MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON COMMERCE AND LABOR

Seventy-Fifth Session
May 4, 2009

The Committee on Commerce and Labor was called to order by Chairman Marcus Conklin at 1:30 p.m. on Monday, May 4, 2009, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 5100 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/75th2009/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Marcus Conklin, Chairman
Assemblyman Kelvin Atkinson, Vice Chairman
Assemblyman Bernie Anderson
Assemblywoman Barbara E. Buckley
Assemblyman Chad Christensen
Assemblyman Ed A. Goedhart
Assemblyman William C. Horne
Assemblywoman Marilyn K. Kirkpatrick
Assemblyman Mark A. Manendo
Assemblywoman Kathy McClain
Assemblyman John Oceguera
Assemblyman James A. Settelmeyer

COMMITTEE MEMBERS ABSENT:

Assemblyman Morse Arberry Jr. (Excused)
Assemblywoman Heidi S. Gansert (Excused)

GUEST LEGISLATORS PRESENT:

Senator Maggie Carlton, Clark County Senatorial District No. 2
Assemblywoman Sheila Leslie, Washoe County Assembly District No. 27

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Dan Yu, Committee Counsel
Andrew Diss, Committee Manager
Patricia Blackburn, Committee Secretary
Sally Stoner, Committee Assistant

OTHERS PRESENT:

Louis Ling, Executive Director, Board of Medical Examiners
Weldon E. Havins, M.D., J.D., Executive Director, State Board of Osteopathic Medicine
Lawrence P. Matheis, Executive Director, Nevada State Medical Association, Reno, Nevada
Marla McDade Williams, Chief, Bureau of Health Care Quality and Compliance, Department of Health and Human Services
Paula Berkley, representing Chiropractic Physicians' Board of Nevada, Reno, Nevada
Margaret Colucci, D.C., Vice President, Chiropractic Physicians' Board of Nevada
Cindy Wade, Executive Director, Chiropractic Physicians' Board of Nevada
James T. Overland Sr., D.C., President, Nevada Chiropractic Association, Las Vegas, Nevada
Maury Astley, representing Nevada Chiropractic Association, Las Vegas, Nevada
Ivan Goldsmith, M.D., Private Citizen, Las Vegas, Nevada
Keith Lee, representing the Board of Medical Examiners, Reno, Nevada
James Tate, M.D., President, West Crear Medical Society, Association of Black Physicians, Las Vegas, Nevada

[Roll was taken and the meeting started as a subcommittee.]

Chairman Conklin:
We will open the hearing on Senate Bill 266 (1st Reprint).

Senate Bill 266 (1st Reprint): Makes various changes concerning the practice of medicine. (BDR 54-707)

Senator Maggie Carlton, Clark County Senatorial District No. 2:
The essence of this bill was brought to me by an oncologist who is a friend and who had a special experience by being able to travel to another country to share his particular expertise in surgery within the field of oncology. He had such a wonderful experience. He went to the other country, presented his credentials and received his license to practice in that country, and went to the appropriate hospitals and held classes for the professionals and students on special techniques that he had mastered here in the United States. When he came back he wanted to do the same thing, by bringing people from across the country and around the world to Las Vegas to share their special expertise, and found out that it would not be quite as easy a process as he had experienced in other places. That gave us the idea for this bill. We would like to be able to have those very special professionals come to the State of Nevada and share their knowledge with current professionals and future licensees.

If you look at page 2 of the bill, we get into the special event license. The language, you will notice, reads a little oddly because one of the things we are very cognizant of is not wanting this license to be used as an excuse for a "Botox party" in a hotel. Keeping that and the safety of the public in the back of our minds, we wanted to allow this special experience to happen but still be able to protect the public from someone who would try to abuse this privilege.

That is the essence of the bill and I would be happy to try to answer any questions. If not, the Board is here, and they are well aware of what we are trying to do. We want to make it very explicit so that someone cannot argue within the regulatory process that they should have the opportunity to have a "Botox party."

Chairman Conklin:
Are there any questions from the Committee? I see none. Did you have any other speakers to testify in support of this bill?

Senator Carlton:
If the Board would like to come forward and testify, that would be okay. The oncologist who was involved with this bill was unable to take time away from his patients to come here.

Louis Ling, Executive Director, Board of Medical Examiners:
We have been working with Senator Carlton on this bill, and for the record, we support it as it is presented to you now. It is a good bill.

[There is a quorum present.]

Chairman Conklin:
Are there any questions from the Committee? I see none.

Weldon E. Havins, M.D., J.D., Executive Director, State Board of Osteopathic Medicine
I just noticed in section 3 that the special license costs $400 if you are a medical doctor, but in section 6 it is $200 if you are a doctor of osteopathic medicine. I wondered why there was a difference between the two. It should be the same.

Chairman Conklin:
Mr. Ling, do you know why that is the case?

Louis Ling:
It was put into a location with other, similar-type licenses, which is where the $400 comes from. Presently we are not charging $400 for those licenses; that is just our cap. We will not be charging the cap immediately for this license, either.

Chairman Conklin:
Dr. Havins, I might also point out that on page 4, which is section 3, subsection 1, the special events license also corresponds with the special purpose license, and then on page 6, section 6, subsection 2, the special license fee and the special events license fee are also exactly the same. They have lumped them into the same category because the cap amounts in each *Nevada Revised Statutes* (NRS) Chapter are different. That is why they are different.

Dr. Weldon Havins:
I am just curious that they would not both be the same. Unfortunately, the bill that is down here in Las Vegas does not have pages 4 and 5. It would seem that it would be reasonable to have the cap the same.

Chairman Conklin:
Are there any questions from the Committee? I see none. Thank you for bringing that to our attention.

Lawrence P. Matheis, Executive Director, Nevada State Medical Association, Reno, Nevada:
We do support the bill. It simply puts into statute what we have been trying to deal with by regulation for some time. It is worthwhile.

Chairman Conklin:
Are there any questions from the Committee? I see none. Is there anyone else wishing to get on the record on S.B. 266 (R1)? We will close the hearing on S.B. 266 (R1).

We will open the hearing on Senate Bill 268 (1st Reprint).

Senate Bill 268 (1st Reprint): Makes various changes to provisions governing occupational licensing boards. (BDR 54-161)

Senator Maggie Carlton, Clark County Senatorial District No. 2:
This bill deals with being able to share information. We had a crisis in southern Nevada over the last two years and found out about the gaps in the ability to share information and do joint investigations. I believe this addresses some of those issues.

In section 4 of the bill, it exempts from protection under the Good Samaritan statute any person who is performing community service as a result of disciplinary action by a regulatory board. That provision, in essence, would say that if someone was fined by a regulatory board, not for a practice issue, but for example a bookkeeping issue, rather than paying the fine with money, they could donate an amount of time that those dollars would equate to in community service. Since that time is actually tied to a dollar amount, the care would not be free; therefore, it would not fall under the Good Samaritan statutes. We wanted to make that perfectly clear. A doctor tried to make the argument that if he did do this, he would consider himself not having liability for any of the care that he was about to give because it would be Good Samaritan care. I disagreed and thought we should clarify it for the record so that when these health care professionals do perform this service, they are not under the misinterpretation that they are providing care without liability for those services.

Chairman Conklin:
Are there any questions from the Committee?

Assemblyman Settelmeyer:
Is this the bill stating that certain individuals cannot serve on certain boards?

Senator Carlton:
Perhaps you are right.

Assemblyman Settelmeyer:
How many people would this affect?

Senator Carlton:
I can think of a couple, but I am not sure in total. I did not do an actual survey of the 50-plus boards.

Assemblyman Settelmeyer:
I am concerned because I was the chairman of the Nevada State Conservation Commission, appointed by former Governor Guinn, and I came here on numerous occasions, testifying on my own behalf and also on behalf of the Carson Valley Conservation District and the Nevada State Conservation Commission. It seems that I would be in violation of this bill, if passed.

