

3-4-2016

# Jobe v. Dirne Clinic/Heritage Health Clerk's Record Dckt. 44604

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**BEFORE THE SUPREME COURT OF THE STATE OF IDAHO**

RICHARD JOBE,

Claimant/Appellant,

v.

DIRNE CLINIC/HERITAGE HEALTH, Employer,  
and IDAHO STATE INSURANCE FUND, Surety,

Defendants/Respondents.

**SUPREME COURT NO. 44604**

**AGENCY'S RECORD**

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

Attorney for Appellant:

STEPHEN NEMEC  
1626 LINCOLN WAY  
COEUR D ALENE ID 83814

Attorney for Respondents:

JAMES MAGNUSON  
PO BOX 2288  
COEUR D ALENE ID 83816

**COPY**

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## EXHIBITS LIST

### REPORTER'S TRANSCRIPT(S):

Reporter's Transcript taken March 4, 2016 will be lodged with the Supreme Court.

### Claimant's Exhibits:

1. SSA Wage History, 2013 W-2 from Dirne, 2 paychecks in 2013
2. Legislative History of 2001 Amendment to IC § 72-438
3. Letter of Reference for Dr. Jobe from 2004
4. Dr. Jobe Curriculum Vitae
5. Navy Discharge Paperwork
6. Get Well Soon Card from Dirne/Heritage
7. Redacted Medical Record of Colonized MRSA Patient
8. Kootenai Hand & Reconstructive Surgery
9. Spokane Internal Medicine
10. Infectious Disease Medicine
11. Kootenai Medical Center (a.k.a. Kootenai Health)
12. North Idaho Advanced Care Hospital
13. St. Luke's Rehabilitation
14. Life Care Center of Post Falls
15. Inland Imaging
16. Sacred Heart Medical Center
17. CDA Spine & Neurosurgery

18. Bowen Orthopedic
19. Dr. McNulty IME Report
20. Fred Cutler M. Ed. Report
21. Dr. Hull IME Report
22. Articles Referenced in Dr. Hull Report
23. Medical Bills for Treating Providers
24. Miscellaneous Prescription Bills
25. Deposition Transcript of Deb Gutierrez CMA
26. Defendants' Answers to Discovery
27. Updated Kootenai Health Records Reflecting February 2016 Stroke

Defendants' Exhibits:

1. Employer Records
2. Medical Records of Patrick Mullen, M.D.
3. Medical Records of Kootenai Medical Center
4. Medical Records of Francis Riedo, M.D.
5. Medical Records of David Souvenir, M.D.
6. Dr. Riedo Curriculum Vitae
7. Medical Records of Dr. Riedo, dated February 27, 2016

Depositions:

1. Harry Frazer Hull, M.D., taken April 29, 2016
2. John Michael McNulty, M.D., taken May 23, 2016



3. David Souvenir, M.D., taken March 25, 2016
4. Fred Cutler, M. Ed., taken March 26, 2016
5. Francis Riedo, M.D., taken June 3, 2016

Additional Documents:

1. Claimant's Opening Brief, filed July 5, 2016
2. Defendants' Post-Hearing Brief, filed August 1, 2016
3. Claimant's Reply Brief, filed August 10, 2016

SEND ORIGINAL TO: INDUSTRIAL COMMISSION, JUDICIAL DIVISION, P.O. BOX 83720, BOISE, IDAHO 83720-0041

**WORKERS' COMPENSATION  
COMPLAINT**

CLAIMANT'S (INJURED WORKER) NAME AND ADDRESS Richard Jobe 21450 E. Indiana Ave Liberty Lake, WA 99019  TELEPHONE NUMBER: 208-667-0683	CLAIMANT'S ATTORNEY'S NAME, ADDRESS, AND TELEPHONE NUMBER Stephen Nemec 1626 Lincoln Way Coeur d'Alene, ID 83814  TELEPHONE NUMBER: 208-667-0683
--	---

EMPLOYER'S NAME AND ADDRESS (at time of injury) Dirne Clinic/Heritage Health 1090 W. Park Place Coeur d'Alene, ID 83814	WORKERS' COMPENSATION INSURANCE CARRIER'S (NOT ADJUSTOR'S) NAME AND ADDRESS Idaho State Insurance Fund P.O. Box 83720 Boise, ID 83720-0044
--	--

CLAIMANT'S SOCIAL SECURITY NO. [REDACTED]	CLAIMANT'S BIRTH DATE [REDACTED]	DATE OF INJURY OR MANIFESTATION OF OCCUPATIONAL DISEASE Manifestation of Occupational Disease is 5/29/14
--	-------------------------------------	---

STATE AND COUNTY IN WHICH INJURY OCCURRED Idaho, Kootenai County	WHEN INJURED, CLAIMANT WAS EARNING AN AVERAGE WEEKLY WAGE OF: \$ Unknown, PURSUANT TO IDAHO CODE § 72-419
---	--

DESCRIBE HOW INJURY OR OCCUPATIONAL DISEASE OCCURRED (WHAT HAPPENED)

Claimant contracted methicillin and vancomycin resistant staphylococcal aureus ("MRSA") during the course and scope of his employment with Dirne Clinic/Heritage Health.

NATURE OF MEDICAL PROBLEMS ALLEGED AS A RESULT OF ACCIDENT OR OCCUPATIONAL DISEASE

MRSA bacteremia; MRSA endocarditis; MRSA infection in right upper extremity; MRSA infection iliopsoas muscle; MRSA discitis; MRSA osteomyelitis; MRSA stroke.

WHAT WORKERS' COMPENSATION BENEFITS ARE YOU CLAIMING AT THIS TIME?

Medical benefits

DATE ON WHICH NOTICE OF INJURY WAS GIVEN TO EMPLOYER 5/29/14 via USPS mail	TO WHOM NOTICE WAS GIVEN Mike Baker
---	--

HOW NOTICE WAS GIVEN:    ORAL     WRITTEN     OTHER, PLEASE SPECIFY

- ISSUE OR ISSUES INVOLVED
- Whether Claimant is entitled to medical benefits;
  - Whether Claimant is entitled to indemnity benefits;
  - Whether Claimant is totally and permanently disabled.

**FILED**  
**MAY 29 2014**  
**INDUSTRIAL COMMISSION**

**NOTICE: COMPLAINTS AGAINST THE INDUSTRIAL SPECIAL INDEMNITY FUND MUST BE IN ACCORDANCE WITH IDAHO CODE § 72-334 AND FILED ON FORM I.C. 1002**

**WORKERS' COMPENSATION  
COMPLAINT**

CLAIMANT'S (INJURED WORKER) NAME AND ADDRESS  Richard Jobe 21450 E. Indiana Ave Liberty Lake, WA 99019  TELEPHONE NUMBER: 208-667-0683	CLAIMANT'S ATTORNEY'S NAME, ADDRESS, AND TELEPHONE NUMBER  Stephen Nemec 1626 Lincoln Way Coeur d'Alene, ID 83814  TELEPHONE NUMBER: 208-667-0683
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EMPLOYER'S NAME AND ADDRESS (at time of injury)  Dirme Clinic/Heritage Health 1090 W. Park Place Coeur d'Alene, ID 83814	WORKERS' COMPENSATION INSURANCE CARRIER'S (NOT ADJUSTOR'S) NAME AND ADDRESS  Idaho State Insurance Fund P.O. Box 83720 Boise, ID 83720-0044
--	---

CLAIMANT'S SOCIAL SECURITY NO. [REDACTED]	CLAIMANT'S BIRTH DATE [REDACTED]	DATE OF INJURY OR MANIFESTATION OF OCCUPATIONAL DISEASE Manifestation of Occupational Disease is 5/29/14
--	-------------------------------------	---

STATE AND COUNTY IN WHICH INJURY OCCURRED  Idaho, Kootenai County	WHEN INJURED, CLAIMANT WAS EARNING AN AVERAGE WEEKLY WAGE OF: \$ <u>Unknown</u> , PURSUANT TO IDAHO CODE § 72-419
---	--

DESCRIBE HOW INJURY OR OCCUPATIONAL DISEASE OCCURRED (WHAT HAPPENED)  
  
Claimant contracted methicillin and vancomycin resistant staphylococcal aureus ("MRSA") during the course and scope of his employment with Dirme Clinic/Heritage Health.

NATURE OF MEDICAL PROBLEMS ALLEGED AS A RESULT OF ACCIDENT OR OCCUPATIONAL DISEASE  
  
MRSA bacteremia; MRSA endocarditis; MRSA infection in right upper extremity; MRSA infection iliopsoas muscle; MRSA discitis; MRSA osteomyelitis; MRSA stroke.

WHAT WORKERS' COMPENSATION BENEFITS ARE YOU CLAIMING AT THIS TIME?  
  
Medical benefits

DATE ON WHICH NOTICE OF INJURY WAS GIVEN TO EMPLOYER  5/29/14 via USPS mail	TO WHOM NOTICE WAS GIVEN  Mike Baker
---	--

HOW NOTICE WAS GIVEN:      ORAL       WRITTEN       OTHER, PLEASE SPECIFY

- ISSUE OR ISSUES INVOLVED
- Whether Claimant is entitled to medical benefits;
  - Whether Claimant is entitled to indemnity benefits;
  - Whether Claimant is totally and permanently disabled.

RECEIVED  
 INDUSTRIAL COMMISSION  
 JUN 11 - 2 11:17

NOTICE: COMPLAINTS AGAINST THE *INDUSTRIAL SPECIAL INDEMNITY FUND* MUST BE IN ACCORDANCE WITH IDAHO CODE § 72-334 AND FILED ON FORM I.C. 1002



PHYSICIANS WHO TREATED CLAIMANT (NAME AND ADDRESS)

This will be supplemented in discovery

I AM INTERESTED IN MEDIATING THIS CLAIM, IF THE OTHER PARTIES AGREE.

YES  NO

DATE

5-29-14

SIGNATURE OF CLAIMANT OR ATTORNEY



STEPHEN V. NEMEC

**PLEASE ANSWER THE SET OF QUESTIONS IMMEDIATELY BELOW  
ONLY IF CLAIM IS MADE FOR DEATH BENEFITS**

NAME AND SOCIAL SECURITY NUMBER OF PARTY  
FILING COMPLAINT

DATE OF DEATH

RELATION TO DECEASED CLAIMANT

WAS FILING PARTY DEPENDENT ON DECEASED?

YES  NO

DID FILING PARTY LIVE WITH DECEASED AT TIME OF ACCIDENT?

YES  NO

**CLAIMANT MUST COMPLETE, SIGN AND DATE THE ATTACHED MEDICAL RELEASE FORM**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 21 day of May, 2014, I caused to be served a true and correct copy of the foregoing Complaint upon:

**EMPLOYER'S NAME AND ADDRESS**

**SURETY'S NAME AND ADDRESS**

Attn: Mike Baker  
Heritage Health  
1090 W. Park Place  
Coeur d' Alene, ID 83814

Idaho State Insurance Fund  
P.O. Box 83720  
Boise, ID 83720-0044

U.S. Mail

Fax

U.S. Mail

Fax (208-332-2171)



Signature

**NOTICE: An Employer or Insurance Company served with a Complaint must file an Answer on Form I.C. 1003 with the Industrial Commission within 21 days of the date of service as specified on the certificate of mailing to avoid default. If no answer is filed, a Default Award may be entered!**

**Further information may be obtained from: Industrial Commission, Judicial Division, P.O. Box 83720, Boise, Idaho 83720-0041 (208) 334-6000.**

(COMPLETE MEDICAL RELEASE FORM ON PAGE 3)

Complaint - Page 2 of 3

**ANSWER TO COMPLAINT**

**I.C. NO.** 2014-014564

**INJURY DATE** 5/29/14

The above-named employer/surety responds to Claimant's Complaint by stating:

<p>CLAIMANT'S NAME AND ADDRESS Richard Jobe 21450 E. Indiana Avenue Liberty Lake, WA 99019</p>	<p>CLAIMANT'S ATTORNEY'S NAME AND ADDRESS Stephen Nemec 1626 Lincoln Way Coeur d'Alene, ID 83814</p>
<p>EMPLOYER'S NAME AND ADDRESS Dirne Clinic/Heritage Health 1090 W. Park Place Coeur d'Alene, ID 83814</p>	<p>WORKERS' COMPENSATION INSURANCE CARRIER'S (NOT ADJUSTOR'S) NAME AND ADDRESS Idaho State Insurance Fund 1215 W. State Street Boise ID 83720-0044</p>
<p>ATTORNEY REPRESENTING EMPLOYER OR EMPLOYER/SURETY (NAME AND ADDRESS) H. James Magnuson, Attorney PO Box 2288 Coeur d'Alene ID 83816-2288</p>	<p>ATTORNEY REPRESENTING INDUSTRIAL SPECIAL INDEMNITY FUND (NAME AND ADDRESS)</p>

RECEIVED  
 INDUSTRIAL COMMISSION  
 BOISE, IDAHO  
 MAY 29 2014

IT IS: (Check One)	
Admitted	Denied
	X
X	
X	
	X
	X
	X
X	

1. That the accident or occupational exposure alleged in the Complaint actually occurred on or about the time claimed.
2. That the employer/employee relationship existed.
3. That the parties were subject to the provisions of the Idaho Workers' Compensation Act.
4. That the condition for which benefits are claimed was caused partly  entirely  by an accident arising out of and in the course of Claimant's employment.
5. That, if an occupational disease is alleged, manifestation of such disease is or was due to the nature of the employment in which the hazards of such disease actually exist, are characteristic of and peculiar to the trade, occupation, process, or employment.
6. That notice of the accident causing the injury, or notice of the occupational disease, was given to the employer as soon as practical but not later than 60 days after such accident or 60 days of the manifestation of such occupational disease.
7. That the rate of wages claimed is correct. If denied, state the average weekly wage pursuant to Idaho Code, Section 72-419: \$ \_\_\_\_\_
8. That the alleged employer was insured or permissibly self-insured under the Idaho Workers' Compensation Act.

10. What benefits, if any, do you concede are due Claimant?

None.

(COMPLETE OTHER SIDE)  
Appendix 3

Answer--Page 1 of 2

Continued

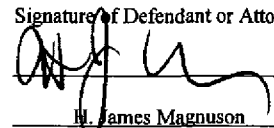
10. State with specificity what matters are in dispute and your reason for denying liability, together with any affirmative defenses.
1. Defendants deny each and every allegation of Claimant's Complaint not admitted herein.
  2. Defendants allege Claimant's condition is attributable in whole or in part to a preexisting injury, infirmity, or condition.
  3. Defendants allege that Claimant's claim is barred by the provisions of Idaho Code § 72-701.
  4. Defendants allege that Claimant's claim is barred by the provisions of Idaho Code § 72-706.
  5. Defendants allege that Claimant's claim is barred by the Idaho Supreme Court decisions Nycum v. Triangle Dairy Co. and Nelson v. Ponsness Warren.
  6. Defendants deny that Claimant's condition is a result of an accident arising out of and in the course of his employment and, therefore, deny that he is entitled to any benefits.
  7. Defendants further allege that Claimant's current condition is the result of subsequent activity and, therefore, not related to the alleged injury.
  8. Defendants allege that Claimant failed to give notice to the Employer within sixty (60) days after the accident.
  9. Defendants reserve the right to amend this Answer and/or raise additional defenses based on information discovered subsequent hereto.

Under the Commission rules, you have twenty-one (21) days from the date of service of the Complaint to answer the Complaint. A copy of your Answer must be mailed to the Commission and a copy must be served on all parties or their attorneys by regular U.S. mail or by personal service of process. Unless you deny liability, you should pay immediately the compensation required by law, and not cause the claimant, as well as yourself, the expense of a hearing. All compensation which is concededly due and accrued should be paid. Payments due should not be withheld because a Complaint has been filed. Rule 3.D, Judicial Rules of Practice and Procedure under the Idaho Workers' Compensation Law, applies. Complaints against the Industrial Special Indemnity Fund must be filed on Form I.C. 1002.

**I AM INTERESTED IN MEDIATING THIS CLAIM, IF THE OTHER PARTIES AGREE.**     YES     NO

DO YOU BELIEVE THIS CLAIM PRESENTS A NEW QUESTION OF LAW OR A COMPLICATED SET OF FACTS? IF SO, PLEASE STATE.

No.

Amount of Compensation Paid to Date			Dated	Signature of Defendant or Attorney
PPD	TTD	Medical		
-0-	-0-	-0-	June <u>14<sup>th</sup></u> , 2014	 H. James Magnuson

**PLEASE COMPLETE**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 14<sup>th</sup> day of June, 2014, I caused to be served a true and correct copy of the foregoing Answer upon:

CLAIMANT'S NAME AND ADDRESS

Richard Jobe  
c/o Stephen Nemece  
1626 Lincoln Way  
Coeur d'Alene, ID 83814

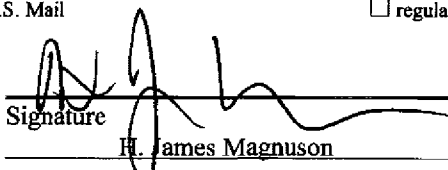
EMPLOYER AND SURETY'S NAME AND ADDRESS

INDUSTRIAL SPECIAL INDEMNITY FUND (if applicable)

via:  personal service of process  
 regular U.S. Mail

via:  personal service of process  
 regular U.S. Mail

via:  personal service of process  
 regular U.S. Mail

  
Signature  
H. James Magnuson

Answer--Page 2 of 2

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

RICHARD JOBE,

Claimant,

v.

