

**MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR**

**Seventy-fourth Session
May 9, 2007**

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 7:02 a.m. on Wednesday, May 9, 2007, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Randolph J. Townsend, Chair
Senator Warren B. Hardy II, Vice Chair
Senator Joseph J. Heck
Senator Michael A. Schneider
Senator Maggie Carlton

GUEST LEGISLATORS PRESENT:

Assemblyman Joe Hardy, Assembly District No. 20
Assemblywoman Sheila Leslie, Assembly District No. 27

STAFF MEMBERS PRESENT:

Gloria Gaillard-Powell, Committee Secretary
Kelly S. Gregory, Committee Policy Analyst
Wil Keane, Committee Counsel
Scott Young, Committee Policy Analyst
Lori Johnson, Committee Secretary

OTHERS PRESENT:

James Sala, Southwest Regional Council of Carpenters
Keith Lee, State Contractors' Board; Board of Medical Examiners
Gary Milliken, Associated of General Contractors, Las Vegas Chapter
Clara Andriola, Associated Builders and Contractors, Sierra Nevada Chapter
Dylan Shaver, Construction Industry Coalition

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Patrick T. Sanderson, Laborers International Union Local 872
James Wadhams, Southern Nevada Home Builders Association
Fred Hillerby, State Board of Nursing
Samuel McMullen, LensCrafters
James Jackson, Nevada Homeopathic and Integrative Medical Association
F. Fuller Royal, M.D., H.M.D., Board of Homeopathic Medical Examiners
Scott Craigie, Nevada State Medical Association
Denise Selleck Davis, Executive Director, Nevada Osteopathic Medical Association
Kristi McCaskill, M.Ed., National Board for Certified Counselors
Louise Sutherland
Patricia Markos, Ph.D, Chair, Department of Counselor Education, University of Nevada, Las Vegas
Helen Foley, Marriage and Family Therapists
Gerald Weeks, Ph.D. Chair, Department of Marriage and Family Therapy
University of Nevada, Las Vegas
Maria Canfield, M.S., Chief, Substance Abuse Prevention and Treatment Agency, Division of Mental Health and Developmental Services, Department of Health and Human Services
Judy Larquier

CHAIR TOWNSEND:

We will start with Assembly Bill (A.B.) 56. The Vice Chair will take over since I have to leave to attend another meeting.

ASSEMBLY BILL 56 (1st Reprint): Revises the administrative penalties that may be imposed against contractors for certain offenses. (BDR 54-880)

JAMES SALA (Southwest Regional Council of Carpenters):

The original A.B. 56 was designed to fix a problem that the construction industry has been facing; contractors subcontracting to unlicensed contractors. In addition to that, there are licensed contractors who are paying employees with cash or using the *Internal Revenue Service* (IRS) form 1099 to pay unlicensed contractors.

In section 1, subsection 3, paragraph (b), our bill proposes to specifically deal with penalties for violations of the *Nevada Revised Statute* (NRS) 624.3015. We have an amendment (Exhibit C) that will change subparagraph (2) for a

second offense from the word "shall" to "may" and the same with subparagraph (3).

The other significant change is in section 2, subsection 3, where the Legislative Counsel Bureau suggested separating subsection 3, and adding subsection 4. The penalties on page 2 are specifically designed for and apply only to subsection 4 "knowingly entering into a contract with a contractor while that contractor is not licensed." All the other violations in NRS 624.3015, subparagraphs (1), (2), (3), (5) and (6), still contain the same penalties as they have in the past, which is not changing.

MR. SALA:

Yesterday, I received an e-mail that the U.S. House of Representatives, Committee on Ways and Means, was also hearing this very issue of the misclassification of workers or employees and the use of the IRS form 1099 to hide the subcontracting of unlicensed people who act as licensed contractors. This problem of using independent, unlicensed contractors has become a national issue and it is becoming more pervasive here in Nevada. I believe that this problem is costing the Federal government \$4.7 billion of revenue in taxes, workers' compensation and unemployment premiums. In this State, it is costing us millions of dollars in revenue that we normally would have collected in modified business taxes and unemployment insurance, as well as issues of poor quality and performance.

In A.B. 56 we are trying to deal not only with the worker who is acting as an unlicensed contractor, but a contractor who is exploiting or pretending to use subcontractors. In this State, in the construction industry, you are either an employee or a licensed contractor. We want to make sure that those classifications are significantly defined.

In [Exhibit C](#), there is some basic information. In particular there is an article about a KLAS, Channel 8 television investigation last September, where the State Contractors' Board conducted a sting investigation in which 500 people were convicted of doing business without a license. Most of those people were unlicensed contractors that went directly to homeowners for side jobs. Those low-level offenses can be dealt with by the Contractors' Board under the NRS 624.700. As an analogy, those are the "drug users", but we are also concerned with the "drug dealers" who represent licensed contractors who knowingly contract with an unlicensed contractor. Those operators are perpetuating a

problem which undermines all those contractors doing business legally. Our licensed contractors are paying all their obligations, such as taxes, unemployment compensation and workers' compensation and maintaining safety programs. Then you have the contractors who are using unlicensed subcontractors who pay only for materials and wages but do not pay their fair share of the tax burden. By not sharing that tax burden, a contractor could save about 25 to 30 percent over a contractor who is playing fairly. That is a race to the bottom. In the article I previously mentioned, one thing that is a concern to us is the minimum fines and dismissal of charges for performing work without a license. The present fines are not the kind of deterrent we think is necessary to make these contractors more compliant.

