Kelly is an EMPLOYERS claim manager responsible for Nevada, Arizona and Colorado claim file handling. He holds a bachelor's degree in business administration from the University of Kentucky. Another addition to the committee is **Cindi Rivera**. She is a Certified Professional Disability Manager at Certified Vocational Services who brings 16 years of vocational rehabilitation and workers' compensation experience to the committee. Among her many duties, she helps long-term disability companies with providing vocational rehabilitation services for their insured's. She has also worked with the International Association of Rehabilitation Professionals Board in drafting proposed legislation to improve vocational rehabilitation services in Nevada. Cindi is bilingual (English-Spanish) and holds bachelor's degrees in law and Spanish. *

Hails and Farewells

Gigi Pick joined the WCS Southern District Office in mid-October, replacing Smiddy Lamb as the Medical Unit's registered nurse. Gigi is licensed in California and Nevada with clinical expertise in emergency medicine. Since coming to Las Vegas a decade ago, she has performed medical case management duties in Valley and Mountain View Hospitals. Before moving to Las Vegas, Gigi built her own case management/consulting business focusing on workers' compensation cases while living in California where she was also a director of nursing services at hospitals in San Jose and Monterey. Gigi is bilingual (English/Spanish). When she isn't working, Gigi spends time with her parents and extended family and she loves all types of music, especially jazz.



Aurora Perez joined the DIR/WCS in September as an administrative assistant. She works primarily at the front desk and is often the first WCS staff member callers to Henderson's main number come in contact with. Aurora is a Torrance, California native who has been in Las Vegas more than 10 years. She has an extensive background in providing administrative support in the medical field: working for physicians, pharmacies and medical centers. Aurora is bilingual (English/Spanish). In what little spare time she has after taking care of her husband and three children, she enjoys improving the quality of life in her community by volunteering to help the elderly, sick and disabled. She's also enjoys reading about the latest breakthroughs in medical research.



Sherry Crance joined the WCS Northern District Office in mid-September replacing Gail McGuire as the registered nurse for the Medical Unit. Sherry has experience in workers' compensation case management, rehabilitative and operating room nursing, supervision of Medicaid programs, and licensing and certification of health care facilities. When not at work, she enjoys spending time with her family, animals, crafts and music. *

WINTER 2009-2010 TRAINING SESSIONS

The **WCS Orientation** is a comprehensive overview of workers' compensation in Nevada. This session is beneficial for anyone involved. **Specified Forums** offer specified advanced topics. All training sessions are free and open to the public.

SOUTHERN NEVADA

Division of Industrial Relations
 1301 North Green Valley Pkwy.,
 Ste. 200, Henderson, NV 89074

WCS Orientation

January 21, 2010

WCS Specified Forum:

December 14, 2009

Subsequent Injury/PPD/AMW

February 4, 2010 – Medical Fee Schedule

For reservations, please contact:

✉ tsimi@business.nv.gov

☎ (702) 486-9019

NORTHERN NEVADA

The Carson City/Reno sessions are tentatively scheduled at Western Nevada Community College in Carson City.

WCS Orientation:

December 10, 2009

WCS Specified Forum:

February 11, 2010

Employer Briefing

For reservations, please contact:

✉ tmills@business.nv.gov

☎ (775) 684-7261

Medical Unit Reminder:

D-35 is Required

The WCS Medical Unit staff has noticed a troubling trend. Some insurers, third-party administrators and attorneys are not providing updated or even initial D-35: Request for a Rotating Rating Physician or Chiropractor forms. If the WCS Medical Unit rotation system has assigned a rater but the injured employee has agreed to a different rater, that new rater must be reflected on the D-35. This update releases the original rater back into the rotation. In addition, any informal agreements on a rater must be made official using a D-35. Failure to notify WCS and complete the D-35 as required violates NAC 616C.103 *