DIRNE CLINIC/HERITAGE HEALTH,

Employer,

and

IDAHO STATE INSURANCE FUND,

Surety,

Defendants.

IC 2014-014091

NOTICE OF HEARING

FILED

SEP 04 2015

INDUSTRIAL COMMISSION

NOTICE IS HEREBY GIVEN that a hearing will be held in the above-entitled matter on **March 4, 2016, at 9:00 a.m. Pacific Time for one day**, in the Industrial Commission field office located at 1111 Ironwood Drive, Suite A, City of Coeur d'Alene, County of Kootenai, State of Idaho, on the following issues:

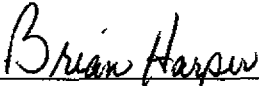
1. Whether Claimant has complied with the notice limitations set forth in Idaho Code § 72-701 through Idaho Code § 72-706, and whether these limitations are tolled pursuant to Idaho Code § 72-604;
2. Whether Claimant suffered a compensable injury from an accident arising out of and in the course of employment;
3. Whether Claimant suffers from a compensable occupational disease;
4. Determination of Claimant's average weekly wage;

5. Whether and to what extent Claimant is entitled to the following benefits:
  - a. Medical care;
  - b. Temporary partial and/or temporary total disability benefits (TPD/TTD);
  - c. Permanent partial impairment (PPI);
  - d. Permanent partial disability in excess of impairment, including total permanent disability pursuant to the odd-lot doctrine; and
  - e. Attorney fees;
6. Whether Claimant is totally and permanently disabled;
7. Whether the *Neel* doctrine applies to Claimant's past medical bills and in what amount; and
8. Whether the accident or occupational exposure alleged in the Complaint actually occurred on or about the time claimed.

If the above-entitled matter settles prior to hearing, the Commission must be notified **in writing**.

DATED this 4<sup>th</sup> day of September, 2015.

INDUSTRIAL COMMISSION

  
\_\_\_\_\_  
Brian Harper, Referee



**CERTIFICATE OF SERVICE**

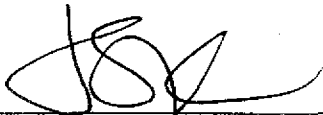
I hereby certify that on the 4th day of September, 2015, a true and correct copy of the foregoing **NOTICE OF HEARING** was served by United States **Certified Mail** upon each of the following:

STEPHEN NEMEC  
1626 LINCOLN WAY  
COEUR D ALENE ID 83814

JAMES MAGNUSON  
PO BOX 2288  
COEUR D ALENE ID 83816

And by email to:

INDUSTRIAL COMMISSION FO – CDA  
M&M COURT REPORTING – CDA



---

jsk

JAMES & VERNON & WEEKS, P.A.  
 Attorneys at Law  
 1626 Lincoln Way  
 Coeur d'Alene, ID 83814  
 Telephone: (208) 667-0683  
 Facsimile: (208)-664-1684

*Stephen J. Nemeec, ISB # 7591*  
*Attorneys for Claimant*

**BEFORE THE INDUSTRIAL COMMISSION  
 OF THE STATE OF IDAHO**

RICHARD JOBE,  
  
                                   Claimant,  
  
 vs.  
  
 DIRNE CLINIC/HERITAGE HEALTH,  
  
                                   Employer,  
  
 and  
  
 IDAHO STATE INSURANCE FUND,  
  
                                   Surety,  
  
                                   Defendants.

**CASE NO.: 2014-014091**

**CLAIMANT'S PRE-HEARING NOTICE  
 OF WITNESSES, EXHIBITS AND POST-  
 HEARING DEPOSITIONS**

**FILED**

**FEB 23 2016**

**INDUSTRIAL COMMISSION**

COMES NOW, Claimant, by and through his attorney of record, Stephen J. Nemeec of the firm James, Vernon & Weeks, P.A. and pursuant to Rule X of the Judicial Rules of Practice and Procedure of the Industrial Commission of the State of Idaho states as follows:

1. The hearing is on the issues of:
  1. Whether Claimant has complied with the notice limitations set forth in Idaho Code §72-201 through Idaho Code §72-706, and whether these limitations are tolled pursuant to Idaho Code §72-604;

**CLAIMANT'S PREHEARING NOTICE OF WITNESSES, EXHIBITS, AND POST-HEARING DEPOSITIONS-1**

JAMES & VERNON & WEEKS, P.A.  
Attorneys at Law  
1626 Lincoln Way  
Coeur d'Alene, ID 83814  
Telephone: (208) 667-0683  
Facsimile: (208)-664-1684

*Stephen J. Nemec, ISB # 7591*  
*Attorneys for Claimant*

**BEFORE THE INDUSTRIAL COMMISSION  
OF THE STATE OF IDAHO**

RICHARD JOBE,

Claimant,

vs.

DIRNE CLINIC/HERITAGE HEALTH,

Employer,

and

IDAHO STATE INSURANCE FUND,

Surety,

Defendants.

**CASE NO.: 2014-014091**

**CLAIMANT'S PRE-HEARING NOTICE  
OF WITNESSES, EXHIBITS AND POST-  
HEARING DEPOSITIONS**

2016 FEB 29 AM 11:04  
RECEIVED  
INDUSTRIAL COMMISSION

COMES NOW, Claimant, by and through his attorney of record, Stephen J. Nemec of the firm James, Vernon & Weeks, P.A. and pursuant to Rule X of the Judicial Rules of Practice and Procedure of the Industrial Commission of the State of Idaho states as follows:

1. The hearing is on the issues of:
  1. Whether Claimant has complied with the notice limitations set forth in Idaho Code §72-201 through Idaho Code §72-706, and whether these limitations are tolled pursuant to Idaho Code §72-604;

2. Whether Claimant suffers from a compensable occupational disease;
  3. The parties stipulated that Claimant is entitled to the maximum benefits available under Title 72 for purposes of AWW calculations at the February 19, 2016, pre-hearing conference;
  4. Whether and to what extent, Claimant is entitled to the following benefits:
    - a. Medical Care;
    - b. Temporary Partial and/or Temporary Total Disability benefits (TPD/TTD);
    - c. Permanent Partial Impairment;
    - d. Permanent Partial Disability in Excess of Impairment, including Total Permanent Disability Pursuant to Odd-Lot Doctrine; and
    - e. Attorney Fees
  5. Whether Claimant is totally and permanently disabled;
  6. Whether the *Neel* doctrine applies to Claimant's past medical bills and in what amount; and
  7. Whether the occupational exposure alleged in the Complaint actually occurred on or about the time claimed.
2. It is not believed this case will settle prior to hearing.
  3. Claimant will rely on exhibits listed in Defendants Prehearing Notice of Exhibits and will also introduce the following exhibits:
    - A. SSA Wage History, 2013 W-2 from Dirne, 2 Pay Checks in 2013
    - B. Legislative History of 2001 Amendment to I.C. 72-438
    - C. Letters of Reference for Dr. Jobe from 2004
    - D. CV of Dr. Jobe
    - E. Navy Discharge Paperwork
    - F. Get Well Soon Card from Dirne/Heritage


- G. Redacted Medical Record of Colonized MRSA Patient
- H. Kootenai Hand and Reconstructive Surgery
- I. Spokane Internal Medicine
- J. Infectious Disease Medicine
- K. Kootenai Medical Center (a.k.a. Kootenai Health)
- L. North Idaho Advanced Care Hospital
- M. St. Luke's Rehabilitation
- N. Life Care Center of Post Falls
- O. Inland Imaging
- P. Sacred Heart Medical Center
- Q. CDA Spine & Neurosurgery
- R. Bowen Orthopedic
- S. Dr. McNulty IME Report
- T. Fred Cutler M. Ed. Report
- U. Dr. Hull IME Report
- V. Articles Referenced in Dr. Hull Report
- W. Medical Bills for Treating Providers
- X. Miscellaneous Prescription Bills
- Y. Deposition Transcript of Deb Gutierrez CMA (Taken 2-23-16)

Claimant reserves the right to supplement the above exhibit listing.

4. It is expected that the Claimant will testify live at hearing along with lay witnesses Idalla Jobe and Brian Jobe. It is also expected that Dr. McNulty, Dr. Souvenir, Dr. Hull and Fred Cutler may testify via post-hearing deposition or at hearing as their schedule permits. Claimant reserves the right to depose additional treating physicians as needed.

DATED this 23<sup>rd</sup> day of February, 2016.

JAMES, VERNON & WEEKS, P.A.

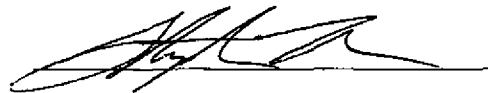


Stephen J. Nemecek  
Attorney for Claimant

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 23<sup>rd</sup> day of February, 2016, a true and correct copy of the foregoing document was served upon the following individuals by the method indicated below:

H. James Magnuson 1250 Northwood Center Court P.O. Box 2288 Coeur d'Alene, Idaho 83816 <i>Atty. for Employer &amp; Surety</i>		
<input type="checkbox"/>	Mailed	Mailed
<input checked="" type="checkbox"/>	By Hand	By Hand
<input type="checkbox"/>	Overnight Mail	Overnight Mail
<input type="checkbox"/>	Fax: 666-1700	Fax



JAMES & VERNON & WEEKS, P.A.  
 Attorneys at Law  
 1626 Lincoln Way  
 Coeur d'Alene, ID 83814  
 Telephone: (208) 667-0683  
 Facsimile: (208)-664-1684

*Stephen J. Nemec, ISB # 7591*  
*Attorneys for Claimant*

**BEFORE THE INDUSTRIAL COMMISSION  
 OF THE STATE OF IDAHO**

RICHARD JOBE,

Claimant,

vs.

DIRNE CLINIC/HERITAGE HEALTH,

Employer,

and

IDAHO STATE INSURANCE FUND,

Surety,

Defendants.

**CASE NO.: 2014-014091**

**CLAIMANT'S AMENDED PRE-  
 HEARING NOTICE OF WITNESSES,  
 EXHIBITS AND POST-HEARING  
 DEPOSITIONS**

**FILED**

**FEB 23 2016**

**INDUSTRIAL COMMISSION**

COMES NOW, Claimant, by and through his attorney of record, Stephen J. Nemec of the firm James, Vernon & Weeks, P.A. and pursuant to Rule X of the Judicial Rules of Practice and Procedure of the Industrial Commission of the State of Idaho states as follows:

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JAMES & VERNON & WEEKS, P.A.  
Attorneys at Law  
1626 Lincoln Way  
Coeur d'Alene, ID 83814  
Telephone: (208) 667-0683  
Facsimile: (208)-664-1684

*Stephen J. Nemec, ISB # 7591*  
*Attorneys for Claimant*

**BEFORE THE INDUSTRIAL COMMISSION  
OF THE STATE OF IDAHO**

RICHARD JOBE,

Claimant,

vs.

DIRNE CLINIC/HERITAGE HEALTH,

Employer,

and

IDAHO STATE INSURANCE FUND,

Surety,

Defendants.

CASE NO.: 2014-014091

**CLAIMANT'S AMENDED PRE-  
HEARING NOTICE OF WITNESSES,  
EXHIBITS AND POST-HEARING  
DEPOSITIONS**

2016 FEB 29 AM 11:04  
RECEIVED  
INDUSTRIAL COMMISSION

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- X. Miscellaneous Prescription Bills
- Y. Deposition Transcript of Deb Gutierrez CMA
- Z. Defendants Answers to Discovery

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Cutler may testify via post-hearing deposition or at hearing as their schedule permits. Claimant reserves the right to depose additional treating physicians as needed.

DATED this 23<sup>rd</sup> day of February, 2016.

JAMES, VERNON & WEEKS, P.A.

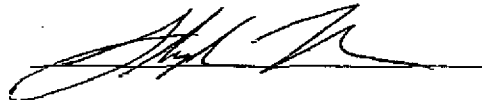


Stephen J. Nemec  
Attorney for Claimant

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 23<sup>rd</sup> day of February, 2016, a true and correct copy of the foregoing document was served upon the following individuals by the method indicated below:

H. James Magnuson 1250 Northwood Center Court P.O. Box 2288 Coeur d'Alene, Idaho 83816 <i>Atty. for Employer &amp; Surety</i>		
<input type="checkbox"/>	Mailed	Mailed
<input checked="" type="checkbox"/>	By Hand	By Hand
<input type="checkbox"/>	Overnight Mail	Overnight Mail
<input type="checkbox"/>	Fax: 666-1700	Fax



H. JAMES MAGNUSON  
Attorney at Law  
1250 Northwood Center Court, Ste. A  
P. O. Box 2288  
Coeur d'Alene, Idaho 83816  
Telephone: (208) 666-1596  
Fax: (208) 666-1700

Attorney for Defendants

BEFORE THE INDUSTRIAL COMMISSION  
OF THE STATE OF IDAHO

RICHARD JOBE,

Claimant,

vs.

DIRNE CLINIC/HERITAGE HEALTH,

Employer,

STATE INSURANCE FUND,

Surety,  
Defendants.

I.C. NO. 2014-0145<sup>oal</sup>~~564~~

**PREHEARING COMPLIANCE OF  
DEFENDANTS EMPLOYER/SURETY  
AND NOTICE OF COMPLIANCE**

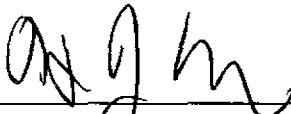
2016 FEB 25 AM 10:15  
RECEIVED  
INDUSTRIAL COMMISSION

COMES NOW, Defendants, DIRNE CLINIC/HERITAGE HEALTH, Employer, and STATE INSURANCE FUND, Surety, by and through H. James Magnuson, their attorney of record, and in compliance with Rule 10(C) of the Judicial Rules of Practice and Procedure submit their list of proposed Exhibits attached hereto as **Exhibit A**.

PLEASE TAKE NOTICE that, on the 23 day of February, 2016, true and correct copies of the exhibits referred to on **Exhibit A** hereto were served by first-class, prepaid mail, addressed to:

Stephen J. Nemecek  
James, Vernon & Weeks, P.A.  
1626 Lincoln Way  
Coeur d'Alene, ID 83814

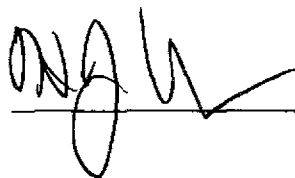
DATED this 22 day of February, 2016.

  
\_\_\_\_\_  
H. JAMES MAGNUSON  
Attorney for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing was sent by first-class, prepaid mail on the 22 day of February, 2016, to:

Stephen J. Nemecek  
James, Vernon & Weeks, P.A.  
1626 Lincoln Way  
Coeur d'Alene, ID 83814

  
\_\_\_\_\_

**EXHIBIT A**

**LIST OF EXHIBITS  
OF DEFENDANTS EMPLOYER/SIF**

**I.C. NUMBER:** 2014-014564

**DATE OF HEARING:** March 4, 2016

**TITLE OF CASE:** Richard Jobe, Claimant v. Dirne Clinic/Heritage Health, Employer, and  
State Insurance Fund, Surety

1. Employer records
2. Medical records of Patrick Mullen, M.D.
3. Medical records of Kootenai Medical Center
4. Medical records of Francis X. Riedo, M.D.
5. Medical records of David B. Souvenir, M.D.
6. Francis X. Riedo, M.D., Curriculum Vitae

H. JAMES MAGNUSON  
Attorney at Law  
1250 Northwood Center Ct, Ste A  
P.O. Box 2288  
Coeur d'Alene, Idaho 83816  
Telephone: (208) 666-1596  
Facsimile: (208) 666-1700  
ISB # 02480

Attorney for Defendants

BEFORE THE INDUSTRIAL COMMISSION  
OF THE STATE OF IDAHO

RICHARD JOBE,

Claimant,

vs.

DIRNE CLINIC/HERITAGE HEALTH,

Employer,

STATE INSURANCE FUND,

Surety,  
Defendants.

I.C. NO. 2014-014091

**SUPPLEMENTAL PREHEARING  
COMPLIANCE OF DEFENDANTS  
EMPLOYER/SURETY AND NOTICE  
OF COMPLIANCE**

**FILED**

**FEB 29 2016**

**INDUSTRIAL COMMISSION**

COMES NOW, Defendants, DIRNE CLINIC/HERITAGE HEALTH, Employer, and STATE INSURANCE FUND, Surety, by and through H. James Magnuson, their attorney of record, and in compliance with Rule 10(C) of the Judicial Rules of Practice and Procedure and submit their Supplemental List of Proposed Exhibits attached hereto as **Exhibit A**.

SUPPLEMENTAL PREHEARING COMPLIANCE OF DEFENDANTS EMPLOYER/SURETY AND NOTICE OF COMPLIANCE

H. JAMES MAGNUSON  
Attorney at Law  
1250 Northwood Center Ct, Ste A  
P.O. Box 2288  
Coeur d'Alene, Idaho 83816  
Telephone: (208) 666-1596  
Facsimile: (208) 666-1700  
ISB # 02480

Attorney for Defendants

BEFORE THE INDUSTRIAL COMMISSION  
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RICHARD JOBE,

Claimant,

vs.