Two years ago, our own organization went out into the residential drywall market to take a look at that particular industry and we found that 50 percent of the jobs included workers who were being paid by cash or using a IRS form 1099. Those contractors were in violation of most of Nevada's laws. There is an ongoing, joint investigation by federal and state authorities concerning 21 of those contractors in that industry. We have worked diligently with the Southern Nevada Home Builders and the Associated General Contractors to create language for this bill, and we also want to thank them for their help in moving this legislation forward.

MR. SALA:

I believe someone will also be presenting another proposed amendment to add the word "knowingly" to subsection 3, as it is in subsection 4. I have spoken to the Legislative Counsel and I do not have a problem with that word being added, if it is important. Our intent, by increasing minimum fines and a possible suspension of their license, is to make it an issue that will be taken seriously by the contractors. We also know that the Contractors' Board is overburdened on this issue. We are hoping that this will level the playing field. We patterned the fines after the fines an individual worker would receive under the NRS 624.700, to be consistent. In closing, I would cite from a Harvard Study done in 2004, that the state of Massachusetts' losses were \$7 million a year in workers' compensation collections, \$4 million a year in payroll taxes, and \$4 million a year in unemployment taxes. We urge you to support this bill to minimize the impact against consumers and the licensed contractors.

SENATOR CARLTON:

I have few technical issues with the offenses; if the contractor has six workers, is that one offense with six counts, or six offenses? How do you see it and how does the Contractors' Board see it? I would like that intent on the record.

KEITH LEE (State Contractors' Board):

As you indicated, there are often multiple offenses; it is my understanding that each is a separate offense. Generally speaking, a licensed contractor knowingly entering into a contract with an unlicensed contractor would be one offense. If that contractor has several people working for him, then that could be multiple offenses. The circumstance of whether that worker was earning wages subject to the IRS form W-2, or is being paid subject to an eventual 1099 IRS form at the end of the year, is a separate matter. I am not sure that I can speak to how the Board would handle that circumstance.

I can tell you that with respect to the proposed amendment, we think it is a good amendment with the change from "shall" to "may" because we think we should have that continued discretion. We understand Mr. Sala's direction, and we support his organization in the effort to send a message to those contractors who are knowingly violating this law. Our other bill, Senate Bill (S.B.) 279, which you passed out of this Committee and is before the Assembly at the present time, goes a long way toward dealing with the unlicensed contractor issue. That bill will allow investigators from the Contractors' Board to issue administrative citations to someone who is working, but unlicensed. That change is necessary because presently the Contractors' Board has no authority to issue a citation even if they know what is going on.

SENATE BILL 279 (1ST REPRINT): Makes various changes concerning contractors and the State Contractors' Board. (BDR 54-624)

MR. SALA:

Traditionally, when we deal with agencies such as the Office of Labor Commissioner, there has been a distinction between a violation and an offense. As an example, if an unlicensed contractor was performing work for a licensed contractor that would be a violation and an offense. If that licensed contractor, has six unlicensed contractors working for him, which would be six violations. In the language of this bill we allowed some latitude, hoping that the Contractors' Board would look at each situation. Even if there were multiple violations that would probably be considered their first offense because it was

all contained within one job. There is no language that we could put into statute that would cover every type of situation that may arise.

SENATOR CARLTON:

Thank you, I am glad that you used the terms of violations and offenses. I want to go on record to say that I hope we are not going to go back in time to prosecute the contractors who you may have previously suspected to be in violation. I know there is a statute of limitations. I think it is terrible that someone would hire an unlicensed person, since as a licensed professional they should know better, but I do not want this to turn into a witch hunt.

MR. SALA:

In our discussions and workshops, the issue of a statute of limitations was brought up. For most violations, it is two years after the offense, as stated in the NRS 624.800. We do not want to go back any further than that. Most of these kinds of violations happen while the project is in process. Once the project is over there it would be impossible to ascertain a previous violation.

VICE CHAIR HARDY:

The legal intent of this bill is that the violation has to occur if they "knowingly" hire an unlicensed contractor, but I do not see where that term is defined within the bill? Does "knowingly" apply to all the changes we are making?

WIL KEANE (Committee Counsel):

"Knowingly" is used to apply to section 2, subsection 4 only. I agree with Mr. Sala that "knowingly" should be reinserted in the new subsection 3, section 2 of the bill, as well as subsection 4 of A.B. 56.

MR. SALA:

That was the intent of the original language; it was not our intent to change that. "Knowingly" is defined in the NRS 624.024.

VICE CHAIR HARDY:

All the discussions we had centered on contractors hiring unlicensed contractors. You mentioned in the beginning of your testimony the term "misclassification." I do not see that this bill would apply to that term. Could you clarify that issue?

MR. SALA:

Misclassification was probably not the appropriate term to use, because we use that term in a lot of other prevailing-wage issues. I was referencing the issue of a licensed contractor with ten people working for him who should be classified as employees, but are otherwise classified as subcontractor, in order to avoid the taxes he would pay if they were employees.

