

Joe Lombardo  
Governor



Richard Whitley,  
MS  
Director



Cody Phinney,  
MPH  
Administrator

Ihsan Azzam,  
Ph.D., M.D.  
Chief Medical  
Officer

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## NOTICE OF PUBLIC HEARING

ELKO BOYS AND GIRLS CLUB, ELKO NEVADA, 89803 IS REQUESTING A VARIANCE, CASE #765, FROM THE NEVADA STATE BOARD OF HEALTH REGULATIONS.

NOTICE IS HEREBY GIVEN that ELKO BOYS AND GIRLS CLUB, ELKO NEVADA, 89803 has requested a variance from Nevada Administrative Code (NAC) 444.166(4)(5) "Cutters"

A public hearing will be conducted on September 6, 2024 at 9:00 am by the Nevada State Board of Health to consider this request. This meeting will be held in person and online.

### Meeting Locations:

- Southern Nevada Health District (SNHD)  
Red Rock Trail Rooms A and B  
280 S. Decatur Boulevard; Las Vegas, Nevada 89107
- Nevada Division of Public and Behavioral Health (DPBH)  
Hearing Room No. 303, 3rd Floor  
4150 Technology Way; Carson City, Nevada 89706

Join from a computer using the Microsoft Teams meeting link:

Microsoft Teams

[https://teams.microsoft.com/l/meetup-join/19%3ameeting\\_ZjcxNGQzYjQtMzMlOS00MTNiLTg1ZWYtMmExODkwZTBkMTQ0%40thread.v2/0?content=%7b%22Tid%22%3a%22e4a340e6-b89e-4e68-8eaa-1544d2703980%22%2c%22Oid%22%3a%22768e443d-3be6-48f0-9bb0-7e72f1276b8d%22%7d](https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZjcxNGQzYjQtMzMlOS00MTNiLTg1ZWYtMmExODkwZTBkMTQ0%40thread.v2/0?content=%7b%22Tid%22%3a%22e4a340e6-b89e-4e68-8eaa-1544d2703980%22%2c%22Oid%22%3a%22768e443d-3be6-48f0-9bb0-7e72f1276b8d%22%7d)

Join by Phone:

1-775-321-6111

Phone Conference ID Number: 382 183 728#

ELKO BOYS AND GIRLS CLUB, ELKO NEVADA, 89803 has requested a variance from Nevada Administrative Code (NAC) 444.166 "Gutters" which states, in relevant part:

4. *The pool water level must be maintained about an inch below the gutter during periods of pool use. During daily cleanup operations the water level of the pool must be raised by the addition of water until the water overflows the crest of the gutters and flushes away the debris.*

5. *The overflow gutter depth below the lip must be a minimum of 3 inches (8 centimeters) at the high points between the drains. The drains must be spaced at a maximum of 15 feet (4.6 meters) between centers and a slope provided in the bottom of not less than 2 1/2 inches in 10 feet (2 percent). The gutters must be of sufficient size and shape so that floating matter entering them will not be washed back into the pool. The branch piping to each overflow gutter drain must not be less than 2 inches (5 centimeters).*

The authority of the State Board of Health to consider and grant a variance from the requirements of a regulation is set forth at NRS 439.200 and NAC 439.200 – 439.280.

Persons wishing to comment upon the proposed variance may appear at the scheduled public hearing or may submit written testimony at least five days before the scheduled hearing to:

Secretary, State Board of Health  
Division of Public and Behavioral Health  
4150 Technology Way, Suite 300  
Carson City, NV 89706

Anyone wishing to testify for more than five minutes on the proposed variance must petition the Board of Health at the above address. Petitions shall contain the following: 1) a concise statement of the subject(s) on which the petitioner will present testimony; 2) the estimated time for the petitioner's presentation.

