

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

**Seventy-fourth Session
April 12, 2007**

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 8:04 a.m. on Thursday, April 12, 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:

Senator Bob Beers, Clark County Senatorial District No. 6
Senator Barbara K. Cegavske, Clark County Senatorial District No. 8

STAFF MEMBERS PRESENT:

Kelly S. Gregory, Committee Policy Analyst
Lori Johnson, Committee Secretary
Wil Keane, Committee Counsel
Scott Young, Committee Policy Analyst
Laura Adler, Committee Secretary

OTHERS PRESENT:

Debra Jacobson, Southwest Gas Corporation
Pamela Scott, The Howard Hughes Corporation
Karen Dennison, Lake at Las Vegas Joint Venture; American Resort
Development Association

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Marilyn Brainard, Commissioner, Commission for Common-Interest Communities, Real Estate Division, Department of Business and Industry
Gail J. Anderson, Administrator, Real Estate Division, Department of Business and Industry
Stephen McDowell, Vice President, Pacific Perfusion Services Incorporated; American Society of ExtraCorporeal Technology
Michael Hays, President, Pacific Perfusion Services
Robert Twells, Perfusionist
Keith L. Lee, Board of Medical Examiners
Robert L. Compan, Farmers Insurance
Scott Craigie, Farmers Insurance; Nevada State Medical Association
Graham Galloway, Nevada Trail Lawyers Association
James Jackson, Homeopathic Association
Fred L. Hillerby, Nevada Association of Health Plans
Jim Jenks

CHAIR TOWNSEND:

We will open the work session on Senate Bill (S.B.) 436, which includes the mock-up of amendments of yesterday's discussion ([Exhibit C](#), original is on file in the Research Library).

SENATE BILL 436: Makes various changes to the provisions governing common-interest communities. (BDR 10-234)

Section 0.5 of the proposed amendment is Senator Schneider's amendment on motorcycles. Section 1, subsection 2 is Senator Schneider's amendment on giving notice to unit owners of a fine. I believe this is new language. This is the issue discussed about the unit's owner not getting notification of a fine for a tenant. Does everyone understand that?

Senator Lee's amendment is section 1, subsection 7, and paragraphs (a) and (b) have to do with a revote. If someone is not qualified because they have not paid their dues or fines, it would make the vote void.

I believe section 1, subsection 7, paragraphs (a) and (b) meet Senator Lee's requirements, and he made a good case.

CHAIR TOWNSEND:

Section 1, subsection 10 says, "Not later than 30 days after receiving a payment in full of a fine, including any lawful interest" We moved that to 30 days so the normal billing and accounting cycles would pick it up.

Ancillary audits are in section 4, subsection 2. We have already dealt with that amendment. It defines the difference between declarant and the association.

Mr. Gresham's amendment of the timing of the executive board meeting is section 6, subsection 1, page 9. A meeting of the executive board must be held at least once every quarter, and not less than once every 100 days, so we do not have quarterly board meetings that could actually be held 6 months apart.

Waving notice of executive session meetings is in section 6, subsections 4 and 7. That was discussed.

Ms. Dennison's amendment on reserve studies is in section 7, subsection 2, paragraph (b) on page 12. In summary, you cannot arbitrarily come up with an assessment because you want one and that way get out of the vote by saying it is for reserves when you do not have documentation from reserve studies to support the decision.

We covered the language on when an executive board's documents are to be released to association members.

Ms. Jacobson's Southwest Gas Corporation utility and emergency vehicle amendment is section 10, subsections 3 and 4. Ms. Jacobson, does that language meet with your requirements?

DEBRA JACOBSON (Southwest Gas Corporation):
Yes, we appreciate the language.

Senator Heck's amendment on the motor vehicles is section 10, subsection 1, page 15, where we removed "motor vehicles on." This was the addition for subtraction component.

The amendments on temporary certificates for common-interest communities are in section 15, page 20. That is where we merged the two.

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There is also a stand-alone amendment on the radar gun issue ([Exhibit D](#)). Committee, is it your pleasure to include that in S.B. 436?

SENATOR CARLTON:

Back on page 16, that is about Senator Heck's addition by subtraction. When I read it through, except for 3, it reads backwards. It does not preclude them from setting forth rules that reasonably restrict parking, but only when it is substantiated by zoning ordinance or the condition of the subdivision map.

CHAIR TOWNSEND:

Section 10, subsections 1 and 2, state that if the city or county says that is what they want, then the association or common-interest community can apply it.

SENATOR CARLTON:

I just read "does not preclude," and have to follow up after that.

CHAIR TOWNSEND:

Your point is well made. There are two catch phrases to which we need to be alert, "except as otherwise provided," and "does not preclude." I think this says when the development is granted the right to develop and there are restrictions put on it by a local government or the State, the documents for the association can include those in their rules and regulations.

Is the radar gun issue something the Committee wishes to include in the bill?

The proposed amendment by Senator Titus ([Exhibit E](#)) deals with the rights under the current law which allows for solar and wind devices to be used in common-interest communities. There is a prohibition against prohibiting them. However, I believe there is a phrase in the law that states you "cannot unreasonably restrict." Someone put up black solar panels and was asked to paint them to meet a community standard. Apparently the issue related to color. As a result, the efficacy of the particular solar unit was restricted; therein lies the rub.

Information was obtained from Byron Stafford at the National Renewable Energy Laboratory (NREL) who had consulted with Underwriters Laboratory (UL) and the Florida Solar Energy Center, which was mentioned in testimony before this Committee on March 30, 2007. The information from Mr. Stafford included:

- Painting panels will void the UL listing and the manufacturer's warranty;
- There appears to be only one manufacturer of terra-cotta panels with a UL listing and a 25-years warranty, Open Energy Corporation;
- The efficiency loss between Open Energy's black panels and its terra-cotta panels is 14 percent, not 11 percent;
- The efficiency loss between Open Energy's terra-cotta panels and the best available black panels currently on the market is 34 percent;
- Even a 1 percent reduction in efficiency, over the 30-year life of a PV system, is a significant reduction.

CHAIR TOWNSEND:

Terra-cotta is a color predominant in southern Nevada; since there is only one manufacture, it tends to limit choice. The most efficient energy panel and the difference between the most efficient color panel is 34 percent.

Now it becomes an issue of the right of the association to manage the value of the units. This is a tough one because both sides are right. It is not easy because they both have solid positions.

SENATOR CARLTON:

If someone invests a large amount of money in these types of panels, and this is a big financial commitment by a family, I would not want to see them put that much money into a system and then lose 34 percent of the energy. That is over one-third of the energy they could possibly use. The market is evolving, and wherever we set the line, they will drive that product to that line so people will want it. In discussion with Senator Titus, we considered one-fifth of the power for the esthetic part, as long as they do not lose more than 20 percent of efficiency. Perhaps a manufacturer would be willing to design a product that could be used in common-interest communities as their sales point. One-fifth sounds acceptable since there are already two products that would comply with that guideline.

CHAIR TOWNSEND:

Based on what Senator Titus has put forth, that it significantly decreases the efficiency and performance of the system which means a decrease of 5 percent or more, are you suggesting it be placed at 20 percent or more efficiency?

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SENATOR CARLTON:

I am looking for a middle ground, and this seems reasonable.

