MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR

Seventy-fifth Session
March 30, 2009

The Senate Committee on Commerce and Labor was called to order by Chair Maggie Carlton at 1:47 p.m. on Monday, March 30, 2009, 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 Maggie Carlton, Chair
Senator Michael A. Schneider, Vice Chair
Senator David R. Parks
Senator Allison Copening
Senator Dean A. Rhoads
Senator Mark E. Amodei
Senator Warren B. Hardy II

GUEST LEGISLATORS PRESENT:

Senator Barbara K. Cegavske, Clark County Senatorial District No. 8
Senator Maurice E. Washington, Washoe County Senatorial District No. 2

STAFF MEMBERS PRESENT:

Kelly S. Gregory, Committee Policy Analyst
Daniel Peinado, Committee Counsel
Suzanne Efford, Committee Secretary

OTHERS PRESENT:

Steve Holloway, Executive Vice President, Associated General Contractors, Las Vegas Chapter
Richard Peel, Subcontractor Legislative Coalition
Keith Lee, State Board of Contractors; Board of Medical Examiners
Louis Ling, Executive Director, Board of Medical Examiners

Paul J. Kalekas, D.O., State Board of Osteopathic Medicine
Weldon E. Havins, M.D., Executive Director, State Board of Osteopathic Medicine
Justine Harrison, Vice President, Legal and Government Affairs, Nevada Cancer Institute
Larry Matheis, Executive Director, Nevada State Medical Association
Graham Galloway, Nevada Justice Association
Dino DiCianno, Executive Director, Department of Taxation
Gard Jameson, Chair, Children's Advocacy Alliance; Chair, Children's Advocacy Center; Children's Welfare Network
Marvin Gawryn, Marriage and Family Therapist
Colleen Peterson, Ph.D., President, Board of Examiners for Marriage and Family Therapists and Clinical Professional Counselors
Helen Foley, Marriage and Family Therapist Association of Nevada
Tom Ray, General Counsel, University of Nevada School of Medicine
Bryan Gresh, Touro University
Harold Cook, Ph.D., Administrator, Division of Mental Health and Developmental Services, Department of Health and Human Services
Elizabeth Neighbors, Ph.D., Director, Lake's Crossing Center

CHAIR CARLTON:
We will start with Senate Bill (S.B.) 207. This bill was heard on Friday, March 27, 2009.

SENATE BILL 207: Revises provisions relating to unlawful discrimination in places of public accommodation. (BDR 54-738)

SENATOR PARKS:
Senate Bill 207 was a simple bill as it was presented. I would ask that the Committee consider a "Do Pass" on the bill as submitted and heard.

SENATOR PARKS MOVED TO DO PASS S.B. 207.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CARLTON:
Senate Bill 151 was passed in a work session on Monday, March 23, 2009. There was some miscommunication, and some felt they did not have the opportunity to put comments on the record. We have already processed, amended and sent out the bill. For discussion purposes only, we will let those people put their concerns on the record.

Senator Hardy and I have had a discussion about the bill and we will be discussing it further. But for now, in the interest of fairness, we will let those with concerns about the amendment on S.B. 151 put their comments on the record.

SENATE BILL 151: Provides for the payment of certain claims from the Recovery Fund of the State Contractors' Board. (BDR 54-702)

STEVE HOLLOWAY (Executive Vice President, Associated General Contractors, Las Vegas Chapter):
I support the amendment to S.B. 151 which removed the phrase "capacity to pay" from section 1, subsections 2 and 3 of the bill. However, there have been some objections which I would like to address (Exhibit C).

One of the objections was that the amendment somehow prohibits the State Contractors' Board from hearing money-owing complaints. Cursory reading of the bill shows that is not true. Subsection 2 still requires the State Contractors' Board to take disciplinary action against a contractor for the willful or deliberate failure to pay any money when he is obligated to pay by contract or law, or when he has been paid for the work, materials or equipment that are the subject of the "money-owing complaint." Obviously, if there is a "money-owing complaint," the State Contractors' Board must hear that complaint.