Senator Carlton:
My intent was to deal with the Title 54 boards. I realized after this was drafted and the issue was brought to my attention, even after the bill passed the Senate because that had not arisen in the Senate, that when we used the term regulatory body, we actually reached out to over 200 of them. The goal was to reach out just to the Title 54 boards, which are health care professionals and licensing boards.

Chairman Conklin:
Are there any questions from the Committee? Senator, who is going to come up and provide us with additional support testimony?

Senator Carlton:
If you need someone from the Department of Health and Human Services, they could probably share with you the discussions that we had. I would be happy to stay for any other questions that might arise.

Chairman Conklin:
I am reading now in section 3, subsection 4, and am trying to get it right in my head, "Shall not have an immediate relative who has substantial personal or financial interests in the practice of any occupation or profession that the regulatory body has. . . ." That sounds fine except most of these boards have members who are regulated by them. For instance, a doctor would be on the doctors' boards. There could be family members who have shared practices, such as a husband and wife, or father and son, or brother and sister. I am looking for the rationale on that point, and do we limit this?

Senator Carlton:
We took this language from the Federation of State Boards, and this is model language that they use in a number of states as far as making sure that the objectivity of the board is maintained and not compromised. It seemed like very good language when I read it at the federation level. This is what they were

recommending to a number of states that were having problems with boards being too close to the licensees and the public not being protected to the level that they should be protected. In the research that I did we found this model language, and I would be happy to supply that language to the Committee. We took pieces of it because some of it would not have applied to Nevada the way we have our boards structured.

Assemblywoman Buckley:
On page 2, line 13, it states "a member of a regulatory body who is not a licensee . . . shall not have an immediate relative. . . ." I think the point of it is if you have a member from the public who is appointed, you want that member of the public not to have a vested interest in the outcome. You want them to bring their own life's perspective, not tainted by knowledge of the industry. Let us say you have a medical board where you have four doctors and one layperson. You want the layperson not to be married to a doctor who is being regulated by the board. You want to get a completely different perspective to say, "Wait a minute; you might not know what this looks like from the outside, but it looks as if you are all protecting each other." They would bring a different viewpoint. I think that is why you do not want them from the industry because most of the rest of the members of the board are licensees who bring that perspective. That is my own thought.

Assemblyman Settelmeyer:
I think it would be wise to have someone on the optometry board who did wear glasses for the simple fact that they would have more knowledge of glasses than people who do not wear them. This would not prevent that even if they had a pecuniary interest.

Senator Carlton:
I do not think a pecuniary interest would be the fact that you wear glasses. I think it would be if your paycheck was tied to the fact that people bought glasses from you.

Chairman Conklin:
Are there any questions from the Committee? I see none. Is there anyone wishing to testify in support of this bill?

Marla McDade Williams, Chief, Bureau of Health Care Quality and Compliance, Department of Health and Human Services:
The Division supports sharing information among regulatory bodies. It is an important aspect to the protection of public health. It allows for free flow of information between regulatory bodies so long as confidentiality of information is appropriately maintained. Further, the Division has already put into place

standards and policies for sharing of information with other regulatory bodies and reporting to professional licensing boards, and it is the expectation of all survey staff who inspect facilities in Nevada.

We are supportive of the provisions that allow for joint investigations between us and the other licensing boards.

Chairman Conklin:
Are there any questions from the Committee? I see none.

Lawrence P. Matheis, Executive Director, Nevada State Medical Association, Reno, Nevada:
We support the bill. Section 2 is another take on some of the issues that we have discovered following the Las Vegas hepatitis C outbreak. It is in a number of other bills that have been processed already, mostly by the Health and Human Services Committee, making sure that all of the appropriate agencies get the message that they are supposed to share information with anyone who has authority over any aspect of a follow-up, rather than "siloing" their information. I think this completes the circle of making sure that all receive that message.

In section 3, we actually read it the way that Senator Carlton interpreted it, that it did not apply to every regulatory body in the state, but was really focused on the health and professional boards, because that is where the problems were experienced. We certainly agree with the approach here, trying to minimize the conflicts that could emerge. Our experience, sadly, is that they do emerge and are not always well taken care of in an appropriate way.

As to section 4, we do not have a position on that. The issue here is that increasingly, as our professional workforce shortages preclude having sufficient specialists, at least in the medical area, if a medical specialist gets into trouble with the board, the board might want to, rather than taking money to get their attention, have them do some service hours at the University Medical Center or in the Veterans Affairs (VA) Hospital, or other places. The issue is how to reconcile that to make it clear that it is not a green light to do whatever you want.

I do not know how often this could be used, but I think that is the intent of it.

Chairman Conklin:
Are there any questions from the Committee? I see none.

Louis Ling, Executive Director, Board of Medical Examiners:
We would like to state our support of this bill. As Mr. Matheis mentioned, one of the silver linings of the various things that have happened over the last year is we are cooperating better with our sister agencies, including the Health Division, so this section 2 will help us with that.

Our read of section 3 is the same as Assemblywoman Buckley's, namely that this is for public members and is intended to make sure that public members truly are independent. That is very important to these boards. Our board has six physicians on it and three public members, and it is very important that those public members be independent and not linked, somehow, to the medical profession.

Section 4 is a good provision for us, because we actually do use community service as part of our disciplinary orders in those cases where the physician is not being accused of malpractice but has some other kind of an issue and is otherwise a good physician. This is for the good of the community. We can use physicians, but we want to make sure that they are serving those patients, and that they are doing community service with exactly the same high standards as if they were serving them as paying clients. We support the bill.

Chairman Conklin:
Are there any questions from the Committee? Is there anyone opposed to S.B. 268 (R1)? Is there anyone in the neutral position? I see none. I have some concerns about the number of boards this applies to and would like to do some research on my own.

Assemblyman Settelmeyer:
Could we also look into how many people we think this bill affects?

Chairman Conklin:
We can. It would just be an estimate. We could tell you how many people are on boards, but not necessarily if they will be affected.

We will close the hearing on S.B. 268 (R1).

We will open the hearing on Senate Bill 26 (1st Reprint).

Senate Bill 26 (1st Reprint): Revises provisions governing chiropractic physicians. (BDR 54-349)

Paula Berkley, representing Chiropractic Physicians' Board of Nevada, Reno, Nevada:
I would like to introduce you to Dr. Colucci, who will give you an overview of the bill.

Margaret Colucci, D.C., Vice President, Chiropractic Physicians' Board of Nevada:
I am here to discuss the Chiropractic Physicians' Board of Nevada's request for two changes to the statutes governing the practice of chiropractic.

[Spoke from prepared testimony (Exhibit C).]

Chairman Conklin:
Are there any questions from the Committee? I am curious. I have received numerous emails regarding this bill. Is it your interpretation that it is already this way? That is, the $10,000 fine maximum applies to any fine, any single individual fine? Or, is it the Board's interpretation that it is a maximum amount and you are trying to separate it out.

Dr. Margaret Colucci:
We are trying to separate it out depending on the type of discipline case that comes before us, so for the more egregious types of cases we have the authority to do that.

Chairman Conklin:
It seems if you were going to make it per violation, that you would have some maximum amount before you would revoke their license.

Paula Berkley:
The fine should be appropriate to the action. I think the different Attorneys General (AGs) interpreted this line to be different things. Previous AGs have said that we could charge up to $10,000, and it was a total no matter how many violations. That was not what was intended with this bill. What the Board assumed over the past 20 years was that the fine was up to $10,000 for each act. Again, they have found only two occurrences where they charged that, but that was the assumption.