CHAIR TOWNSEND:

What do the major associations allow?

PAMELA SCOTT (The Howard Hughes Corporation):
Summerlin allows black panels.

KAREN DENNISON (Lake at Las Vegas Joint Venture; American Resort Development Association):

Lake at Las Vegas currently does require terra-cotta manufactured panels which could meet the standard, depending on the comparison standard. My only concern is you are placing a burden on the architectural control committees to determine whether the panel the owner brings to the committee is comparable within the percentage range. They will ask the experts in solar panel ratings if they can rely on the accuracy of the manufacturers' statements or whether they need to go beyond that for a determination. Perhaps the owner who is challenging the standard of the architectural committee ought to have the burden of proof that their panel is more than 20-percent better than what is specified by the committee.

CHAIR TOWNSEND:

We will say 20 percent; then the individual who requests use of terra-cotta panels must demonstrate they meet the standard. That way they can bring in the manufacturer's standard or the NREL standard.

SENATOR CARLTON:

After they do this a few times, they will see the same manufacturers over again. The only apprehension I have is the architectural review committees. But, places like Lake at Las Vegas have the resources to make their own arguments. I think it would be fine.

CHAIR TOWNSEND:

Is that all right, Committee? We will go with the 20 percent, and the burden to demonstrate to the association would be on the applicant. Senator Schneider brought up that most associations' architectural review committee is one architect, so it may not be too much of a problem for the applicant.

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WIL KEANE (Committee Counsel):

"Mr. Chairman, is the language that appears on the sheet, except for the 5 is swapped out for a 20?"

CHAIR TOWNSEND:

Yes. The burden to prove it meets the 20 percent or less is on the applicant.

MR. KEANE:

"Thank you."

SENATOR SCHNEIDER MOVED TO AMEND AND DO PASS AS AMENDED S.B. 436.

SENATOR CARLTON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIR TOWNSEND:

Senator Beers has an amendment to his bill, S.B. 235, which is the homeowners' association voting bill. We have not had time to draft it, but there is language on it ([Exhibit F](#)).

SENATE BILL 235: Revises certain provisions pertaining to voting by units' owners in a homeowners' association. (BDR 10-681)

CHAIR TOWNSEND:

This is a conceptual amendment provided by the sponsor. We will take it as two separate components. The larger one is " ... within two years of the declarant transferring control to the homeowners, governance must be changed so that a board of directors is created, each member representing an equal number of units, pursuant to a representative district structure and each member elected by a majority of popular vote within their respective district. Decisions by the board will be by a majority or supermajority in accordance with the declaration."

I would like comments, because I do not know how that will work in medium and small areas. I am not sure how it would be done in a homeowners association of 50 units. If there were five board members, they would represent ten homes. If there was another person on the ballot, then one of them would have to get six out of ten homes. That is a different setup than the larger groups.

Ms. SCOTT:

You have to have a minimum of 1,000 units to have delegate voting, so this would not affect the smaller associations.

CHAIR TOWNSEND:

I am sorry, it is 1,000 units.

Ms. SCOTT:

That is the minimum in the current law. The number could be changed if this body so chose. Yesterday, Senator Beers sent this to The Howard Hughes Corporation and, conceptually, we do agree with it. However, we need to work on the language as there are a number of issues to resolve. Having two years to get them resolved, how are existing associations who have a delegate voting system going to apportion those districts?

The Summerlin North has seven homeowner board members. They would divide Summerlin North's 15,000 units into seven districts and each board member would represent their own district. Those districts should be as contiguous as possible, and as equal as possible in number. State government uses a percentage to determine districts. New emerging associations wanting to set this up should be required to outline those districts within a certain time frame before control turns, so it is based strictly on the number of units without politics being involved. You would also need to determine in an existing association who would decide how to apportion those districts without the politics. Obviously, numbers and contiguousness would be the best situation.

CHAIR TOWNSEND:

I do not know how many units are in Caughlin Ranch. How about Wingfield Springs?

MARILYN BRAINARD (Commissioner, Commission for Common-Interest Communities, Real Estate Division, Department of Business and Industry): We have 2,142 units with a current build-out to 2,400. My concern is philosophical; we do not have delegate voting. We have not had a chance as a commission to discuss this, but I think members of the board should represent all of the association, which we have been able to do with our five-member board. When you are a director, you look at what is good for the total association and represent one issue from that person's neighborhood. This has happened in our association where the builder had not completed the common area landscaping, and we do not accept it into the association until the irrigation and planting have been brought up to standards. If someone ran only on that type of issue, and we divided into geographic delegate districts, that would concern me. I think a director should look at the overall good for all the owners of units. We have difficulty getting some people to run for the board, and it would not help to break it down into geographic districts if no one from a particular area is interested in running. I do not see a need for it in my association.

MS. DENNISON:

Lake at Las Vegas does not have delegate voting but we currently have on the drawing board a time-share project which will be an undivided-interest project of 13,000 owners. I have a running e-mail dialogue with Senator Beers on this issue. I believe what he means by exempting time-shares is when there is a time-share project within a master-planned or common-interest community, those votes on master-association issues be voted through the delegates, which is usually the board of the time-share association, rather than having 13,000 time-share owners trying to get proxies from people who live there. The current law says you must reside there or have a member of your immediate family vote your proxy. Many owners are on vacation and not concerned with issues relating to the master association. We have proposed, and Senator Beers agrees, that the board of the association be allowed to be the delegates to the master association to vote those time-share interests.

CHAIR TOWNSEND:

When I saw time-shares and mixed-use, it made sense. Unfortunately, next time we may have to take up the high-rises; that will be a challenge. Since the two largest common-interest community representatives are here, and do not have delegate voting, this would not affect them. I do not know why we would

put this into state law. If the bill sponsor wants to work with you, are you prohibited from breaking it down now?

Ms. SCOTT:

The documents in Summerlin North would require an amendment to the documents. That would be another issue to address for current associations, because Summerlin North is a delegate voting system. We do have a similar situation in one of the newer areas of Summerlin where each board will represent a district. That is because it is so large that if one or two villages are active and the other 10,000 units are not, it keeps all the board members from coming from one geographical area.

CHAIR TOWNSEND:

How big is your master association? How many units does it cover?

Ms. SCOTT:

At build-out, it will be about 70,000.

CHAIR TOWNSEND:

How many do you presently cover?

Ms. SCOTT:

Right now, there are approximately 25,000.

CHAIR TOWNSEND:

I will have a conversation with Senator Beers after this Committee, so please stay available, Ms. Scott.

SENATOR CARLTON:

Every time we change the law, the law trumps the documents, and do you have to amend your documents?

Ms. SCOTT:

This is a conceptual issue, so I am not sure how Senator Beers envisioned this would happen. The amendment says we are going to change our documents, so I am questioning if that is the way it will happen or if we are going to determine a way to break down the districts. My concern is for the existing community as to how we help them break into districts.

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SENATOR CARLTON:

I am talking about in general. The law trumps the documents.

Ms. SCOTT:

Yes. I do not believe we have to amend the documents every time. I think that was changed last session or the session before.

SENATOR CARLTON:

Was there a commission meeting last Friday?

