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Summary-Senate Bill 389

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While Senate Bill 389 makes changes regarding the legal counsel for most of the occupational and licensing boards and establishes a fund for providing professional liability insurance subsidies for some physicians, it makes 10 Legislative "Findings" regarding the Nevada Board of Medical Examiners and the Nevada Board of Osteopathic Medicine and the balance of the bill proposes reforms in the structure and procedures of these boards.

1-Legal Counsel

The 1st subject addressed by SB389 deals with legal counsel for the occupational and licensing boards. Certain Occupational and Licensing Boards currently are granted by statute the authority to employ attorneys. All of these statutes are being revised in the bill to remove that authority and to require the office of the attorney general to serve as their legal counsel.

Sections 1-2 (Architecture, Interior Design and Residential Design); Sections 3-4 (Landscape Architects); Section 6 (Professional Engineers); Sections 7-8 (Accountants); Section 23 (Medical Doctors); Section 31 (Homeopathic Medicine); Section 32 (Dentistry and Dental Hygiene); Section 33 (Nursing); Section 38 (Osteopathic Medicine); Section 39-40 (Chiropractic); Section 41 (Oriental Medicine); Section 42 (Podiatry); Sections 45-46 (Veterinarians); Section 47 (Pharmacists); Section 48 (Physical Therapists); Section 49 (Psychologists); Section 50 (Alcohol and Drug Abuse Counselors); Section 51 (Funeral Directors, Embalmers and Operators of Cemeteries and Crematories; and, Section 52 (Barbers).

Section 54 amends NRS 228.110, which defines the role of the Attorney General as legal adviser to the Executive Department. It makes it clear that the AG's office "are the exclusive attorneys and counselors at law who may represent, within the state, each board or commission created by title 54 of NRS, unless the Attorney General and his deputies are disqualified to act in the particular matter." The boards are permitted to employ or contract an attorney in this event or if the legislature grants them authority to do so.

2- Critically Impacted Medical Specialties Subsidy Fund

A 2nd major issue in the bill creates a "Critically Impacted Medical Specialties Subsidy Fund". Sections 56-65 define and create the fund. Sections 17, 36 and 55 describe the method of raising the revenues for the fund.

The "Critically Impacted Medical Specialties Subsidy Fund" is set up as a special revenue fund in the State Treasury (Section 62) that "Fund must be used to provide subsidies to pay or defray the cost of malpractice insurance for physicians who are practicing in specific branches of medicine or osteopathic medicine that have been critically impacted by the cost of malpractice insurance in this state." Sections 63-65 assigns the responsibility for regulating the fund to the commissioner of insurance, who may adopt any needed implementing regulations. A physician could be eligible for a subsidy if he/she meets the standards listed in Section 64 and has submitted a request to the Commissioner as defined in Section 63. Basically, a majority of the physician's gross revenue from the practice of medicine is derived in Nevada; the physician practices in a specialty that has been critically impacted by the cost of medical liability insurance; the medical liability insurance premiums exceeds 15% of the physician's gross revenue; and the physician hasn't received a subsidy from the fund during the preceding 12 months.

Section 17 requires the Nevada Board of Medical Examiners to assess each licensed Medical Doctor an additional \$200 a year, which will be deposited into the fund. Section 36 requires the Nevada Board of Osteopathic Medicine to assess each licensed doctor of osteopathy an additional \$200 a year, which will be deposited into the fund. Section 55 requires the State Health Division to assess every hospital in the state \$50 for each live birth that occurs in the facility. This is to be collected monthly and deposited in the fund.

3-Nevada Board of Medical Examiners Reforms

A 3rd focus of SB389 addresses the NBME. This is contained in Sections 9-30. Those provisions discussed above regarding legal counsel and the critically impacted medical specialties fund and won't be repeated here.

Section 10 permits the NBME to employ "hearing officers, experts, administrators, investigators, consultants and clerical personnel necessary to the discharge of its duties", but makes them "at-will" employees serving at the pleasure of the Board and subject to discharge for any reason that doesn't violate a public policy. It allows the NBME to employ an Executive Secretary to serve as its chief administrative officer but limits the term of that person to not more than a total of 8 years. If the Board employs a hearing officer, the Board can't employ that person for any other purpose and if the hearing officer is removed or resigns, the Board cannot rehire the person in any capacity for 2 years.