DIRNE CLINIC/HERITAGE HEALTH,

Employer,

STATE INSURANCE FUND,

Surety,  
Defendants.

I.C. NO. 2014-014091

**SUPPLEMENTAL PREHEARING  
COMPLIANCE OF DEFENDANTS  
EMPLOYER/SURETY AND NOTICE  
OF COMPLIANCE**

2016 MAR -2 AM 10:23  
RECEIVED  
INDUSTRIAL COMMISSION

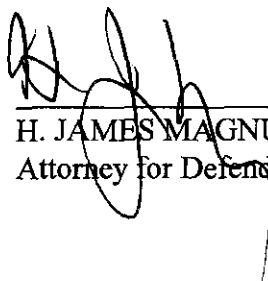
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PLEASE TAKE NOTICE that on the 29 day of February, 2016, a true and correct copy of the exhibit referred to on **Exhibit A** hereto was served by first class, prepaid mail, addressed to:

Stephen J. Nemec  
James, Vernon & Weeks, P.A.  
1626 Lincoln Way  
Coeur d'Alene, ID 83814

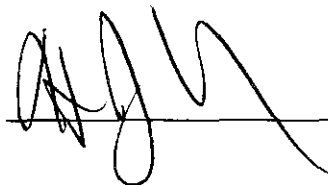
DATED this 29 day of February, 2016.

  
\_\_\_\_\_  
H. JAMES MAGNUSON  
Attorney for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing was sent by first-class, prepaid mail on the 29 day of February, 2016, to:

Stephen J. Nemec  
James, Vernon & Weeks, P.A.  
1626 Lincoln Way  
Coeur d'Alene, ID 83814

  
\_\_\_\_\_

**EXHIBIT A**

**LIST OF EXHIBITS  
OF DEFENDANTS EMPLOYER/SIF**

**I.C. NUMBER:** 2014-014091

**DATE OF HEARING:** March 4, 2016

**TITLE OF CASE:** Richard Jobe, Claimant v. Dirne Clinic/Heritage Health, Employer, and  
State Insurance Fund, Surety

7. Medical records of Francis X. Riedo, M.D., dated February 27, 2016

JAMES & VERNON & WEEKS, P.A.  
Attorneys at Law  
1626 Lincoln Way  
Coeur d'Alene, ID 83814  
Telephone: (208) 667-0683  
Facsimile: (208)-664-1684

*Stephen J. Nemeec, ISB # 7591*  
*Attorneys for Claimant*

**BEFORE THE INDUSTRIAL COMMISSION  
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RICHARD JOBE,

Claimant,

vs.

DIRNE CLINIC/HERITAGE HEALTH,

Employer,

and

IDAHO STATE INSURANCE FUND,

Surety,

Defendants.

CASE NO.: 2014-014091

**CLAIMANT'S SECOND AMENDED  
PRE-HEARING NOTICE OF  
WITNESSES, EXHIBITS AND POST-  
HEARING DEPOSITIONS**

**FILED**

**MAR - 3 2016**

**INDUSTRIAL COMMISSION**

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**CLAIMANT'S PREHEARING NOTICE OF WITNESSES, EXHIBITS, AND POST-HEARING DEPOSITIONS-1**

JAMES & VERNON & WEEKS, P.A.  
Attorneys at Law  
1626 Lincoln Way  
Coeur d'Alene, ID 83814  
Telephone: (208) 667-0683  
Facsimile: (208)-664-1684

*Stephen J. Nemec, ISB # 7591*  
*Attorneys for Claimant*

**BEFORE THE INDUSTRIAL COMMISSION  
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RICHARD JOBE,

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Surety,

Defendants.

**CASE NO.: 2014-014091**

**CLAIMANT'S SECOND AMENDED  
PRE-HEARING NOTICE OF  
WITNESSES, EXHIBITS AND POST-  
HEARING DEPOSITIONS**

2016 MAR -7 AM 11:17  
RECEIVED  
INDUSTRIAL COMMISSION

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- T. Fred Cutler M. Ed. Report
- U. Dr. Hull IME Report
- V. Articles Referenced in Dr. Hull Report
- W. Medical Bills for Treating Providers
- X. Miscellaneous Prescription Bills
- Y. Deposition Transcript of Deb Gutierrez CMA
- Z. Defendants Answers to Discovery
- AA. Updated Kootenai Health Records Reflecting Feb. 2016 Stroke


Claimant reserves the right to supplement the above exhibit listing.

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DATED this 3<sup>rd</sup> day of March, 2016.

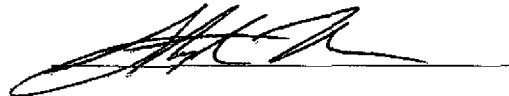
JAMES, VERNON & WEEKS, P.A.

  
 Stephen J. Nemecek  
 Attorney for Claimant

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H. James Magnuson 1250 Northwood Center Court P.O. Box 2288 Coeur d'Alene, Idaho 83816 <i>Atty. for Employer &amp; Surety</i>		
	Mailed	Mailed
X	By Hand	By Hand
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	Fax: 666-1700	Fax



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I.C. No.: 2014-014091

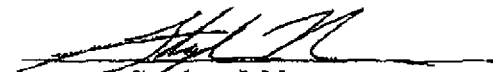
**NOTICE OF FILING THE POST-  
HEARING DEPOSITION TRANSCRIPT  
OF DR. HULL**

**FILED  
JUN -7 2016  
INDUSTRIAL COMMISSION**

NOTICE IS HEREBY GIVEN of the filing of the transcript of the post-hearing deposition transcript of **Dr. Harry Hull** in the above matter this 7<sup>th</sup> day of June, 2016.

DATED this 7<sup>th</sup> day of June, 2016.

JAMES, VERNON & WEEKS, P.A.

  
Stephen J. Nemeec  
Attorney for Claimant

NOTICE OF FILING THE POST-HEARING DEPOSITION TRANSCRIPT OF DR. HULL-1



JAMES & VERNON & WEEKS, P.A.  
Attorneys at Law  
1626 Lincoln Way  
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IDAHO STATE INSURANCE FUND,

Surety,

Defendants.

I.C. No.: 2014-014091

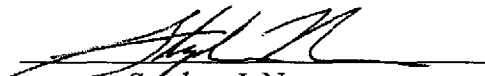
**NOTICE OF FILING THE POST-  
HEARING DEPOSITION TRANSCRIPT  
OF DR. HULL**

RECEIVED  
INDUSTRIAL COMMISSION  
2016 JUN -9 AM 10:06

NOTICE IS HEREBY GIVEN of the filing of the transcript of the post-hearing deposition transcript of **Dr. Harry Hull** in the above matter this 7<sup>th</sup> day of June, 2016.

DATED this 7<sup>th</sup> day of June, 2016.

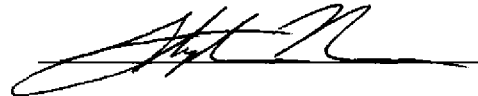
JAMES, VERNON & WEEKS, P.A.

  
Stephen J. Nemeec  
Attorney for Claimant

**CERTIFICATE OF SERVICE**

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H. James Magnuson 1250 Northwood Center Court P.O. Box 2288 Coeur d'Alene, Idaho 83816 <i>Atty. for Employer &amp; Surety</i>		
<input type="checkbox"/>	Mailed	Mailed
<input type="checkbox"/>	By Hand	By Hand
<input type="checkbox"/>	Overnight Mail	Overnight Mail
<input checked="" type="checkbox"/>	Fax: 666-1700	Fax:



JAMES & VERNON & WEEKS, P.A.  
Attorneys at Law  
1626 Lincoln Way  
Coeur d'Alene, ID 83814  
Telephone: (208) 667-0683  
Facsimile: (208)-664-1684

*Stephen J. Nemeec, ISB # 7591*  
*Attorneys for Claimant*

**BEFORE THE INDUSTRIAL COMMISSION  
OF THE STATE OF IDAHO**

RICHARD JOBE,

Claimant,

vs.

DIRNE CLINIC/HERITAGE HEALTH,

Employer,

and

IDAHO STATE INSURANCE FUND,

Surety,

Defendants.

I.C. No.: 2014-014091

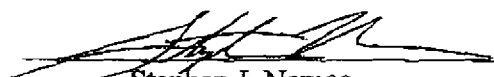
**NOTICE OF FILING THE POST-  
HEARING DEPOSITION TRANSCRIPT  
OF DR. MCNULTY**

**FILED  
JUN - 7 2016  
INDUSTRIAL COMMISSION**

NOTICE IS HEREBY GIVEN of the filing of the transcript of the post-hearing deposition transcript of **Dr. John McNulty** in the above matter this 7<sup>th</sup> day of June, 2016.

DATED this 7<sup>th</sup> day of June, 2016.

JAMES, VERNON & WEEKS, P.A.

  
Stephen J. Nemeec  
Attorney for Claimant

NOTICE OF FILING THE POST-HEARING DEPOSITION TRANSCRIPT OF DR. MCNULTY-1

JAMES & VERNON & WEEKS, P.A.  
Attorneys at Law  
1626 Lincoln Way  
Coeur d'Alene, ID 83814  
Telephone: (208) 667-0683  
Facsimile: (208)-664-1684

*Stephen J. Nemec, ISB # 7591*  
*Attorneys for Claimant*

**BEFORE THE INDUSTRIAL COMMISSION  
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RICHARD JOBE,

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vs.

DIRNE CLINIC/HERITAGE HEALTH,

Employer,

and

IDAHO STATE INSURANCE FUND,

Surety,

Defendants.

**I.C. No.: 2014-014091**


**NOTICE OF FILING THE POST-  
HEARING DEPOSITION TRANSCRIPT  
OF DR. MCNULTY**

RECEIVED  
INDUSTRIAL COMMISSION  
2016 JUN -9 AM 10:05

NOTICE IS HEREBY GIVEN of the filing of the transcript of the post-hearing deposition transcript of **Dr. John McNulty** in the above matter this 7<sup>th</sup> day of June, 2016.

DATED this 7<sup>th</sup> day of June, 2016.

JAMES, VERNON & WEEKS, P.A.

  
Stephen J. Nemec  
Attorney for Claimant

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 7<sup>th</sup> day of June, 2016, a true and correct copy of the foregoing document was served upon the following individuals by the method indicated below:

H. James Magnuson 1250 Northwood Center Court P.O. Box 2288 Coeur d'Alene, Idaho 83816 <i>Atty. for Employer &amp; Surety</i>		
<input type="checkbox"/>	Mailed	Mailed
<input type="checkbox"/>	By Hand	By Hand
<input type="checkbox"/>	Overnight Mail	Overnight Mail
<input checked="" type="checkbox"/>	Fax: 666-1700	Fax:



JAMES & VERNON & WEEKS, P.A.  
Attorneys at Law  
1626 Lincoln Way  
Coeur d'Alene, ID 83814  
Telephone: (208) 667-0683  
Facsimile: (208)-664-1684

*Stephen J. Nemeec, ISB # 7591*  
*Attorneys for Claimant*

**BEFORE THE INDUSTRIAL COMMISSION  
OF THE STATE OF IDAHO**

RICHARD JOBE,

Claimant,

vs.

DIRNE CLINIC/HERITAGE HEALTH,

Employer,

and

IDAHO STATE INSURANCE FUND,

Surety,

Defendants.

I.C. No.: 2014-014091

**NOTICE OF FILING THE POST-  
HEARING DEPOSITION TRANSCRIPT  
OF DR. SOUVENIR**

FILED

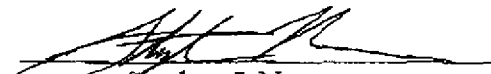
JUN -7 2016

INDUSTRIAL COMMISSION

NOTICE IS HEREBY GIVEN of the filing of the transcript of the post-hearing deposition transcript of **Dr. David Souvenir** in the above matter this 7<sup>th</sup> day of June, 2016.

DATED this 7<sup>th</sup> day of June, 2016.

JAMES, VERNON & WEEKS, P.A.

  
Stephen J. Nemeec  
Attorney for Claimant

NOTICE OF FILING THE POST-HEARING DEPOSITION TRANSCRIPT OF DR. SOUVENIR-1

JAMES & VERNON & WEEKS, P.A.  
Attorneys at Law  
1626 Lincoln Way  
Coeur d'Alene, ID 83814  
Telephone: (208) 667-0683  
Facsimile: (208)-664-1684

*Stephen J. Nemec, ISB # 7591*  
*Attorneys for Claimant*

**BEFORE THE INDUSTRIAL COMMISSION  
OF THE STATE OF IDAHO**

RICHARD JOBE,

Claimant,

vs.

DIRNE CLINIC/HERITAGE HEALTH,

Employer,

and

IDAHO STATE INSURANCE FUND,

Surety,

Defendants.

**I.C. No.: 2014-014091**

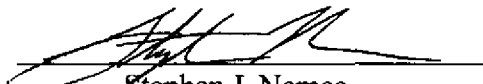
**NOTICE OF FILING THE POST-  
HEARING DEPOSITION TRANSCRIPT  
OF DR. SOUVENIR**

RECEIVED  
INDUSTRIAL COMMISSION  
JUN 9 9 44 AM '16

NOTICE IS HEREBY GIVEN of the filing of the transcript of the post-hearing deposition transcript of **Dr. David Souvenir** in the above matter this 7<sup>th</sup> day of June, 2016.

DATED this 7<sup>th</sup> day of June, 2016.

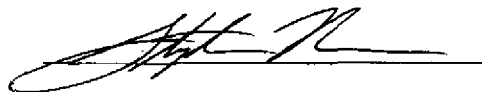
JAMES, VERNON & WEEKS, P.A.

  
Stephen J. Nemec  
Attorney for Claimant

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 7<sup>th</sup> day of June, 2016, a true and correct copy of the foregoing document was served upon the following individuals by the method indicated below:

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JAMES & VERNON & WEEKS, P.A.  
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1626 Lincoln Way  
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Facsimile: (208)-664-1684

*Stephen J. Nemec, ISB # 7591*  
*Attorneys for Claimant*

**BEFORE THE INDUSTRIAL COMMISSION  
OF THE STATE OF IDAHO**

RICHARD JOBE,

Claimant,

vs.

DIRNE CLINIC/HERITAGE HEALTH,

Employer,

and

IDAHO STATE INSURANCE FUND,

Surety,

Defendants.

I.C. No.: 2014-014091

**NOTICE OF FILING THE POST-  
HEARING DEPOSITION TRANSCRIPT  
OF FRED CUTLER**

**FILED**

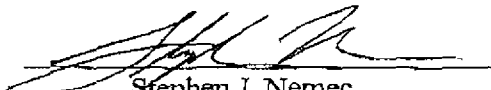
**JUN - 7 2016**

**INDUSTRIAL COMMISSION**

NOTICE IS HEREBY GIVEN of the filing of the transcript of the post-hearing deposition transcript of **Fred Cutler** in the above matter this 7<sup>th</sup> day of June, 2016.

DATED this 7<sup>th</sup> day of June, 2016.

JAMES, VERNON & WEEKS, P.A.

  
Stephen J. Nemec  
Attorney for Claimant

NOTICE OF FILING THE POST-HEARING DEPOSITION TRANSCRIPT OF FRED CUTLER-1

JAMES & VERNON & WEEKS, P.A.  
Attorneys at Law  
1626 Lincoln Way  
Coeur d'Alene, ID 83814  
Telephone: (208) 667-0683  
Facsimile: (208)-664-1684

*Stephen J. Nemec, ISB # 7591*  
*Attorneys for Claimant*

**BEFORE THE INDUSTRIAL COMMISSION  
OF THE STATE OF IDAHO**

RICHARD JOBE,

Claimant,

vs.

DIRNE CLINIC/HERITAGE HEALTH,

Employer,

and

IDAHO STATE INSURANCE FUND,

Surety,

Defendants.

I.C. No.: 2014-014091

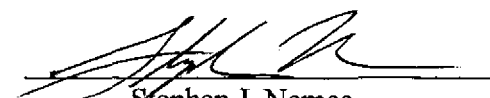
**NOTICE OF FILING THE POST-  
HEARING DEPOSITION TRANSCRIPT  
OF FRED CUTLER**

RECEIVED  
INDUSTRIAL COMMISSION  
2016 JUN -9 AM 10:05

NOTICE IS HEREBY GIVEN of the filing of the transcript of the post-hearing deposition transcript of **Fred Cutler** in the above matter this 7<sup>th</sup> day of June, 2016.

DATED this 7<sup>th</sup> day of June, 2016.

JAMES, VERNON & WEEKS, P.A.



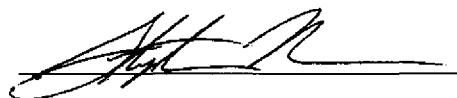
Stephen J. Nemec

Attorney for Claimant

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 7<sup>th</sup> day of June, 2016, a true and correct copy of the foregoing document was served upon the following individuals by the method indicated below:

H. James Magnuson 1250 Northwood Center Court P.O. Box 2288 Coeur d'Alene, Idaho 83816 <i>Atty. for Employer &amp; Surety</i>		
<input type="checkbox"/>	Mailed	Mailed
<input type="checkbox"/>	By Hand	By Hand
<input type="checkbox"/>	Overnight Mail	Overnight Mail
<input checked="" type="checkbox"/>	Fax: 666-1700	Fax:



BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

RICHARD JOBE,  
Claimant,

v.