VICE CHAIR HARDY:

I just want to clarify that because the Labor Commissioner's office does not have classifications that we can count on, it is a difficult issue. Contractors working in good faith often call that office to find out how they should classify a certain worker, for cases of prevailing wages; they do as instructed and then a claim is filed and they are found guilty of misclassifying the worker. I just want to make sure that we clarify that when you spoke of misclassification, we are not speaking of that in terms of prevailing wages.

GARY MILLIKEN (Associated General Contractors, Las Vegas Chapter):

We appreciate you letting us participate in putting together the language for this bill. We support A.B. 56 as amended. We also want to thank the Vice Chair for the clarification on misclassification, as that is a sticky issue that we do not have any control over.

CLARA ANDRIOLA (Associated Builders and Contractors, Sierra Nevada Chapter):

I just wanted to thank Mr. Sala for the amendment that has been submitted and the addition of the word "knowingly." We are in support of A.B. 56.

VICE CHAIR HARDY:

In the interest of disclosure, Ms. Andriola is my counterpart in the Associated Building Contractors organization; I am president of the Las Vegas Chapter.

DYLAN SHAVER (Construction Industry Coalition):

We actually support this bill. We think it is great to go after the bad guys, but we think it should be undertaken with an abundance of caution. I am not here to defend the bad guys, but we do want the intent, for the record, to reflect our understanding that if you are caught with three unlicensed workers, that would still constitute only one offense. I would like to thank Senator Carlton for her important questions. Mr. Sala and Mr. Lee qualified their statements with the words "typically" and "probably," which could leave a door open for confusion. Our concern is with the NRS 624.800 and the two-year statute of limitations.

While it does stop you from prosecuting an individual offense, if something was prosecuted by the Contractors' Board 12 years ago, would that count toward these offenses?

VICE CHAIR HARDY:

Do you have proposed language to make that distinction?

MR. SHAVER:

Yes, I do ([Exhibit D](#)).

PATRICK SANDERSON (LABORERS INTERNATIONAL UNION LOCAL 872):

What we are attempting to do is get rid of the suitcase or pickup contractors. Since they do not pay workers' compensation, an injured worker on that type of job is not protected or covered for payment if they are injured. This is a good bill. The carpenters made a lot of concessions, but they were good and we hope you are able to pass this legislation.

VICE CHAIR HARDY:

I think our passage of S.B. 279 is a good indication of our policy. We are in favor of giving authority to the Contractors' Board to be able to pursue these violators. This Assembly bill will be give them more leverage.

JAMES WADHAMS (Southern Nevada Home Builders Association):

We are in support of this bill. I have a couple of concerns. The original bill had a death sentence for the second offense so we appreciate the fact they changed that to allow some room for discretion. In addition to adding the word "knowingly" in section 2, subsection 3, I think the language should be looked at to clarify whose limits, the contractor's or the subcontractor's, it is seeking to limit.

VICE CHAIR HARDY:

Mr. Sala, could you clarify that? We will ask legal counsel to take a look at it also.

MR. SALA:

We moved the line in section 2, subsection 4, to a new subsection 3 at the request of the contractors, to keep that language clear of penalties involved in subsection 4, "Bidding ... beyond the scope or exceeding your license limit." Our intent was to not enhance or reduce that section or subject that issue to

penalties. It would be an administrative issue and I do not know how the Board handles that.

VICE CHAIR HARDY:

We will close the hearing on A.B. 56 and open the hearing on A.B. 491.

ASSEMBLY BILL 491 (1st Reprint): Makes various changes concerning the clinical education of a student in a school of nursing. (BDR 54-1339)

FRED HILLERBY (State Board of Nursing):

We were asked to seek authority to do background checks for nursing students. When the nursing students begin to do their clinical rotations, most hospitals require all of their employees to have background checks. The Legislative Committee on Health Care says if all your employees have to have background checks, then anyone working in the hospital has to have one also.

In the first semester they just do didactic rounds, then in the second semester they were required to have a private background check done, and it became problematic to the student as the check did not follow them to other hospitals. Also problematic, was if the nurses had already committed their time and resources to complete their first semester as an intern and were then found to have a problem in their background check.

MR. HILLERBY:

We were approached by both of the deans of the nursing schools and their nursing directors, to become the clearinghouse for this procedure, since we already do the checks for all the nurses. The intent of A.B. 491 is to give the authority to the State Board of Nursing, which we have to have, in order to get the report from the Federal Bureau of Investigation on the background check. We would be a one-stop shop for nursing students because generally it is recommended to get the fingerprinting and background check done before they start the program. The bill also allows us to charge a fee because there is time and effort involved. Once that is completed, they would carry that forward with them to whatever hospital they go.

Some of verbiage in the bill in section 1.5 was surprising to me. I thought we just needed authority to do the actual background check, but the Legislative Counsel Bureau thought it needed to be very specific. The language in section 1.5 does not alarm us, but we are not sure it is necessary.

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VICE CHAIR HARDY:
Are you speaking of "disqualifying crimes"?

MR. HILLERBY:
Yes, certainly those mentioned would be disqualifying.

SENATOR CARLTON:
If I understand you correctly, under section 1.7, they are going to need a background check when they enroll in nursing school or before they start patient care.

MR. HILLERBY:
Yes, when the nursing students start patient care at the hospital.

SENATOR CARLTON:
That way if they change their minds after starting school, thinking perhaps this is not the profession they want to continue, they will not have gone through the whole background check effort until they have made the decision to continue with this profession.