Assemblyman Anderson:
When you are citing someone for unprofessional conduct or not being properly licensed, generally speaking, how many different violations do you find?

Dr. Margaret Colucci:
It can vary, obviously. It averages 10 to 12.

Assemblyman Anderson:
So, if there are ten different violations, it would be $100,000?

Paula Berkley:
Again, there have been only two instances where they charged over $10,000. One was a chiropractor who held up a bank—armed robbery—and left a late-term pregnant woman in a vault. Obviously, we do not expect to have that one again. One time, on the other hand, we had a doctor who molested his patient six times. The question with saying "total" is do you charge a discounted rate of less than $2,000 per molestation, or would it be more appropriate to apply it as the offense occurs? Sometimes there is one thing and sometimes there are fifteen things.

Assemblyman Anderson:
It boggles the mind, relative to double jeopardy. If the criminal penalty was such that they were arrested and penalized for holding up a bank, I do not think that would generally fit into the professional conduct rules. You might want to remove his license for unprofessional conduct for molesting patients; I can see that, but I think the molestation would be a criminal event. Am I missing something?

Cindy Wade, Executive Director, Chiropractic Physicians' Board of Nevada:
I think I can clarify this. We have a statute that says it is unprofessional conduct to be convicted of a crime. That is the administrative law as opposed to the criminal law. We have been advised by our Deputy Attorney General that it is comparing apples and oranges and we have the right to pursue unprofessional conduct under the administrative law. The same would be true for not reporting to us. They must report a crime to us if they have been convicted. That is in our statute. It is unprofessional conduct to not report that crime. With conduct unbecoming a licensee in the profession, it is a separate statute and we may prosecute them under the administrative law.

I have a printout of our disciplinary actions over the years, and we start with no fines for minor violations. We just recently fined a doctor for three minor advertising violations, in a settlement agreement that he agreed to, and we fined him $300 per violation for a total of $900. This is what we are getting from the Deputy Attorney General. For the past 28 years that I have worked for the Board I can name you 20 different Deputy Attorneys General that we have had. We have had some who said we can fine only up to $10,000, period, per disciplinary action, and then we have had some who allowed us to fine $300 per advertising violation. We are trying to clear up this disparity of opinions from the Deputy Attorneys General. We keep getting various opinions on this particular statute.

[Chair passes the gavel to Vice Chair.]

Vice Chairman Atkinson:
Are there any questions from the Committee? I see none. Is there anyone else wishing to testify in favor of this bill? Is there anyone wishing to testify in opposition to S.B. 26 (R1)?

James T. Overland Sr., D.C., President, Nevada Chiropractic Association, Las Vegas, Nevada:
[Spoke from written testimony (Exhibit D).]

[Vice Chair returns the gavel to Chair.]

Chairman Conklin:
Are there any questions from the Committee? I see none.

Maury Astley, representing Nevada Chiropractic Association, Las Vegas, Nevada:
[Spoke from written testimony (Exhibit E).]

If you had an egregious violation it seems it would be better to suspend a license or remove a license. A $10,000 fine seems to be excessive.

[Continued with prepared testimony.]

Chairman Conklin:
Are there any questions from the Committee?

Assemblyman Horne:
What is your procedure mechanism for challenging or objecting to an excessive fine?

Dr. James T. Overland:
I do not understand your question, totally.

Assemblyman Horne:
You mentioned your concerns about possibly having an excessive fine being imposed. If that were to occur, if you were cited by the Board and they fined you $30,000, how do you challenge that? What procedures are in place, if any?

Dr. James T. Overland:
I think the methodology of challenging something of that nature would be during the hearing conducted by the Chiropractic Board, and would include an explanation of the violation and whether or not it was egregious. I think a chiropractor would be represented by legal counsel to try to determine whether or not the Board was being fair in assessing the excessive fine or a fine in general. We do not really have any control over the monetary fine that the Board assesses. As far as we are aware, there is no set schedule for determining a dollar value for a particular fine.

Assemblyman Horne:
Is there no appeal process?

Dr. James T. Overland:
Yes, there is always an appeal process after the fine has been instituted and voted on by the Board.

Chairman Conklin:
Are there any questions from the Committee? I see none. In Las Vegas, we are looking for testimony we have not heard.

Ivan Goldsmith, M.D., Private Citizen, Las Vegas, Nevada:
As someone who works with a fair number of chiropractors, my only comment to the Committee would be that lately I have seen an exodus of several chiropractors that I have worked with in the last five or ten years in Las Vegas, because the reimbursements have dwindled from typical insurance sources. Just listening to this conversation, it seems to be very onerous to impose a $10,000 fine per occurrence given that in many instances Medicare or Medicaid is paying only $40 to $50 per visit. Because it is so low, the chiropractors are exiting Nevada. I think some of the changes that have been suggested in terms of enacting broader, sweeping powers are a little over the top. This is an example. Chiropractors are the lowest paid professionals. We want them to see patients, we do not want them to be deterred from treating people, but if you are going to have a fine of $10,000 per occurrence I do not believe there will be anyone left to treat people.

Chairman Conklin:
Are there any questions from the Committee?

Assemblywoman Kirkpatrick:
Would you be amenable to an amount closer to what Arizona and Utah fine, which is $5,000 per act?

Dr. Ivan Goldsmith:
There is a factor that the Committee needs to understand. Anytime you are a physician or allied professional and you challenge any of these rulings, the legal bills are staggering. We want to have parity in this process. I think $1,000 per occurrence is the right amount. We are not talking about every chiropractor being a child molester or robbing a bank. These are people who are in the trenches every day. Why penalize them with these onerous fines and put a threat over everyone's head? You want them to see patients, not run the professionals away from Nevada. The economic havoc that this bill will do is tremendous. We want to create an atmosphere that is inviting, not discouraging. A $1,000 fine would be fair.

Chairman Conklin:
Are there any questions from the Committee?

Assemblyman Anderson:
In Nevada we are always concerned about people following the professional boards to which they subscribe. That is the intent for these regulations, is it not? You do want the practitioners to adhere to the rules that are set up so that their conduct meets the same level or standard of behavior; is that right?

Dr. Ivan Goldsmith:
No disrespect, but I have done this for 20 years and treated over 100,000 patients. The more I read these rules, and there are a lot of them—and I am sitting here on a Monday when I should be treating patients—to be quite honest, most of my colleagues are going to have a hard time keeping up with all of these rules and regulations. I think you can beat a dead horse, and I think that is where we are going.

[There was over-talk between the testifier and the Chair, so the Chairman gaveled the testimony over.]

Chairman Conklin:
Next witness, please.

[The audio was lost and Las Vegas could no longer hear what was going on in Carson City.]

Is there any more testimony in opposition? We will close the hearing on S.B. 26 (R1) for now and we will come back to it if time permits.

We will open the hearing on Senate Bill 269 (1st Reprint).

Senate Bill 269 (1st Reprint): Makes various changes to provisions governing physicians and certain related professions. (BDR 54-757)

Louis Ling, Executive Director, Board of Medical Examiners:
I would like to thank the sponsors of this bill, Senator Carlton, Assemblyman Hardy, and Assemblywoman Smith, for giving us a vehicle in which to make some substantial changes to the law as it relates to our Board. We are going to cover this bill in order. We have four themes in this bill. All of these have resulted, of course, from last year's events as they have applied to this Board. For those of you who do not know, I started in the position of the Executive Director the last week of September, so I started right in the middle of this maelstrom and immediately started trying to find ways to address the various issues before the Board, things that had come up as a result of all of the issues swirling around for the past year. This bill is the end product of that. Let me explain the four themes of this bill.

