

NEVADA WORKERS' COMPENSATION CHRONICLE



Department of Business & Industry (B&I)

Division of Industrial Relations (DIR)

A Publication of the Workers' Compensation Section (WCS)

Fall Edition (Sept.– Nov.) 2009

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.

DIR & DOI: Partners in Workers' Comp Regulation

The Division of Industrial Relations, Workers' Compensation Section is better known simply as "DIR," whereas, Nevada's Division of Insurance is often recognized as "DOI." However, these alphabet soup agency acronyms can often confuse the greater public, and even the regulated community, about which one to contact for certain kinds of workers' compensation information: Exactly which agency does what?

Out of the 1,470 [WCSHelp](#) e-mails received in the past four years, 247 of them contained a question or required an answer referencing the [Division of Insurance](#). Each agency has its distinct part of the larger workers' comp picture. Here's a brief overview of some of DIR's versus DOI's major functions to help reduce the confusion:

Major DIR/WCS activities:

- Ensure employer workers' comp coverage compliance per [NRS 616 & 617](#)
- Regulate and [oversee the claims handling process to ensure timely delivery of workers' compensation benefits](#)
- Audit each workers' comp insurer at least once every five years ([NRS 616B.003](#))
- Investigate workers' comp complaints against insurers, employers or health care providers
- Maintain panels of workers' comp [treating](#) and [rating](#) physicians and chiropractors
- Create and annually revise the [Medical Fee Schedule](#)
- Ensure accurate medical billing and prompt reimbursement to healthcare providers
- Register [employee leasing companies/professional employee organizations](#)
- Contact insurers for claimant information and make annual payments to those who are permanently and totally disabled and eligible per [NRS 616C.453](#)
- Maintain the [Coverage Verification System](#) (in conjunction with the [National Council on Compensation Insurance](#))
- Maintain the workers' comp Claim Index System ([NRS 616B.018](#))
- Collect and compile an annual summary of claims activity
 - Because of lifetime reopening, many insurers must continue to report annually to DIR/WCS.

Major DOI activities:

- License workers' compensation insurers to write policies in (continued on page 3)



WCS' 2009 Legislative Changes Forum in August hosted 129 attendees at the College of Southern Nevada (above), while a similar WCS training at Western Nevada Community College in Carson City had 56 attendees. The [Legislative Changes](#) briefing is posted on the main WCS Web page under "Training." Anyone interested in free WCS training can find WCS e-mail sign-up information on page 4.

HOT TOPIC

New BP Max Effective October 1

Fifty Thousand Dollars is a lot of money. But is it enough to deter insurance companies, TPA's, self-insured's or employers from violating NRS 616D120 (3)? That's the statute that deals with benefit penalties. This year, legislators raised the maximum benefit penalty amount that the WCS can issue to an injured worker if we uncover a serious violation. Obviously, they are more serious than ever about punishing the bad actors out there. We believe that by identifying and properly handling issues before they rise to the BP level is the best way to avoid them. Every organization should have trained individuals who can resolve these types of problems and save their organizations a lot of money — possibly \$50,000.00! *

**Ken Webb, WCS,
Southern District Manager**

WCS Education Committee

Member Retires

Nancy Jennings, a 30-year veteran of Nevada's workers' compensation system and the first woman workers' comp claims adjuster in Nevada, retired in August. She began her career with the Nevada Industrial Commission, later moving on to represent State employees with the State of Nevada Employees Association. In 1986 she returned to the workers' comp community when she joined the State Industrial Insurance System. Ms. Jennings left State employ for the private sector in 2002. Most recently, she was a valued employee of Sierra Nevada Administrators, as well as a member of the WCS Education Committee. The WCS wishes Nancy luck and prosperity in all of her future endeavors. *

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CONFUSION CORNER

Claim Reopening Rights Often Misunderstood

Nevada is one of the few states that allows lifetime reopening of a closed workers' compensation claim. Of the dozens of WCS Help questions e-mailed to us monthly, without fail, a handful will ask about claim reopening. The Nevada Attorney for Injured Workers Web site has a helpful primer on claim reopening which is abridged as follows:

To reopen your claim, you need to submit a written request to the insurer or self-insured employer asking that your claim be reopened for medical treatment. It is best to include your name, social security number, date of injury, employer at the time of injury, and your current address and phone number. If you can include the number of the claim to be reopened, that will help expedite the process.