MR. HILLERBY:
Yes, that is how it would work, but I would think that the students should do this as early as possible, so they do not go through a whole semester and then start their clinical internship to find out that there is problem with their qualifications after the background check. It is up to the student when to do it,

SENATOR HECK:
I have grave concerns over this. I think we are heading down a slippery slope so no one in this State is going to work at anything without a background check. If we open this door, anyone working in a hospital, such as any student, occupation therapist or a medical student who is completing their clinical units, will have to have a fingerprint and background check. I think this is a misunderstanding of the Joint Chief Hospital Operations Administration Audit (JCHOA) standard. These people are not employees of the hospital. Being a clearinghouse for doing the background checks is one thing, but with this bill, we are making a decision and issuing a certificate that they can continue with their education just by completing a background check. I am going need to see a lot of background on this before I would consider this at all.

MR. HILLERBY:

We were approached to take over a procedure that is already being done now by some hospitals, not all. It is a policy issue, but if in fact they have to have a background check in order to do their clinical training, someone has to provide the means for that to be done.

SENATOR HECK:

I understand that the Board was thrown into this by request. I think the better public policy is to pass a law that says no one has to pass a background check in order to finish their educational requirements. Because this issue is being conducted haphazardly and is done differently from hospital to hospital, I think some of these hospitals are interpreting the JCHOA standards too liberally. The JCHOA standard is only applicable to employees, not students. I need to do some more research on this application.

VICE CHAIR HARDY

We will close the hearing on A.B. 491. We will begin with A.B. 249

ASSEMBLY BILL 249 (2nd Reprint): Revises provisions relating to dispensing opticians. (BDR 54-547)

SAMUEL MCMULLEN (LensCrafters):

I am here representing LensCrafters, an ophthalmic dispenser, supplier and vendor. I have been asked by Mr. Stuart from the Board of Dispensing Opticians to speak for him as he was unable to be here today. This bill is in good shape. We worked in the Assembly to craft this bill. I believe that Mr. Stuart sent all of you an e-mail regarding A.B. 249.

This bill, A.B. 249, first and foremost codifies minimum standards for production of ophthalmic devices such as eyeglasses. They currently use an American National Standards Institute (ANSI) standard, which is the only national standard as indicated in section 1.3, subsection 2. If you adopt this bill, we would be asking for consistency in the ranges of tolerance for lens prescriptions that show the plus or minus in which that prescription is acceptable to fill. If the prescription is not correct, the Board will have the authority to discipline people who are dispensing devices outside the minimum standard. On page 5, line 13 of A.B. 249; you will see the correlating provision for disciplinary grounds. There are people who take prescriptions and try to pass off devices that are not acceptable.

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On page 4 starting at line 20, A.B. 249 puts a limitation of two years to reinstate a delinquent license. In section 8, we have brought up the Board's standards to meet production of documents that all boards and commissions are required to submit.

SENATOR HECK:

What does "without proper verification" mean; who is verifying the prescription?

MR. McMULLEN:

It is the responsibility of the optician, at least the supervising optician. That is part of their professional responsibility, and there is actually a form that verifies the prescription is within the standards and is okay to be dispensed.

SENATOR HECK:

It looks to me that once verified, even if it is not within the standards, it can be dispensed.

MR. McMULLEN:

The Attorney General's Office drafted the bill. I think the word "proper" relates back to protocols and procedures. The prescription has to be appropriate or within the standards.

SENATOR HECK:

What is the reason the prescribing optician would dispense outside the standard?

MR. McMULLEN:

Basically, they need to fill the prescription according to the ANSI standard. Accordingly, in grinding the lenses there are certain tolerances they have to maintain.

SENATOR CARLTON:

In section 1.7, we are going to codify the expiration of a prescription after two years. If the prescription automatically expires but your prescription has not changed, then people are still going to have to go back to the doctor and pay for a visit.

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MR. McMULLEN:

I should have gone over that. We did not request that expiration period. The Assembly requested that it be extended from one year to two years.

SENATOR CARLTON:

I would like to see that dispensing optician make the call on how long the prescription would be good. I do not think we need to codify an expiration date.

MR. McMULLEN:

I think that is what the Assembly wanted. There have been situations where the vendor, such as LensCrafters, will not fill a prescription that is over a year old.

SENATOR CARLTON:

I will talk with Assemblywoman Allen and go over the issue of expiration dates.

VICE CHAIR HARDY:

We will recess and come back at 8:30 a.m.

VICE CHAIR HARDY:

I am going to call the meeting back to order at 9:58 a.m. We will proceed with A.B. 234.

ASSEMBLY BILL 234 (1st Reprint): Eliminates the Nevada Institutional Review Board. (BDR 54-646)

ASSEMBLYMAN JOE HARDY (Assembly District No. 20):

I support A.B. 234.

JAMES JACKSON (Nevada Homeopathic and Integrative Medical Association):

I am here on behalf of the Homeopathic Medical Association, but we have been working with the Board of Homeopathic Medical Examiners and they have asked me to present some amendments they feel should be in this bill. Some of the measures have been indicated for further study on some of the necessary items the Board needs. When the bill was amended in the Assembly Committee on Commerce and Labor, the Board asked me if I could approach the Speaker of the Assembly to try to get some of the things they cut back into the bill. Those things are represented in ([Exhibit E](#)).