We recognized that our licensing process was too slow and was hindering people and their ability, especially physicians, to come to our state. What we have done is set a particular goal of trying to make sure that our physician applicants who have no derogatory information on their record will get licensed within 60 days. We do not want, in the course of doing this, to abandon our rigor. We do have very high standards in the State of Nevada. We were trying to balance that and rebalance the process so that we can move along without sacrificing quality. You have in front of you a two-page handout (Exhibit F) which shows what we have already done regarding licensing.

[Interruption from Las Vegas.]

On the second page of this document is a graph which shows, as a point of reference, the last 20 licenses that had been issued. We have seven licensing specialists. They went back in history to find out how we had been doing, and you will see that for people who applied back in 2007 and into early 2008 our licensing times were pretty dismal. It was taking, in some cases, longer than a year to license a physician. That is not acceptable. What you should see in the graph is by the time you get to people who applied in December 2008 or in January 2009, our licensing times are, on average, under the 60-day level. I just had a licensing specialist tell me, very proudly, that she has licensed someone in about 30 days. We are moving this process right along, but the proposal we are making in this bill will improve that even more. That is one of our main themes in this legislation. We need to keep the licensing process moving.

Our second major theme is our disciplinary and investigative process. We know that process is also taking too long. We are sensitive to the criticisms that the process has not been as responsive, timely, or transparent as it should be for the public. We are proposing a number of disciplinary improvements that will increase all of those things and give us some new tools to deal with discipline and investigations.

A third theme is the licensing of perfusionists. Perfusionists are the people who run the heart/lung machines that keep patients alive in open heart surgery. They have requested that we bring them into our fold so there are a number of provisions in the early part of the bill that deal with perfusionists, and then provisions throughout the bill adding the word "perfusionists" for various other contexts.

Our fourth theme concerns one section of the bill making an administrative change in our fiscal year. Our money comes in on July 1 and we are right in the middle of our renewal process now. The first day of our fiscal year also was July 1. We had not received our money before creating our budget, which resulted in some real problems. We are asking to have our fiscal year moved to a calendar year, which would give us two board meetings within which to craft a budget after we know how much money we have.

I would like to cover, quickly, the way the bill lays out. Sections 1 through 16 and 19 through 21 are the perfusionist sections that set up the licensure of perfusionists very similarly to the way we license respiratory therapists and physician assistants. I do not intend to go over those provisions. We actually just took a lot of the language that this Legislature has already approved regarding respiratory therapists and physician assistants and matched it for perfusionists.

The next major sections are sections 26 through 40. Those all have to do with licensing changes. We trace all of our licensing information all the way back to the original source of that document, which has caused problems, as you might imagine. When we license a doctor—the very one you would want in this state—who has been practicing for 25 or 30 years in another state and wants to move here, we have to get a transcript from his medical school that is now 36 years old. That is very difficult to do. We are trying to change this in a way that will still seek that rigor but will not hang up their license application while we are trying to get that. Instead, we will license people based on what is readily available.

There is a national credentialing service which we will use. We will use online services. We will look to other states they have been licensed in. We will use

that readily available information to issue the license, and get the actual supporting documents after we license. If we find that somebody has, in fact, misrepresented their status to us, there is a provision in the bill that allows us to take action after the fact, hang up that particular applicant or licensee, go in and give them due process, and try to figure out why we got something that was incorrect from the readily available sources.

With this, we believe we easily will be keeping all of our license applications for physicians under 60 days, with the exception of someone who has an exception they would have to come before the Board for.

Sections 41 through 57 are largely improvements to our disciplinary process. We are trying to create some new mechanisms to allow us to address disciplinary actions that do not rise to the level of malpractice but are risky to the public. We wanted to not only create some new areas that we would be disciplining for, but also create something that section 41 does, which we call a remediation agreement. If we see a practice that has not yet gotten to the level of malpractice, has not harmed patients, but definitely needs to be examined, a remediation agreement allows the Board to negotiate with that physician to come up with a device where we can monitor and improve that practice. If they comply with the agreement it is not a disciplinary offense. If they do not comply with the remediation agreement it would then become a disciplinary offense. This would be for things like record keeping violations, risky practices, or unhygienic practices. If we go into a doctor's office and see an absolute disaster, we have, right now, no way to address that. These provisions would give us a way to correct those behaviors before they have caused patient harm. We are hopeful that this will give us a way to deal with some things that we cannot get to right now.

We also are going to improve the way that our hearings are conducted. Presently we have very little involvement of patients in our process. Once we get the complaint, patients do not get a seat at our hearings or when discipline is imposed. They do not get an opportunity to speak to the Board even though that is the reason we exist—for the patient and the fact that the patient's life has been changed by the act of that physician. We are trying to create a new way of conducting these hearings where we will have Board members sitting with the hearings officer, and most importantly for patients, we are going to give patients a right at the hearing to speak to the panel. Also, when the case ends up in front of the full Board for imposition of discipline, the patients will be allowed the opportunity to speak by way of a victim impact statement. So they can explain to the Board, before the Board imposes discipline, how this has affected their lives. We are trying to increase our effectiveness, our

responsiveness, and our transparency to the public. That is what those sections through section 57 do.

The one administrative improvement I was speaking about is in section 22. That changes our fiscal year.

That is the broad overview of our bill. You should have a one-page proposed amendment (Exhibit G). When this came out of the Senate they had stricken an entire section of our law, *Nevada Revised Statutes* (NRS) 630.348. By and large we are asking to have most of that removed anyway because it was creating a very special way and special standards for the revocation of a physician's license that do not exist for any other licenses that I am aware of. We wanted to equalize this so that physicians were treated the same, administratively, as any other licensee.

In the course of whatever happened in the Senate, they removed the whole section, including our standard of proof. We have to have a standard of proof because there is a Supreme Court decision that says without it the standard would default to the very highest standard of proof, which is clear and convincing evidence, and that would be very difficult for us. The amendment that I have proposed contains language taken from NRS Chapter 233B, the Administrative Procedure Act, and we are asking to add standard of proof back into our bill by adding it into an existing section of this bill, section 55. The language we are asking to be added would simply say, "All facts that serve as the basis of a finding, conclusion, or ruling must be based upon the reliable, probative, and substantial evidence on the whole record of the matter." That is the only amendment we are proposing to this bill at this time.

Chairman Conklin:
Are there any questions from the Committee?

Assemblywoman Kirkpatrick:
I have a couple of questions. In section 35, why did you take out the appeal process on line 13? Did you put it somewhere else in the bill?

Louis Ling:
No. This is for denials of applications. I do not know of any other profession that was allowed to go through a petition for judicial review, which is what this does, for a denial of an application. We were treating doctors differently than any other profession by giving them this right to petition for judicial review on a denial of an application. We are trying to equalize this for physicians so that they are treated the same as any other licensed professional.

Assemblywoman Kirkpatrick:
On page 15, lines 1 and 2, what kind of fees would not be recovered? Looking at section 28 dealing with fingerprints, it continues with "any fees or costs charged by the Board for this service. . . ." How much are those fees, and how are they determined when they are not refunded? I am not sure what NRS 630.268 says.

Louis Ling:
The general rule for all licensing boards is that your licensing application fee is not refundable. Even if you withdraw your application and abandon the process, we keep those licensing fees. This particular statute addresses fingerprints, and those are just pass-through fees for us. We charge exactly what it costs to get those fingerprints run through the databases. Those would be nonrefundable.

Assemblywoman Kirkpatrick:
I am confused on sections 10 and 13. They both refer back to section 9, but section 10 talks about waiving the examination portion if you meet the criteria in other states. Section 13 talks about if you do get a license, then you have to do these temporary things. Could you explain that to me?

Louis Ling:
This is setting up a system to recognize that we already have 22 perfusionists practicing in the State of Nevada. Section 10 is trying to say that the Board could waive this examination, so that we could retain our present perfusionists and also attract perfusionists from other states. This is reciprocity, essentially. They do not have to take the examination if they are licensed in another state that licenses perfusionists. There are not many states that do license them right now, but this would allow us to take those people in and hopefully increase the numbers of perfusionists.