COMMISSIONER BRAINARD:

There are phone conferences scheduled for every Friday morning at 8:30 a.m. throughout the Session until June 1. They emanate from the Grant Sawyer State Office Building in Las Vegas and are open to the public.

SENATOR CARLTON:

Was delegate voting discussed at the meeting?

COMMISSIONER BRAINARD:

I do not yet have minutes from that meeting, but I do not recall discussing delegate voting. Ms. Sanderson is at the table in Las Vegas, and she may be able to tell you. I do not recall discussing it, but that does not mean we did not.

SENATOR CARLTON:

Perhaps someone else has a different memory.

COMMISSIONER BRAINARD:

Ms. Scott just reminded me we did discuss it in relation to an Assembly bill.

SENATOR CARLTON:

The information I received said there was a discussion on delegate voting, and when it comes to voting for board members, they are not going to allow delegate voting, but it is okay to have delegate voting on policy issues at the monthly meetings. Is that correct?

COMMISSIONER BRAINARD:

You are helpful, but it is still not coming up for me. Perhaps Ms. Anderson can help.

GAIL J. ANDERSON (Administrator, Real Estate Division, Department of Business and Industry):

I recall a discussion regarding policy decisions for which delegate voting was appropriate, but on elections it must be one person, one vote. I do not have those minutes, but that is my recollection of the discussion of the Commission.

COMMISSIONER BRAINARD:

The Commission opposes the changes to Nevada law. This was in relationship to Assembly Bill 396, sections 1 through 6, and section 11. These provisions would prohibit delegate voting. The Commissioners inquired of the ombudsman, the Real Estate Division and the compliance division whether they recalled complaints dealing with delegate voting and they did not. Furthermore, the reports to the Commission do not indicate that delegate voting is a significant problem area for associations. Accordingly, although the Commission did not vote to approve or disapprove any particular form of delegate voting, the Commission supports delegate voting as presently permitted in Nevada. Delegate voting recognizes that in large communities, just as in municipalities, the State and the United States, a representative form of government may be desirable. The Commission is concerned the prohibition of delegate voting in all cases may have an adverse effect on different types of associations; particularly, mixed-use projects and large mass associations.

ASSEMBLY BILL 396: Makes various changes to the provisions governing common-interest communities. (BDR 10-1284)

I do recall now, in our conference call there was a member of the public who discussed the delegate voting issue. The Commission was in favor of having the voting at large for the master board of directors, not for the normal day-to-day issues for that one election. We thought that would be a good compromise for the one purpose of doing the master board of directors, but not for the other governmental issues and responsibilities of the board of directors.

MS. ANDERSON:
That is correct.

MS. SCOTT:

I do think that is the intent of Senator Beers' conceptual amendment. When you send a person to the board, it will be one person, one vote within the board member's district. This is similar to your own senatorial districts within the

State. His allows delegate voting on issues for amending documents, etc., simply because of the higher majorities needed in order to amend documents and meet the higher court requirements.

CHAIR TOWNSEND:

We are trying to understand the conceptual amendment proposed to your bill. Commissioner Brainard represents Wingfield Springs, which does qualify at more than 1,000 units. They do not have delegate voting. Ms. Dennison represents Lake at Las Vegas, which has lots of units, and does not have delegate voting. This ends up at the Summerlin level, and Ms. Scott has been helpful in our understanding of your proposal, its effects and what would have to happen to change. I asked, since nobody else does it, would they have to change their documents to do it. Is that your understanding?

SENATOR BOB BEERS (Clark County Senatorial District No. 6):

Right. It is. Further, it is my understanding they want to change their documents to do it. I think the reason there has not been a lot of complaints about delegate voting is the effect of it is disenfranchisement. Only enfranchised people complain. We do not often hear from people who do not vote. It is that disenfranchisement I would like to see stopped. As I said before on this bill, this is an alien form of government to any American high school civics graduate. No other aspect of government functions in this manner where people who do not vote have their votes cast for them by other people. I joked earlier in the session that my goal is to either eliminate it in Summerlin or be able to cast all the uncast votes in my next Senate election.

CHAIR TOWNSEND:

I do not think we can solve this right now.

SENATOR BEERS:

This is language suggested by Tom Warden and Randy Eckland who are the contacts with The Howard Hughes group. There was discussion about amendments to the declaration, and they were considering dropping the percentage they must hit to 35 percent in order to take it to court. That way, if you did not get the 35 percent turnout, you could take the question that did not get resolved to a judge and say we did our best, here is the outcome, would you change our declarations to the current provision of NRS 116. Right now, the percentage is 50 percent and this would drop it back to 35 percent. This was also a recommendation by The Howard Hughes Corporation.

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CHAIR TOWNSEND:

The only places represented here today are Summerlin and Howard Hughes. Are you familiar with this? I know you cannot sign off on something that is not written in bill draft form.

SENATOR BEERS:

I got this yesterday afternoon, so you may not have seen it.

CHAIR TOWNSEND:

We got it to the Committee this morning. I would like to give her time to review this, and we will pick it up in the morning. Is that okay?

Ms. SCOTT:

The proposed amendment was faxed to me last night, and I did have a lengthy discussion with Mr. Warden and Mr. Eckland. That is when I said it has been conceptually agreed on. We are using the concept in another master community in Summerlin, and we would like to find a way to use this concept in the others.

CHAIR TOWNSEND:

Mr. Keane, do you have enough information on this conceptual amendment proposal to draft a mock-up for the morning?

MR. KEANE:

"We can put together some language, certainly."

CHAIR TOWNSEND:

Okay, and we can look at it the morning. We will have time for Senator Beers, Ms. Scott and her colleagues to review. Will that be okay?

SENATOR BEERS:

This bill is not exempt.

CHAIR TOWNSEND:

I know. We have to get it out of here tomorrow. I am saying that counsel can have a mock-up of the concept so you and the Summerlin representatives can have something in writing to see if we have it right. If we are close, we can vote on it and take care of those minor issues before it goes to the Floor of the Senate.

SENATOR BEERS:
Very good.

COMMISSIONER BRAINARD:

Once again, the Commission, to my recollection, has not discussed this. A strong point with me is, is there any way in the second section to reduce the requirement for taking declaration changes to court to 35 percent from 50 percent? Declaration changes should have a higher standard to meet since those changes have a potentially greater impact on all associations. The majority vote is a standard measure in parliamentary procedures. Even a 15-percent difference is significant. It means it would be easier for a special interest group to sway 35 percent of unit owners as opposed to 50 percent. In the drafting, is there any way this could be applied only to master associations of a certain size?

CHAIR TOWNSEND:

We could do anything we want when we figure out what it is.

COMMISSIONER BRAINARD:
I would speak to that.

SENATOR BEERS:

The language was unclear in its initial writing. This does not refer to the percentage of people who cast votes who want to make the change. This refers to the quorum requirement, to the turnout percentage, if I am not mistaken, in the NRS 116, not the majority part. We do not weigh the Summerlin association as structured and Sun City as well. In order to amend their declarations, they must get a certain percent of the unit owners. They have twice achieved turnout exceeding that required percentage that must exist. It is unworkable and recognizing that, the Legislature created this provision designed to allow some hope of reasonable declaration change overseen by a judge once there was some expression of support within the community that could not reach this almost impossibly high standard of 66 percent of 12,000 unit owners.