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VICE CHAIR HARDY:

Nobody is here officially representing the Board. Have you been asked to represent the Board of Homeopathic Medical Examiners?

MR. JACKSON:

Yes, although one of their Board members, Dr. F. Fuller Royal is present in Las Vegas. The amendments, [Exhibit E](#), have already been vetted by the Chairman of the Assembly Committee on Commerce and Labor, as well as the Speaker of the Assembly.

The bottom line is that A.B. 234 was gutted in the Assembly, including the sections that were drafted to deal with Nevada Institutional Review Board (NIRB). Assemblywoman Buckley then amended the bill to repeal the legislation from the 2005 Session that established the NIRB. When I testified about the bill some weeks ago, I was not aware of the intent of Assemblywoman Buckley in regard to the NIRB.

VICE CHAIR HARDY:

To clarify for the Committee, there are two issues we are dealing with. Putting some changes back into A.B. 234 that the Homeopathic Board feels they need but were taken out in the Assembly hearing is the first. The second issue is a policy issue about whether we should eliminate the NIRB. The Homeopathic Board agrees with the concept of the NIRB and feels that it would be beneficial to the people of Nevada.

MR. JACKSON:

What Dr. Royal has endeavored to do is to explain the reasoning for the need to include these amendments in this bill. The first amendments deals with the definition of homeopathy in section 6, [Exhibit E](#). Dr. Royal has indicated the need to change the current statutory language set forth on page 2, although it is my understanding that it does not substantively change the practice.

On page 3, there is a request that the current law be amended to allow the Board to use a different method of obtaining information.

VICE CHAIR HARDY:

This language expands the current definition a lot. Did we get this new language from model legislation or is it something the Legislative Counsel Bureau has written?

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F. FULLER ROYAL, M.D., H.M.D. (Board of Homeopathic Medical Examiners):
I am the vice president of the Board of Homeopathic Medical Examiners. Basically, the practice of homeopathic medicine in Nevada has never been purely homeopathic in the definition as it is practiced by classical homeopaths. We have used a method of determination of homeopathic medicines that would be needed by electrodiagnosis. Electrodiagnosis is the use of the acupuncture meridian system to determine how energy flows and where energy blockage is indicated.

SENATOR HARDY:
Is this standardized language used elsewhere?

DR. ROYAL:
We worked with the Center for Frontier Sciences at Temple University, where I have participated, to help determine and put into place alternative, complementary and integrative medicine. This is not a street definition of homeopathic, but it has been used in Nevada since 1983.

VICE CHAIR HARDY:
I am curious about the use of the term "school of medicine." Will that cause confusion as opposed to a system or practice?

DR. ROYAL:
In Europe, especially in Germany where they teach homeopathic medicine, that is the term they use.

MR. JACKSON:
On pages 3 and 4, they would like to delete the word "foreign" and use a better definition.

SENATOR CARLTON:
If we are not going to use the word "foreign," what word are we going to use and why are we changing the definition?

VICE CHAIR HARDY:
The way I read it is that any doctor not located in the United States or Canada practicing homeopathic medicine is considered "foreign."

DR. ROYAL:

We basically found that our borders seemed to be questionable. We consider Canada to be included with the United States since they use the same type of medical system as the United States, but Mexico would not be included. Though, I suppose if you say Mexico is outside the borders, so is Canada.

SENATOR CARLTON:

In all of the other professional boards, we define anyone outside the borders of the United States as "foreign." I believe even American protectorates are viewed as foreign. We have worked very hard to maintain consistency with our language on the professional boards. Now is this Board asking for Canada to be considered with the United States?

DR. ROYAL:

There has been an open relationship with Canada for all medical fields. If it is a problem, we can change it.

SENATOR CARLTON:

I am just looking to maintain consistency of language among the boards.

SENATOR SCHNEIDER:

Mr. Jackson, has the Board of Homeopathic Medical Examiners actually seen these amendments, since you are representing them?

MR. JACKSON:

To my knowledge, yes, but I am only here to present their proposed amendments.

SENATOR SCHNEIDER:

Dr. Royal, has your board seen and officially approved your amendments?

DR. ROYAL:

I was appointed by our Board to represent them during this Legislative Session.

SENATOR SCHNEIDER:

That is the reason we have such a mess on our hands in regard to the NIRB and the Homeopathic Board. The individual sitting down there in Las Vegas is acting as an independent contractor. No one in the homeopathic industry has seen

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these amendments. I do not think we need to give this amendment any more time.

VICE CHAIR HARDY:

This amendment was presented as being from the Board, so this is a threshold question. We need to have input from the whole Homeopathic Board. Does the Homeopathic Board have a registered lobbyist?

MR. JACKSON:

I am not registered to lobby for them.

DR. ROYAL:

No, we do not. The Board of Homeopathic Medical Examiners has been working for well over two years on more amendments than just what was taken out of A.B. 234 by the Assembly. All of the amendments were submitted to the Office of Administration and approval was given in September of last year. The Board of Homeopathic Medical Examiners voted at their last meeting to go forward in sustaining and supporting this particular bill as it was at that time.

SENATOR HARDY:

Are you saying the amendments before us today, that the document we have in front of us, [Exhibit E](#), dated May 8, has the approval of the Board?