A claim may be reopened if it meets certain requirements. It is your burden to provide the necessary medical evidence which justifies having the claim reopened for further treatment. So, to show that your claim should be reopened, you must provide medical evidence showing that: 1) the primary cause of the change in your condition is the original injury; 2) as shown by objective medical evidence; your condition has changed since your claim was closed and 3) you need further treatment to help improve your condition. Therefore, you should enclose, with your request, a statement from your doctor containing the following information:

- a. What your current symptoms are and how they relate to your original industrial injury.
- b. How your condition has changed or worsened as shown through objective medical evidence by your doctor's letter.
- c. A statement as to a proposed treatment plan the doctor thinks is necessary to help your condition improve.
- d. Whether you can perform the job duties of your injury job or the most recent job you were rehabilitated to do.

You must pay the cost of the original medical examination to substantiate the reopening of your claim. If the claim is accepted, you may be reimbursed for the medical exam.

You should receive a response within 30 days from the date your request and the



FRAUD WATCH

JURY FINDS PTD CLAIMANT GUILTY OF FRAUD: PART II



In the last newsletter you were introduced to Steve Barfield, who was recently convicted of committing fraud following a jury trial. Previously we discussed issues regarding how indirect benefits could be construed as earnings that should have been reported while Barfield collected permanent partial disability benefits. His case also raised some interesting issues with the strengths and weaknesses of surveillance evidence.

A common attack on surveillance evidence is to argue the surveillance tapes show only a small segment of time and thus do not demonstrate the claimant is capable of doing those activities for an extended period of time necessary for him to return to any form of employment. Rarely is the prosecution blessed with long durations of video surveillance. How can this form of attack be thwarted?

The strength of the video surveillance is entirely dependent on the connection with the alleged misrepresentation. The Workers' Compensation Fraud Unit receives stacks of video surveillance evidence, each accompanied by the statement that these tapes are the "best we have ever seen. He is not to lift his arm above his shoulder and the tape proves he can do it. Prosecute him."

Time and again, we must remind providers and employers there is a huge chasm between saying a person "cannot" or "does not" do a specific activity and saying a person "should not" or "does not do so" because of pain or other problems. The relevance of the video surveillance will depend on which side of the canyon we sit.

In the Barfield trial there were 6 days of surveillance, which showed a clear activity level. In total, however, only about 10 to 15 minutes of actual physical activities were caught on tape. The defense argued the tapes do not show any sustained activities that would indicate the defendant was able to return to work. The tapes showed the defendant "living his life." We agreed. The tapes did show him living his life.

During a home visit in late July of 2003 Barfield stated he could not drive, particularly on the freeway, because of a neck fusion, which prevented him from turning his head to the left. He could not go shopping alone because he cannot lift most items. The heaviest item he could lift was a small can of tomato paste. He rarely left the house and was cared for at home by his son. He indicated his left arm was dead and mainly just hung at his side. During the home visit he moved his left arm only by picking it up with his right hand. Barfield also stated that he needed a cane to ambulate.

The video surveillance showed activities a month before, a week before and a week after the home visit. There was also video surveillance done a few months later on the day of an independent medical examination and on another date two days prior.

The days of surveillance showed a consistent pattern. He would leave home at 6:00 a.m. He would drive several miles to Henderson, where his wife worked. He would then drive back home and stay for a short period of time before he drove to his business on Losee Road, all on the freeway. At the end of the day he would drive back to Henderson, pick up his wife and return home sometime after 6:00 p.m.

The driving video was particularly interesting because each time he entered a freeway he instantly and rapidly moved across traffic (continued on page 3)



doctor's report are received. These documents are reviewed by the insurer. You will be notified in writing after a determination is made as to whether your application for reopening is approved or disapproved.

If the reopening is approved, your claim will be opened retroactive to the date your application for reopening was received. However, you may be allowed the cost of emergency treatment, prior to your application date, if there is sufficient evidence to substantiate that the treatment

was necessary and done on an emergency basis. Otherwise, costs of treatment between claim closure and reopening are not reimbursed.

You and your employer will be notified of the right to appeal the decision regarding the approval or disapproval of your reopening request. If your reopening request is denied, you should immediately appeal that determination to the hearing officer. You are given 70 days; however do not wait until the last few days to appeal. (continued on page 3)

(Fraud Watch, cont. from page 2)

lanes to get to the left lane and would often weave in and out of heavy traffic. Hardly the characteristics of someone who could not turn his head let alone of someone who claimed he could not and did not drive on the freeway.

The shortest segments of video were also the most telling. He often stopped at a convenience market. Walked with no cane and with no sign of any balance trouble. On one occasion he came out holding a bottle of soda in his dead left hand and carrying two twelve packs of soda in his right arm. He transferred the twelve packs to his dead left arm and then bent over and loaded the soda into the back seat of his vehicle. During other short segments, he is seen in conversation using his left arm for gesturing without difficulty and without pain behavior. He was not seen using a cane while walking except for his arrival at and departure from the Independent Medical Examination.