This notice has also been posted at the following locations:

DIVISION OF PUBLIC AND BEHAVIORAL HEALTH (DPBH), 4150 TECHNOLOGY WAY, CARSON CITY, NV  
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH WEBSITE:

<http://dpbh.nv.gov/Boards/BOH/Meetings/Meetings/>

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Director

**DEPARTMENT OF  
HEALTH AND HUMAN SERVICES**

 **NEVADA DIVISION of PUBLIC  
and BEHAVIORAL HEALTH**



Cody Phinney,  
MPH  
Administrator

Ihsan Azzam,  
Ph.D., M.D.  
Chief Medical  
Officer

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## MEMORANDUM

**DATE:** August 6, 2024  
**TO:** Jon Pennell, DVM, Chairperson, State Board of Health  
**THROUGH:** Cody Phinney, Secretary, State Board of Health  
**RE:** Case # 765, Elko Boys and Girls Club Recreation Center

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### STAFF REVIEW

For the reasons stated below, the Division of Public and Behavioral Health (DPBH) staff recommend that the State Board of Health approve Variance Case #765, as requested by the Elko Boys and Girls Club on April 26, 2024. The Elko Boys and Girls Club is requesting a variance from Nevada Administrative Code (NAC) 444.166, specifically the requirement that the water level be maintained one inch below the gutter-weir overflow lip. This regulation exists to allow the pool surface water to reach a drain during surface-cleaning by skimming of the pool surface water. The public health rationale for the use of gutters within pool systems is to remove contaminants, maintain water levels and improve uniform water distribution. This includes bacteria, dirt, body oils and other organic or inorganic materials. NAC 444.166 was last updated in 1988 and does not reflect modern pool design or pool-gutter function.

### REGULATION

Nevada Administrative Code (NAC) 444.166 (4) – (5) states:

4. "The pool water level must be maintained about an inch below the gutter during periods of pool use. During daily cleanup operations the water level of the pool must be raised by the addition of water until the water overflows the crest of the gutters and flushes away the debris."
5. "The overflow gutter depth below the lip must be a minimum of 3 inches (8 centimeters) at the high points between the drains. The drains must be spaced at a maximum of 15 feet (4.6 meters) between centers and a slope provided in the bottom of not less than 2 1/2 inches in 10 feet (2 percent). The gutters must be of sufficient size and shape so that floating matter entering them will not be washed back into the pool. The branch piping to each overflow gutter drain must not be less than 2 inches (5 centimeters)."

### INTENT OF THE REGULATION

NAC 444.166 (4) – (5) requires the use of a specific type of gutter system within a pool to remove contaminants, maintain water levels and improve uniform water distribution. This includes the filtration and removal of bacteria, dirt, body oils and other organic or inorganic materials. NAC 444.166 was last updated in 1988 and does not reflect modern pool design or pool-gutter function.

### DEGREE OF RISK TO PUBLIC HEALTH

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There is little to no risk to public health in allowing the Elko Boys and Girls Club Recreation Center to use an updated and engineered perimeter gutter system design. The requested system would provide the same safety features required by the code.

### **EXCEPTIONAL AND UNDUE HARDSHIP**

The Division has found that there is not an undue or exceptional financial hardship by strict application of NAC 444.166 (4) – (5).

### **PUBLIC COMMENT RECEIVED**

Notice of the hearing is scheduled to be posted on the Division of Public & Behavioral Health website at <http://dpbh.nv.gov/Boards/BOH/Meetings/Meetings/> and at the 4150 Technology Way office in Carson City, NV by August 8, 2024. The Division of Public & Behavioral Health is not aware of any objections to this variance by any local authorities, and no public comments have been received to date.

### **STAFF RECOMMENDATION**

DPBH staff recommend the State Board of Health approve the Elko Boys and Girls Club Recreation Center Variance Case # 765, request for a variance to NAC 444.166(4) & (5), with the following conditions:

- The Elko Boys and Girls Club will ensure that all procedures related to the maintenance and upkeep of the engineered perimeter gutter system are followed.

### **PRESENTER**

Teresa Hayes, Health Program Manager III, Environmental Health Section, DPBH



NEVADA STATE BOARD OF HEALTH  
4150 Technology Way, Suite 300 CARSON CITY, NV 89706

**APPLICATION FOR VARIANCE**

Please check the appropriate box that pertains to the NAC for which you are requesting a variance.