Assemblywoman Kirkpatrick:
Do we currently have the same standards as everybody else, or are our standards higher than the American Board?

Louis Ling:
We are matching the standards as they presently exist. That is where the Board comes in. There is a national board for this. This is saying, if they are board certified and licensed in another state that has the same standards, they can come to Nevada without having to take another examination.

Assemblywoman Kirkpatrick:
If you come to Nevada and have already taken the examination in another state, how does the temporary license work?

Louis Ling:
The temporary license is because perfusionists have to do one year of postgraduate work, a residency, and that is what this would do. It gives them a license while they are getting their one-year residency.

Chairman Conklin:
Are there any questions from the Committee?

Assemblywoman Buckley:
First, examining the licensure by endorsement, I received an email from someone that talked about how the licensure by endorsement was changed last session or the session before and made more restrictive. Have you had an opportunity to study when we initially allowed licensure by endorsement and any changes we have made over the years?

Louis Ling:
That is what we are trying to do with this bill. The preceding version of the endorsement statute was more permissive and therefore easier to comply with. That was changed last session, and we found an unintended consequence. We had to turn away people we otherwise would have been able to license. We want to go back to the old language, which was more permissive, and add one additional good thing, which was otherwise problematic, which allows me and the President of the Board of Medical Examiners to issue these licenses between our regular meetings. If we get an applicant who otherwise qualifies, they will not have to wait for three months until the next Board meeting. We can grant that license immediately.

Assemblywoman Buckley:
Is that the new language on page 14, lines 34 through 37?

Louis Ling:
Correct.

Assemblywoman Buckley:
Is there any difference between the new language and the language that existed prior to last session?

Louis Ling:
No. We went back to the old language.

Assemblywoman Buckley:
Who requested the language last session that changed the standard?

Louis Ling:
I believe that was Senator Heck.

Assemblywoman Buckley:
What was the rationale for that? The whole point of this was to attract good doctors to Nevada.

Keith Lee, representing the Board of Medical Examiners, Reno, Nevada:
As Mr. Ling indicated, we were working with Dr. Heck, and we agreed with him that the standard that he had set forth, that we are now asking to be repealed, would make it easier. The problem was it made it more difficult because while we set up standards, some were more difficult as we worked through them. We also removed the discretion the Board had to look at the overall picture, and if there was some question, there could be an oral examination that had been employed on many occasions where professional members of the Board of Medical Examiners would have a discussion with the prospective licensee and determine whether that person was fully qualified. With the changes we made to NRS 630.1605 last session, we removed the discretion of the Board, and although we put in standards that we thought, at that time, would be cookie-cutter, they turned out not to be so. That is why we are requesting a return to the practice before we changed it in the 2007 Session.

Assemblywoman Buckley:
I appreciate that explanation. Moving on to page 15, section 31, what is the reason for the change which would only require an applicant to disclose malpractice complaints, licensing board complaints, or hospital-related complaints for ten years? Why not get everything you can and then evaluate? You might determine that it was so stale and so remote and isolated that it should not be a bar. But, why not request everything so that you have all the data immediately in order to make a decision?

Louis Ling:
The reason for this ten-year "look back" limitation was, again, the lessons of hard experience. When you have a physician who has been practicing for 25 or 30 years in another state, and you are now looking at hospital privileges that they may have had 25 years ago, those records do not even exist. They are very hard to get. We want to get the information beyond ten years, which we will for malpractice actions which are perpetually in the national databank, as are the licensing board disciplinary actions. We may not see the hospital actions further back than ten years. What happens currently is we will not

process an application unless the doctor can give us verification from the original source all the way back to 20 or 25 years ago. That delays his application. If we get information that goes back more than ten years, we can use that also, but at the very least what we are trying to do is not make that doctor. . .

Assemblywoman Buckley:
So, why not require the applicant to submit the information to you but change the processing statute so that if the Board feels the information is remote and isolated, you do not need to request the records or review them? My concern is this language says that the applicant does not have to submit the information or list it. So, you would not know. What if in year 11 there were four complaints? Maybe you would pick them up from the databank, but what if they were from a hospital and not in the databank? If you require the information, at least you would know to look, and if the physician failed to disclose it, then later you would have a failure-to-disclose charge. If your premise is you do not want to delay the application waiting for a 25-year-old, one-time complaint that would not bar entry anyway, I agree with that. That makes sense. But it seems to me you would still want the applicant to reveal.

Louis Ling:
I agree. What we are trying to do is strike a different balancing point. If this is not the right way to do it, it was at least a way we could see to prevent what we call the perpetual look-backs, where we are having to go all the way back 20 or 30 years.

Assemblywoman Buckley:
Is there another statute which addresses this besides disclosure?

Louis Ling:
No. We have a licensing application review committee and are already doing this, in essence, through our committee structure. When we get any kind of a hit on an application, whether it is malpractice or board action, even back to when they were in medical school or residency, we get that information. We review it with the committee, and the committee does exactly what you are describing. They look at it and say: "This was 25 years ago; it was one time, and who cares. He has had a clean record since then and should be licensed." We are already doing this. But we thought by defining it in a very definite way and giving us ten years, we were not going to make that doctor try to get records that simply do not exist anymore.

Assemblywoman Buckley:
I support that, but I still think you should ask for the information and then add some language to say that if the Board feels that the incident is remote and not applicable, they do not have to proceed with getting the records. I still think you should ask for it. Otherwise, someone might come back and ask why the Board did not ask for that information.

With regard to the issue involving discipline and more timely discipline, and looking back on the issue regarding the Hepatitis C outbreak, what in this bill is going to ensure greater accountability with the Board both in terms of timeliness and in terms of showing the public that you are out there to protect them?

Louis Ling:
There are several things that are going to address that directly. One is we are adding an ability to suspend licenses that is independent of the Administrative Procedure Act, so that when we see a problem we can step in immediately and stop the practice and start the due process from that point forward. The language is in section 49. That was one of the major concerns for this Board at the time the hepatitis C story first broke. There were questions about why we were not suspending the license. This will give us an easier way to do that and step in when necessary.

What we are trying to do with the whole processing-of-the-complaint issue is set up a new structure so that the interminable requests for continuances and other things will be minimized. We are shifting the process around. Under this bill, in section 53, we will file a complaint, and there will be an early case conference immediately with the hearing officer, within 20 days of the doctor filing his answer. From there you can see on page 32 how the early case conference will lay out, essentially, the whole rest of the case and how it will proceed. You will have both lawyers there, the calendars will be out, and hearing dates will be set that are real. Right now, that is not our process. We will keep a case on track from the beginning. This was a suggestion from our hearing officers. They are very frustrated by our current process and we wanted to give those hearing officers the tools they need to keep a case on track and keep it moving.

Our goal under this procedure is to process our investigations within 90 days from the date of complaint to when we decide how to proceed on that case; and then there would be another six months from that decision to the full resolution and a hearing. So the cases should be done in nine months, in most instances. That, again, is set out in this bill.

There is another area we are making changes to that I think will help. Presently, our process is hearing officer driven. The cases are tried by a hearing officer, the hearing-officer generates a transcript and a synopsis of the evidence, and he presents that to the full Board for adjudication. That process is not only long, because you have to get to the hearing officer and then wait for the next available Board meeting, but more importantly I think what we are seeing is that patients are not involved in that process. Nobody sees the Board talking with the patients or the physicians. The Board, by the time it rules, is ruling on paper. That is all they are looking at. We want them to see patients. We want the public to see the Board doing what the public expects of them.