The other objection was that the deletion of the phrase "capacity to pay" somehow validates "pay-if-paid" clauses in a contract between a prime contractor and a subcontractor. I do not see what "capacity to pay" has to do with "pay-if-paid" clauses. "Pay-if-paid" clauses in construction contracts have been upheld by the courts in this State for decades. Indeed, "pay-if-paid" clauses were upheld by the Nevada Supreme Court as recently as October 30, 2008.

"Pay-if-paid" clauses are recognized in three different sections of chapter 624 of the *Nevada Revised Statutes* (NRS), including NRS 624.3012, which says "... when he has received sufficient money therefor as payment for the particular construction work, project or operation for which the services or materials were rendered or purchased."

"Capacity to pay" has been used in recent months by the investigative staff of the State Contractors' Board to put pressure on contractors to pay even though the money was not due, and in some cases not owing.

The Associated General Contractors (AGC) submits that disciplining a contractor because he did not pay when he was obligated to pay by contract or law is proper. Requiring a contractor to pay simply because he has the "capacity to pay" is wrong.

We urge you to reaffirm your nearly unanimous decision to amend and do pass S.B. 151 as you did on March 23, 2009.

RICHARD PEEL (Subcontractor Legislative Coalition):
Chapter 624 of NRS requires licensees to demonstrate they are financially responsible to pay for work, materials and equipment for which they may become indebted.

The State Contractors' Board gives a contractor a certain bid limit based on their financial responsibility. The bid limit is important because it tells the Board the contractor has the financial ability to pay their debts and obligations in the ordinary course of doing business.

Since 1969, the Board has routinely interpreted the "when he has capacity to pay" language in subsection 2 of NRS 624.3012 the same. Under the current Board as well as prior Boards, in "money-owing complaints," the contractor should be paying his debts and obligations, if he has the financial capacity.

Essentially, what AGC is asking this Committee to do is to ignore the 40 years of legislative history as well as the 40 years of practice by the Board, and instead to legislate "pay-if-paid" or "pay-when-paid" clauses by way of contracts. This way a contractor does not have to pay if he has such a clause in an agreement.

We disagree that "pay-if-paid" clauses are valid and enforceable in this State. They are not, and until the Nevada Supreme Court rules on that issue again, it should not be handled through legislation. The Board should be able to handle their affairs the way their statute has allowed them for 40 years.

The impact of this amendment is significant. It would be problematic for the Board by preventing them from requiring contractors to be financially responsible and pay for debts incurred.

KEITH LEE (State Board of Contractors):
I echo Mr. Peel's remarks. I have submitted two exhibits that I ask to be made part of the record. One is a letter on the letterhead of the State Contractors' Board dated March 27, 2009.

CHAIR CARLTON:
Mr. Lee, may I stop you for a moment? Since we have already had the hearing, the amendment has already been adopted, and this is only for discussion purposes, are exhibits appropriate at this time or should Mr. Lee make sure the individual Committee members get them independently? This matter is not actually before us at the moment. The record has already been made and the hearing is closed on S.B. 151.

DANIEL PEINADO (Committee Counsel):
I am not aware of any rule that would preclude receipt of the materials, but we may want to hold them in abeyance and not make them part of the official record pending final resolution.

MR. LEE:
Under the conditions that Mr. Peinado has just stated, there is a letter on the State Contractors' Board letterhead, dated March 27, 2009, signed by Guy Wells, Chairman of the Board. The letter reaffirms the Board's position on the amendment the Board submitted early on in this matter that is part of the record and registers the Board's opposition to the AGC's proposed amendment 3514.