COMMISSIONER BRAINARD:

I agree with that, it is the majority of unit owners, not who shows up at a meeting. That is my concern, that it not be those folks you can get to come to one meeting, it should be all of the unit owners. I hope we can retain that 50 percent or modify it by the number of units, which would be for these huge

developments such as Summerlin, but not for the vast majority of associations in the State.

SENATOR SCHNEIDER:

The Commission for Common-Interest Communities supports the ban on delegate voting for elections, but allows it for monthly meeting policy issues.

COMMISSIONER BRAINARD:

I know the election for board of directors was paramount. From the public comments received, that seemed to be the main issue, not to be able to vote for your master board of directors.

SENATOR SCHNEIDER:

Is that letter before the last hearing?

COMMISSIONER BRAINARD:

This was prepared by our Chair, Michael Buckley.

SENATOR SCHNEIDER:

But at the hearing, the Commission changed its position, so I believe the Commission does not support delegate voting for elections.

MS. ANDERSON:

I have in my notes from last Friday's telephone conference that the Commission supports the concept of delegate voting, but supports electing board members by direct vote. The delegate voting concept was for owners' meetings for such things as approving audits, approving budgets and other actions the board must take.

CHAIR TOWNSEND:

Senator Beers, there is some concern by legal counsel with regard to the percentage. I think it is important that you and Mr. Keane have a dialogue on what it does and does not affect. If you can do that while he is here, then a draft mock-up of the amendment can be ready in the morning. That way, we can also e-mail it to those interested, so they do not have to be tracked down.

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COMMISSIONER BRAINARD:

There is an 8:30 a.m. conference call scheduled by the Commission for tomorrow morning.

CHAIR TOWNSEND:

It will be e-mailed as soon as we get it, most likely tonight.

We will suspend our work session and go into the hearing on S.B. 382.

SENATE BILL 382: Provides for the licensure and regulation of perfusionists.
(BDR 54-941)

SENATOR BARBARA K. CEGAVSKE (Clark County Senatorial District No. 8):

Before I give my written comments ([Exhibit G](#)), I would like to tell how this bill came about. I received a phone call from an organization asking me to talk to their national organization meeting in Las Vegas about perfusionists and the need for certification by the states. I said, it sounds interesting, but what is it? I did not know what a perfusionist was, but the Legislative Counsel Bureau staff helped with research so I could understand.

There were fewer than 100 perfusionists from around the country. We talked about whether or not we needed to certify them in Nevada. Not having seen the procedure, I decided I needed to explore. I called a local hospital to ask if a doctor would allow me to observe a perfusionist. A heart doctor obtained permission from the mother of a four-month old baby that needed open heart surgery for me to observe the surgery. I spent a whole day finding out what they did, how they did it and watched the whole procedure. It was the most amazing and wonderful thing I have ever witnessed. The skill and care of these perfusionists was incredible. They talked about the intense education to become a perfusionist.

I have gained the utmost respect for this profession. What I am bringing forth is a decision to let you look at whether or not they would have to be certified in Nevada and if it is necessary to put a board together.

The bill would create a five-member professional licensing board to regulate the perfusionists. It describes the perfusionist's scope of practice and establishes educational and examination requirements for licensure. It also provides for the normal function of a professional licensee board such as regulation, continuing

education and disciplinary matters. There are 14 other states currently licensing perfusionists.

Other than Senator Heck, most of you may not know what a perfusionist is, so I will briefly describe what these practitioners do and why it is vital to consider this bill and make a decision. The perfusionist provides a variety of clinical services to numerous patient populations under the prescription and supervision of a physician. A perfusionist constructs extracorporeal circuits to allow the cardiothoracic surgeon to connect the heart-lung machine to an open heart surgery patient. Whether the patient is older or newborn, whether receiving coronary artery bypass grafting, cardiac valve replacement or surgical correction of a cardiac birth defect, the perfusionist operates the heart-lung machine to bypass the patient's heart and lungs. The heart-lung machine replaces the function of the patient's heart and lungs to provide a bloodless, motionless surgical field for the surgeon. The perfusionist ventilates the patient's blood to control the level of oxygen and carbon dioxide. The perfusionist propels the patient's blood back into the arterial system to provide nutrient blood flow to all the patient's vital organs and tissues during heart surgery.

The extracorporeal membrane oxygenation (ECMO) is the long-term use of an artificial blood oxygenator to support or replace a newborn's undeveloped or failing lungs, or a pediatric or adult patient's damaged, infected or failing lungs to allow treatment and healing. The long-term ECMO for pediatric and adult patients is performed clinically in large health care centers. The membrane oxygenators are employed in the ECMO circuits with blood pumps designed to provide emergency cardiorespiratory assistance in a heart attack, heart failure, drowning or exposure to the cold.

Now, I am going to let the professionals talk more about this.

SENATOR SCHNEIDER:

I know Senator Hardy was struggling with this concept. It is like a big fuel pump only for the body.

STEPHEN MCDOWELL (Vice President, Pacific Perfusion Services):

I am also representing the American Society of ExtraCorporeal Technology, which is our national organization and their state liaison and representing the perfusionists in northern Nevada.

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I have prepared a statement to introduce myself ([Exhibit H](#)) as a certified clinical perfusionist and chief perfusionist of the open heart surgery program at Carson Tahoe Regional Medical Center in Carson City. I have 28 years experience in the field of perfusion, 23 of which are in Nevada.

SENATOR HARDY:

Surely there is regulation? Is it self-regulated through the hospitals?

MICHAEL HAYS (President, Pacific Perfusion Services):

I represent myself and five other practicing perfusionists in northern Nevada. There are regulations. We have national certification through the American Board of Cardiovascular Perfusion. Currently, most hospitals require the certification of perfusionists through this board, and do so through their hospital credentialing process.

As Senator Cegavske said, there are only 14 states that have licensure for perfusionists. In concept, we would like to see licensing for perfusionists. We are concerned about some of the wording and would like to work with the Senator in providing some amendments to this bill.

SENATOR HECK:

Are there any hospitals in Nevada using perfusionists that are not certified by the national organization, without naming them?

MR. HAYS:

No, there are not.

SENATOR HECK:

So all the perfusionists currently employed by Nevada hospitals are certified by the national organization?

MR. HAYS:

To my knowledge, yes. Either certified or board eligible. Board eligible is a process after you graduate from an accredited school and have up to a year to take your test. During that process you are considered board eligible and can practice as a perfusionist.

SENATOR HECK:

How many practicing perfusionists are there in Nevada?

MR. MCDOWELL:

There are 22.

SENATOR HECK:

Unfortunately, that becomes the biggest obstacle, because it would be prohibitively expensive to create a board for 22 people. You will price yourselves out of business.

SENATOR CARLTON:

I am happy to hear about the national certification and that it is working. Was there any discussion about incorporating the specialty into an existing board?

SENATOR CEGAVSKE:

No. When the national group came to me, they were going from state to state to talk about having this done. I knew the numbers were low, but said I would be willing to bring it up and have the discussion, and let this legislative body decide if it was necessary. As I stated, I have never seen such professionalism in a group of people. I did not want to put this in to harm anybody; it was strictly for the conversation. If there is anything they need out of the legislation that can be helpful, that would be fine.