Assemblywoman Buckley:
Is there anything in the bill with regard to the evaluation of competency? I saw a lot of questions emerge recently about one physician doing a paper review as opposed to having a multidisciplinary team reviewing for competency.

Louis Ling:
No, there is nothing in here specific to that. The context that we are talking about presently—the case that you are discussing—is unique. Most of the time, the Board receives these competency questions from the physician himself. The physician has substance abuse issues, physical issues, has had a stroke or a heart attack, whatever it is, and we are working with that physician's treating practitioners in a context of licensure. That is, should they be allowed to continue to practice? This case that we are talking about right now came up in a disciplinary context. It is the first time in the history of the Board that we have had to look at, not the question of what the treating physician thinks, but whether we need a second opinion on what the treating physician thinks. That is where we are right now. Because of the uniqueness of that, we do not have anything in place. We do not have a process for something that has never happened before. What we are doing now is giving that hearing officer the authority to ask for a second opinion.

In that case, the hearing officer specifically directed that it be a neuropsychologist and not a panel. The hearing officer felt that what he needed to hear was not what was physically going on with that physician—we know that from the medical records—but what effect would that have on the physician's ability to understand what is happening and his ability to articulate something to help his attorney? That is neuropsychology. That is not neurology. That is why the neuropsychologist was chosen.

Assemblywoman Buckley:
I think it is really important that we remember the public has their trust in us. Every time a decision is made and there is a different standard of care, in a

different community or a different practice, that seems fairer, we put ourselves up to the public as not being concerned about their health and well-being. That is absolutely something that must be corrected.

Louis Ling:
I agree.

Assemblywoman Kirkpatrick:
I have a few more questions. Can you give me some examples on section 41, as it pertains to "is violating or is about to violate"? How would you guarantee that in the future the Boards are consistent? I know that there are often changes. Can you also give me an example of paragraph (b), "remediate or improve the practice of the person"? How would you determine how the practice would be improved? Would it be large scale, small scale? Are there regulations in place to determine that? The last piece is on subsection 5. Am I misreading that, or does it say that if you are under a remediation agreement and you break that agreement, it is not reportable to the national databank?

Louis Ling:
Let me address those questions in order. First, the existing language that you are talking about in section 41, "is violating or is about to violate," is the existing way that the Board can deal with situations where the violations are not malpractice but the Board has a problem with the physician. We are processing somewhere in the range of 400 to 600 cases a year. A lot of those violations do not rise to the level of malpractice, but you might see that a doctor is not going in the direction you would want him to. The only device we have presently is a "letter of concern." That letter works marvelously for those doctors who care. Since it is non-disciplinary, for those doctors who do not care, it is just a letter that they put in a file somewhere.

Assemblywoman Kirkpatrick:
I thought I read something this weekend that your Board said you could not look into a particular situation because it was not an issue. My constituents believe it was a concern and were dumbfounded, as was I.

Louis Ling:
What the existing language in section 41 does is address the situation where we have received a complaint, the complaint is within our jurisdiction, we have investigated the complaint, and we have found that there is no malpractice. There is nothing that would rise to the level of us being able to file charges, but the practice is risky, dangerous, et cetera. We have already gone through the whole investigative process by the time we get to the existing language that we are talking about in section 41. At that time, what the Board can do is issue a

"letter of concern." The letter works really well when you have a good doctor who wants to change his practice, but when you are dealing with a doctor who already knows what he is doing is not great, that letter does not change behavior.

What we are trying to do with the new language on page 23 is create something that gives the Board a new device to address that physician who has a practice where they are doing too many procedures in a day, for example. The Board feels as if that is unsafe, and at some point something bad will happen, but nothing bad has happened yet. In that case what the Board could do is go in and negotiate a remediation agreement with the doctor which would have very concrete terms, so that over the period of that agreement, whether three, six, or nine months, whatever it takes, the Board could go in and pull charts to make sure that the agreement is being followed. If it is, we are going to see what we are suggesting in the new language of subsection 3, paragraph (b): a practice that is going to improve. That is what we want. As long as the agreement is being followed, it will not be a disciplinary offense. It will not be reportable to the national data banks, and it will not affect the doctor's license.

When you get to subsection 5, it says that it will not be a disciplinary offense as long as the doctor complies. If the doctor does not comply, it now becomes a disciplinary offense, it is made public, and it is reportable. That is as it should be. If the Board has negotiated something in good faith with the doctor that will improve the doctor's practice and the doctor does not want to comply, what else can we do at that point? We do have to take action and enforce the agreement or take disciplinary action.

In another section we have actually made violation of those remediation agreements a disciplinary offense, so we can discipline for that.

Chairman Conklin:
Are there any questions from the Committee?

Assemblyman Horne:
I would like to return to section 35. For my curiosity, you said you wanted to treat the doctors the same as any other licensed professional, but it seems like we are trying to bring doctors to the state. With this section there would be no appeals process if their application is rejected. It seems like a fairly high standard for the applicant to have to show that the denial was erroneous or unlawful. How many appeals do you actually get in a year, that is, someone who takes it to district court to appeal? I would think many of those would not meet that standard.

Louis Ling:
We did this largely because, having worked with Senator Carlton for all of these years, she likes to try to equalize all the boards so that every board, from board to board, has essentially the same kinds of rights. In Nevada, for almost every board, if they deny a license, the appeal right is through a lawsuit, not through a petition for judicial review. The applicant would have to prove the board had violated his civil rights in the way they denied the license. Physicians were the only ones that I am aware of who had this special statute allowing them to go through a petition for judicial review. This is an equalizer. It is just trying to make our licensees the same as any other board's licensees.

In answer to your other question, we do not get many of these appeals. Most of the time if the physician can see that his license application is not going to be granted—and by that time he is in front of the Board—usually he will withdraw the application before the Board officially denies it. When an application is denied, the physician now has to answer to that on everything he ever fills out, anywhere, forever, that he had a license denied by the State of Nevada. This is not used a lot, but we felt it was a good idea to make our licensees the same as everyone else's licensees.

Chairman Conklin:
Are there any questions from the Committee? I see none.

Lawrence P. Matheis, Executive Director, Nevada State Medical Association, Reno, Nevada:
We support this bill. Many of these issues have been addressed numerous times before this in other committees over the years. The problem relating to licensure has been a chronic one. The problems of investigations and accountability have repeatedly needed to be addressed. Several issues that emerged in southern Nevada during the interim, especially the hepatitis C outbreak, have given a focus to responding to these things within that context. I think both Mr. Ling and the Board have made significant efforts to try to address these things.

The warning is the same as I have given in the past, and you have just seen an example of the problems that can happen. When licensing by endorsement was created two sessions ago, it was to stop turning down qualified physicians who were practicing elsewhere but whose history meant that they did not meet the training requirements that younger physicians have. The licensing by endorsement was meant to streamline recruiting physicians, and last session the Legislature undertook to streamline it even more. What was identified as a problem was the Board's discretion being used to overturn the things that, by endorsement, you could look at: how long they had practiced, whether they had

actions against them, et cetera. What the Legislature thought they were doing was making it easier for longtime practitioners who met qualifications A, B, and C, to automatically be licensed by endorsement. The Legislature took away the discretion because of the fear the Board would not license by endorsement. What happened was you took away the discretion and the Board could not use it in those cases.

Many of these things will have to be revisited after we have some experience with them to try to get them right, especially these new areas in investigation and sanctioning activities. My guess is that you will revisit them in two years, as something will not work as expected.