The physician that conducted the IME initially opined Barfield was totally disabled based on his medical examination. When the doctor reviewed the video surveillance about two months later he changed his opinion. He stated the activities seen in the video could not have been done by the person he examined.

Although the video was short, the relevance to the representations made by the defendant was overwhelming. Although most of the days filmed were not caught on tape the videos did show the defendant arriving at and opening the business and staying there for a full day.

This trial is a testament to the importance of understanding the connection between the representations made and the activities observed. Unless the representations are clearly defined and articulated, no video will be helpful. Showing isolated incidents of someone "exceeding his restrictions" will generally not suffice. Focus on what cannot be done, not on what should not be done.

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**

Editor's note: Mr. Barfield was sentenced in July to serve 36 months probation in lieu of serving 12 to 32 months in State prison, and required to pay more than \$6,000 in restitution. In addition, Mr. Barfield has forfeited his rights to future workers' compensation benefits.

(Confusion Corner, cont. from page 2)

Please note the following exceptions:

If you are trying to reopen your claim within one year of claim closure, you need to show the above points by clear and convincing evidence.

If your claim was closed due to lack of treatment for six months and your treatment costs did not total \$500.00 or more it will be difficult to win a reopening.

If you have voluntarily removed yourself from the workforce before you reopened your claim, you are not entitled to temporary total disability compensation or vocational rehabilitation services.

For more information, use the NAIW Web link: <http://naiw.nv.gov/reopen.htm> *

FORM FOCUS: D-14

Permanent Total Disability Report of Employment:

This edition's Fraud Watch (page 2) describes the workers' compensation fraud investigation and conviction of Steve Barfield who failed to report earnings made while collecting permanent total disability benefits. This is an opportune time to clarify reporting requirements that ensure PTD benefit recipients continue to receive timely monthly payments from insurers.

Former employees receiving permanent total disability benefits are required by law ([NRS 616C.445](#)) to submit an annual report of employment to the insurer providing the PTD benefits. This report is done on a Form D-14, "Permanent Total Disability Report of Employment" <http://dirweb.state.nv.us/Forms/d-14.pdf> and reflects the employment and earning information for the previous 12-month period. The D-14 is due on the anniversary date of the PTD award.

If the PTD employee fails to submit the D-14 within 30 days of the due date, the insurer must notify both the employee and the date-of-injury employer of the missing report. In addition, the insurer can stop PTD payments until the D-14 is received. *

WCS EDUCATION COMMITTEE

Mike Brooks, Chair, WCS
Dock Williams, WCS
Ken Webb, WCS
Christi Mosher, Genex
Suhair Susan Sayegh, Sierra Nv Admin



STATE OF NEVADA Holiday Office Closures:

Labor Day
Monday, September 7, 2009
Nevada Day
Friday, October 30, 2009
Veteran's Day
Wednesday, November 11, 2009
Thanksgiving Day
Thursday, November 26, 2009
Family Day
Friday November 27, 2009

(DIR & DOI, cont. from page 1)

Nevada

- License third-party administrators to handle workers' comp claims in Nevada
 - Certify and regulate self-insured employers and associations of self-insured employers for workers' compensation
 - License and regulate agents (producers) who sell workers' comp insurance
 - Review and approve workers' comp policy rates (premiums), based on information supplied by NCCI
 - Review and approve workers' comp policy language, composition and format
 - Investigate policy complaints from employers
 - Designate advisory organization for workers' compensation (Currently, NCCI which establishes classification codes for workers' comp in Nevada)
 - Register [Utilization Review companies](#)
 - Collect quarterly and annual financial statements from private workers' comp insurers
 - Compile estimated claim file expenditure reports, financial statements and insolvency assessments for self-insured and associations for self-insured employers
- ***Note:** Insurer assessments per [NRS 616A.425](#) are processed by DIR/ASU
** Workers' compensation fraud is investigated and prosecuted by the Attorney General's [Workers' Compensation Fraud Unit](#) (see Fraud Watch on page 2) *

PPD Rater Selection System Changes

Since June, the Workers Compensation Section has used a new information management system to collect and track many aspects of data. The WCS Medical Unit now uses VERSA for permanent partial disability rater selection. This new system still complies with the rotation requirements of [NRS 616C.490\(2\)\(b\)](#).