SENATOR CARLTON:

I support the bill. I support what you are trying to do. I recognize the fact that you want to be regulated. Not many people come here for that, but this session many have been asking to be taxed and regulated. With just 22 perfusionists, is everyone in agreement about wanting to be regulated?

MR. HAYS:

I can only speak for the practicing perfusionists in northern Nevada, and we are in agreement. We have a representative in Las Vegas who could speak for those perfusionists.

SENATOR CARLTON:

You may have said this earlier, but why to you want to be regulated?

MR. HAYS:

Licensing protects the health care consumer. It assures over and above what our certification process does. Additionally, for the practicing perfusionist it protects our scope of practice. With changes in health care, we are seeing cost cutting. It is an important process which we need to look at in the future.

SENATOR CARLTON:

You want to make sure that in the future, qualified people are still doing this job and the standards do not slip.

SENATOR CEGAVSKE:

One thing that impressed me with the group I observed and talked with, was how long they had been in the process. Some started out as nurses, and their education is continuous. One thing they said is that there would be less and less quality background and education.

SENATOR CARLTON:

Is that because technology is changing so quickly?

MR. HAYS:

Technology has provided improved safety and patient compliance. As far as automation, it is difficult to have an automated process for what we do; it is manual labor. There is a lot of decision making and processes that take place.

SENATOR CARLTON:

Senator Cegavske, I would like to help as much as I can with this bill. We are trying to figure out how to get rid of the two-thirds, if possible, but it is a dim light. If we could incorporate this specialty into another board to give you that level of desired regulation, I am willing to help in any way I can to achieve that goal.

ROBERT TWELLS (Perfusionist):

I am the chief perfusionist at Sunrise Hospital and Medical Center and Sunrise Children's Hospital in Las Vegas and president of Clinical Technician Associates, a perfusionist company in Las Vegas.

The bill is something we need in Nevada to protect the perfusionists and the patients. Senator Carlton brought up a valid point in that it is too cost prohibitive to set up a separate board. The Board of Medical Examiners does a

great job of licensing physicians, physician's assistants and respiratory therapists. I think the most feasible option is to go under that Board.

The bill is based on a generic copy from the American Society of ExtraCorporeal Technology, and the language needs to be looked at by the Senator and perfusionists in the State for rewording.

SENATOR CEGAVSKE:

I agree with Senator Carlton that in them coming forward asking for this, knowing of the future and planning, it says a lot for all of them.

SENATOR HECK:

Here is another potential option to get the ball rolling. Just for concern of public safety and protecting the consumer, is part of it that there may someday be uncertified, incompetent or untrained perfusionists hired by hospitals?

MR. MCDOWELL:

Probably not, because of the regulations for our malpractice insurance and the fact that hospitals now require we be certified. I would not see that issue coming about. It is possible, but highly unlikely.

SENATOR HECK:

As it is now, the hospitals filter by hiring an individual or group by making sure they are board certified or by their in-house process.

MR. MCDOWELL:

Correct.

MR. TWELLS:

If we are regulated by the State, we could do more background checks on everybody. Right now, it is regulated solely by the hospitals and the perfusion companies in the State to make sure everybody is up on all their credentials and background checks. There are only three employers in Nevada for perfusionists, and it is up to them and the hospitals they work for to make sure they are credentialed and background checks are complete. The State could take over this aspect in the interest of better patient safety.

KEITH L. LEE (Board of Medical Examiners):

It has been suggested that if there is a regulatory function to be performed in this State with respect to perfusionists, it should be placed in the Board of Medical Examiners. I would suggest you be careful what you pray for, you might get it. The Board is not prepared to say we can and should regulate perfusionists; we do not know anything about that profession, even though we regulate allopathic physicians and respiratory therapists. Perhaps we should look at some regulatory scheme for perfusionists. I respectfully suggest we look at this over the interim to give it some real thought as to where it should go. If there indeed is a need for regulation, I have not heard the case made for regulating them. Apparently there has been no harm done so far nor does it appear likely in the future, given the processes presented regarding perfusionists. We suggest that before it is placed within the Board, we give some study to the process to decide if, in fact, they need to be licensed and regulated, until we know where they should be placed.

MR. HAYS:

I think licensing will help reduce malpractice insurance, as there is a high incidence of malpractice in perfusion, putting the patients at risk by not having qualified, licensed perfusionists. Proper licensing or an additional licensing procedure might help that procedure.

SENATOR CEGAVSKE:

I appreciate the opportunity to discuss this. I look forward to working with you. I know the deadline is Friday, so if there is something we can do before the session ends, I believe that is their intent.

CHAIR TOWNSEND:

We will close the hearing on S.B. 382 and return to the work session on S.B. 359.

SENATE BILL 359: Revises provisions governing claims made under policies of insurance for motor vehicles. (BDR 57-1135)

ROBERT L. COMPAN (Farmers Insurance):

The Committee asked me to look at the concerns of Senator Hardy and Senator Carlton regarding provisions in section 1, subsection 3 of the bill ([Exhibit I](#)). Regarding the 90-day time frame and the civil action provision, I met with the Nevada Trial Lawyers Association and worked out a compromise regarding the

language in the bill. We made amendments to section 1, lines 14-17 to clarify the language. We removed on line 15 "without limitation" and "any" on line 16.

We worked the whole bill to get to the intent more simply by providing "a time-limit demand shall not be less than 30 days pursuant to subsections 1 and 2, and must be provided 30 days subsequent to applicable period of limitations." In providing this language we hope we have satisfied the Committee.

CHAIR TOWNSEND:

Mr. Keane, since I do not have the statute, does this create any problems with regard to the 30 days pursuant to subsection 1 and 2, and must be provided 30 days subsequent to the applicable period of limitations?

MR. KEANE:

"I am not sure what a time-limit demand is. I would like an opportunity to look this over."

MR. COMPAN:

A time-limit demand is a demand for payment of provisions of a policy based on medical specialists outlined in subsections 1 and 2. In our industry we are finding time-limit demands are somewhat in a 10-day nature. We get a demand saying you must make payment within ten days; failure to make payment will force pursuit of a civil action in a court of jurisdiction. It is our reasoning ten days is a hard time to analyze and properly evaluate a claim as to the nature and expenditures.

Section 1, subsection 2 clarifies that information required by us to provide by representation in the form of medical specialists and things of that nature. We clarify what must be presented to us. This gives us time to protect our customers' interests regarding claims and damages and to manage the demand for payment.

MR. KEANE:

I would like an opportunity to go over the language. I just saw it. I'm not sure exactly what the 30 days you mentioned. The time of the event should not be less than 30 days pursuant to those subsections. Is that it should not be submitted in less than 30 days

after someone grants health authorization? I guess I am just not sure what the language does.

MR. COMPAN:

I drafted this yesterday. Obviously, the Legislative Counsel Bureau will have to use the proper language. But that is the intent.

SCOTT CRAIGIE (Farmers Insurance; Nevada State Medical Association):

The changes made try to address on many levels the concerns raised. There are a number of things in the bill. There is a defined time when you can demand payment. That defined time is in that two-line section eliminating all of the other pieces. This sets it out straight forward. You can file an action now any time. There is no requirement for a demand action. There is no time period by statute; you can go past the statute of limitations on this. We tried to add flexibility. It is a well-done package. It is shorter, clearer, straight to the point and makes the process easier to work. That was the objective we took with us from the last hearing to make those changes.