DIRNE CLINIC/HERITAGE HEALTH,  
Employer,

and

IDAHO STATE INSURANCE FUND,  
Surety,  
Defendants.

IC 2014-014091

ORDER ESTABLISHING  
BRIEFING SCHEDULE

FILED

JUN 16 2016

INDUSTRIAL COMMISSION

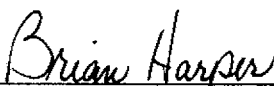
A hearing was held on March 4, 2016, in Coeur d'Alene, Idaho. Claimant was represented by Stephen Nemec of Coeur d'Alene, Idaho. Defendants were represented by James Magnuson, also of Coeur d'Alene, Idaho. Based on Claimant's request and notice that post-hearing depositions have been completed, the following briefing schedule is now hereby **ESTABLISHED**:

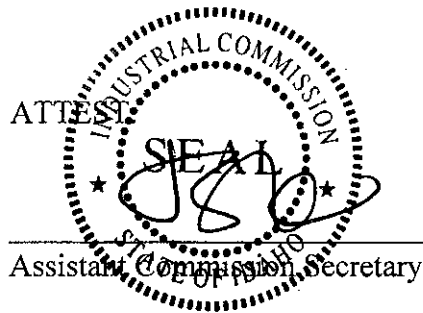
Claimant's opening brief shall be filed at the Commission on or before July 1, 2016. Defendants' responsive brief shall be filed on or before July 20, 2016. Claimant shall have until August 1, 2016 to file a reply brief, if desired. If Claimant declines to file a reply brief, the Commission must be notified in writing.

Pursuant to a directive from the Commissioners, **four (4) copies of all briefs shall be filed along with the original to facilitate review of cases.**

DATED this 16<sup>th</sup> day of June, 2016.

INDUSTRIAL COMMISSION

  
\_\_\_\_\_  
Brian Harper, Referee

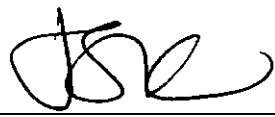


**CERTIFICATE OF SERVICE**

I hereby certify that on the 16<sup>th</sup> day of June, 2016, a true and correct copy of the foregoing **ORDER ESTABLISHING BRIEFING SCHEDULE** was served by facsimile transmission upon each of the following:

STEPHEN NEMEC  
*Fax No.:* (208) 664-1684

JAMES MAGNUSON  
*Fax No.:* (208) 666-1700



---

jsk

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

RICHARD JOBE,  
Claimant,

v.

DIRNE CLINIC/HERITAGE HEALTH,  
Employer,

and

IDAHO STATE INSURANCE FUND,  
Surety,  
Defendants.

IC 2014-014091

**ORDER ON MOTION FOR ADDITIONAL  
TIME TO FILE DEFENDANTS' BRIEF,  
and AMENDED BRIEFING SCHEDULE**

**FILED**

**JUN 20 2016**

INDUSTRIAL COMMISSION

On or about June 16, 2016, an Order issued from the Commission setting the briefing schedule in the instant proceedings. Based upon Claimant's request, and in light of his physical condition, a modified schedule was established. Under the schedule, Defendants' brief is due on or before July 20, 2016.

On June 16, 2016, Defendants requested additional time, until August 8, 2016, to file their responsive brief, in part due to counsel's prior plans to be out of the office from July 14 through July 24, 2016. (The fact that Dr. Riedo's original transcript had not arrived by June 16 is immaterial as a copy of that transcript was delivered on June 13. The notion that the doctor will make mass changes to his testimony is so unlikely as to be dismissed. The only viable argument Defendants make is unavailability of counsel after July 13.) Given defense counsel's calendar, the current schedule would require counsel to prepare Defendants' brief by July 13, or thirteen days after Claimant's brief, although still over a month removed from the scheduling order. While in the abstract such a time frame seems reasonable, the undersigned realizes counsel does not have this brief as his only project to complete in the interim.

**ORDER ON MOTION FOR ADDITIONAL TIME TO FILE DEFENDANTS' BRIEF, and  
AMENDED BRIEFING SCHEDULE - 1**

By way of comparison, the Idaho Rules of Civil Procedure give a responding party fourteen days to file whatever briefing the party chooses in opposition to a motion for summary judgment. The Idaho Appellate Rules allows a respondent twenty eight days to prepare appellate briefing. In the present case, Defendants have twenty-seven days from the scheduling order to file a brief, and thirteen days to tailor such briefing to whatever issues from Claimant's briefing they choose to rebut. While the current schedule is not unreasonable, in light of counsel's unavailability between July 14 and July 24, Defendants' motion is GRANTED in part, and the following AMENDED briefing schedule is ORDERED:

Claimant's opening brief is due on or before July 1, 2016. Defendants' responsive brief is due on or before August 1, 2016. Claimant shall have until August 10, 2016 to file a reply brief. If Claimant declines to file a reply brief, he should let the Commission know, in writing, of such decision. The copy requirement remains unchanged.

DATED this 20th day of June, 2016.

INDUSTRIAL COMMISSION

  
\_\_\_\_\_  
Brian Harper, Referee

ATTEST



\_\_\_\_\_  
Assistant Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on the 20<sup>th</sup> day of June, 2016, a true and correct copy of the foregoing **ORDER ON MOTION FOR ADDITIONAL TIME TO FILE DEFENDANTS' BRIEF, and AMENDED BRIEFING SCHEDULE** was served by facsimile transmission upon each of the following:

STEPHEN NEMEC  
*Fax No.: (208) 664-1684*

JAMES MAGNUSON  
*Fax No.: (208) 666-1700*



---

jsk



H. JAMES MAGNUSON  
Attorney at Law  
1250 Northwood Center Court  
P.O. Box 2288  
Coeur d'Alene, Idaho 83816  
Telephone: (208) 666-1596  
Facsimile: (208) 666-1700  
ISB # 02480

Attorney for Defendants

BEFORE THE INDUSTRIAL COMMISSION  
OF THE STATE OF IDAHO

RICHARD JOBE,  
  
Claimant,  
  
vs.  
  
DIRNE CLINIC/HERITAGE HEALTH,  
  
Employer,  
  
STATE INSURANCE FUND,  
  
Surety,  
Defendants.

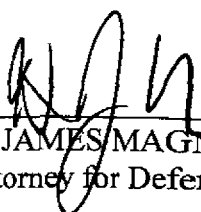
I.C. NO. 2014-014091

**NOTICE OF LODGING**

**FILED**  
**JUN 24 2016**  
**INDUSTRIAL COMMISSION**

COMES NOW, DIRNE CLINIC/HERITAGE HEALTH, Employer, and STATE INSURANCE FUND, Surety, Defendants herein, by and through H. JAMES MAGNUSON, their attorney of record, and hereby give notice that the transcript of the deposition of FRANCIS RIEDO, M.D., taken on June 3, 2016, has been lodged with the Industrial Commission.

DATED this 22 day of June, 2016.

  
\_\_\_\_\_  
H. JAMES MAGNUSON  
Attorney for Defendants

CERTIFICATE OF MAILING

I hereby certify that a true and exact copy of the foregoing was sent by first-class, prepaid mail on the 22 day of June, 2016, to:

Stephen J. Nemec  
James, Vernon & Weeks, P.A.  
1626 Lincoln Way  
Coeur d'Alene, ID 83814



---

JAMES & VERNON & WEEKS, P.A.  
Attorneys at Law  
1626 Lincoln Way  
Coeur d'Alene, ID 83814  
Telephone: (208) 667-0683  
Facsimile: (208)-664-1684

*Stephen J. Nemec, ISB # 7591*  
*Attorneys for Claimant*

**BEFORE THE INDUSTRIAL COMMISSION  
OF THE STATE OF IDAHO**

RICHARD JOBE,

Claimant,

vs.

DIRNE CLINIC/HERITAGE HEALTH,

Employer,

and

IDAHO STATE INSURANCE FUND,

Surety,

Defendants.

CASE NO.: 2014-014091

**CLAIMANT'S MOTION TO ADMIT  
NETHERLANDS STUDY**

FILED  
JUL - 1 2016  
INDUSTRIAL COMMISSION

COMES NOW, Claimant, by and through his attorney of record, Stephen J. Nemec of the firm James, Vernon & Weeks, P.A. and hereby moves for the introduction of the Netherlands study referenced by Dr. Riedo in the *Dulon* article that was first disclosed to the Claimant at Dr. Riedo's post-hearing deposition on June 3, 2016.

CLAIMANT'S MOTION TO ADMIT NETHERLANDS STUDY-1

JAMES & VERNON & WEEKS, P.A.  
Attorneys at Law  
1626 Lincoln Way  
Coeur d'Alene, ID 83814  
Telephone: (208) 667-0683  
Facsimile: (208)-664-1684

*Stephen J. Nemec, ISB # 7591*  
*Attorneys for Claimant*

**BEFORE THE INDUSTRIAL COMMISSION  
OF THE STATE OF IDAHO**

RICHARD JOBE,

Claimant,

vs.

DIRNE CLINIC/HERITAGE HEALTH,

Employer,

and

IDAHO STATE INSURANCE FUND,

Surety,

Defendants.

**CASE NO.: 2014-014091**

**CLAIMANT'S MOTION TO ADMIT  
NETHERLANDS STUDY**

2016 JUN -5 AM 11:15  
RECEIVED  
INDUSTRIAL COMMISSION  
OF THE STATE OF IDAHO

COMES NOW, Claimant, by and through his attorney of record, Stephen J. Nemec of the firm James, Vernon & Weeks, P.A. and hereby moves for the introduction of the Netherlands study referenced by Dr. Riedo in the *Dulon* article that was first disclosed to the Claimant at Dr. Riedo's post-hearing deposition on June 3, 2016.

## I. BACKGROUND

On June 3, 2016, Defendants introduced the *Dulon* article at the post-hearing deposition of Dr. Riedo. This was the first time Claimant's counsel had ever seen this study as it is necessary to pay a fee in order to access the journal articles referenced by Dr. Riedo and Dr. Hull in their reports. At Dr. Riedo's deposition, the following exchange occurred regarding the admission of the *Dulon* article as Exhibit 4:

MR. MAGNUSON: I would – I would move for admission of Exhibit 4<sup>1</sup>. And if you can restate your objection or you want – say it as you've already stated? Either way is fine with me.

MR. NEMEC: Yeah. Same objection. Claimant's counsel has not seen this report until today, where we're seeing this for the first time, so I've not had an opportunity to review it. And we did, in fact, introduce all of our reports that Dr. Hull referenced, so Dr. Riedo had an opportunity to review. Dr. Hull never had a chance to review this report. (Riedo Depo. pgs. 38-39)

## II. DISCUSSION

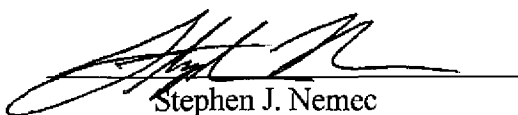
Claimant's counsel is willing to withdraw all objections to the introduction of the *Dulon* article made at the deposition of Dr. Riedo as long as the Commission is also able to review the underlying Netherland's study upon which the *Dulon* article relies to take the pooled MRSA colonization rate of health care workers from 4.4% to 1.8% in non-outbreak settings. Claimant was unable to review or introduce the Netherlands study until after the *Dulon* article had been introduced on June 3, 2016.

---

<sup>1</sup> Exhibit 4 is the *Dulon* article that relies chiefly on a study of laboratory employees in the Netherlands to arrive at a MRSA colonization rate for health care workers lower than the generally accepted average of 4-5%

DATED this 1<sup>st</sup> day of July, 2016.

JAMES, VERNON & WEEKS, P.A.

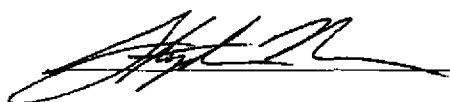


Stephen J. Nemecek  
Attorney for Claimant

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 1<sup>st</sup> day of July, 2016, a true and correct copy of the foregoing document was served upon the following individuals by the method indicated below:

H. James Magnuson 1250 Northwood Center Court P.O. Box 2288 Coeur d'Alene, Idaho 83816 <i>Atty. for Employer &amp; Surety</i>		
<input type="checkbox"/>	Mailed	Mailed
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<input checked="" type="checkbox"/>	Fax: 666-1700	Fax



JAMES, VERNON & WEEKS, P.A.  
 1626 Lincoln Way  
 Coeur d'Alene, ID 83814  
 Phone: 208-667-0683  
 Fax: 208-664-1684

*Stephen Nemeć ISB # 7591  
 Attorney for Claimant*

**BEFORE THE INDUSTRIAL COMMISSION  
 OF THE STATE OF IDAHO**

RICHARD JOBE,  <p style="text-align: center;">Claimant,</p> vs.  DIRNE CLINIC/HERITAGE HEALTH,  <p style="text-align: center;">Employer,</p> and  IDAHO STATE INSURANCE FUND,  <p style="text-align: center;">Surety,                   Defendants.</p>	<p style="text-align: right;"><b>CASE NO.: 2014-014091</b></p>  <p style="text-align: center;"><b>CLAIMANT'S ATTORNEY                  AFFIDAVIT IN SUPPORT OF                  MOTION TO ADMIT                  NETHERLANDS STUDY</b></p>  <p style="text-align: center;"><b>FILED</b></p> <p style="text-align: center;"><b>JUL - 1 2016</b></p> <p style="text-align: center;"><b>INDUSTRIAL COMMISSION</b></p>
---	--

County of Kootenai    )  
                                       ) ss  
 State of Idaho         )

I, Stephen J. Nemeć, being first duly sworn under oath, deposes and says:

- 1.) I am the Attorney of Record for the above-named Claimant and have personal knowledge of the facts stated in this Affidavit.

**CLAIMANT'S ATTORNEY AFFIDAVIT IN SUPPORT OF MOTION TO ADMIT  
 NETHERLANDS STUDY -1**

JAMES, VERNON & WEEKS, P.A.  
1626 Lincoln Way  
Coeur d'Alene, ID 83814  
Phone: 208-667-0683  
Fax: 208-664-1684

*Stephen Nemec ISB # 7591*  
*Attorney for Claimant*

**BEFORE THE INDUSTRIAL COMMISSION  
OF THE STATE OF IDAHO**

RICHARD JOBE,  
  
                    Claimant,  
  
vs.  
  
DIRNE CLINIC/HERITAGE HEALTH,  
  
                    Employer,  
  
and  
  
IDAHO STATE INSURANCE FUND,  
  
                    Surety,  
  
                    Defendants.

**CASE NO.: 2014-014091**

**CLAIMANT'S ATTORNEY  
AFFIDAVIT IN SUPPORT OF  
MOTION TO ADMIT  
NETHERLANDS STUDY**

RECEIVED  
INDUSTRIAL COMMISSION  
CLAYTON  
2015 APR 22 10:11:10

County of Kootenai    )  
  ) ss  
State of Idaho         )


I, Stephen J. Nemec, being first duly sworn under oath, deposes and says:

- 1.) I am the Attorney of Record for the above-named Claimant and have personal knowledge of the facts stated in this Affidavit.

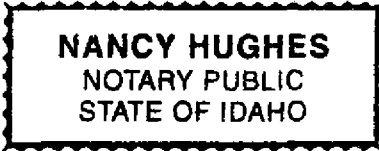


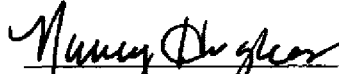
- 2.) Attached hereto as Exhibit BB is a true and correct copy of the 3 page Netherlands study referenced in the *Dulon* article introduced as Exhibit 4 at Dr. Riedo's deposition.

Further your affiant sayeth naught.

  
 Stephen J. Nemeck  
 Attorney for Claimant

SUBSCRIBED AND SWORN to before me on this 1<sup>st</sup> day of July, 2016.

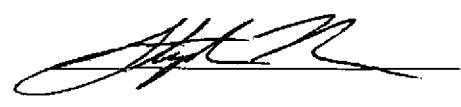


  
 Notary Public for Idaho;  
 Residing at: CDA, ID 83815 ;  
 Commission Expires: 3-30-21

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 1<sup>st</sup> day of July, 2016, a true and correct copy of the foregoing document was served upon the following individuals by the method indicated below:

H. James Magnuson 1250 Northwood Center Court P.O. Box 2288 Coeur d'Alene, Idaho 83816 <i>Atty. for Employer &amp; Surety</i>		
<input type="checkbox"/>	Mailed	Mailed
<input type="checkbox"/>	By Hand	By Hand
<input type="checkbox"/>	Overnight Mail	Overnight Mail
<input checked="" type="checkbox"/>	Fax: 666-1700	Fax



## Acknowledgements

We thank M. Emery and H. Eagle for help with data collection.

### Conflict of interest statement

None declared.

### Funding sources

None.