There is also a document titled "Opposition to S.B. 151 Amendment" which I will briefly paraphrase. "Capacity to pay" allows the Board to look at the financial ability of the contractor to pay. It does not mean that simply because there is a capacity to pay there is going to be a violation of the statute. There

has to be some sort of agreement in the broadest sense of the term. Many times, in the money-owing cases, there is no formal contract between two contractors or a supplier and a contractor. The Board does not use "capacity to pay" to penalize the contractor. If there is no dispute as to the amount owing, if it is clear that materials have been delivered or work has been performed, and the contractor has the ability to pay, then there is a determination that the contractor has not discharged his financial responsibility.

SENATOR HARDY:
I looked at the amendment and can see both sides of the confusion. Mr. Holloway commented that he is not intending to impact the "pay-if-paid" statutes through this amendment. I will work with the parties and make sure that the amendment does what we intended it to do.

I will also disclose that I am the president of the Associated Builders and Contractors of Las Vegas. It is not required under Rule 23; I just do it as matter of public record.

CHAIR CARLTON:
I will open the hearing on S.B. 266. The intent of this bill was to address the issue of allowing doctors from outside of this State, and from other countries, to come into Nevada to demonstrate their techniques and teach physicians some of the intricacies of their medical specialty. There is some concern with the term "special event" license. The bill adds the provisions of the "special event" license, and we will probably need to determine what is and is not a "special event" and define "special event."

SENATE BILL 266: Makes various changes concerning the practice of medicine. (BDR 54-707)

LOUIS LING (Executive Director, Board of Medical Examiners):
We understand this "special event" license is for educational purposes, not for physicians who invite patients in for treatment.

Section 1, subsection 5, of S.B. 266 gives the Board of Medical Examiners the authority to adopt regulations to carry out the provisions of the bill. If it is the desire of the Committee, we would be able to adopt regulations to enforce the legislative intent. Otherwise, we are willing to work with the Committee to define a "special event." We can work on a definition for the bill, or if the

Committee wants to leave that to the Board, with the Committee's "statement of intent," we will do that after Session.

CHAIR CARLTON:
Would it be preferable to incorporate intent within the bill? If we can get the bill passed on the Senate Floor with legislative-intent language, we would have a guide for the Board on what they would like to do.

I would like to have an option for how long this license is valid. If the physician who comes to this State to teach and instruct travels a long distance, he should be able to stay for an extended period of time. This is about bringing very knowledgeable professionals into the State in order to share their expertise with the professionals in this State. It might be wise for the Board to incorporate this into a continuing-education component.

We have probably addressed some of the concerns about this bill.

PAUL J. KALEKAS, D.O. (State Board of Osteopathic Medicine):
We have no issues with this bill, other than with the increase in staff and processing of checks. If the bill passes, we would like to increase the fee from $200 to $300.

CHAIR CARLTON:
I understand. It is currently listed at $200 in the bill.

DR. KALEKAS:
That is correct. We would like to increase it to $300, assuming the bill passes.

CHAIR CARLTON:
We need to discuss why you need that extra money, since the physicians are only going to be here for a short period of time. Your other special license fee is $200 also.

DR. KALEKAS:
We will incur a lot of costs for additional staff, clearing checks and credentialing for the special license.

CHAIR CARLTON:
That is something we can discuss. Do you have a budget proposal to submit as an exhibit along with the bill?

DR. KALEKAS:
I do not have one, but we can submit one.

CHAIR CARLTON:
That will be great because I need to understand why you want to do this. We may have to amend the bill.

Committee, we will hold onto S.B. 266. I will try to get answers to the questions and get the budget proposal from the State Board of Osteopathic Medicine on the number they need to change. It is a two-thirds majority vote because it includes a fee.

I will close the hearing on S.B. 266 and open the hearing on S.B. 269.

SENATE BILL 269: Makes various changes to provisions governing physicians and certain related professions. (BDR 54-757)

MR. LEE:
Senate Bill 269 is a major overhaul of two areas of the Board of Medical Examiners, which are long overdue. They are in the licensing and disciplinary areas that occupy more than 90 percent of the Board's time and resources.