Division Administration  
(NAC 439, 441A, 452, 453A, & 629)

Health Care Quality & Compliance  
(NAC 449, 457, 459 & 652)  
Radiation control program

Child, Family & Community Wellness  
(NAC 392, 394, 432A, 439, 441A, & 442)

Office of State Epidemiology  
(NAC 440,450B, 452, 453, 453A, & 695C)

Public Health & Clinical Services  
(NAC 211, 444, 446, 447, 583, & 585)

Date: July 10, 2024

Name of Applicant: Black Knight Entertainment LLC

Phone: 725 264-7248

Mailing Address: 1550 S. Pavilion Center Drive

City: Las Vegas

State: Nevada

Zip: 89135

We do hereby apply for a variance to  
chapter/section **NAC 459.556(1)(c)** of the Nevada Administrative  
Code (NAC). (For example: NAC 449.204)

Title of section in  
question: (NAC) 459.556(1)(c) and (d)



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**APPLICATION FOR VARIANCE**

**Statement of existing or proposed conditions in violation of the NAC:**

NEVADA ADMINISTRATIVE CODE (NAC) 459.556(1)(c) and (d) state, in relevant part,

1. Procedures and auxiliary equipment designed to minimize exposure to the patient and personnel commensurate with obtaining the needed diagnostic information must be utilized, including the following:

(c) Except as otherwise provided in paragraph (d), portable or mobile equipment may be used only for:

(1) Examinations where it is impractical to transfer the patient to a stationary radiographic installation; and

(2) Its designed purpose, as specified by the manufacturer; and

(d) Portable or mobile equipment may be used in lieu of stationary equipment for a period of not more than 90 days while the facility is awaiting the delivery of new stationary equipment or the repair of registered stationary equipment if the following conditions are satisfied:

(1) The portable or mobile equipment has been registered and the appropriate fee has been paid in accordance with NAC 459.154 and 459.161; and

(2) The registrant has requested, in writing, and been granted authorization from the Division to use the portable or mobile equipment in lieu of stationary equipment. Such a request must include, without limitation:

(I) The date of installation of the portable or mobile equipment; and

(II) The expected duration of the use of the portable or mobile equipment.

Date of initial operation (if existing): N o v 2 0 2 3



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## **APPLICATION FOR VARIANCE**

**ATTENTION: Please read this section closely. Your request for variance will be examined against these criteria:**

Any person who, because of unique circumstances, is unduly burdened by a regulation of the State Board of Health and thereby suffers hardship and the abridgement of a substantial property right may apply for a variance from a regulation. (NAC 439.200(1))

1. The State Board of Health will grant a variance from a regulation only if it finds from the evidence presented at the hearing that:
  - (a) There are circumstances or conditions which:
    - (1) Are unique to the applicant.
    - (2) Do not generally affect other persons subject to the regulation.
    - (3) Make compliance with the regulation unduly burdensome; and
    - (4) Cause a hardship to and abridge a substantial property right of the applicant; and
  - (b) Granting the variance:
    - (1) Is necessary to render substantial justice to the applicant and enable him to preserve and enjoy his property; and
    - (2) Will not be detrimental or pose a danger to public health and safety.
2. Whenever an applicant for a variance alleges that he/she/they suffers or will suffer economic hardship by complying with the regulation, they must submit evidence demonstrating the costs of compliance with the regulation. The Board will consider the evidence and determine whether those costs are unreasonable. (NAC 439.240)

**Therefore, it is important for your variance request to be as complete as possible. It is your responsibility to attach documentation supporting your variance request.**

### **Statement of degree of risk of Health**

The health risk is increased radiation exposure to radiological technologists, patients, and non-radiation workers such as support staff and or members of the public.

#### Background information:

The Applicant performs x-ray imaging services at athletic events at the T-Mobile Arena located at 3780 South Las Vegas Blvd. Las Vegas, NV 89109, Lee's Family Forum located at 200 S Green Valley Pkwy, Henderson, NV 89012, and other sporting venues. The Applicant is not the sole owner of the arena and is not allowed to remodel the facility to accommodate a stationary x-ray machine. It is common practice for doctors and other medically trained staff to evaluate a player's injury at professional and collegiate athletic events. Some reasons for assessing injuries at the arena instead of sending the player to the hospital include:

- What seems like a minor injury could in fact be a more serious injury and allowing the player to continue would result in further damage to the player.