## References

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D.A. Enoch<sup>a,\*</sup>

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## Prevalence of carriage of methicillin-susceptible and methicillin-resistant *Staphylococcus aureus* in employees of five microbiology laboratories in The Netherlands

Madam,

*Staphylococcus aureus* is a major cause of community- and hospital-acquired infections. Colonisation with *S. aureus* is clinically important because rates of infection are higher in carriers than in non-carriers.<sup>1</sup> The anterior nares are considered to be the primary site of colonisation with *S. aureus*. Employees of medical microbiology laboratories frequently encounter *S. aureus* in cultures of patient samples. Incidental reports indicate that employees can acquire these laboratory strains.<sup>2,3</sup>

We performed a cross-sectional survey between September and December 2008 and sampled the anterior nares and throat of 266 employees from five clinical microbiology laboratories to determine the carriage rate of methicillin-susceptible (MSSA) and methicillin-resistant (MRSA) *S. aureus* strains. The participating laboratories were: VU Medical Centre in Amsterdam, the Jeroen Bosch Hospital in 's Hertogenbosch, Sint-Elisabeth Hospital in Tilburg, Laboratory for Pathology and Medical Microbiology in Veldhoven, Amphia Hospital in Breda.

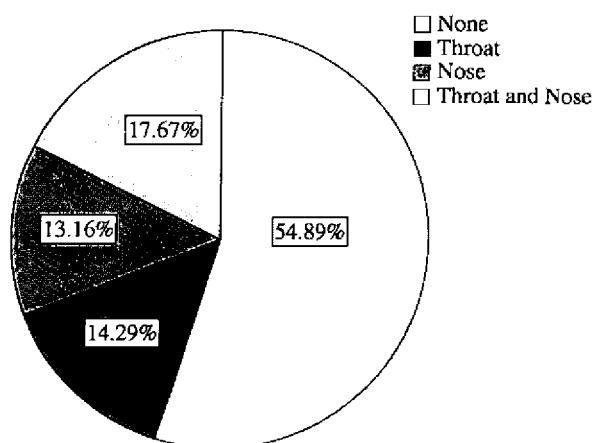
Each participating employee submitted a nose and a throat swab and made note of their profession, which made it possible to categorise the participants into four different groups: staff, laboratory technicians, infection control practitioners and other. The response rate was about 90%.

The swabs were placed in enrichment broth, incubated for 48 h at 37 °C and subsequently cultured on selective media used for isolation of MRSA and MSSA as described previously. Growing colonies were characterised as MSSA or MRSA according to guidelines from the Clinical and Laboratory Standards Institute. The presence of the *mecA* gene was confirmed by polymerase chain reaction. MRSA strains were typed by amplification fragment length polymorphism as described previously.<sup>4</sup>

*S. aureus* was detected in 120 of the 266 screened individuals (see Figure 1). The overall carriage rate was 45.1% [95% confidence interval (CI): 39.1–51.3]. About one-third of the carriers harboured *S. aureus* exclusively in the nose, another third carried *S. aureus* exclusively in the throat; the remainder carried *S. aureus* in both nose and throat cultures. There was no significant difference in carriage rate of MSSA between the five laboratories or between employees of different occupational categories, such as staff, technicians, or infection control practitioners.

MRSA was detected in the throat sample of one person, a technician who worked in the molecular laboratory (0.38%; 95% CI: 0.07–2.11). This rate of MRSA carriage is not significantly different from the carriage rate that was measured in a survey of patients on admission to the hospital in The Netherlands.<sup>5</sup> A comparison of this strain with MRSA strains isolated in the same laboratory over the previous year revealed that this technician had been working with an identical strain several months before. The MRSA-positive laboratory technician and his relatives or household members had no other risk factors for exposure to MRSA. Since household transfer has been noted previously, his partner and his two cats were also screened for MRSA.<sup>6</sup> One cat was MRSA positive in nose and throat with exactly the same strain.

To the best of our knowledge, this is the first assessment of MSSA and MRSA carriage in personnel of medical microbiology laboratories. The overall *S. aureus* carriage rate in this study is higher than expected; another Dutch survey found 37.2% *S. aureus* carriage in the general population.<sup>7</sup> The high carriage rate in our survey is probably explained by our inclusion of throat swabs. About one-third of carriers harboured their strain exclusively in the throat. In many, if not most, studies of human *S. aureus* carriage, nose swabs are used exclusively for screening. The throat is an important and generally underestimated site that can harbour *S. aureus*, and may even represent the exclusive site where *S. aureus* is found. A recent letter in this Journal reports that throat carriage of MRSA is almost as common as nasal carriage.<sup>8</sup>



**Figure 1** Distribution of *S. aureus* carriage among all employees. Total *S. aureus* carriage was: 45.1% (95% confidence interval: 39–51). Among the *S. aureus* carriers the relative carriage rates were: 31.7% exclusively in the throat, 29.2% exclusively in the nose and 39.2% in the nose and throat.

Alternatively, the high rate may reflect the occupational exposure to *S. aureus* in a medical microbiology laboratory. The assumption is, however, not supported by a difference in carriage rate of *S. aureus* between the four occupational groups. Possibly, the groups were too small to detect significant differences. Surveys in countries with high endemic levels of MRSA are warranted to determine whether laboratory workers are at increased risk of acquiring MRSA.

We conclude that the risk of acquiring MRSA during work in a Dutch medical microbiology laboratory is low, although this may relate to the low prevalence of MRSA in The Netherlands in general. The high rate of *S. aureus* carriage warrants further investigation to determine whether it can be fully attributed to the sensitive technique that we used or whether working in a medical microbiology laboratory is an underestimated risk factor for *S. aureus* colonisation.

#### Conflict of interest statement

None declared.

#### Funding sources

None.

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### Molecular epidemiology of MRSA among nasal carriers in a tertiary care hospital: first report from Nepal

Madam,

*Staphylococcus aureus* nasal carriage in adults has been estimated at 20–40%. Infected and colonised patients, or colonised hospital personnel and the inanimate environment, are the major reservoirs of methicillin-resistant *S. aureus* (MRSA). *S. aureus* and MRSA are mainly transmitted from patient to patient by the hands of healthcare workers (HCWs). Colonised HCWs may transfer nasal strains

to patients resulting in epidemics in hospitals. Transient colonisation has been documented in up to 50% of HCWs. However, long-term MRSA colonisation is infrequent (<5%).

In Nepal, to the best of our knowledge, *S. aureus* and MRSA nasal carriage among HCWs is not documented. Therefore, this study was designed to determine the point prevalence of *S. aureus* and MRSA carriage among HCWs in Nepal.

Nasal swabs ( $N=258$ ) were collected during August and September 2008 from 129 HCWs representing all wards in a tertiary care teaching hospital and were cultured for *S. aureus* by standard methodology.<sup>1</sup> Of 129 participants, 23, 63, 20, and 23 were doctors, nursing staff, nursing students, and ward attendants respectively; 111 were female and 18 were male. Mean age was 32.3 years (range: 19–61).

All the isolates were tested for antibiotic susceptibility using antibiotic discs (Oxoid, Basingstoke, UK) as recommended by the US Food and Drug Administration (FDA).<sup>2</sup> Methicillin/oxacillin resistance was determined by oxacillin and cefoxitin disc diffusion, and the oxacillin screen agar (OSA) test.<sup>2</sup> Oxacillin minimum inhibitory concentration and PBP2a detection was done by E-test (AB Biodisk, Solna, Sweden) and MRSA screen test (Denka Seiken, Tokyo, Japan) respectively. Similarly, for the detection of reduced susceptibility to glycopeptide, vancomycin and teicoplanin disc diffusion tests and vancomycin screen agar testing were performed.<sup>2</sup> Isolates resistant to oxacillin and cefoxitin, positive in the OSA test and in the MRSA screen latex agglutination test whose minimum inhibitory concentration (MIC) was  $\geq 4$   $\mu\text{g}/\text{mL}$ , were identified as MRSA.

Total genomic DNA was extracted by the phenol–chloroform method and was used for the polymerase chain reaction (PCR) amplification of *mecA* gene; *coa*, *spa*, and *hvr* (in MRSA); *ermC* (plasmid DNA extracted by using QIAgen spin, Miniprep kit, Hilden, Germany) *ermB*, *ermA*, and *PVL*.<sup>3–6</sup> D test with minor modification and mupirocin MIC was performed for phenotypic detection of clindamycin and mupirocin resistance.<sup>2,7</sup>

$\beta$ -Lactamase production was assessed by three biochemical methods, namely chromogenic (nitrocefin disc, BBL, Sparks, MD, USA), acidimetric and iodometric.<sup>1</sup>

PCR–restriction fragment length polymorphism of nasal heterogeneous MRSA and other clinical samples isolated in the same timeframe were carried out by using purified amplification product (QIAquick PCR purification kit, QIAgen) of *coa*, *spa* and *hvr* digested by *HaeIII* (New England

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Attorney for Defendants

BEFORE THE INDUSTRIAL COMMISSION  
OF THE STATE OF IDAHO

RICHARD JOBE,  
  
Claimant,  
  
vs.  
  
DIRNE CLINIC/HERITAGE HEALTH,  
  
Employer,  
  
STATE INSURANCE FUND,  
  
Surety,  
Defendants.

I. C. No. 2014-014091

**DEFENDANTS' OBJECTION TO  
CLAIMANT'S MOTION TO ADMIT  
NETHERLANDS STUDY**

FILED

JUL 25 2016

INDUSTRIAL COMMISSION

COMES NOW, Defendants, DIRNE CLINIC/HERITAGE HEALTH, Employer, and STATE INSURANCE FUND, Surety, by and through H. James Magnuson, their attorney of record, and object to Claimant's Motion to Admit Netherland's Study.

This objection is made on the grounds that there is no authority to admit an unauthenticated document post hearing that was never identified by a witness, disclosed in discovery or disclosed in Claimant's Rule 10 disclosures. Further, the record was closed at the

H. JAMES MAGNUSON  
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Attorney for Defendants

BEFORE THE INDUSTRIAL COMMISSION  
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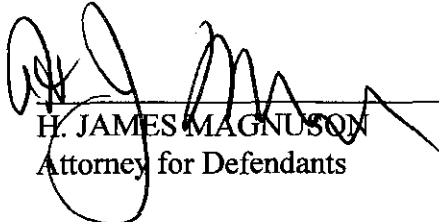
2016 JUL 27 11:10:04  
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INDUSTRIAL COMMISSION

COMES NOW, Defendants, DIRNE CLINIC/HERITAGE HEALTH, Employer, and STATE INSURANCE FUND, Surety, by and through H. James Magnuson, their attorney of record, and object to Claimant's Motion to Admit Netherland's Study.

This objection is made on the grounds that there is no authority to admit an unauthenticated document post hearing that was never identified by a witness, disclosed in discovery or disclosed in Claimant's Rule 10 disclosures. Further, the record was closed at the

termination of the Defendants' last post-hearing deposition which was the deposition of Francis Riedo, M.D., on June 3, 2016.

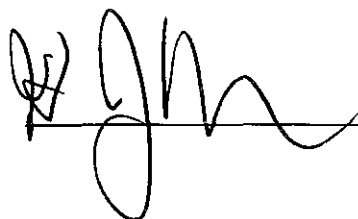
DATED this 25 day of July, 2016.

  
\_\_\_\_\_  
H. JAMES MAGNUSON  
Attorney for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing was sent by first-class, prepaid mail on the 25 day of July, 2016, to:

Stephen J. Nemec  
James, Vernon & Weeks, P.A.  
1626 Lincoln Way  
Coeur d'Alene, ID 83814

  
\_\_\_\_\_

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

RICHARD JOBE,

Claimant,

v.

DIRNE CLINIC/HERITAGE HEALTH,

Employer,

and

IDAHO STATE INSURANCE FUND,

Surety,

Defendants.

IC 2014-014091

ORDER DENYING MOTION TO  
ADMIT NETHERLANDS STUDY

FILED

AUG 03 2016

INDUSTRIAL COMMISSION

On July 1, 2016, Claimant filed a Motion to Admit Netherlands Study. Subsequently, a telephone conference was scheduled for July 29, 2016 at 11:00 a.m. regarding the same. On July 25, 2016, Defendants filed their objection thereto. Based on the July 29, 2016 telephone conference;

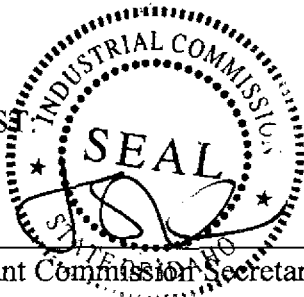
IT IS HEREBY ORDERED that Claimant's Motion is DENIED.

DATED this 3<sup>rd</sup> day of August, 2016.

INDUSTRIAL COMMISSION

Brian Harper  
Brian Harper, Referee

ATTEST



Assistant Commission Secretary




**CERTIFICATE OF SERVICE**

I hereby certify that on the 3<sup>rd</sup> day of July, 2015, a true and correct copy of the foregoing **ORDER DENYING MOTION TO ADMIT NETHERLANDS STUDY** was served by regular United States Mail upon each of the following:

STEPHEN NEMEC  
1626 LINCOLN WAY  
COEUR D ALENE ID 83814

JAMES MAGNUSON  
PO BOX 2288  
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jsk

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

RICHARD JOBE,

Claimant,

v.

DIRNE CLINIC/HERITAGE HEALTH,

Employer,

and

IDAHO STATE INSURANCE FUND,

Surety,

Defendants.

IC 2014-014091

**NOTICE OF TELEPHONE  
CONFERENCE**

**FILED**

**AUG 23 2016**

INDUSTRIAL COMMISSION

A telephone conference will be initiated and conducted by Referee Brian Harper, pursuant to the Judicial Rules of Practice and Procedure under the Workers' Compensation Law, on **August 24, 2016, at 1:30 p.m. Pacific Time (2:30 p.m. Mountain Time).**

Stephen Nemecek may be reached at (208) 667-0683.

James Magnuson may be reached at (208) 666-1596.

If there are any changes to these numbers, please contact us immediately. You may do this by calling the Industrial Commission at 334-6069.

All parties shall be ready to proceed at the scheduled time for conference. Sanctions may be imposed against any party not prepared or not participating.

DATED this 23<sup>rd</sup> day of August, 2016.

INDUSTRIAL COMMISSION


Brian Harper  
Brian Harper, Referee

**CERTIFICATE OF SERVICE**

I hereby certify that on the 23<sup>rd</sup> day of August, 2016, a true and correct copy of the foregoing **NOTICE OF TELEPHONE CONFERENCE** was served by facsimile transmission upon each of the following:

STEPHEN NEMEC  
*Fax No.: (208) 664-1684*

JAMES MAGNUSON  
*Fax No.: (208) 666-1700*



---

jsk

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

RICHARD JOBE,

Claimant,

v.

DIRNE CLINIC/HERITAGE HEALTH,

Employer,

and

IDAHO STATE INSURANCE FUND,

Surety,

Defendants.

**IC 2014-014091**

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND RECOMMENDATION**

**FILED**

**SEP 23 2016**

**INDUSTRIAL COMMISSION**

**INTRODUCTION**

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Brian Harper, who conducted a hearing in Coeur D'Alene, Idaho, on March 4, 2016. Claimant was represented by Stephen Nemecek, of Coeur D'Alene. James Magnuson, of Coeur D'Alene, represented Dirne Clinic/Heritage Health ("Employer") and Idaho State Insurance Fund ("Surety"), Defendants. Oral and documentary evidence was admitted. Post-hearing depositions were taken and the parties submitted post-hearing briefs<sup>1</sup>. The matter came under advisement on August 11, 2016.

<sup>1</sup> Neither party complied with JRP 11A in spacing and/or margin requirements. However, no objections were raised, and neither party used their full thirty-page allotment in their briefing. The briefs are accepted as written, although all counsel practicing under the JRP should keep in mind the formatting requirements when preparing their briefing.

## ISSUES

The issues to be decided are<sup>2</sup>:

1. Whether Claimant suffers from a compensable occupational disease, including whether the provisions of Idaho Code § 72-448 serve as a bar to the claim;
2. Whether and to what extent Claimant is entitled to the following benefits:
  - a. Medical care;
  - b. Temporary disability benefits, partial or total (TPD/TTD);
  - c. Permanent Partial Impairment (PPI)
  - d. Permanent Partial Disability in excess of Impairment, including Total Permanent Disability pursuant to the Odd-lot Doctrine; and
  - e. Attorney Fees.
3. Whether Claimant is totally and permanently disabled; and
4. Whether the *Neel* Doctrine applies to Claimant's past medical bills.

## CONTENTIONS OF THE PARTIES

Claimant, a physician, asserts he contracted disseminated MRSA out of and in the course of his employment with Employer. The infection spread throughout his body, causing numerous and severe complications, and rendering him totally and permanently disabled. Claimant is entitled to all applicable benefits.

Defendants argue Claimant did not prove causation. Furthermore, he failed to comply with the notice and filing requirements of Idaho Code § 72-448. Defendants owe Claimant no benefits. Alternatively, should Claimant's disease be found compensable, Defendants would only be liable for payment of benefits after the date of manifestation.

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<sup>2</sup> While the issue of notice under Idaho Code § 72-701 *et seq.* was listed in the Notice of Hearing, this case does not involve a claim of accident, neither party argued for or against the application of these statutes, and the matter is deemed inapplicable to the facts of this case. Also, the parties stipulated that Claimant is entitled to the maximum benefits available under Title 72 for purposes of AWW calculations if he proves a compensable occupational disease. Finally, the parties listed the issue of whether the occupational exposure actually occurred at the time claimed, but neither party specifically addressed this as a separate issue. Rather, it was subsumed into the parties' arguments on timely notice and filing.

## EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The hearing testimony of Claimant's wife, Idalla Jobe, and his son, Brian Jobe, taken at hearing;
2. Claimant's Exhibits (CE) A through Z and AA, admitted at hearing;
3. Defendants' Exhibits (DE) 1 through 7, admitted at hearing, with the exception of pages 13 through 16 and 69 through 74 of DE 1, which were objected to, and which objection is hereby sustained;
4. The post-hearing deposition transcript of David Souvenir, M.D., taken on March 25, 2016;
5. The post-hearing deposition transcript of Harry Hull, M.D., taken on April 29, 2016;
6. The post-hearing deposition transcript of John McNulty, M.D., taken on May 23, 2016;
7. The post-hearing deposition transcript of Mr. Fred Cutler, taken on May 26, 2016; and
8. The post-hearing deposition transcript of Francis Riedo, M.D., taken on June 3, 2016.

### Objections

Defendants' objection to Dr. McNulty's testimony totalling Claimant's various impairments is overruled in that the testimony is simply a mathematical exercise using combining tables available to anyone. Defendants' objections to opinion testimony

of Dr. McNulty on page 15, l. 6 and ll. 13 through 21 are sustained in that they go beyond information provided in discovery, and Dr. McNulty's written report, CE S.

Claimant's objection to the admission of Defendants' proposed Exhibits 4 to Dr. Riedo's deposition – a study of the prevalence of MRSA carriage in healthcare workers in non-outbreak settings –is sustained. The motion to strike Dr. Riedo's testimony concerning the study is overruled. While the document is not admissible due to Defendants' failure to provide it in discovery and/or disclose it in "Rule 10" disclosures, the doctor may discuss the study in his oral testimony, as it was referenced previously in his written report.

Having considered the evidence and briefs of the parties, the Referee submits the following findings of fact and conclusions of law for review by the Commission.

#### **FINDINGS OF FACT**

1. At the time of hearing, Claimant was an 80 year old married man living in Spokane Valley, Washington. Claimant is a licensed physician; he graduated from medical school in 1961, completed a residency in internal medicine, then a fellowship in hematology and oncology in 1965.

2. Claimant went to work for Employer on October 8, 2012 as an internist and primary care physician. He saw patients five days a week for Employer. His last day of work was June 19, 2013. Prior, Claimant had worked at various hospitals and clinics.

3. Claimant presented to Patrick Mullen, M.D., on June 17, 2013, complaining of sudden onset right thumb pain. Eventually, the infection was determined to be caused by methicillin-resistant staphylococcus aureus, or MRSA. When asked as to a possible source of the infection, Claimant told Dr. Mullen the only thing that came to mind was

the fact that his cat had scratched him on his right hand a few weeks previous.<sup>3</sup>

4. The infection spread throughout Claimant's body. This widely-disseminated MRSA infection had by the time of hearing resulted in numerous surgeries, including multiple hand, wrist, and forearm surgeries to clean out infection, surgeries to Claimant's back and left shoulder, and removal of Claimant's previously-installed artificial hip joint. Claimant was placed on IV antibiotics for suppressive therapy of his incurable MRSA infection, and will remain so for life.

5. Since June 2013, Claimant has suffered two strokes, arguably related to his MRSA infection. The strokes have left him unable to effectively communicate. He has trouble in his movements and needs assistance for things such as sitting, putting on his socks and shoes, and walking (he uses a cane and walks with a shuffling gait). Claimant was unable to attend the hearing in this matter due to his health condition, including his second stroke. He was never deposed in this matter, perhaps due to his inability to precisely communicate, or testify under oath.

6. Claimant hired John McNulty, M.D., to assess Claimant's impairment. Dr. McNulty assigned Claimant an impairment rating of 67% of the whole person due to Claimant's hip, shoulder, thoracic spine, wrist, and forearm condition, as well as his loss of ability to express speech.

7. Claimant's pre-existing conditions relevant to this discussion include pseudogout involving Claimant's right knee, which requires periodic draining of fluid from the knee joint. Claimant had his knee drained a few weeks before

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<sup>3</sup> Claimant's wife testified at hearing that Claimant had not been scratched by his cat, and in fact rarely if ever interacted with the cat since he was allergic to it. Claimant's son testified that it was he, and not his father, who was allergic to the cat.



experiencing MRSA infection symptoms. Claimant also has a condition known as hemochromatosis, which causes an accumulation of iron in the blood. Treatment includes ongoing phlebotomy (blood draining) approximately quarterly. Claimant was also diagnosed with diabetes during his treatment for MRSA infection, but was not prescribed insulin injections.

8. Claimant had several surgeries prior to 2012, including bilateral shoulder replacement surgery (one medical record notes the date as 2003; Claimant's CV also notes a shoulder surgery in 2010), ankle surgery in 2009, lumbar fusion surgery in about 1992, a left hip replacement in 1990, and bilateral second metacarpophalangeal joint replacement surgery, no date given.

## **DISCUSSION AND FURTHER FINDINGS**

### **Causation**

9. An occupational disease is one that is due to the nature of an employment in which the hazards of such disease actually exist, are characteristic of, and peculiar to the trade, occupation, process for employment.... See Idaho Code § 72-102(22)(a). The terms "contracted" and "incurred," when referring to an occupational disease, are deemed to be the equivalent of "arising out of and in the course of employment". See Idaho Code § 72-102(22)(b). Under Idaho Code § 72-439, an employer cannot be held liable for an occupational disease unless such disease is actually "incurred" in that employment.

10. Claimant has the burden of proving, by a preponderance of the evidence, all facts essential to recovery to his claims. *Duncan v. Navajo Trucking*, 134 Idaho 202, 203, 998 P.2d 1115, 1116 (2000). Claimant, in pursuing an occupational disease claim, has the burden of proving, to a reasonable degree of medical probability, a causal connection between the condition for which compensation is claimed and occupational exposure to the substance or

conditions which caused the alleged condition. *Watson v. Joslin Millwork, Inc.*, 149 Idaho 850, 855, 243 P3d 666, 671 (2010). “Probable” is defined as “having more evidence for than against.” *Fisher v. Bunker Hill Company*, 96 Idaho 341, 344, 528 P.2d 903, 906 (1974). In determining causation, it is the role of the Commission to determine credibility of witnesses, and to resolve conflicting interpretations of, and assign relative weight to, testimony. *See Rivas v. K.C. Logging*, 134 Idaho 603, 608, 7 P.3d 212, 217 (2000).

11. The threshold issue is whether Claimant has proven he contracted his disseminated MRSA infection arising out of and in the course of his employment as a physician with Employer. To analyze this question it is important to briefly consider some MRSA background.

#### MRSA BACKGROUND

12. *Staphylococcus aureus* (*S. aureus*) is the most commonly isolated human bacterial pathogen; at least one-third of the population carries the bacteria in their noses or on their bodies. Typically, the “colonized” bacteria (“colonized” refers to a colony of bacteria living on a person, but producing no symptoms) cause no harm. However, sometimes these colonized bacteria can enter the person’s bloodstream, causing bacteremia or sepsis, such as in Claimant’s case. When this happens, it is known as “disseminated,” as it spreads to various parts of the body, removed from its original colony site, and often results in infection. The bacteria can also cause various skin and soft tissue (SSTI) infections, creating abscesses, boils and cellulitis. Various antibiotics can successfully treat regular “staph” bacteria.

13. As noted above, MRSA stands for methicillin-resistant staphylococcus aureus. In other words, MRSA is a form of staphylococcus bacteria which has developed a resistance to certain antibiotics, such as methicillin, an antibiotic in the penicillin family

often used to treat staph infections. There are strains of drug-resistant staphylococcus bacteria, such as afflicts Claimant, which are also resistant to other antibiotics in addition to methicillin. For the purpose of this case, all antibiotic-resistant staphylococcus bacteria will be called "MRSA."

14. In 1961, strains of *S. aureus* were identified in the United Kingdom which were resistant to methicillin. With time, the resistant bacteria (MRSA) spread throughout Europe, although it was confined mainly to hospital settings. In 1968, MRSA found its way to the United States, first noted in a Boston hospital. By 2000, nearly 126,000 cases of MRSA were diagnosed annually.<sup>4</sup>

15. Until the mid-1990s, MRSA in this country was rarely seen in otherwise healthy individuals outside of a health care setting. Since then, there has been an explosion of "community-associated" MRSA (CA-MRSA) infections, where individuals not at risk due to factors such as hemodialysis, surgery, residence in a long-term care facility, indwelling catheter or percutaneous device use, or hospitalization in the previous year, nevertheless are diagnosed with MRSA. All other MRSA infections are known as "hospital-associated" MRSA (HA-MRSA).<sup>5</sup>

16. Currently, CA-MRSA risk factors include children under age two, athletes, people who frequent or work at gyms, persons living with a MRSA SSTI infection patient,

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<sup>4</sup> The information on MRSA in this and subsequent paragraphs is synthesized from the voluminous reference materials supplied by Claimant as part of his exhibits, and the deposition testimony of medical experts retained in this matter.

<sup>5</sup> Originally, there were molecular differences between MRSA found at hospitals (HA) and MRSA infecting the community outside the health care setting (CA), but those differences have become blurred as MRSA strains continue to evolve, CA-type MRSA patients treat their infections medically, and HA MRSA left the health care setting and made its way into the community. In the present case, Claimant's MRSA strain was not identified, so it is not known if it was of a type commonly associated with health care facilities or molecularly similar to CA strains. Even if this information was known it would not be determinative of the causation issue, since there is no strain which is *never* found in health care settings. Furthermore, if it was a HA strain, Claimant was both a physician and a patient, so such information would not assist in determining if he incurred his MRSA as a physician or as a patient.

ER patients, residents in urban underserved communities, indigenous populations, cystic fibrosis patients, military personnel, persons in jail or prison, men who have sex with men, HIV patients, injection drug users, veterinarians, pet owners, livestock handlers, pig farmers, diabetics, and persons over 65 years of age.

17. Individuals can carry colonized MRSA for years without the bacteria producing infection. Skin is an effective barrier for preventing MRSA from causing infection. Often a break in one's skin provides the opening for the bacteria to enter the bloodstream, disseminate, and cause infections. The bacteria are also capable of airborne transmission.

18. It is undisputed that health care workers as a whole have a higher incidence of colonized MRSA than the general public. In addition, health care workers have a greater risk of contracting symptomatic MRSA (either SSTI infections or disseminated through the blood stream) than the public at large. Of course, patients at health care facilities are at greater risk of MRSA infection due to risk factors including weakened immune systems, open wounds, incisions associated with surgery or invasive procedures, intravenous catheters, and/or other breaks in the skin surface, coupled with greater opportunity for infection from the higher incidence of MRSA bacteria (and MRSA colonized staff) often present at such facilities.

Expert Testimony

*Dr. Souvenir*

19. Claimant's primary treating infectious disease physician, David Souvenir, M.D., checked the "agree" box when presented with an "agree or disagree" proposition which stated that Claimant's MRSA colonization was due to

MRSA exposure while he was working as a physician. Subsequently, Dr. Souvenir was deposed.

20. After detailing his treatment history with Claimant, Dr. Souvenir testified about MRSA causation. He noted that health care workers, as a general class, can have an increased incidence of MRSA colonization. However, Dr. Souvenir testified that it is difficult to assess where people acquire the bacteria. Physicians can become colonized with MRSA at work, but Dr. Souvenir stated that he did not know where or when Claimant acquired his MRSA. In spite of not knowing the when and where, Dr. Souvenir felt it was more likely than not that Claimant acquired MRSA “in the course and scope of his duties as a physician.” Depo of Souvenir, p. 24, ll. 15 – 20.

*Dr. Hull*

21. Claimant also relies on the opinions of Harry Hull, M.D., of Reno, Nevada, to support causation. Since 2006, Dr. Hull has primarily consulted parties in litigation. He does not actively practice medicine currently. Dr. Hull is, or was, a board-certified pediatrician, and has extensive experience in infectious disease epidemiology, serving at various times as state epidemiologist for New Mexico and Minnesota.

22. Dr. Hull was hired by Claimant to review this case and opine on causation. After reviewing various medical records, Dr. Hull prepared a report dated February 4, 2016, addressed to Claimant’s attorney. Therein, Dr. Hull opined that Claimant more likely than not acquired the MRSA bacteria which led to his infection from one of his patients he examined at work in the months preceding the infection onset.

23. Dr. Hull was deposed. Much of his testimony revolved around studies exploring hospital-caused MRSA infections. Dr. Hull noted that while between 1%

and 1.5% of the general public carries colonized MRSA, approximately 4% to 5% of health care workers are carriers of the bacteria. The doctor pointed out that MRSA bacteria is found in virtually every hospital in the country, although the rate of MRSA colonization among hospital staff varies widely, from zero at the low end to nearly 60% at the other extreme.

24. According to Dr. Hull, patients frequently become infected while treating at health care facilities, and the facility's staff are often implicated as the source of the MRSA. The general conclusion from the studies Dr. Hull reviewed is that the most important risk factor for community members carrying MRSA is exposure to the medical system; therefore medical facilities need to do a better job of controlling MRSA within its confines, in order to limit its spread to the community.

25. Dr. Hull also noted that MRSA carriers are at risk of developing MRSA infections for years after being colonized with the bacteria.

26. Dr. Hull succinctly summarized his thought process and opinion thusly;

I believe because [Claimant] was a physician, because he was a physician caring for MRSA patients he was at increased risk of becoming colonized. And because [Claimant] was at increased risk of becoming colonized, he would be at increased risk of developing ... [MRSA] infections....

Depo. of Dr. Hull, p. 21, ll. 7 – 13.

*Dr. Riedo*

27. Defendants sought an independent evaluation and examination of Claimant from Francis Riedo, M.D., a Kirkland, Washington board-certified internist and infectious disease physician.

28. On June 24, 2015, Dr. Riedo examined Claimant. Thereafter, the doctor opined in a report of that date that Claimant had widely disseminated, incurable MRSA infections which would require suppressive antibiotics for the remainder of Claimant's life. Dr. Riedo did not believe it is possible to establish that Claimant's MRSA colonization or infection was acquired in the course of his work with Employer.<sup>6</sup> As stated in his report;

[Claimant] feels that he acquired MRSA colonization while working for [Employer], but unfortunately it is impossible to determine exactly when and where the colonization would have occurred.

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The duration of carriage can be as short as days or as long as years, and only under the most unusual circumstances can the acquisition be attributed to a single event.

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MRSA colonization can persist for years, as well as be lost and reacquired. In addition, careful hand hygiene and infection control should limit the acquisition of MRSA as well as carriage of any other bacteria while practicing medicine. In sum, I do not believe it is possible, on a more probable than not basis, to attribute [Claimant's] acquisition of MRSA colonization or MRSA infection to his employment at [Employer].

DE Ex. 4, p. 239.

29. Dr. Riedo was deposed. Much of his testimony concerned various studies which attempted to quantify the increased risk of carriage among health care workers compared to the general population. Many of Dr. Riedo's observations concerning

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<sup>6</sup> At the time the report was authored, Dr. Riedo believed Claimant had stopped working for Employer in October 2012, when in fact that is when Claimant began such employment. At his deposition, Dr. Riedo amended his statement, but again got Claimant's last date of employment wrong. Dr. Riedo testified as to his then-current understanding that Claimant's last day of work was in March 2013. In reality, Claimant worked for Employer until June 19, 2013 – two days after he was initially seen for his MRSA infection. Dr. Riedo's opinion was not based on Claimant's last work day, so his inaccuracy in this regard is not fatal to his opinion.

the difficulties of attempting to make “one-size-fits-all” conclusions from these studies were illuminating. However, this case does not turn on whether health care workers are four times more likely, five times more likely, or just barely more likely to carry MRSA than the general public. (However, Dr. Riedo’s criticism of the argument that health care workers are nearly twenty times more likely to carry MRSA when compared to the public is accurate. For the sake of this decision, it has already been assumed that health care workers are approximately four to five times more likely to carry colonized MRSA than the general population.)

30. Dr. Riedo also expounded on his opinion on causation. He testified on causation by noting;

I’m not disputing that being a healthcare worker is a risk for being a MRSA carrier. I’m just saying that I don’t think, on a more-probable-than-not basis, you can say it was [Claimant’s] healthcare-working risk that led to his MRSA because he had multiple other variables that could contribute just as likely.

And you can’t do it based on time, because working in a clinic is not the same as having a surgical procedure. It’s not the same as being a patient.

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So, I mean there’s – there’s independent variables that I think really make it impossible to ascribe [Claimant’s] acquisition of MRSA from his occupational risk as a healthcare worker.

Depo. of Dr. Riedo, p. 27, ll. 15-25, p.28, ll. 3-6.

31. The “independent variables” mentioned by Dr. Riedo are also the “risk factors” which applied to Claimant, and which, as argued by Dr. Riedo, complicated the analysis of why and how Claimant contracted disseminated MRSA.



Risk Factors

32. As noted previously, there are a number of factors which statistically increase one's chances of acquiring symptomatic MRSA. The categories which statistically increase the chance of acquiring an active MRSA infection and which apply to Claimant include;

- Health care worker;
- Health care patient;
- Age over 65;
- Pet owner;
- Diabetic;
- Multiple surgical procedures;
- Arthritis and artificial joints; and
- Liver abnormality.