GRAHAM GALLOWAY (Nevada Trail Lawyers Association):

We have had negotiations with the proponents of this bill. While the changes in the proposed amendment are a step in the right direction, we have not completed our negotiations. We are still opposed to the language in subsection 3; we think 30 days is too long. There are many situations where a demand for payment should be taken care of in less than 30 days. Traditionally, from our side, we do put a 10-day time limit on it. Realistically, the average life span of simple claims is nearer 20 days. The 20 days is a middle ground between the 10 days and 30 days. We are opposed to the 30-day time because often I have clients representing individuals who are living on the edge. A 30-day delay in payment puts them over the edge. There are clear-cut situations where 30 days is not necessary. The flip side of that is the statute or the proposed amendment does not address the carrier. We would like a time limit on how long the carrier has to digest the information. I have had the situation where I have presented information to an insurance carrier where it is clear that it should be paid, but it takes 30, 40, 50 days or even a lawsuit. We would like to see additional language which would put an outside time line on how long an insurer has to ponder the demand package presented.

SENATOR HECK:

I would agree with the point on section 1, subsection 1 where the attorney or the claimant has been providing medical records on an ongoing basis, not more than once every 90 days, because the carrier is receiving the package every 90 days. The language proposed for subsection 2 is reasonable, because in lieu of providing the records, you are going to provide an authorization. Now the carrier has to make a demand for the records, because 30 days from the authorization is how it is worded. If they receive an authorization, then they have to contact each one of the medical providers requesting the records. We all know how poorly doctors respond to requests for records. In that case, 30 days to get those records and digest them is very reasonable since they are the ones doing the work to get all the records.

MR. COMPAN:

That is exactly the intent. It states "pursuant to subsection 1 and 2." It is the 30 days after the date the authorization was received to receive the information. I agree with your analogy.

MR. CRAIGIE:

The 30 days is new to us. You outlined the problem we have had in the discussions. Maybe there are ways we can do this, but the fact is I am worried because I am getting pushed back from my client. They have signed off on that and it is an improvement.

SENATOR CARLTON:

I understand what you are trying to do. When we look at where you started in going all over the various lengths of days and statute of limitations, you are almost there. I understand where it is coming from because I have been through this mess. I know this is still a work in progress and with a couple of more steps it will get better.

MR. GALLOWAY:

There are two concepts, there is giving an authorization and then there is the demand package. Normally, in my practice, I give an authorization to the insurance company in the beginning of the process, long before a demand is ever sent to them. I understand some people do not do that, but the common practice is to give that authorization up front. In that case, the 30 days never comes into play because they have the authorization in the beginning, giving

them plenty of time to obtain the needed information. The demand is at the end of the time.

I struggle with the concept of putting in this 30-day limit, because the authorization is already there at the beginning of the process. When we give the time-limit demand, we also normally give all the medical records and bills at that point. When we send a demand package to an insurance company, we include all the medical bills and records at that point. That is the standard practice. I understand there is a concern by Farmers Insurance that some brothers in southern Nevada are not doing that and that is a proper concern on their part. Most of the information is already given to them and if they have all the information when they are given the demand package and it is a clear-cut case, they should not be held up for 30 days while Farmers Insurance looks it over. In talking to the representatives of Farmers Insurance, they indicated in most situations they would pay within less than 30 days. But we have also experienced the situation where that does not happen. There may be personalities involved and they sit on it and drag their feet. These are our concerns about the 30 days. In modest situations, 30 days is not necessary. To do a hard and fast rule of 30 days is problematic for us.

MR. CRAIGIE:

Mr. Galloway has been reasonable in our conversations, and everyone is trying to get to an agreement. One problem is where he describes the 30-day time. There are many situations where you cannot go 30 days or it can be paid within that time. The problem for us is setting the standard we have to apply to all cases. If we set up a system that requires us to deal with all cases in a manner where it is inside a lesser amount of time for payment, there are going to be those instances when we do not have the material or the decision-making process inside the company and cannot get to the end point. The company does respond within 30 days in most cases, but the problem is we cannot afford to be strapped to that time on all cases.

CHAIR TOWNSEND:

We have heard the dialogue on the proposed amendment; what is your pleasure, Committee?

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SENATOR SCHNEIDER MOVED TO AMEND AND DO PASS AS
AMENDED S.B. 359.

SENATOR HARDY SECONDED THE MOTION.

SENATOR SCHNEIDER:

I listened to the arguments about some people not providing the authorization in the beginning, and all this bill does is put a realistic time frame in. This way everyone has the same opportunity. If it does not work, they can come back. In the meantime, this is a way to save our constituents money.

SENATOR HECK:

I am pleased this will provide the authorization up front which will start the 30-day clock, so there should be no issue. If the authorization is provided up front, once the case is closed and it has been 30 days, then this provision becomes moot. If anything, this may help those who do not practice that way to start putting their authorizations up front.

CHAIR TOWNSEND:

On the question?

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIR TOWNSEND:

This shows the bills relating to complementary integrative medicine and the proposed amendments for each ([Exhibit J](#)).

SENATOR SCHNEIDER:

I would like to propose we work through this to see what we can agree to. We are attempting to change medicine. Sometimes you have to have big swings to make change. This is so important that the Legislature has to keep a finger on it so we can stay abreast all the time. The first amendment is on S.B. 432.

SENATE BILL 432: Enacts provisions governing complementary integrative medicine. (BDR 54-694)

KELLY S. GREGORY (Committee Policy Analyst):

The first document contains a chart outlining the concepts in each bill, [Exhibit J](#). In our meetings with Dr. Frazen, he explained he was attempting to create a matrix to do with complementary integrative medicine (CIM). On the mock-up for S.B. 432 ([Exhibit K](#), original is on file in the Research Library), Senator Carlton wanted to be sure there was a declaration of legislative intent to protect the public. We also wanted to address the concerns of the massage therapists, physical therapists and registered dieticians who testified on the bill the first time it was heard on March 28, 2007. Changes were made in section 19 addressing the composition of the Board of Complementary Integrative Medical Examiners. Language on delegation of certain duties of the Board to subcommittees of the Board was removed as it was decidedly unnecessary. Lastly, we removed language dealing with reciprocity and automatically granting licenses, which was a provision in the statute on homeopathy, but removed for the purposes of this bill.

SENATOR CARLTON:

In discussions on the Board of Homeopathic Medical Examiners becoming the Board of Complementary Integrative Medical Examiners, we decided to keep in effect some of the current testing so it mirrors what is being done and not pull the ladder up behind us. Whatever they started with we would continue and as the Board evolves, we thought it was important to be consistent. This has evolved into almost abolishing the current Homeopathic Board and recreating it as a higher standard board. It allows the same things while realizing this form of medicine is evolving and we want the board to evolve and change along with it.

CHAIR TOWNSEND:

Originally, I thought you were going to get rid of a couple of boards and combine them under one. Are you now going to leave those boards in place?