The goal of S.B. 269 is to get physicians licensed faster than they were in the past, and to have the staff become advocates for the physicians in obtaining licensure.

The bill is also designed to expedite the processing of disciplinary complaints. Often, the person filing the complaint was never allowed to become part of the process. We are putting a provision in the bill which will allow the complainant to make a statement during the disciplinary process.

MR. LING:
The Board's statutes have not been reviewed since 1985. Some of the sections are from the 1970s, and some of these old laws do not apply anymore. We are asking for your assistance in remedying this situation.

In the licensing area, our stated goal is to get physician licensing for those with nothing derogatory in their background, down to 60 days or less. We want to reach that goal without compromising our standards, which are some of the highest in the country.

Our goal in disciplinary improvements is more ambitious. We want to go from the receipt of the complaint to a decision in 90 days. If we decide to go forward with a case, we want to process it to resolution in another six months. This means that complaints should be processed in nine months.

We want to increase patient involvement in the disciplinary process in two places, at the hearing and at the Board meeting for final resolution and disciplinary action. The complainant will be able to appear and make a statement to the full Board.

We have provisions in the bill that address increasing responsiveness, effectiveness, timeliness and transparency.

There is a provision addressing administrative improvements. We want to change our fiscal year so our planning will match our revenue, in terms of renewal fees.

The perfusionists would like to get licensed. There are only 22 in the State, which is not enough to start a board, but, since they work hand-in-hand with surgeons, we are the best Board to offer them licensure.

Section 1 of S.B. 269 adds perfusionists and makes them a provider of health care. There are a number of sections throughout this bill in which we add perfusionists.

Sections 4-16 are the main sections adding perfusionists, by licensure, into our practice act. Perfusionists are the professionals who run the heart-lung machines during open-heart surgery. We intend to handle the licensure of perfusionists similar to the way we handle the licensure of physician assistants and respiratory therapists.

CHAIR CARLTON:
With this language, are there any of these professionals who would not be able to comply with these criteria, and whose services we would not be able to use?

MR. LING:
There is grandfathering language in the bill. The perfusionists who have been practicing in the State for eight of the last ten years will qualify for licensure.

Section 17 is a licensing and discipline section. It adds the performance of autopsies to the definition of the practice of medicine.

Section 18 will align our practice act with the practice acts of other State boards and commissions. Prior to this section, we had a special statute to handle the revocation of a physician's license.

Section 22 will change our fiscal year to a calendar year. All of our renewal fees come in on July 1, and with our fiscal year also starting on July 1, we had a hard time with our budgeting. The money will come in on July 1, but we will have the budget start the following January, which will give us six months to set our budget.

Section 25 is a discipline procedure which will allow the executive director of the Board to sign subpoenas. The intent of this is to allow for faster processing of subpoenas, particularly in cases that are emergent for us. This does not totally eliminate the president or officers of the Board, we would still defer to them. If we really need to move quickly on a case, and the president or officers are not available, the executive director will be able to sign the subpoena. We have also added "tangible items" to the definition of what can be obtained through a subpoena.

Sections 26-40 address our licensing problems. The intent is to expedite the process without sacrificing the high standards we maintain in Nevada. I have submitted a one-page handout with a graph on the reverse side (Exhibit D). The Board is aware of the issues in licensing. We have found ways of streamlining the process already which is reflected on the graph.

We want to maintain our high standards while streamlining the licensing process. There are national databases through which we can verify physician information, but we will also continue to verify the information through the original source documents.

In section 26, we have created a mechanism that will allow us, after the fact, to address those few cases where someone has made a misrepresentation to

the Board. They now have a license, but depending on what was misrepresented, they should not have had that license. Section 26, subsection 4 gives the Board the power to place the licensee on probation, administer a reprimand, temporarily suspend a license, etc.