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**APPLICATION FOR VARIANCE**

- Sending a player to the hospital will likely change the outcome of the event.
- Players may not report or downplay an injury to keep playing, which could result in further injury to the player.
- Professional athletic organizations such as the National Hockey League contractually mandate on site access to medical care for players, including x-ray services.

X-ray imaging is an important tool for assessing injuries and the use of portable x-ray systems at these events are not uncommon in other states.

The Applicant has made the following commitments to reduce health risks:

To protect radiological technologist:

- Technologists will not routinely hold or restrain patients when taking x-rays,
- Technologists have been provided additional training specific to the use of mobile x-ray machines and methods to control the area where x-rays are taken, in order to reduce exposures to ancillary persons and members of the public at the facility.
- The following equipment will be provided:
  - Lead aprons with thyroid collars for technologists,
  - Shielding for patients,
  - Patient table for performing x-rays, and
  - Positioning foams to stabilize patients and minimize movement during x-ray exams.

To reduce exposure to ancillary persons and other non-radiation workers:

- The area where x-rays are taken will be controlled and access limited to only persons necessary for the examination.

To ensure adequate management oversight of these activities:

- Radiation safety personnel will perform oversight of the entire process to include observations or demonstrations of work being performed at least annually and when a new x-ray technologist works independently.

To ensure radiation exposure to patients are maintained as low as reasonably achievable the Applicant will:

- Ensure a medical doctor is on site to prescribe x-rays and to evaluate if an x-ray should be taken using a portable or mobile x-ray machine or if the player needs to be sent off site to a stationary x-ray machine.
- Track all repeat images and review the data to ensure repeat images are kept at an acceptable level and implement corrective actions if needed.

RCP considers the determination of the types of examinations that should be performed using a portable or mobile x-ray machine a medical decision that should be made by the physician who prescribes the x-ray in consultation with the Applicant.

The Applicant has agreed to implement the above commitments. (See Attachment A).

Approval of the variance with the above commitments will minimize the detriment to public health and safety to the extent practical.





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**APPLICATION FOR VARIANCE**

**Please state in detail the circumstances or conditions which demonstrate that:**

1. An exceptional and undue hardship results from a strict application of the Regulation:
  - A. Strict application of 459.556(1)(c) and (d), would require the Applicant to send players to an imaging facility that has a stationary x-ray machine. Sending a player to another facility would likely remove them from the event, which would affect both the event and the player. Players not wanting to be removed from an event may be reluctant to reveal or even hide an injury to keep playing, which could result in further injury to the player. With all the pressures and competition among athletic teams, it is in the best interest of the players, teams, fans, owners, and supporting organizations for injured players to be assessed at the arena. It can help prevent further injury to players. X-ray imaging services are an important part of the medical assessment process.
  - B. The circumstances associated with this variance are unique. The Applicant is not the sole owner and cannot remodel the arena to install a stationary x-ray machine. Moving the event to another arena is not practical. The number of x-rays taken is extremely low, for example in 2023, the Applicant performed an average of 1 x-ray exam during each athletic event.
  - C. Compliance with the regulation in this case is unduly burdensome given the Applicant has provided adequate protection for technologists, committed to taking actions necessary to maintain patient and ancillary persons radiation exposures to levels that are as low as reasonably achievable. As stated above there are several adverse consequences associated with a strict application of the regulation which would create a hardship for the players, teams, and supporting organizations.
2. The variance, if granted, would not:
  - a. Cause substantial detriment to the public welfare.
    - i. The Applicant has made the following commitments to reduce health risks:
    - ii. To protect radiological technologist:
    - iii. Technologists will not routinely hold or restrain patients when taking x-rays,
    - iv. Technologists have been provided additional training specific to the use of mobile x-ray machines and methods to control the area where x-rays are taken, in order to reduce exposures to ancillary persons and members of the public at the facility.
  - b. The following equipment will be provided:
    - i. Lead aprons with thyroid collars for technologists,
    - ii. Shielding for patients,
    - iii. Patient table for performing x-rays, and
    - iv. Positioning foams to stabilize patients and minimize movement during x-ray exams.