WCS' previous rater selection system included the rating examination region of Nevada as a factor in the rotation process. However, VERSA assigns raters based on the order their names appear on the rotating list regardless of the region where the rating is to occur. Therefore, many of the rotating physicians and chiropractors, who perform ratings in the various areas, may notice a decrease in the ratings assigned in some regions because ratings are now distributed by name. Any raters wanting to adjust their areas of service may contact the Medical Unit, (702) 486-9095 or (775) 684-7276. *

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: mbrooks@business.nv.gov

Hails and Farewells: Arrivals and Departures Continue

Patti Zielinski retires in October after 20 years of service with the Division of Industrial Relations. Patti has vast workers' comp experience, having been a compliance/audit investigator, audit supervisor and then switching gears in the past several years as a management analyst in the Research and Analysis Unit. Patti has interacted with a variety of workers' compensation stakeholders but is best known by insurers and third-party administrators, helping them with statutes and regulations and their responsibilities associated with claims handling and data reporting issues. Over the years, her WCS colleagues have relied on Patti as a great source of information and as a problem-solver. We will miss her, but her granddaughters are looking forward to finally having her to themselves.

Pat Judge retired in July after 10 years with WCS as the C-4 Coverage Verification Coordinator for the southern district office. Before coming to WCS, Pat worked at the former Jean Hanna Clark Rehabilitation Center in Las Vegas where her interactions with the workers' compensation, medical, insurance and legal community proved to be a valuable asset for her later work at WCS. As part of the Research and Analysis Unit, she was instrumental in the implementation of the public-access online Coverage Verification Service and helped train many medical providers and TPAs in how to use multiple resources, including CVS, to locate coverage. Pat's retirement will allow her

the time to travel to Italy and visit her family on the East Coast.

In October, **Ken Webb** retires as the WCS Southern District Manager after more than 30 years of service. A native Las Vegas, Ken graduated from the University of Nevada, Las Vegas with a bachelor's degree in accounting and went on to own a small specialty auto-parts store. In 1978 he was offered an audit position with the Nevada Industrial Commission. Over the years, he has worked as a senior auditor, traveling auditor, principal auditor and finally as an audit supervisor. Those years also saw the organization reorganized and renamed several times. Eventually, in the fall of 1996, he became the WCS Southern District Manager. Ken notes that being an auditor and regulator has always been exciting and challenging. He's met countless people from all walks of life and made many friends – and that is what he'll miss most in retirement.

Darlene Rosenberg joined the DIR/WCS, Henderson office, in June, as a Compliance Audit Investigator. She has worked in insurance almost continuously since graduating from Michigan State University. In 1990 Fireman's Fund transferred her from Cincinnati to Las Vegas as a liability claims adjuster. Then in 1993, Darlene took a position at Horizon CompCare where she received workers' compensation training from [Smiddy Lamb](#), who has recently retired from DIR/WCS. Later Darlene moved to the public sector and for the past 14 years handled workers'

compensation and benefits at the City of North Las Vegas. So far, she's found that working with different TPA's and employers handling workers' compensation issues from the audit investigator's point of view has been "an eye-opening experience."

Jim Estrada has more than 10 years of experience in the workers' compensation field in California, as a claims examiner, field investigator, hearing representative and self-employed private investigator. He comes to DIR/WCS from the Nevada Department of Employment, Training and Rehabilitation where he worked as an unemployment claims examiner. Jim enjoys the abundance of hiking and outdoor activities that southern Nevada offers. He is also an active proponent of animal rights.

Dano K. Fernandez is a new Compliance Audit Investigator II with DIR/WCS in Carson City. Dano brings more than 20 years of law enforcement experience with him, including military security forces service. He holds a Bachelor of Arts degree in Criminal Justice from the University of Nevada and a Master of Justice Administration from Norwich University. In addition, Dano enjoys running, body building, practical shooting, teaching Taekwondo and practicing mixed martial arts. He has three children and, yes, throughout his years in law enforcement he's heard the "Book 'em Dano" moniker many, many times.



FALL 2009 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

September 9, 2009
November 2, 2009

WCS Specified Forum:

October 15, 2009
Employee / Voc Rehab

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:

September 18, 2009

WCS Specified Forum:

November 19, 2009
Employer Briefing

For reservations, please contact:

✉ tbixler@business.nv.gov

☎ (775) 684-7261

E-MAIL NOTIFICATION

Stay connected to what's new in the Nevada workers' compensation system by registering to receive e-mail notification of upcoming training sessions, hearings and other important events.

Simply go to the WCS Web site: <http://dirweb.state.nv.us/WCS/wcs.htm>, click on the "Update" icon and fill out the E-mail Enrollment Request Form as a new subscriber or to make updates.



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.