CHAIR CARLTON:
In other licensing schemes in the State, we have used the term "provisional" licensure. Was there any consideration to give these professionals a "provisional" license?

MR. LING:
"Provisional" license within physician licensure would create problems. The problems are physicians have to get hospital privileges, and they have to maintain or obtain national certifications through their boards. There are a number of places where a "provisional" license would not get processed.

CHAIR CARLTON:
How far back can you look on a physician's history?

MR. LING:
For some areas we will look back at their entire life. We can look in the national data bank for information on their entire work career. In section 31, we are only requiring a ten-year history. If we get information prior to that ten years, we can use it, but we are not forcing them to divulge it.

CHAIR CARLTON:
My concern is public safety. We want to know who these people are.

MR. LING:
We do too. Our current system is very thorough in vetting all of our applicants, but we are not licensing until the end of that process to catch the one bad applicant. This bill will switch that around so that they will all get licensed quickly, and we will catch that one bad applicant after the fact. The time frame for that will be very short.

Section 27 is an endorsement improvement. There was an attempt to improve it in the 74th Session of the Legislature, but unfortunately it did not improve it, it made it harder. We are going back to our original endorsement language with the exception of section 27, subsection 2. This gives the executive director and

the president of the Board the ability to issue a license by endorsement between meetings.

Sections 28 and 29 add all of our licensees to the list of people who will be submitting fingerprints.

CHAIR CARLTON:
You have a number of professionals working in the State who have not submitted fingerprints. Will the submittal of fingerprints be upon renewal or upon disciplinary action?

MR. LING:
We were not anticipating doing this on renewal, but we do have a provision that requires it upon disciplinary action. We are going to keep it that way.

Section 30 requires proof of the degree of medicine from the original medical school. If that is not available, it allows the Board to accept proof from some other source.

Section 31 limits background review to ten years for civil actions for malpractice cases. This is also for disciplinary actions in other states and from hospitals. Ten years of records probably still exist, so we can get them. The Board can still look at information that is older than ten years, but it is not required.

Section 32 requires proof of a degree from the original school for foreign medical graduates.

The denial of an application for a license is addressed in section 35. We are removing the provision which allows judicial review of the denial of an application for license. We know of no other board that allows judicial review of an application denial.

Section 36 was a request from retired practitioners who want to work either for the Federal Department of Homeland Security or other nonprofit organizations, to provide volunteer medical services in disaster relief operations. The Board needed to create the ability to license these people.

CHAIR CARLTON:
Is section 36 the "Good Samaritan" section?

MR. LING:
No. This is just to license the retired doctor for a limited purpose.

CHAIR CARLTON:
Is there a provision like this within the osteopathic section of the bill?

MR. LING:
I do not know.

CHAIR CARLTON:
This should be looked into.

WELDON HAVINS, M.D. (Executive Director, State Board of Osteopathic Medicine):
We do not have this provision in the osteopathic section of this bill. We intend to put it in. It may be in another bill.

CHAIR CARLTON:
If not, we will make sure it is addressed.

MR. LING:
Section 37 creates a single-purpose license for independent medical examinations (IME). The intent is to give a one-time license to a doctor coming into this State to do an examination for insurance or other reasons.

Section 38 was at the request of psychiatrists working in our State's mental facilities. We were calling them "restricted" licenses, which they were having a difficult time explaining to other states. We are changing the name to an "authorized facility" license. Nothing else is being changed.

Section 39 adds a fee for the single-purpose license and takes restricted licenses out of the fee sections.

Section 40 is to acknowledge the new, national accrediting body for respiratory therapists.

Section 41 is a new concept for this Board. This allows the Board to negotiate a remediation agreement with a physician in a disciplinary case. If the physician complies with the remediation agreement, it does not become a disciplinary action, and is not reportable to the databases. If they do not comply with the remediation agreement, it does become disciplinary, and action will be taken. This will not apply to malpractice or misuse of license.