SENATOR CARLTON:

Yes. The Homeopathic Board will look quite different, yet their testing, scope of practice and other similar things will stay as the base while the board expands and grows into other areas as the practice of homeopathy evolves.

CHAIR TOWNSEND:

What about the State Board of Osteopathic Medicine and the Board of Medical Examiners? Are they not affected by this, only the homeopathic practitioners? Can they apply to this new board?

SENATOR CARLTON:

Right. There is no intention on the part of this new board to disenfranchise anyone. We do want to recognize the people who want to also practice these other things while making sure it is safe for the public. There are other issues now, and this bill takes the Board of Homeopathic Medical Examiners, expands it and gives it the correct title of the Board of Complementary Integrative Medical Examiners. That was the goal of the provisions in this bill.

CHAIR TOWNSEND:

I am looking at section 41, page 16, [Exhibit K](#), "The Board may grant a certificate as an advanced practitioner of complementary integrative medicine to a person who has completed an educational program designed to prepare him to:" Then it lists paragraphs (a), (b) and (c), individuals who are licensed under the Board of Medical Examiners or the State Board of Osteopathic Medicine. May they apply equally to get a certificate as an advanced practitioner of integrative medicine?

SENATOR CARLTON:

Yes, sir.

CHAIR TOWNSEND:

They may do that too. Then you define medical nutritionist. Under section 45 it states, "The Board may issue a certificate as a complementary integrative medical nutritionist to an applicant who is qualified pursuant to regulations adopted by the Board to provide services relating to complementary integrative medicine or homeopathic medicine." We are not substituting this for the State Board of Pharmacy are we? Would the individual still be licensed under the Board of Pharmacy and then apply this?

SENATOR CARLTON:

Correct. These are all second licenses. This is not to prohibit anyone from being licensed under any other scheme; this gives people a second choice.

CHAIR TOWNSEND:

Okay. You could become a C.M.D., H.M.D., C.A.P., C.A. or C.N. depending on your particular designation according to section 48?

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SENATOR CARLTON:
I believe that to be true.

CHAIR TOWNSEND:
So, you would be a certified nutritionist. Let us use a medical doctor (M.D.) for the purposes of this question. If an M.D. applies for this type of certification, what else do they have to do in order to qualify? If they meet these standards, how long does it take to get certified?

SENATOR CARLTON:
I am not sure about that.

Ms. GREGORY:
That is in section 35, subsection 1, paragraph (c) of S.B. 432. The requirement is "during the year immediately preceding the date he submits his application, completed not less than 60 hours of continuing medical education and complimentary integrative medicine."

CHAIR TOWNSEND:
In completing those 60 hours, will this board define complementary integrative medicine hours, so people would know what classes qualify?

SENATOR CARLTON:
That will all be done through regulations. It will be almost in the same way we do continuing education.

CHAIR TOWNSEND:
Were a lot of these provisions taken from other boards so we are consistent?

Ms. GREGORY:
The vast majority of this bill was directly carried over from the Homeopathic Board language as it appears now.

SENATOR CARLTON:
We wanted to make as little change as possible. We did not want to revamp, we wanted an evolution.

SENATOR HECK:

I have concerns about some things included in this bill, although it is a marked improvement from where it started. Perhaps this bill is taking too big a step as opposed to the next baby step. Personally, although it has been better defined and retitled as a complementary integrative medical nutritionist, there are still a lot of issues surrounding the use of the term and what the general public thinks of when they hear nutritionist. Likewise, I have concerns about starting to license advanced technicians or assistants, when those entities have not been well defined, and leave it to regulation to allow the Board to start licensing other entities that do not have any place right now in any of our other boards other than medical assistant.

There are some technical issues with the bill I see after having gone through it quickly. Under section 47, subsection 1, it states a "physician may use any nontraditional diagnostic or nontraditional therapy." I understand that is where this bill is going, but there needs to be some oversight as to what that is considering. What this is saying is that someone licensed under this chapter can treat anybody with anything, and have it protected under the idea it is a nontraditional treatment.

Section 48, subsection 2, deals with "a physician licensed pursuant to this chapter who holds a degree." An M.D. or D.O. is able to use those initials after his name, even if he is not licensed by that board. I understand a degree is a degree, and everyone is entitled to use their degree. But, in the medical community when you see those initials after somebody's name, you automatically assume that person is licensed by the respective board and a practicing physician in that specialty or in that discipline.

It appears section 50 conflicts with section 35 of the bill regarding the amount of postgraduate training required before an individual could be licensed. Under section 35 of S.B. 432 it is three years of postgraduate study, and in section 50 there are two dates. If you are licensed before July 1, 2007, it is only one year of post-graduate study and after July 1, 2007, there are three years of postgraduate study.

Section 53 talks about a postgraduate program of clinical training. I am not sure if that is because we are giving a limited license to practice as a resident in one of these postgraduate programs. I do not know if one of those programs still exists or if there is a residency in CIM. I would have concerns, since it is being

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called a residency, if it actually is an Accreditation Council for Graduate Medical Education residency.

As for the idea of putting ABC coding in section 118 of the bill in statute, we have had that discussion. This would force it upon insurers.

SENATOR CARLTON:

The ABC coding was not supposed to be in the bill.

SENATOR HECK:

That was easy; we can delete section 118 from S.B. 432. In section 124, it mandates health insurers to contract with someone licensed under chapter 695G of the *Nevada Revised Statutes* (NRS). I have voted against worthwhile causes containing mandates so I have a concern here.

Section 9, subsection 2 discusses the term "complementary integrative medicine," including herbal therapy. While that may be part of CIM, it is not in all areas. In section 17, it says this chapter does not apply to certain practices but it does not make exception for those who are not licensed by this chapter to practice herbal therapy. Those are my technical concerns.

Complementary integrative medicine is still considered to be somewhat fringe; so was osteopathy when it first came out. The National Institutes of Health (NIH) recognizes CIM and has a whole section on it in the NIH. There is a lot of merit in moving this forward; we need to make sure we do it in a manner that accomplishes the goal while continuing to protect the public.

SENATOR SCHNEIDER:

I would ask for suggestions on further discussion from Senator Heck as he is a doctor.

JAMES JACKSON (Homeopathic Association):

This bill is a major change from what we started with a few weeks ago. I stand on the concerns I previously expressed on behalf of the Homeopathic Association on the original bill. Senator Heck pointed out a few of the same things I did, particularly in sections 35 and 50 with respect to the postgraduate requirement. Our concern is whether a program is available for that. I know Senator Carlton said some things would be taken care of by regulation, but it is hard to regulate something that does not exist at this point.

We continue to have concerns with respect to the oversight of the Nevada Institutional Review Board. If I understood correctly, they would report to the Legislative Commission, but we continue to have concerns about the day-to-day oversight of that group. Again, they are going to be operating under the authority and auspices of the State. One comment was there is a big difference between a baby step and a huge step forward, and this is a major step forward. I have not had a chance to vet this with my association. I am sure there will still be some concerns, and I would like to have overnight to more thoroughly go over the changes in the bill.