33. The physicians disagree on some of these factors as being legitimate considerations in this case. Dr. Hull discounted the "pet owner" category, instead suggesting only veterinarians and pig farmers would fit into this class. Further, he noted Claimant's cat was not sick, so it is unlikely it could be the MRSA culprit, even if it had scratched Claimant's right hand. Regarding Claimant's past surgeries and artificial joints, Dr. Hull and Dr. Souvenir found those to be too remote in time for serious consideration. Reduced immune system function due to liver abnormality was not discussed as a potential factor until Dr. Riedo's deposition. Claimant had only recently been diagnosed as diabetic, and was not taking insulin, so that factor was minimal. As Dr. Hull noted, both diabetics and people over age 65 are typically exposed to the health care system more than healthy younger people, and that fact might account for their increased MRSA risk.

34. Dr. Riedo felt individuals over age 65 were inherently at risk due to decreased immune systems and more abnormal bone and joint tissue. He also cited

to the fact that animals can be MRSA carriers without symptoms, and can transmit the bacteria to humans without themselves having to be infected.

35. The only categories of increased risk in this case on which there was no disagreement was health care worker and health care patient.

Causation Analysis and Conclusion

36. Arguments in favor of causation include;

- MRSA is found at most hospitals and health care facilities.
- Sixty percent of health care facilities have at least some MRSA-colonized staff. The worst facilities have 50% or more of work staff carrying colonized MRSA.
- Claimant worked daily at a health care facility; therefore he had a high potential for exposure in his work environment.
- Claimant regularly treated MRSA-infected patients.
- Claimant's MRSA infection likely originated in his right hand, making MRSA infection from an old surgery or artificial joint unlikely.

37. Arguments against causation include;

- Claimant is a member of several high-risk for MRSA infection categories;
- MRSA can be found in and on numerous locations outside of health care facilities;
- Individuals often carry colonized MRSA for years before an infection. One study found the median duration of MRSA carriage was 3.5 years, and some carried the bacteria for greater than 4 years.
- Claimant worked for Employer for less than one year when he was infected with MRSA.

- Claimant was a regular patient at health care facilities and had regular phlebotomy appointments, as well as other periodic invasive procedures in the relevant time frame prior to his MRSA infection.
- Claimant can control his environment at work to minimize his exposure to MRSA but can not control the environment when he is a patient at other health care facilities.
- Infection risk for patients of invasive procedures is greater than the infection risk of health care workers.

38. When all of the evidence is considered, on a more probable than not basis the Referee finds that Claimant's MRSA infection originated at or near Claimant's right hand, wrist, or arm. His right thumb joint was the first area of infection diagnosed and treated. He had lymphangitic streaking in the vicinity of his right forearm, indicating drainage of staphylococcal toxins through the lymphatic system in the region of the infection.

39. Claimant told his treating physician he had received a scratch from his cat. Claimant's medical assistant, Deborah Gutierrez, testified that Claimant had a scratch on his right hand, which she noticed not long before Claimant's MRSA infection. Notwithstanding Claimant's wife's testimony to the contrary, the evidence supports the fact that Claimant suffered a scratch on his right hand from his cat within the weeks preceding his MRSA infection.

40. It is possible, but not inevitable, that the MRSA bacteria could have entered Claimant's bloodstream through his right hand scratch. It is also possible Claimant could have had the bacteria introduced by his phlebotomist when he went for his quarterly blood withdrawal procedure. However, there is nothing in the record documenting

which arm (assuming the blood was drawn from his arm) was used in the procedure. As such, it would be speculation to assume such a scenario. On the record presented, there is only one likely source of infiltration of the MRSA bacteria – Claimant’s right hand cat scratch.

41. Finding that the MRSA was introduced into Claimant’s system through this scratch does not answer the question regarding the source of the bacteria. It could have come from the cat’s nails. It could have been present as colonized MRSA, present at the site of the scratch for days, weeks, or years before the scratch. It could have been MRSA colonized and living anywhere on Claimant (for example, in his nose) and transferred by him to the wound site by Claimant touching the wound with contaminated hands (for example, after rubbing his nose). It could be that the MRSA was introduced directly from a patient, or Claimant’s work environment, after the scratch took place but while the skin was still compromised.

42. If the MRSA which infected Claimant was introduced into the scratch by a patient of Employer, or Claimant’s work environment, then clearly Claimant has proven causation. However, there is no direct evidence that such is the case.

43. If the MRSA came from the cat’s nails, Claimant has argued the most likely source of the bacteria initially was Claimant, who transferred the MRSA he picked up at work to the cat, who then transferred it back with the scratch. Claimant cites to an instance of that very scenario in one of the articles he produced as an exhibit in this case. If that hypothesis is correct (and it would be speculation to assume it is), it still does not answer the question of when the cat was colonized in relation to when

Claimant began working for Employer. Of course, the cat could also have acquired MRSA from a source independent from Claimant.

44. The final possibility is that Claimant was an active MRSA carrier at the time he was scratched, and the infection resulted from colonized MRSA entering his bloodstream at that time. This seems closest to the argument advanced by Claimant. However, Claimant assumes under his argument that the MRSA which colonized him came from his work with Employer. That proposition bears further scrutiny.

45. All the experts in this matter agree one can be colonized with MRSA for years prior to an infection. All the experts further agree that being in the health care industry is a risk factor for becoming a carrier for MRSA. Therefore, Claimant, as a physician in the health care industry, was at a greater risk than the general population for carrying MRSA. Because Claimant could come into contact with MRSA at any point in his medical career, which he has pursued since 1961, and once colonized, the bacteria could remain with Claimant for years prior to finding its way into his bloodstream, it is not axiomatic that Claimant's MRSA was acquired out of and in the course of his employment with Employer. Even if it was certain, and it is not, that Claimant acquired MRSA from his work as a physician, that would not necessarily mean he acquired MRSA while working for Employer. Claimant could have been colonized with MRSA prior to October 2012, when he first went to work for Employer.

46. All of Claimant's expert testimony in this case has centered on the increased risk of colonization due to Claimant's occupation as a physician. No expert has credibly explained why Claimant could not have been colonized with MRSA while working as a physician prior to employment with Employer. While there is

an increased risk of becoming colonized due to his profession, that risk existed prior to Claimant's most-recent employment. Claimant's employment for years prior to his MRSA infection included work as a hospitalist at various locations, work in a clinic, and at a hospice. All those assignments carry risk of MRSA colonization.

47. Claimant must prove causation. The weight of the evidence has shown that Claimant is at increased risk for MRSA colonization due to his profession, and that his infection began while working for Employer. However, those facts do not, by themselves, establish that Claimant's infection came about as a result of his employment with Employer. A temporal connection is insufficient to prove causation.

48. There is no evidence to suggest that Claimant was colonized with MRSA within eight months of his infection, to the exclusion of his former employment. (For example, there is no evidence that Claimant was checked for MRSA at the time he was employed by Employer, and found to be MRSA free.) Each of Claimant's past employments since 2009<sup>7</sup> carried the risk of colonization.

49. When all of the potential ways Claimant could have been infected and/or colonized with MRSA are considered, including;

- Claimant's employment with Employer;
- Claimant's previous employments at various hospitals and clinics;
- Claimant's regular contact with the health care industry as a patient (undergoing invasive procedures);
- Introduction of the bacteria from any number of extra-employment activities;
- Cat scratch;
- 2010 shoulder surgery;
- 2009 ankle surgery; and perhaps

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<sup>7</sup> 2009 is used because of the fact MRSA bacteria can remain colonized for years, and four years was suggested by one study. Claimant's work and patient status subjected him to increased risk of MRSA for years prior to 2009, but that year was used as the cut off as being a reasonable outer limit of time for carriage of the bacteria.

- Bilateral second metacarpophalangeal joint replacement surgery, depending on when that surgery took place;

it can not be said that Claimant has produced evidence which establishes that it is more probable than not that he was colonized and infected with MRSA while working for Employer from October 2012 through June 2013. While certainly not all of the above-listed events are equally likely to have been the culprit for Claimant's MRSA infection, only one event – Claimant's employment with Employer – would allow Claimant to obtain compensation under Idaho's worker's compensation statutes.

50. The opinion of Dr. Riedo, that it is simply not possible to state from a medical and scientific base, that Claimant's MRSA infection resulted from his work with Employer, carries more weight than the opinions of Drs. Souvenir and Hull. The latter's opinions were based generally on Claimant's occupation, and did not address why Claimant's colonization could not have occurred prior to his most recent employment. Nor did they take into account Claimant's more recent surgeries; instead they merely discounted his more remote surgeries, such as his hip replacement surgery in 1990.

51. When the totality of the evidence, including expert witness testimony and related exhibits are considered, Claimant has failed to prove his MRSA infection was caused by his employment with Employer.

### **Remaining Issues**

52. The noticed issues of Claimant's entitlement to medical care, temporary disability, permanent partial impairment, and permanent disability benefits, the applicability of *Neel* decision to reimbursement of medical bills, as well as whether Claimant is totally and permanently disabled, are rendered moot by the Claimant's failure to prove causation.

53. Claimant has failed to prove an entitlement to attorney fees under Idaho Code § 72-804. Defendants did none of the prohibited activities under that statute, and did not act unreasonably under the circumstances.

### CONCLUSIONS OF LAW

1. Claimant has failed to prove his MRSA infection constitutes a compensable occupational disease caused by his employment with Employer.
2. Claimant has failed to prove his entitlement to attorney fees.
3. All remaining issues are rendered moot by the Claimant's failure to prove causation.

### RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, the Referee recommends that the Commission adopt such findings and conclusions as its own and issue an appropriate final order.

DATED this 7<sup>th</sup> day of SEPT, 2016.

INDUSTRIAL COMMISSION

  
\_\_\_\_\_  
Brian Harper, Referee



CERTIFICATE OF SERVICE

I hereby certify that on the 23<sup>rd</sup> day of September, 2016, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

STEPHEN NEMEC  
1626 LINCOLN WAY  
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JAMES MAGNUSON  
PO BOX 2288  
COEUR D ALENE ID 83816

Kenna Andrews

jsk

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

RICHARD JOBE,

Claimant,

v.

DIRNE CLINIC/HERITAGE HEALTH,

Employer,

and

IDAHO STATE INSURANCE FUND,

Surety,

Defendants.

IC 2014-014091

ORDER

FILED

SEP 23 2016

INDUSTRIAL COMMISSION

Pursuant to Idaho Code § 72-717, Referee Brian Harper submitted the record in the above-entitled matter, together with his recommended findings of fact and conclusions of law, to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendations of the Referee. The Commission concurs with these recommendations. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusions of law as its own.

Based upon the foregoing reasons, IT IS HEREBY ORDERED that:

1. Claimant has failed to prove his MRSA infection constitutes a compensable occupational disease caused by his employment with Employer.
2. Claimant has failed to prove his entitlement to attorney fees.
3. All remaining issues are rendered moot by the Claimant's failure to prove causation.

4. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 23<sup>rd</sup> day of September, 2016.

INDUSTRIAL COMMISSION

R D Maynard

R.D. Maynard, Chairman

Thomas E Limbaugh

Thomas E. Limbaugh, Commissioner

Thomas P Baskin

Thomas P. Baskin, Commissioner



CERTIFICATE OF SERVICE

I hereby certify that on the 23<sup>rd</sup> day of September, 2016, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

STEPHEN NEMEC  
1626 LINCOLN WAY  
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Kenna Andrews

jsk

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IDAHO SUPREME COURT  
COURT OF APPEALS

**ORIGINAL**

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2016 NOV -3 A 10:31

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INDUSTRIAL COMMISSION

**FILED**

NOV 14 2016

INDUSTRIAL COMMISSION

*Stephen J. Nemec ISBA # 7591  
Attorney for Appellant/Claimant*

**BEFORE THE INDUSTRIAL COMMISSION  
OF THE STATE OF IDAHO**

RICHARD JOBE,  
  
Claimant-Appellant,  
  
vs.  
  
DIRNE CLINIC/HERITAGE HEALTH,  
Employer, IDAHO STATE INSURANCE  
FUND, Surety,  
  
Defendants-Respondents.

**Supreme Court No.** 44604

**CASE NO.:** 2014-014091

**NOTICE OF APPEAL**

Filing Fee : \$94.00

**TO: THE ABOVE NAMED RESPONDENTS, DIRNE CLINIC/HERITAGE HEALTH and IDAHO STATE INSURANCE and Respondents' attorney H. JAMES MAGNUSON and the CLERK OF THE IDAHO INDUSTRIAL COMMISSION**

NOTICE IS HEREBY GIVEN THAT:

1. The above-named Claimant-Appellant, Richard Jobe, appeals against the above-named Respondents, to the Idaho Supreme Court from the order entered in the matter on September 23, 2016, Commissioner R.D. Maynard, Commissioner Thomas Baskin, and Commissioner Thomas Limbaugh, presiding. A copy of said order is attached to this notice.

Notice of Appeal -1

**FILED - ORIGINAL**  
NOV -7 2016  
Supreme Court Court of Appeals  
Entered in AFS by: *10*

**COPY**

2. Appellant has a right to appeal to the Idaho Supreme Court and the order described in Paragraph 1 is an appealable order under and pursuant to Idaho Appellate Rule 11(d)(1).
3. A preliminary statement of the issues on appeal which the Appellant then intends to assert in the appeal; provided, such list of issues on appeal shall not prevent the Appellant from asserting other issues on appeal:
  - (a) Did the Commission err as a matter of law in applying I.C. §72-439?
  - (b) Can the Commission's conclusions of law be supported in light of the Commission's findings of fact?
4. No order has been entered sealing all or any portion of the record.
5. The Appellant requests the preparation of the following portions of the reporter's transcript:
  - a. No additional preparation of the transcript is necessary as court reporter Patricia Pullo, CSR previously filed a complete and accurate transcript of the hearing (*37 pages*) that occurred on March 4, 2016, in which Referee Bryan Harper presided with the Idaho Industrial Commission on March 10, 2016.
6. The Appellant requests the following documents to be included in the Clerk's

**record in addition to those automatically included under Idaho Appellate Rule 28:**

- a.) 05/29/14 Complaint to Employer/Surety
- b.) 06/17/14 Defendant Employer/Surety Answer to Complaint
- c.) 09/04/15 Notice of Hearing
- d.) 02/23/16 Defendants' Prehearing Compliance Notice Pursuant to Rule 10
- e.) 02/23/16 Claimant's Amended Pre-Hearing Notice of Witnesses, Exhibits, and Post-Hearing Depositions
- f.) 03/01/16 Defendants' Supplemental Prehearing Compliance Notice Pursuant to Rule 10
- g.) 03/03/16 Claimant's Second Amended Pre-Hearing Notice of Witnesses, Exhibits, and Post-Hearing Depositions

- h.) 03/10/16 Transcript of March 4, 2016 Hearing
- i.) 06/07/16 Notice of Filing Transcript of Fred Cutler and Transcript
- j.) 06/07/16 Notice of Filing Transcript of Dr. Souvenir and Transcript
- k.) 06/07/16 Notice of Filing Transcript of Dr. McNulty and Transcript
- l.) 06/07/16 Notice of Filing Transcript of Dr. Hull and Transcript
- m.) 06/16/16 Order Establishing Briefing Schedule
- n.) 06/20/16 Order on Amended Briefing Schedule
- o.) 06/24/16 Notice of Filing Deposition Transcript of Dr. Riedo
- p.) 07/01/16 Claimant's Opening Brief
- q.) 07/01/16 Claimant's Motion to Admit Netherlands Study
- r.) 07/01/16 Claimant's Attorney Affidavit in Support of Motion to Admit Netherlands Study
- s.) 07/27/16 Defendants' Objection to Motion to Admit Netherlands Study
- t.) 08/01/16 Defendants' Brief
- u.) 08/03/16 Order Denying Motion to Admit Netherlands Study
- v.) 08/10/16 Claimant's Reply Brief
- w.) 08/23/16 Notice of Telephone Conference
- x.) 09/23/16 Commission's Findings of Fact, Conclusions of Law and Order

7. Exhibits: A designation of documents admitted as exhibits at hearing to be copies and sent to the Supreme Court is set forth below:

**Claimant's Exhibits:**

- A. SSA Wage History, 2013 W-2 from Dirne, 2 Pay Checks in 2013
- B. Legislative History of 2001 Amendment to I.C. 72-438
- C. Letters of Reference for Dr. Jobe from 2004
- D. CV of Dr. Jobe
- F. Get Well Soon Card from Dirne/Heritage
- G. Redacted Medical Record of Colonized MRSA Patient
- H. Kootenai Hand and Reconstructive Surgery
- J. Infectious Disease Medicine
- K. Kootenai Medical Center (a.k.a. Kootenai Health)
- S. Dr. McNulty IME Report
- T. Fred Cutler M. Ed. Report
- U. Dr. Hull IME Report
- V. Articles Referenced in Dr. Hull Report
- Y. Deposition Transcript of Deb Gutierrez CMA

**Defense Exhibits:**

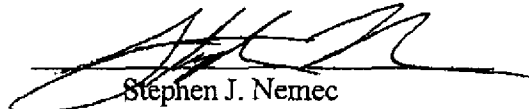
- 1. Employer Records
- 4. Records of Dr. Riedo
- 7. Records of Dr. Riedo

8. I certify:

- (a) That the estimated fee for preparation of the agency's records has been paid.
- (b) The appellate filing fee has been paid.
- (c) Service has been made upon all the parties required to be served pursuant to Idaho Appellate Rule 20.

DATED this 2<sup>nd</sup> day of November, 2016.