DR. ROYAL:

Yes I am, but the current amendments are not all of the various items that were in the original bill that came before the Senate Committee on Commerce and Labor. These are just the ones that the Board felt were the most important to get through the present Legislative Session. Yes, they have been approved by the Board of the Homeopathic Medical Examiners.

VICE CHAIR HARDY:

Who is the executive director or chief policy person for the Board?

DR. ROYAL:

That would be Nancy Eklof, who is the Executive Director.

VICE CHAIR HARDY:

Is she here? I think Senator Schneider's question is a valid one. I think it would be important for this Committee to see these amendments on letterhead and

signed by the executive director. I think if we can get that document, it would be helpful.

SENATOR HECK:

I would like to follow up on Senator Carlton's question about why language was changed. As I understand the NRS 630A, it requires someone applying for licensure as a homeopath to be licensed as either a doctor of osteopathy or a doctor of medicine as is required by either the NRS 630 or 633. Since that is the original statutory requirement, changing the wording in NRS 630A is totally incomprehensible to me. If you change the language, it will be inconsistent with the two chapters that are required to issue the original license before you can apply to add a homeopathic designation.

I also agree with Senator Schneider that there are competent, caring practitioners who that have been ill-served by this Board. The Homeopathic Board's activities have been called into question and are suspect. It is my opinion that until this Homeopathic Board can prove that they know what they are doing in their own house; we do not need to take any further action on any amendments to their chapter. They need to enforce what is already in their chapter. These amendments are looking at new definitions and new scopes of practice and additional changes that may be necessary to serve the people of Nevada, but there is currently not enough oversight to be sure that the public safeguard can be maintained.

VICE CHAIR HARDY:

There is a general agreement of the Committee that we would like to see a formal presentation of these amendments signed by the executive director as an indication that they have been vetted by the full Board. Until that time, we will not consider these amendments.

SENATOR CARLTON:

I just pulled up my report on what boards have turned in their quarterly summary of disciplinary actions and I see that the Board of Homeopathic Medical Examiners has not submitted a disciplinary action report since March 31, 2004. We really do not know what is going on with this board.

VICE CHAIR HARDY:

I should indicate for the record, that my dad was a former member of this Board.

SCOTT CRAIGIE (Nevada State Medical Association):

I have a written statement ([Exhibit F](#)). In addition, in regard to the controversies and issues about the NIRB, we strongly support the idea of the interim study that was contained in another bill that was passed in this Committee earlier.

SENATOR SCHNEIDER:

We have spent millions on interim studies on health care that, once done, were shelved. I know you know that, Mr. Craigie, since you were Chief of Staff during some of those commissioned studies. Would you support an interim study to develop an NIRB and a Complementary and Integrative Medicine Board that the Legislature oversees so that at the end of the 18 months, that board is up and ready to operate?

MR. CRAIGIE:

I think what you are asking me is to do is to prejudice whatever materials are developed. We know that this entity, as it existed in the last couple of years, was dysfunctional and fell apart. Whether that situation forever prevents us from developing this type of alternative medicine is part and parcel of what the focus of the interim study should be. I do know that physicians in my organization plan on participating and appearing before that committee to testify as to systems and protections needed if we go forward in that arena. Frankly, all of the issues between the Homeopathic Board and the NIRB at this moment point to the need to get together and assess this movement before we go forward.

SENATOR SCHNEIDER:

I hate to think that we go forward on a path to never addressing the health care costs, alternatives to health care and preventative health care. My opinion is that this has to be fixed in the State; the fix is not going to come from the federal level. I know of a doctor who had to take a patient to Costa Rica to get him medical care since it was not available here in the United States. Agencies that were created under Franklin Roosevelt and the boards we have created in the State are now the fourth branch of government that is dictating policy to us. It is a territorial battle and we, as Legislators, just divvy up the money.

SENATOR HECK:

The point that Senator Schneider just made so eloquently is true. We have seen, in this Session, more battles over turf than we have over the best patient care and providing access. In this particular battle we have seen an attitude by too

many people who consider alternate medicine a fringe, lunatic-type medicine, and it is not. The National Institutes of Health has a National Center for Complementary and Alternative Medicine. When we talked about the other bills of Senator Schneider in this same area, we referred to them as complementary and integrative medicine. They need to be integrated with something, and therefore, there is this nexus between NRS 630 and NRS 633 and whatever comes out of complementary and alternative medicine bills. It has to integrate with conventional medicine.

SENATOR HECK:

It is my hope that this study comes forward and demonstrates the utility of these treatments and does so to provide a framework that we did not have in 2005, when we first passed this legislation. This, I hope, will allow these valuable adjunct therapies to be utilized for the people of Nevada. I appreciate the points that were raised by the Nevada State Medical Association, of which I am a member. Perhaps we did not go about this in the right way starting in 2005, but I am hopeful that the study done in the interim will come back with a solid framework in 2009.

SENATOR CARLTON:

I think we are being careful and moving slowly, and when we are done with the study, everyone in the country will be very interested in what Nevada is trying to accomplish with complementary medicine.

MR. CRAIGIE:

Based on all the comments, I just want to state that I was one of the persons who walked the original bill through the 2005 Session. I do not want anyone to think that we are in favor of stopping this type of medicine, but based on the problems we have had, it is wiser to go about this calmly and thoroughly and look at this legislation to make sure we are proceeding with adequate protections.