The only area that has generated sufficient physician comment—and I raised it in the Senate; Mr. Ling is aware of it, and I will raise it again—is the concern about a change that has to be very carefully watched which is on page 11, section 25. This really comes from the hepatitis C outbreak and the reports about what was and was not done in the first few days following the start of the outbreak. The Board president, secretary-treasurer, and whoever chairs the investigation committee of the Board have always been able, when something happens and they need to immediately act, to sign a subpoena and go into the practice to get the materials. The materials that they should be getting are those that the Board would normally have access to when they send an investigator. That would be the medical records, the files, and whatever might give information about that case. There were concerns that the President of the Board at the time of the outbreak may have inappropriately met with principals but did not take a subpoena along, so none of the materials that should have been available for review by the Board were taken in that early period. I think it has become a problem since then trying to get everything needed.

Section 25 adds the Executive Director as being able to make that initial move into a practice when there has been a problem, to sign a subpoena and go in. The only concern is that the Executive Director doing that without an order from the Board gives him a lot of new authority. The other part is that it is changing what the subpoena can get. It adds "and tangible items." Currently if the Board seeks something more than what they would normally be entitled to as part of any investigation, they have to go to a court and get a subpoena and then get those materials.

It is only a concern that these two things together need to be watched very carefully so it does not get out of control.

Chairman Conklin:
Are there any questions from the Committee? I see none.

Weldon E. Havins, M.D., J.D., Executive Director, State Board of Osteopathic Medicine:
In sections 66 through 78, I do not think there is anything controversial. Section 68, perhaps, is a little different taking into account Mr. Ling's proposed amendment. The standard of proof is a preponderance of the evidence. That has always been the case with the Medical Board. And that is what the Osteopathic Board wanted to adopt as a standard of proof, so there would not be ambiguity on that. As to the rest of the sections, I can answer any questions you might have.

Chairman Conklin:
I think we will just find out if the Committee has any questions; I think they have gone through it pretty well, so far. Are there any questions from the Committee? I see none. Is there anyone wishing to testify in opposition to this bill?

Ivan Goldsmith, M.D., Private Citizen, Las Vegas, Nevada:
I think there are some provisions here that need to be further discussed before this bill is passed. I am concerned about the broad power that is going to be in the hands of the Executive Director. No disrespect, but I am concerned that practices could be totally destroyed in the process of an investigation. When you read section 49, subsection 2, it says, ". . . the Board shall hold a hearing regarding the matter not later than 45 days after the completion of the investigation by the Board." That should be after the suspension, not the completion of the investigation, because the investigation could take up to two years. Where is the due process for the doctor who is not practicing during that period?

Going back to my comments earlier with the chiropractic situation, litigation and costs to the doctor to defend an investigation are horrendous. There are not that many attorneys who do this type of litigation, and a doctor could easily run up $300,000 in legal fees trying to protect his license against what he views as an unfair prosecution. Granted, the hepatitis C outbreak has left the community very angry, but I think the doctors who are still here practicing are paying a heavy price for this. I think it is very unfair, giving the Executive Director this new power. We should not be eliminating standard of proof. We are now saying you just need substantial evidence to take a physician's license. This is not right.

Most doctors are not able to come here to interject their comments about this. I think 95 percent of the medical community has no idea what is going on. How can these types of things be voted on when there is no discussion? I consider myself somewhat knowledgeable, but until noon today, I did not know

there was a hearing on this. I dropped everything to come over. I feel very strongly that doctors' rights are being eroded, and until some of this is discussed further, this bill should not pass.

The Board has to have some authority. I have no disagreement with that. I have been a vocal critic of the conduct of the Board in the last year or two. They did not take forceful action against Dr. Desai, and some people consider what he has had is a "stroke" of genius. There is no objective evidence that the doctor is impaired or incapacitated. I think the Board in any other venue would have taken measures to revoke his license.

The Board picks and chooses who they want to target and go after, and by giving them these powers it just opens it up further. I think that doctors are going to voice their concerns to all the lawmakers. I am not in favor of this. Until it is reviewed further it is granting too much power to too few people to do whatever they want to whomever they want.

Chairman Conklin:
Are there any questions from the Committee?

Assemblywoman Buckley:
My only comment would be that we will be discussing the bill when it comes before us in a work session, and that is our procedure. The physicians usually have their voices represented through the medical association or through other industry groups, and that is a good way to have your thoughts represented when you are busy practicing. The other way to get your opinion put forward is through emails. Sometimes our best questions come from people who are following these procedures and are the experts in their field and give us some additional guidance. Thank you for being with us here today, and thank you for your comments.

Chairman Conklin:
Are there any questions from the Committee? I see none. Is there anyone else wishing to testify in opposition? I see none. We will close the hearing on S.B. 269 (R1).

We will open the hearing on Senate Bill 8 (1st Reprint).

Senate Bill 8 (1st Reprint): Makes various changes related to members of certain medical boards. (BDR 54-216)

Assemblywoman Sheila Leslie, Washoe County Assembly District No. 27:
I am here today on behalf of the Legislative Committee on Health Care. You all received the final report at the beginning of session. Senate Bill 8 (R1) came out of that Committee. It looks as if the bill was adjusted somewhat in the Senate. Basically, this bill pertains to the Committee's recommendation that we need more consistency with regard to the manner in which appointed members address a conflict of interest or the appearance of a conflict of interest. We found, during our hearing over the interim with the hepatitis C crisis, that the Medical Board had differing ideas about what they needed to do in terms of conflicts of interest.

The issue kept coming up, as you will recall, between the members of the Board and who they practiced with and what they did. We felt it was not super clear that they should be held to the same standard as other appointed members. That is why you have the bill here which basically requires that members of the Board of Medical Examiners, the Board of Homeopathic Medical Examiners, and the State Board of Osteopathic Medicine read and understand certain ethical standards that pertain to public officers.

It is a fairly simple little bill but one that the interim committee felt was necessary to restore public confidence in those boards and make sure that they understood their duties in terms of conflicts of interest.

Chairman Conklin:
Are there any questions from the Committee? I see none. Is there anyone wishing to testify in favor of S.B. 8 (R1)?

Lawrence P. Matheis, Executive Director, Nevada State Medical Association, Reno, Nevada:
We are in support of this bill. The Committee on Health Care was very patient when the Board of Medical Examiners actually chose to refuse to consider this. They have subsequently done it. I think it is wise to put this into statute so that when institutional members change, there is still a known obligation.

Chairman Conklin:
Are there any questions from the Committee? I see none. Is there anyone else wishing to get on the record in favor of this bill? I see none. Is there anyone wishing to testify in opposition?

James Tate, M.D., President, West Crear Medical Society, Association of Black Physicians, Las Vegas, Nevada:
The Association of Black Physicians is the national group. I am also speaking for the local group which is the West Crear Medical Society, which is a part of

the Association of Black Physicians. We testified many times before the Legislative Committee on Health Care about what is wrong with the Board. I believe it was the Legislative Counsel Bureau (LCB) that wrote much of the language that is in the bill, and there was language that was stricken. The bill came out as saying nothing more than if you were going to be on a board you had to read an ethics statement. That does nothing. We believe that you should adopt the same standards that the District of Columbia has adopted. I will go through those a little later.

The whole hepatitis C scare really showed how bad the State Board of Medical Examiners is in regard to its oversight function. Three members of the Board were personal friends of Dr. Desai and were business partners and did not reveal that until it was about to come out in the press. Even though the Governor asked them to resign, there must have been some divine intervention from Washington because they did not have to resign.

The problem with the Board is the selection process itself. If I were to ask anybody how the Governor makes a decision as to whom he is going to appoint, they could not answer. It is shrouded in secrecy. At such a time when even the national administration is saying there must be transparency in how government functions, this is not transparent. The Governor appoints a doctor; how did the Governor get that information? Does Allah come down and say, you will appoint Dr. X, Dr. Y, or Dr. Z? Is it done a little bit closer to home, such as paying money to get a seat on the Board? There is no public input. There are no hearings. You do not know anything about the people who are appointed. Even the physicians do not know a lot about the people who are being appointed to oversee them. This has not changed. I do not believe keeping everything the same is going to work.