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**APPLICATION FOR VARIANCE**

- c. To reduce exposure to ancillary persons and other non-radiation workers:
    - i. The area where x-rays are taken will be controlled and access limited to only persons necessary for the examination.
  - d. To ensure radiation exposure to patients are maintained as low as reasonably achievable the Applicant will:
    - i. Ensure a medical doctor is on site to prescribe x-rays and to evaluate if an x-ray should be taken using a portable or mobile x-ray machine or if the patient needs to be sent off site to a stationary x-ray machine.
    - ii. Track all repeat images and review the data to ensure repeat images are kept at an acceptable level and implement corrective actions if needed.
  - e. RCP considers the determination of the types of examinations that should be performed using a portable or mobile x-ray machine a medical decision that should be made by the physician who prescribes the x-ray in consultation with the Applicant.
  - f. The Applicant has agreed to implement the above commitments.
    - i. Approval of the variance with the above commitments will minimize the detriment to public health and safety to the extent practical.
2. Impair substantially the purpose of the regulation from which the application seeks a variance.
- a. Approval of the variance could result in increased radiation exposure to radiological technologists and patients. However, implementation of the commitments above, will reduce radiation exposures to both radiological technologists and patients to acceptable levels that are reasonably achievable.

The bureau may require the following supporting documents to be submitted with and as a part of this application:

Specific Request:

**DPBH staff recommend the State Board of Health approve Variance Case #Black Knight Sports and Entertainment, LLC request for a variance to NAC 459.556(1)(c) and (d) for a period of 5 years and with the condition that the Applicant continues to implement the commitments in attachment A.**



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- 1. Legal description of property concerned
- 2. General area identification map
- 3. Plot map showing locations of all pertinent items and appurtenances
- 4. Well log (if applicable)
- 5. Applicable lab reports
- 6. Applicable engineering or construction/remodeling information
- 7. Other items (see following pages)

This application must be accompanied by evidence demonstrating the costs of your compliance with regulations or specific statutory standards. Your request will be placed on the Board of Health agenda 40 days or more after receipt in this office if accompanied by the required fee (NAC 439.210). The application and supporting documentation will form the basis for the Division of Public and Behavioral Health staff report and recommendation(s) to the Board. Failure to respond to the above statements may cause the Board to deny consideration of the application at the requested Board meeting.



I am/we are requesting this variance request be placed on the next regularly scheduled Board of Health agenda. It is understood that I/we can attend in person at either physical location in Carson City or Las Vegas or we may attend virtually.

Signature:

Printed Name:

Steve McCauley MHS, ATC, CSCS

Title:

Director of Performance and Sports Medicine

Date:

7.10.24



NEVADA DIVISION of PUBLIC  
and BEHAVIORAL HEALTH



NEVADA STATE BOARD OF HEALTH  
4150 Technology Way, Suite 300 CARSON CITY, NV 89706

**APPLICATION FOR VARIANCE**

**PLEASE SUBMIT YOUR APPLICATION FOR VARIANCE BY USING  
ANY OF THE FOLLOWING METHODS:**

**MAIL TO:**

**Secretary, Nevada State Board of Health**  
Division of Public and Behavioral Health  
4150 Technology Way, Suite 300  
Carson City, NV 89706

**FAX:**

775-687-7570

**EMAIL:**

[DPBH@health.nv.gov](mailto:DPBH@health.nv.gov)  
[StateBOH@health.nv.gov](mailto:StateBOH@health.nv.gov)

BEFORE THE STATE BOARD OF HEALTH

IN THE MATTER OF )  
THE ELKO BOYS AND GIRLS CLUB RECREATION CENTER, POOL )  
VARIANCE REQUEST: CASE # 765 )

The Nevada State Board of Health (“Board”), having considered the application for a variance and all other related documents submitted in support of the application in the above referenced matter, makes the following Findings of Fact, Conclusions of Law, and Decision.