SENATOR SCHNEIDER:

We had an opportunity to court these high-tech companies that were interested in bringing their companies to Nevada. Now with all of this legislation, they are looking at other places, not Nevada.

SENATOR HECK:

I am sensitive to this issue, because I am a doctor of osteopathy. It takes many years for any new discipline to be accepted; it took 80 years for osteopathy to be accepted, and the same situation occurred with chiropractic. I certainly hope that this alternative medicine will be more readily accepted.

KEITH LEE (Board of Medical Examiners):

On behalf of the State Board of Medical Examiners, we support A.B. 234 that indicates that the interim study should be done. Speaking for the Board, we are not afraid of alternative medicine; we just want to make sure of the best possible regulatory scheme for it. It is great that Nevada will be first, leading the nation in both research and new and innovative ways to treat patients in a complementary alternative fashion. As the leader though, we had better be the best we can be at it, and make sure the best regulatory scheme is designed. We will participate in the study to get a comprehensive scheme in place by 2009.

I do want to say that we oppose the proffered amendments from the Homeopathic Board that Dr. Royal has proposed. This is the first I have seen them. The particular portion we oppose is section 6, subsections 1 and 2, concluding with paragraph (d). I would also have you look at section 1, subsection 4, which proposes that the homeopathic chapter does not authorize homeopathic doctors to practice allopathic medicine except as provided in the NRS 630A.040, which this proposes to amend. I have not heard any reason why we need to do that; I think the definition of homeopathy which is in statute now is fine. If the homeopathic physicians think we should have those definitions that are in paragraph (d) that is fine, but we object to the portion above as I stated previously.

DENISE SELLECK DAVIS (Executive Director, Nevada Osteopathic Medical Association)

On behalf of the Osteopathic Medical Association, we would like to support the first reprint of A.B. 234 which was amended to make this an interim study of the NIRB and to set up the proper framework to provide alternative medicine for the citizens of Nevada.

SENATOR HECK:

I am also a member of the Nevada Osteopathic Medical Association.

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VICE CHAIR HARDY:

We will close the hearing on A.B. 234 and proceed with A.B. 424.

ASSEMBLY BILL 424 (1st Reprint): Revises provisions relating to the licensure of counselors. (BDR 54-1294)

KRISTI MCCASKILL, M.ED. (National Board for Certified Counselors):

I am representing the National Board for Certified Counselors (NBCC) and I have a copy of my testimony ([Exhibit G](#)).

LOUISE SUTHERLAND:

I am here to speak on behalf of the mental health needs of Nevada's rural citizens. I would like to express my gratitude to Assemblywoman Sheila Leslie and Senator Joseph Heck whose collaborative efforts have resulted in this important legislation before us today. There is a dearth of mental health service providers in Nevada and that is the reason we are all here today. Prior testimonies before this Committee have been compelling. We are familiar with the frustrated outcry that the vast number of vacant positions in the rural clinics continues to go unfilled.

Nevada's rate of suicide is double that of the national average. Client-to-therapist ratios defy common sense. The list of shortfalls is extensive. We need to license clinical professional counselors to meet the demand of the rural counties. We need to shorten the current three-to four-month waiting time before a client can be seen. There are children who are in the custody of the State and need early access to mental health services, but cannot receive it due to the lack of providers who are qualified to assess their needs. Nevada's methamphetamine problem is the worst in the country. The proposed legislation to help with that problem shows the need to respond to the mental health needs of this substance-dependent population.

This bill, A.B. 424, will provide a vehicle for the more than 300 mental health professionals residing in this State who have credentials that meet or exceed the minimum license requirements that are set forth in the legislation to become licensed. We urge your passage of this bill.

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PATRICIA MARKOS Ph.D. (Chair of the Department of Counselor Education, the University of Nevada, Las Vegas):

As a professional counselor, I support A.B. 424. I just want to say that this program of study is very solid and is a rigorous study.

SENATOR HECK

As a preface, the proposed A.B. 424 enacts the licensed clinical professional counselor (LCPC), having that profession placed under the Board of Examiners for Marriage and Family Therapists (MFT). Secondly, there is the proposed licensure of an alcohol and drug abuse counselor (LADC). Assemblywoman Leslie's goal was to allow LADCs to also interact as mental health counselors to those patients who have co-occurring disorders. As you know, Assemblywoman Leslie and I worked assiduously on the mental health issues facing our State. My proposed amendment ([Exhibit H](#), original is on file in the Research Library) does not change anything in regard to the second part, which has to deal with the clinical LADC counselor. That remains as is in the original bill Assemblywoman Leslie drafted.

My proposed amendment 3885, [Exhibit H](#), proposes some changes to the licensure of the LCPC, by placing their profession under the Board of Examiners for Alcohol, Drug Counselors, NRS 641C, instead of the Board of Marriage and Family Therapists.

My reasoning for that was, since we are trying to have the LADC scope of practice include mental health counseling, putting these two groups together will help with the symbiosis or cross-pollination of both types of counselors and Assemblywoman Leslie agreed.

SENATE BILL 543 (1st Reprint): Establishes the practice of clinical professional counseling. (BDR 54-308)

The other part of the proposed amendment is in section 7, indicating the definition of LCPC would be the same definition that was in S.B. 543. There were some concerns with the definition of LCPC, because education and career counselors were mentioned, so I deleted those words, since that was not the intent. Section 8, proposes to change the licensure and examination requirements, taking those from S.B. 543.