The problem here is bigger than just the protection of the public. It is that several Board members continue to have conflicts of interest. They are involved with their groups and do not regulate those groups. Dr. Desai has had no action taken against his license by the State Board of Medical Examiners. Some may argue whether district court took action, but the district court does not have the authority. It did not grant the license and cannot take it away.

If a public Board member has to prove that he has no conflict of interest, why not the medical doctors? Why are they different? Probably the public Board members have a lot less propensity to have a conflict of interest than the medical doctors.

I would like to give you another example of how the Board functions. There is only one time that the Board found a physician guilty of malpractice. A district

court ordered that the Board reverse their decision and publish that the decision had been reversed. To this day the Board has not done that. That is more than one year ago. The Legislature states they oversee the Board, but they do not. Two of the Board members are direct competitors. One has an office right across the street from the individual that was found guilty of medical malpractice. The other one is a business partner of the individual found guilty of medical malpractice.

There is another thing that we ask, and I know that Senator Heck objected to this but he is no longer on the scene, so perhaps you could do it. That concerns racial profiling. What we asked the Board to do was to provide, on a yearly basis, how many black doctors they discipline and for what, versus how many white doctors they discipline and for what. This is not an idle suggestion. The Attorney General's Office in the state of Maryland actually did a study and found that black dentists—this was a study about dentists—were disciplined much more harshly than white dentists and for much lesser transgressions. Several years ago this Legislature funded a study to find out if police officers throughout the state were doing racial profiling. It turns out that they were. If the police officers were doing it, why is it you think the Board is not doing it?

Finally, you can ask the Board why, until very recently, there never was a black doctor who sat on the State Board of Medical Examiners. If you are going to raise the example of the one who was just appointed, forget it. I do not know who suggested or nominated her, certainly we did not, and as far as I know we are the only black physician group in the State of Nevada.

Chairman Conklin:
Are there any questions from the Committee? I see none.

Ivan Goldsmith, M.D., Private Citizen, Las Vegas, Nevada:
I think I speak for a lot of physicians who do not want to come forward, who never make a statement, and who think that somehow in this state, by being silent, they will fly under the radar. Having been in practice here for 20 years, I think people are very angry. Doctors are very disturbed by what they perceive as patronage, including the Governor's appointment process for the Medical Board, and by the recent conduct where one member of the Board was indicted with his group for 15,000 counts of Medicare fraud and other various violations that have not yet come out. I think people are saying: clean up your house and try to make this process more transparent. A year ago I sent out information on a selection process that removed the Governor entirely from the process. It included the Legislature putting three candidates up as a suggestion for the Governor. Why was that denied?

I think doctors are concerned that this is a political patronage job, and that the process is not transparent. If we are trying to have fairness, and trying to update this thing and bring it into the 21st Century, then this type of patronage needs to stop. Doctors want to see that the process is seamless, fair, and transparent. Until that happens, there is no trust, and I think the conduct of medicine in Las Vegas is not going to improve dramatically. That is what we are asking of the Legislature, and that is what we were asking regarding this bill. I am against this bill, and I do not think there is any change in the selection process. It is business as usual. I want to go on the record with my opinion.

Chairman Conklin:
Are there any questions from the Committee? I see none. Is there anyone else wishing to get on the record? I see none. We will close the hearing on S.B. 8 (R1).

We will open the hearing on Senate Bill 362.

Senate Bill 362: Clarifies and revises provisions related to the suspension or revocation of professional licenses by health care professional licensing boards. (BDR 54-217)

Assemblywoman Sheila Leslie, Washoe County Assembly District No. 27:
The second bill that came out of the interim committee that has come over to us from the Senate is Senate Bill 362. This bill clarifies existing law related to summary suspension of physician licenses. It also allows the suspension or revocation of a license of a health care professional who owns or operates a medical facility that is being investigated or disciplined for misconduct. The bill also requires a board that licenses health care professionals to retain all complaints filed, whether acted upon or not, for ten years. Again, this came out of our extensive hearings and Dr. Tate is correct: he was a regular at our hearings. We had hearings once or twice a month for a year on these issues. I remember when the summary suspension issue came up. At that time, Assemblywoman Buckley said that the ability to issue summary suspension already existed in the law in *Nevada Revised Statutes* (NRS) Chapter 449. The Board felt that it would be wise to restate it in this chapter again. That is what the first part of the bill is about.

What also came out through our hearings was the fact that there was nothing in statute that specified how long the boards needed to retain the complaints. The committee felt pretty strongly, and there was a lot of public testimony in support, that a provision should be included saying we would set the retention period at ten years. We thought that was a good length of time to require these

boards to retain the complaints so that if a future complaint arose, you would have that historical knowledge.

I would be happy to answer any questions. It is a long bill, but it is pretty straightforward.

Chairman Conklin:
Are there any questions from the Committee? I see none. Is there anyone else wishing to testify in favor of S.B. 362?

Lawrence P. Matheis, Executive Director, Nevada State Medical Association, Reno, Nevada:
We do support the bill. Again, as we referred to in an earlier bill, one of the issues has to do with making sure in repeated ways that all of the agencies have the information and authority they need. That is what this bill does, in part at least. There is a category of activity that some physicians have when they actually operate licensed facilities. If it is as a part of that activity where a problem occurs, as it was in the Hepatitis C outbreak, there really was not a way to close the loop on those two sets of activities. This bill would permit that. I think this is a worthwhile bill.

Assemblyman Settelmeyer:
What is the statute of limitations for medical malpractice? Are we asking people to keep records for ten years when the statute of limitations is five years? I am trying to figure that out.

Lawrence P. Matheis:
The statute of limitations for filing claims is two and four, except in the cases of children. But that is for filing claims. As far as record retention, I do not think it is directly addressed anywhere. Medical records have to be kept at least five years, but I think this would be in courts and other places, and so the licensing boards and the national practitioner data bank never purge those records.

Assemblyman Settelmeyer:
I assume this is all just going forward?

Lawrence P. Matheis:
That was the intention. It is a matter of the availability of the information. Since the creation of the national practitioner data bank there is a more stable source of this information than just people's recollections.

Chairman Conklin:
Are there any questions from the Committee? Is there anyone else wishing to testify in support? I see none. Is there anyone wishing to testify in opposition? I see none. We will close the hearing on S.B. 362.

Assemblywoman Kirkpatrick:
I was wondering if we could get the information on what input the other doctors have before the Board of Medical Examiners. How does the process work? There are always conflicting sides, and I want to see what the regulatory process is.

Chairman Conklin:
Are you talking about the regulatory process or the bill process where they approve a bill to bring before the Legislature?

Assemblywoman Kirkpatrick:
What I want to know is how does the interaction work? I have only been to one Board of Medical Examiners meeting, and the public comment portion of it was very short. I am trying to figure out how the rest of the doctors get a chance to speak. I do not have to do it today. I just want to understand the process.

Chairman Conklin:
Mr. Ling and Mr. Lee, please follow up with Assemblywoman Kirkpatrick and she can share that information with us.

[The meeting was adjourned at 3:37 p.m.]

RESPECTFULLY SUBMITTED:

_____
Patricia Blackburn
Committee Secretary

_____
Denise Sins
Editing Secretary

APPROVED BY:

_____
Assemblyman Marcus Conklin, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: May 4, 2009 **Time of Meeting: 1:30 p.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 26 (R1)	C	Dr. Margaret Colucci	Written testimony
S.B. 26 (R1)	D	James T. Overland Sr., D.C.	Written testimony
S.B. 26 (R1)	E	Maury Astley	Written testimony
S.B. 269 (R1)	F	Louis Ling	Statement of Accomplishments
S.B. 269 (R1)	G	Louis Ling	Proposed amendment