FINDINGS OF FACT

1. On April 26, 2024, the Division of Public & Behavioral Health (“Division”) received request for variance from NAC 444.166 (4) & (5):
2. NAC 444.166 (4) states: “The pool water level must be maintained about an inch below the gutter during periods of pool use. During daily cleanup operations the water level of the pool must be raised by the addition of water until the water overflows the crest of the gutters and flushes away the debris.”
3. NAC 444.166 (5) states: “The overflow gutter depth below the lip must be a minimum of 3 inches (8 centimeters) at the high points between the drains. The drains must be spaced at a maximum of 15 feet (4.6 meters) between centers and a slope provided in the bottom of not less than 2 1/2 inches in 10 feet (2 percent). The gutters must be of sufficient size and shape so that floating matter entering them will not be washed back into the pool. The branch piping to each overflow gutter drain must not be less than 2 inches (5 centimeters).”
4. Elko Boys and Girls Club Recreation Center has requested a variance from the requirements of (NAC) 444.166 (4) – (5) on April 26, 2024. The Elko Boys and Girls Club is requesting a variance from the code that the water level be maintained one inch below the gutter-weir overflow lip. This ~~code-regulation exists to~~ allows the surface-cleaning by skimming of the pool surface water to a drain. The public health rationale for the use of gutters within pool

systems is to remove contaminants, maintain water levels and improve uniform water distribution. This includes the filtration and removal of bacteria, dirt, body oils and other organic or inorganic materials. NAC 444.166 was last updated in 1988 and does not reflect modern pool design or pool-gutter function.

5. NAC 444.166(4) allows only one specific type of gutter system which provides a gap between the deck surface and the drain underneath. The current gutter design system with surge tank allows for continuous skimming and does not require manual overflow of the pool to flush the gutter system. The perimeter gutter system, as requested by the applicant does not meet the requirements of the code where the gutter overflow is below the lip. The requested perimeter gutter system would have continuous over-the-lip skimming allowing for continuous skimming, filtering and cleaning. Which still allows the system to remove at least 50 percent of the recirculated water as required by the code.

6. The requested perimeter gutter system includes the use of a surge tank that works in tandem with the gutter system to capture and store water displaced by swimmers or water features installed within a pool. The perimeter gutter system is grated with narrow parallel slots that catch and dampen waves. The gutter is installed at a slight angle to ensure catching the water and debris. The gutter depth is 18 inches and 12 inches wide with several drains that remove the water to the surge tank. The surge tank works as a storage space for the displaced water is continuously filtered in this system and reintroduces the water after it is cleaned and sanitized.

#### CONCLUSIONS OF LAW

1. This matter is properly before the board pursuant to NRS 439.200 and determination of the matter on the merits is properly within the subject matter jurisdiction of the board.

2. NRS 439.200 provides:

The State Board of Health may grant a variance from the requirements of a regulation if it finds that:

- a. Strict application of that regulation would result in exceptional and undue hardship to the person requesting the variance; and

b. The variance, if granted would not:

1. Cause substantial detriment to the public welfare; or
2. Impair substantially the purpose of the regulation.

4. The Board finds that granting this variance would not cause substantial detriment to the public welfare or impair substantially the purpose of the regulation. The Board finds that granting this variance would provide the same safety features required by the code.

5. As a condition of this variance, the Elko Boys and Girls Club will ensure that all procedures related to the maintenance and upkeep of the perimeter gutter system are followed.

6. This variance will be revoked if the Elko Boys and Girls Club undergoes a substantial remodel. This variance is not transferable and will be void if the firm is sold to a new operator.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, and good cause appearing, therefore, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the variance to NAC 444.166(4) – (5) be GRANTED.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_

Cody Phinney, Secretary

Nevada State Board of Health

CERTIFICATE OF MAILING

I hereby certify that I am employed by the Department of Health & Human Services, Division of Public & Behavioral Health, and that on the \_\_\_\_\_ day of \_\_\_\_\_, 2024, I served the foregoing FINDINGS OF FACTS AND DECISION by mailing a copy thereof to:

Elko Boys and Girls Recreation Center  
C/O: Rusty Bahr  
782 Country Club Dr  
Elko NV 89801

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