Sections 8.2 through 8.8 are the sections concerning interns were also taken from S.B. 543. It was brought to my attention that there were concerns that there was a potential for an intern to function independently, so I would add a new statement that nothing contained within section 8.6 would allow an LCPC intern to be able to function independently. Section 9 deals with education, and section 50 deals with the licensing of a LCPC from another state who could be licensed in Nevada if they met the education requirements without having to take another test. Section 99.5 is the section that transitions the two examinations one of which is the National Counselor Examination for Licensure and Certification (NCELC) and the other is the National Clinical Mental Health Counseling Examination (NCMHCE). By the year 2010, the only certification that will be accepted is the NCMHCE, the true mental health exam.

SENATOR HECK:

I discussed this with Assemblywoman Leslie, and I forwarded her the mock-up of the amendment, [Exhibit H](#), at which time she said she was fine with the concepts that we proposed.

SENATOR CARLTON:

I have an amendment ([Exhibit I](#), the original is on file in the Research Library) in which I took a totally different path by putting the LCPC into the marriage and family therapist area. I ran this by Assemblywoman Leslie also and she agreed with my amendment, so I am bewildered as to which board this LCPC classification should fall under.

VICE CHAIR HARDY:

The two proposed amendments look the same, except for which board will have oversight.

SENATOR HECK:

Senator Carlton is correct, this profession was originally scheduled to fall under the MFT in A.B. 424 but in my conversations with Assemblywoman Leslie, and because she was trying to expand and blend the LCPC with the LADC people, I thought it might better belong under chapter 641C of the NRS. Perhaps Senator Carlton and Assemblywoman Leslie and I need to sit down together and iron this out.

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VICE CHAIR HARDY:

Let me ask a question of the NBCC representative; do you have a preference as long as there is equal representation?

Ms. McCASKILL:

With all the factors being equal, we do not have a preference.

SENATOR CARLTON:

With a caveat about the representation, we should evaluate the potential for licensure and work with the board best suited to deal with this technically, and consider membership on the board.

Ms. McCASKILL:

In response, NBCC does national certification and we have over 300 people who are certified and have taken this certification.

HELEN FOLEY (MARRIAGE AND FAMILY THERAPISTS)

We had great concerns about the exam, and I have something I can pass out ([Exhibit J](#)). There is a National Counselor Exam (NCE) versus the NCMHCE examination. One of the concerns was the so called "sunset" so we can allow a stream of counselors to be licensed, taking an exam that does not necessarily have any elements of assessment, diagnosis or treatment and then tightening it up in a couple of years so that there will then be a stricter standard. The MFT would prefer the strictest standard.

GERALD WEEKS, Ph.D. (Chair, Marriage and Family Therapy, University of Nevada, Las Vegas):

I am the chair of Marriage and Family Therapy at the University of Nevada, Las Vegas. With a new profession, we think you should start out with the highest level of examination. We believe that you should have to pass a NCMHCE because the NCE test is only a generic test that simply tests eight areas of academic knowledge but is unrelated to clinical practice for the profession of mental health counseling.

Ms. McCASKILL:

The NBCC does both of these examinations. The NCE is used mostly after you finish your master's degree but before you obtain your clinical experience.

MS. FOLEY:

The issue is which board should monitor this profession; the MFT or the LADC, and we have great respect for the LADC. We feel it is appropriate in creating a new mental health profession that they be regulated by a mental health board. We have alcohol, drug abuse and problem gamblers under their board and they do an excellent job with addictions. We have carved out a section in this bill so they will also be able to receive a mental health license for those special LADCs, who have a mental health background, but for the most part they have six different categories and all of them are non-mental health issues. In that, we felt it would be more appropriate for the LCPC to link up with the Board of Examiners for Marriage and Family Therapists. I think that it is a phase-in type of representation.

VICE CHAIR HARDY:

What about equal representation?

MS. FOLEY:

As of now, we do not have any people licensed. In the future when the numbers of LCPC get larger, then we should look at their membership on the board. It should be monitored closely.

MARIA CANFIELD, M.S. (Chief, Substance Abuse Prevention and Treatment Agency, Division of Mental Health and Developmental Services, Department of Health and Human Services):

I have a technical concern about A.B. 424. I will give you a copy of my testimony ([Exhibit K](#)) since you are short on time.

JUDY LARQUIER:

I am here to urge support of A.B. 424. I am concerned with the shortage of counselors both for children and their families. My main concern is with the language regarding the scope of practice, should the LCPC receive their licensure that they are able to work with both the children and their families. In my experience that is difficult to achieve.

ASSEMBLYWOMAN LESLIE (Assembly District No. 27):

My position is that I want this bill to be passed. I want LCPCs and advanced addiction counseling. I am open to either board doing the oversight. I do not believe that it is the most important issue, but I do not have the experience to know which board should have oversight.

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VICE CHAIR HARDY:

I have written testimony from Dr. Roger Belcourt that I would like to include in the record ([Exhibit L](#)).

CHAIR TOWNSEND:

If there is no further testimony to be given we will revisit A.B. 424 tomorrow and adjourn the Senate Committee on Finance and Labor at 11:07 a.m.

RESPECTFULLY SUBMITTED:

Lori Johnson,
Committee Secretary

APPROVED BY:

Senator Randolph J. Townsend, Chair

DATE: _____