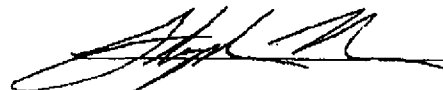
JAMES, VERNON & WEEKS, P.A.

  
Stephen J. Nemeec  
Attorney for Appellant

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 2<sup>nd</sup> day of November, 2016, a true and correct copy of the foregoing document was served upon the following individuals by the method indicated below:

H. James Magnuson 1250 Northwood Center Court P.O. Box 2288 Coeur d'Alene, Idaho 83816 <i>Atty. for Employer &amp; Surety</i>		
<input type="checkbox"/>	Mailed	<input type="checkbox"/>
<input type="checkbox"/>	By Hand	<input type="checkbox"/>
<input type="checkbox"/>	Overnight Mail	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Fax: 666-1700	<input type="checkbox"/>



RECEIVED  
IDAHO SUPREME COURT  
COURT OF APPEALS

2016 NOV -7 AM 10:09

BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

RICHARD JOBE,

Claimant/Appellant,

v.

DIRNE CLINIC/HERITAGE HEALTH, Employer,  
and IDAHO STATE INSURANCE FUND, Surety,

Defendants/Respondents.

SUPREME COURT NO. 44604

CERTIFICATE OF APPEAL  
FILED

NOV 14 2015

INDUSTRIAL COMMISSION

Appeal From: Industrial Commission,  
R. D. Maynard, Chairman presiding

Case Number: IC 2014-014091

Order Appealed from: Findings of Fact, Conclusions of Law, and  
Recommendation, filed September 23, 2016, and  
Order, filed September 23, 2016

Attorney For Appellant: Stephen Nemecek  
1626 Lincoln Way  
Coeur d'Alene, ID 83814

Attorney For Respondents: James Magnuson  
PO Box 2288  
Coeur d'Alene, ID 83816

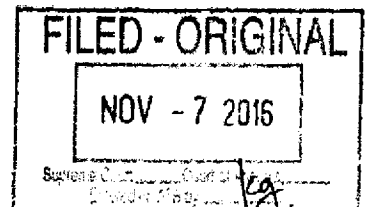
Appealed By: Claimant/Appellant

Appealed Against: Defendants/Respondents

Notice of Appeal Filed: November 3, 2016

Appellate Fee Paid: \$94.00

CERTIFICATE OF APPEAL (JOBE) - 1





Name of Reporter:

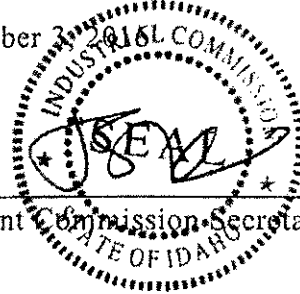
Patricia Pullo, M & M Court Reporting

Transcript Requested:

Standard transcript has been requested. Transcript has been prepared and filed with the Commission.

Dated:

November 3, 2016



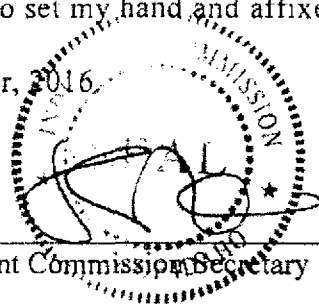
Assistant Commission Secretary

CERTIFICATION

Supreme Court No. 44604

I, Jennifer S. Komperud, the undersigned Assistant Commission Secretary of the Industrial Commission of the State of Idaho, hereby CERTIFY that the foregoing is a true and correct photocopy of the Notice of Appeal; Findings of Fact, Conclusions of Law, and Recommendation; and Order; and the whole thereof, in IC case number 2014-014091 for Richard Jobe.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said Commission on this 3rd day of November, 2016.



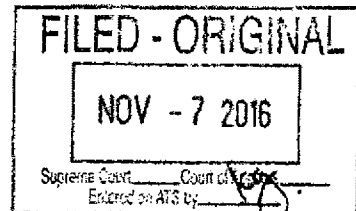
Assistant Commission Secretary

FILED

NOV 14 2016

INDUSTRIAL COMMISSION

CERTIFICATION (JOBE)



H. JAMES MAGNUSON  
Attorney at Law  
1250 Northwood Center Court  
P. O. Box 2288  
Coeur d'Alene, Idaho 83816  
Telephone: (208) 666-1596  
Facsimile: (208) 666-1700  
ISB # 02480

Attorney for Defendants/  
Respondents

BEFORE THE INDUSTRIAL COMMISSION  
OF THE STATE OF IDAHO

RICHARD JOBE,  
  
                    Claimant/Appellant,  
  
          vs.  
  
DIRNE CLINIC/HERITAGE HEALTH,  
  
                    Employer,  
  
STATE INSURANCE FUND,  
  
                    Surety,  
                    Defendants/Respondents.

I. C. No. 2014-014091

**MOTION TO AUGMENT AGENCY'S  
RECORD; REQUEST FOR  
ADDITIONAL DOCUMENTS  
REGARDING RECORD ON APPEAL**

2016 NOV 21 09:11:35  
INDUSTRIAL COMMISSION

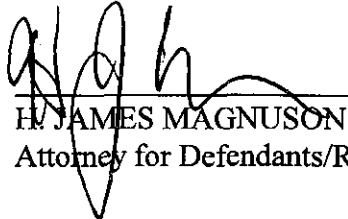
TO: RICHARD JOBE, Claimant/Appellant, your attorney, and the Clerk with the Industrial Commission:

COMES NOW, Defendants/Respondents, DIRNE CLINIC/HERITAGE HEALTH, Employer, and STATE INSURANCE FUND, Surety, by and through H. James Magnuson, their attorney of record, and hereby request additional documents as part of the Clerk's or agency's record under I.A.R. 28(c) and move to augment the Agency's record to include the following:

1. Post-hearing deposition transcript with exhibits of Francis Riedo, M.D., taken on June 3, 2016.

2. Defendants' Exhibits 1-7 to wit:
- A. Employer records;
  - B. Medical records of Patrick Mullen, M.D.;
  - C. Medical records of Kootenai Medical Center;
  - D. Medical records of Francis X. Riedo, M.D.;
  - E. Medical records of David B. Souvenir, M.D.;
  - F. Francis X. Riedo, M.D., Curriculum Vitae; and
  - G. Medical records of Francis X. Riedo, M.D., dated February 27, 2016.

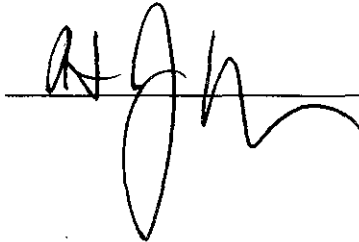
DATED this 17 day of November, 2016.

  
\_\_\_\_\_  
H. JAMES MAGNUSON  
Attorney for Defendants/Respondents

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing was sent by first-class, prepaid mail on the 17 day of November, 2016, to:

Stephen J. Nemecek  
James, Vernon & Weeks, P.A.  
1626 Lincoln Way  
Coeur d'Alene, ID 83814

  
\_\_\_\_\_

**CERTIFICATION OF RECORD**

I, Jennifer Komperud, the undersigned Assistant Commission Secretary of the Industrial Commission, do hereby certify that the foregoing record contains true and correct copies of all pleadings, documents, and papers designated to be included in the Agency's Record Supreme Court No. 44604 on appeal by Rule 28(b)(3) of the Idaho Appellate Rules and by the Notice of Appeal, pursuant to the provisions of Rule 28(b).

I further certify that all exhibits offered or admitted in this proceeding, if any, are correctly listed in the List of Exhibits. Said exhibits will be lodged with the Supreme Court upon settlement of the Reporter's Transcript and Agency's Record herein.

DATED this 8<sup>th</sup> day of December, 2016.

  
\_\_\_\_\_  
Assistant Commission Secretary

BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

RICHARD JOBE,

Claimant/Appellant,

v.

DIRNE CLINIC/HERITAGE HEALTH, Employer,  
and IDAHO STATE INSURANCE FUND, Surety,

Defendants/Respondents.

SUPREME COURT NO. 44604

NOTICE OF COMPLETION

TO: STEPHEN W. KENYON, Clerk of the Courts;  
Stephen Nemecek for the Appellant; and  
James Magnuson for the Respondents.

YOU ARE HEREBY NOTIFIED that the Clerk's Record was completed on this date and, pursuant to Rule 24(a) and Rule 27(a), Idaho Appellate Rules, copies of the same have been served by regular U.S. Mail upon each of the following:

Attorney for Appellant:

STEPHEN NEMEC  
1626 LINCOLN WAY  
COEUR D ALENE ID 83814

Attorney for Respondents:

JAMES MAGNUSON  
PO BOX 2288  
COEUR D ALENE ID 83816

YOU ARE FURTHER NOTIFIED that pursuant to Rule 29(a), Idaho Appellate Rules, all parties have twenty-eight (28) days from the date of this Notice in which to file objections to the Clerk's Record or Reporter's Transcript, including requests for corrections, additions

**NOTICE OF COMPLETION (RICHARD JOBE - 44604) - 1**

or deletions. In the event no objections to the Clerk's Record or Reporter's Transcript are filed within the twenty-eight (28) day period, the Clerk's Record and Reporter's Transcript shall be deemed settled.

DATED at Boise, Idaho, this 8<sup>th</sup> day of December, 2016.



---

Assistant Commission Secretary

JAMES, VERNON & WEEKS, P.A.  
1626 Lincoln Way  
Coeur d'Alene, ID 83814  
Telephone No. 208-667-0683  
Facsimile No. 208-664-1684  
[snemec@jvwlaw.net](mailto:snemec@jvwlaw.net)

*Stephen J. Nemec ISBA # 7591  
Attorney for Claimant/Appellant*

**FILED**

DEC 20 2016

INDUSTRIAL COMMISSION

**BEFORE THE INDUSTRIAL COMMISSION  
OF THE STATE OF IDAHO**

RICHARD JOBE,  
  
Claimant-Appellant,  
  
vs.  
  
DIRNE CLINIC/HERITAGE HEALTH,  
Employer, IDAHO STATE INSURANCE  
FUND, Surety,  
  
Defendants-Respondents.

**SUPREME COURT NO. 44604  
I.C. CASE NO. 2014-014091**

**CLAIMANT/APPELLANT'S  
OBJECTION TO PROPOSED  
AGENCY RECORD**

COMES NOW, Claimant/Appellant, by and through his attorney of record, Stephen J. Nemec of the firm James, Vernon & Weeks, P.A. and hereby files his objection to the Agency Record prepared December 8, 2016, pursuant to I.A.R. 29(a). In the Notice of Appeal filed on November 3, 2016, Claimant/Appellant requested that the Industrial Commission include the following briefs pursuant to I.A.R. 28(c) as set forth in the Notice of Appeal, in relevant part, as follows:

*The Appellant requests the following documents to be included in the Clerk's record in addition to those automatically included under Idaho Appellate Rule 28: . . .*

Claimant/Appellant's Objection to Proposed Agency Record -1



JAMES, VERNON & WEEKS, P.A.  
1626 Lincoln Way  
Coeur d'Alene, ID 83814  
Telephone No. 208-667-0683  
Facsimile No. 208-664-1684  
[snemec@jvwlaw.net](mailto:snemec@jvwlaw.net)

*Stephen J. Nemec ISBA # 7591  
Attorney for Claimant/Appellant*

**BEFORE THE INDUSTRIAL COMMISSION  
OF THE STATE OF IDAHO**

RICHARD JOBE,  
  
Claimant-Appellant,  
  
vs.  
  
DIRNE CLINIC/HERITAGE HEALTH,  
Employer, IDAHO STATE INSURANCE  
FUND, Surety,  
  
Defendants-Respondents.

**SUPREME COURT NO. 44604  
I.C. CASE NO. 2014-014091**

**CLAIMANT/APPELLANT'S  
OBJECTION TO PROPOSED  
AGENCY RECORD**

COMES NOW, Claimant/Appellant, by and through his attorney of record, Stephen J. Nemec of the firm James, Vernon & Weeks, P.A. and hereby files his objection to the Agency Record prepared December 8, 2016, pursuant to I.A.R. 29(a). In the Notice of Appeal filed on November 3, 2016, Claimant/Appellant requested that the Industrial Commission include the following briefs pursuant to I.A.R. 28(c) as set forth in the Notice of Appeal, in relevant part, as follows:

*The Appellant requests the following documents to be included in the Clerk's record in addition to those automatically included under Idaho Appellate Rule 28: . . .*

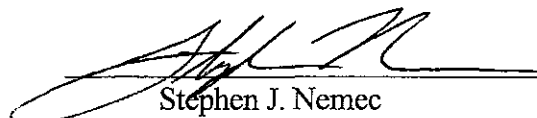
p.) 07/01/16 Claimant's Opening Brief  
t.) 08/01/16 Defendants' Brief  
v.) 08/10/16 Claimant's Reply Brief

When Claimant/Appellant reviewed the Agency Record, it was discovered that the briefs listed above were instead designated as "Additional Documents" on page iii of the Exhibits List and not included in the Agency's Record. Because the briefs filed with the Industrial Commission and designated as "P,T,V" in the Notice of Appeal are critical to the issues of law that the Supreme Court will resolve on appeal, the Claimant/Appellant requests that those briefs be included in the Agency Record pursuant to I.A.R. 28(c).

Finally, in reviewing the Depositions to be sent to the Supreme Court on pages ii and iii of the Exhibits to be sent to the Supreme Court under I.A.R. 31(a)(1)(2), it was noted that there was no mention of the deposition transcript of Fred Cutler M. Ed., taken May 26, 2016, and lodged June 7, 2016, as currently set out on page 43 of the proposed record. Claimant requests that Mr. Cutler's transcript be sent to the Supreme Court as an Exhibit with the other deposition transcripts in this case.

DATED this 20<sup>th</sup> day of December, 2016.

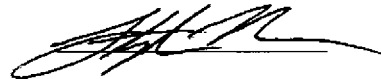
JAMES, VERNON & WEEKS, P.A.

  
Stephen J. Nemeck  
Attorney for Appellant

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the   20<sup>th</sup>   day of   December  , 2016, a true and correct copy of the foregoing document was served upon the following individuals by the method indicated below:

H. James Magnuson 1250 Northwood Center Court P.O. Box 2288 Coeur d'Alene, Idaho 83816 <i>Atty. for Employer &amp; Surety</i>		
X	Mailed	Mailed
	By Hand	By Hand
	Overnight Mail	Overnight Mail
X	Fax: 666-1700	Fax



BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

RICHARD JOBE,

Claimant,

v.

DIRNE CLINIC/HERITAGE HEALTH,

Employer,

and

IDAHO STATE INSURANCE FUND.,

Surety,

Defendants.

IC 2014-014091

ORDER ON CLAIMANT'S REQUEST TO  
AUGMENT THE AGENCY'S RECORD

FILED

JAN - 9 2017

INDUSTRIAL COMMISSION

On December 20, 2016, Claimant filed an objection to the Agency Record pursuant to Idaho Appellate Rules (I.A.R.) 29 (a). Claimant argues that the Industrial Commission incorrectly designated the briefs "P,T,V" as "Additional Documents" rather than as "Exhibits" in the agency record. Claimant contends that these briefs are critical to the issues of law to be considered on appeal. Claimant also requests the deposition transcript of Fred Cutler, M.Ed., taken May 26, 2016, be included as an Exhibit. Defendants did not file an objection.

I.A.R. 28 Preparation of Clerk's or Agency's Record – Content and Arrangement defines "additional documents" as follows:

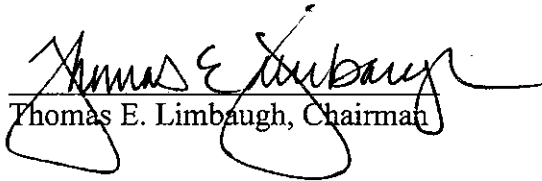
(c) **Additional Documents.** The clerk's or agency's record shall also include all additional documents requested by any party in the notice of appeal, notice of cross-appeal and requests for additional documents in the record. Any party may request any written document filed or lodged with the district court or agency to be included in the clerk's or agency's record including, but not limited to, written requested jury instructions, written jury instructions given by the court, *depositions*, *briefs*, statements or affidavits considered by the court or administrative agency in the trial of the action or proceeding, or considered on

any motion made therein, and memorandum opinions or decisions of a court or administrative agency. (Emphasis added).

I.A.R. 28 has clearly defined Claimant's requested briefs (P,T,V) and the deposition of Fred Cutler, M.Ed. as "additional documents." Therefore, the Commission declines to submit the documents with a different designation. Claimant's request to augment the record to include the deposition of Fred Cutler, M.Ed., is GRANTED.

DATED this 9th day of January, 2017.

INDUSTRIAL COMMISSION

  
Thomas E. Limbaugh, Chairman

ATTEST:

  
Assistant Commission Secretary



**CERTIFICATE OF SERVICE**

I hereby certify that on the 9th day of January, 2017, a true and correct copy of **ORDER ON CLAIMANT'S REQUEST TO AUGMENT THE AGENCY'S RECORD** were served by regular United States Mail upon each of the following:

STEPHEN J. NEMEC  
126 LINCOLN WAY  
COEUR D'ALENE, ID 83814

H. JAMES MAGNUSON  
1250 NORTHWOOD CENTER COURT  
PO BOX 2288  
COEUR D'ALENE, ID 83816