Section 11 prohibits the Board from adopting regulations "that prohibit or have the effect of prohibiting a physician, physician assistant, or respiratory therapist from collaborating or consulting with another provider of health care." The Board may adopt

regulations that prohibit the licensees from abetting the illegal practice of medicine or the unlicensed practice of respiratory care.

Section 12 requires the NBME to maintain a web site. It prohibits posting items on the web site that are not approved by the Board at an open meeting. It requires that all financial reports prepared or received by the Board must be placed on the web site.

Section 13 permits the Board to waive 1 or more of the licensure requirements set forth in NRS 630.160-630.268 if a two-thirds majority of the Board "finds that exceptional circumstances exist which justify the issuance of such a license to the applicant".

Section 14 permits the Board to issue a "a letter of warning, a letter of concern or a non-punitive admonishment, whether or not the Board has initiated any disciplinary proceedings against the person." This letter wouldn't preclude disciplinary proceedings and doesn't constitute a final decision of the Board but would be permitted when the board has reason to believe that someone has violated, is violating or is about to violate any provision of NRS 630.

Section 15 requires a majority vote of the entire membership of the Board to revoke a license and then only if they find that there is clear and convincing evidence that the physician committed a material violation of the practice act.

Section 16 requires the Legislative Commission to conduct regular performance audits of the NBME with the 1st one to commence by October 1, 2003. The Board will be assessed to pay for these audits. "Each performance audit conducted pursuant to this section must include, without limitation, a comprehensive review and evaluation of:

- (a) The methodology and efficiency of the Board in responding to complaints filed by the public against a licensee;
- (b) The methodology and efficiency of the Board in responding to complaints filed by a licensee against another licensee;
- (c) The methodology and efficiency of the Board in conducting investigations of licensees who have had two or more malpractice claims filed against them within a period of 12 months;
- (d) The methodology and efficiency of the Board in conducting investigations of licensees who have been subject to one or more peer review actions at a medical facility that resulted in the licensee losing his professional privileges at the medical facility for more than 30 days within a period of 12 months;
- (e) The methodology and efficiency of the Board in taking preventative steps or progressive actions to remedy or deter any unprofessional conduct by a licensee

- before such conduct results in a violation under this chapter that warrants disciplinary action; and
- (f) The managerial and administrative efficiency of the Board in using the fees that it collects pursuant to this chapter.”

Section 19 removes the prohibition on using the “M.D.” letters if the physician is not licensed to practice. Section 28 removes this provision from the section that permits injunctions to be issued for the practice. The Senate Committee on Commerce and Labor has addressed the problem this has created for practicing dentists who have graduated from a medical school by recommending a “Do Pass” on SB 350. This would simply remove the language entirely.

Section 21 requires the President of the Board to conduct a training program for new Board members. No individual was identified as responsible for this function previously.

Section 23 removes the previous employment language, which is now contained in Section 10. Section 24, the powers of the Board are amended slightly to require its use of its powers and duties “in the interest of the public, judiciously”.

Section 25 does 2 things. It makes the language consistent with Section 13 and provides that physicians who have been issued a special volunteer license (which was approved by the Legislature in 2001) “Is not required to renew the license, and the physician may hold the license until it is voluntarily relinquished or revoked by the Board.” These are retired physicians who hold a limited license to be available as volunteers in nonprofit settings.

Section 26 modifies the list of acts which constitute grounds for discipline by revising the provision regarding malpractice to state: “The commission of repeated acts of malpractice or gross malpractice, but only if such acts are established by clear and convincing evidence.” This could include a court determination or settlements in cases alleging medical malpractice.

Section 27 revises NRS 630.301 which allows disciplinary actions by changing the current provision which permits a sanction for malpractice, which can be evidenced by claims settlements, to: “The commission of repeated acts of malpractice or gross malpractice, but only if such acts are established by clear and convincing evidence.”

4-Nevada Board of Osteopathic Medicine

Sections 34-38 addresses issues related to the Nevada Board of Osteopathic Medicine. Section 35 requires the Legislative audit, with the same provisions as mentioned above for the NBME.

That concludes an overview of Senate Bill 389.