MR. LEE:

I briefly glanced through the mock-up. Generically speaking, the Board of Medical Examiners always has two concerns with respect to issues dealing with licensees and the practice of medicine who are covered under chapter 630 or 633 of the NRS. I presume to speak for the NRS 633 people. The concern is we believe practitioners of any medical care in this State, if they are to prescribe controlled substances, must be licensed under either NRS 630 or 633. We had this debate on other bills this session. On page 7, lines 21-23 indicate that somewhere in this bill it is going to allow practitioners licensed solely under these provisions to prescribe at least schedule II controlled substances. I refer to page 41, lines 26-29 which, while they do not deal with NRS 630, they do deal with chapter 639 of the NRS. It may be another way to get around saying that practitioners licensed under the scheme proposed in this bill can prescribe controlled substances.

I have not had a chance to fully study the bill, but currently if a homeopathic physician is also dually licensed by the allopathic board, the Board of Medical Examiners, we maintain we have primary and initial jurisdiction over any disciplinary complaint filed. Dr. Heck points out a concern in section 48, lines 14 and 15. If I read that the same way Dr. Heck reads it, one need not have a current licensure with either the allopathic or osteopathic licensing authority in Nevada, but if he has a medical degree, he can put M.D. after his name even though he is not properly licensed. That runs contrary to other laws in the State currently in effect.

In my quick review of section 44, subsection 5, it appears if we process that section, we would need to add NRS 630 and 633, as well. It appears to leave an opening for someone to practice under NRS 630 and 633 as an assistant

without being properly vetted by those two boards. With that, I will study the bill further and appear tomorrow.

MR. CRAIGIE:

I would like to reiterate some of Dr. Heck's observations. The physicians on our board and our staff are skeptical of moving aggressively on this front. They have shared that with you in other hearings. There is concern among physicians that there will be confusion about where medical care comes from and where other types of sciences like homeopathic treatments fit. We are also concerned about what happens to the general public if all these new areas open up. There are certified professionals doing work with patients outside of what we see as traditional medical treatments and care. That is a worry that is widespread among those on the board whom I have heard from and been with the most.

If any of this goes forward, we would prefer that it would be something more limited in scope or targeted. That way we could see how new service programs in the health care area impact the general public we can see how the new regulatory schemes created are effective in overseeing, disciplining and properly certifying those people doing the care work based on the various areas defined in the bill.

One thing that is apparent from Dr. Heck's list is somebody is going to have to do a thorough run-through on this. The unfortunate thing is the time is short. I do not know how to rectify that; perhaps you can put a budget piece in it or something. There are a number of issues that need to be looked through. I was to make sure and make clear the Nevada State Medical Association's main position is as it was in the past; to give attention to the details as I just did.

FRED L. HILLERBY (Nevada Association of Health Plans):

It is hard to read through this bill and not realize it affects a number of clients. I am going to start with the Nevada Association of Health Plans. I see things in the bill of concern to us. Somebody already mentioned having a homeopathic physician on provider panels. It says you have to recognize them and they have to be a willing provider for a health plan.

I heard Senator Carlton say the issue with the ABC coding in section 118 on page 55 was not supposed to be in the bill. If that is so, then I do not have that concern. In one of the bills, it called for a study to encourage the use of this, and then we jump to where we are going to mandate it. The coding systems

currently in use are the ICD9 codes for international classification of diseases in terms of diagnosis codes. Then Medicare has a series of codes we have to use and they are used in commercial insurance as well. Putting in a new set of codes is an expensive proposition for limited use. I am not sure who is going to be licensed under this, I have not found it in this bill. One provision would mandate not only having homeopaths on your provider panels, but mandates covering all the treatments mentioned. When you start talking about lifestyle modification and use of sunlight, water, rest, which are all practical things, I do not know how you would deal with that from an insurance standpoint and whether that is medically necessary or just good health. I know your position on prevention and I share your issues.

MR. HILLERBY:

One of the privileges I have is to sit on the board of a medical malpractice insurance company. This bill is trying to define malpractice, and there are specific sections in the statute dealing with malpractice. I do not know if you can change those provisions in section 9, subsection 3, paragraph (e) concerning the definition of homeopathic medicine. Then again, in section 11 on page 5 it defines the practice. In my quick read, I am not sure they are contradictory, but I am curious as to why they appear in two different places in the bill, and are they consistent. The concern Mr. Lee brought up regarding the NRS 639 in section 95, concerns the State Board of Pharmacy who I also represent. I do not know how that may conflict in it saying this bill does not preclude a pharmacist from filling compounds. I am not sure with that language that you can disregard your other rules about what you can and cannot fill.

I do not think anybody is against the notion that there are other ways to deal with people and how they can be helped. It is good to put it on the table, but I am not sure it can be accomplished in two days. I can review this overnight, but it may not be thorough. The thought I had is to plant the seed with everybody else. It is so much, and Senator Schneider said when we started we knew it was different and a big step. Maybe we ought to be looking at this in a more thoughtful process, as in an interim study or a committee on health care that meets regularly to work through this. Then we could come back so everybody understands what we are trying to do without making a leap.

CHAIR TOWNSEND:

It is a major step, and we respect that. All of you thought the Chair was crazy 25 years ago when I said we ought to talk about alternative energy, and now

everybody has a bill, but you have to start somewhere pushing the envelope. Fortunately, one of our members provides health care to individuals.

The fact is there are two tracks for health care. One is attracting the finest practitioners around through the current licensing structure we have, so we can provide for our citizens and attract anyone else who might want to come to Nevada for their health care. There has been a concerted effort, particularly in southern Nevada, with a lot of private commitment to do that. Secondly, we can look at this type of approach in terms of bringing new investments and ideas and integrating different forms of the medical community and the healing arts together. There is not one silver bullet or one arrow to get to the issue, there are multiple ways. This happens to be one of them. I admire the effort by members of this Committee to make this a good bill. I want all of you to read this bill tonight so any concerns can be addressed. It is important we have this dialogue.

JIM JENKS:

I would like to put in a word for those who have home businesses, those who have health food stores. I am questioning page 3, line 36 where it says herbal therapy means to prescribe. Does that mean a person in a health food store is going to have to be certified by the same board in order to sell an herb? I have the same kind of question on page 4, line 37. On page 4, line 7, it says homeopathic remedies prepared by magnetically energized machines or something. I am not sure everybody knows that a low-level homeopathic remedy is over-the-counter and sold in health food stores. We are 6 million home businesses in the United States who are for most of the things in this bill, and question that we might have to be certified by a State medical board in order to sell herbs.

SENATOR SCHNEIDER:

We had a woman representing a private company that does stem cell work who would be willing to come back. She had made a presentation that was quite interesting on nonembryonic stem cells and the research. This and other things can go in this bill ([Exhibit L](#)).

CHAIR TOWNSEND:

If the Committee wants to process a bill, it would be my intention to take the components of value out of the other bills and combine them into one bill. I will speak to the majority leader to see if he will give us a waiver or allow it to be

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sent to Senate Committee on Finance. It does matter where the bill. If I can get it into Finance, we can still keep open hearings and take the amendments there to process the bill, then have them rerefer it to us.

We will close the work session on S.B. 432 and take it up tomorrow at 7:30 a.m. There being no further business before this Senate Committee on Commerce and Labor, the meeting is adjourned at 11 a.m.

RESPECTFULLY SUBMITTED:

Laura Adler,
Committee Secretary

APPROVED BY:

Senator Randolph J. Townsend, Chair

DATE: _____