Section 42, subsections 5 and 13-15 add a few more tools for the Board in terms of grounds for discipline.

CHAIR CARLTON:
Could section 42, subsection 14 have been used last year with the hepatitis C situation in southern Nevada? Would this have been helpful?

MR. LING:
Yes, it would have been very helpful. The Health Division, Department of Health and Human Services, had noted unsafe practices with syringes. We could have gone in at that stage and perhaps negotiated a remediation agreement. We are working much more closely now with the Health Division. In the future, if they were to note the same thing, this provision would give us a tool that we do not have now.

Section 43 adds specificity to the requirement that the Board be notified within 30 days of any known violations.

Section 44 allows almost anyone to file a complaint in almost any form. There is a limited exception for anonymous complaints.

Section 47 is a very important investigative committee (IC) provision. One of the criticisms of the way our process works, which we agree with, is our cases are sorted by an IC made up of three members of the Board. After the Board completes an investigation, as staff we present it to one of two ICs. Those ICs have to conduct their business confidentially. We are dealing with patient records that cannot become public. This was creating a problem because the public and the patient knew we were investigating a case and things go into the IC, but nothing ever comes out. It looks wrong to the public.

In section 47, subsection 3, we are proposing that in 20 days of each one of the ICs meetings, we will publish an abstract of everything the IC did. We will

be publishing a document containing a description of the factual and legal issues, a description of the actions the IC took on the case, and a description of the reason for the action. There will be no patient names and no complainant names. There will be nothing to identify the subject of this, but the public will know what happened in the IC.

CHAIR CARLTON:
In section 47, subsection 2, if the IC does find that there was a violation, the case is forwarded to the full Board to go through the hearing process.

Is section 47, subsection 3, only for when there is not enough information to forward the case to the Board?

MR. LING:
Yes, most of our cases do not result in a full Board prosecution. With the remediation agreement, we will be able to take more action because we will be able to intervene at an earlier stage.

The existing language in section 47, subsection 2, says that if the IC decides to go forward with a case, then it becomes public. We have to file a public formal complaint and it will go through a public hearing and a public determination. Subsection 3 covers everything that does not go through a public hearing.

CHAIR CARLTON:
My only concern is if you have the same physician or the same incident happening over and over again. The public would never know about this issue because it would never reach the full Board, but it had become habitual. What safeguards are in place to ensure that we do not allow someone to continually make the same mistakes?

MR. LING:
The information on the complaint history of a physician is one of the things considered by the ICs. While they are making their decision, they know the complaint history of the physician.

CHAIR CARLTON:
Currently, under the IC nothing is made public. With this legislation, something will be available as a document, showing that the IC has completed its work and found these certain things.

MR. LING:
Section 48 clarifies that the IC, in addition to the Board, can order a competency exam. In practice, that has already been happening, but we want it to be clear that we have the authority to do this.

Section 49 strengthens the Board's summary-suspension power. This will allow the Board, the IC, or the executive director in consultation with Board officers, to issue a summary suspension.

Section 49, subsection 2 provides for a hearing to be held within 45 days after completion of an investigation.

Under section 53, a formal complaint will be filed by the Board; the respondent will have 20 days to get an answer back to the Board; at receipt of the answer an early case conference will be scheduled with the hearing officer. At the early case conference, everything will be set in place as to where that case will go.

This section also allows and authorizes any combination of ways to use the Board and the hearing officer in hearings.

CHAIR CARLTON:
My concern with this is that you will have a licensee looking at another licensee.

MR. LING:
This is designed so if there is a panel of the Board sitting with the hearing officer, one of the members of the panel cannot be a physician, it has to be a member of the public.

Section 53, subsection 6 makes clear what the expectations are of the hearing officer in these cases; what is and is not the responsibility of the hearing officer. The decision of whether the law has been violated, and what discipline is to be imposed, is not up to the hearing officer, it is the Board's decision.

Section 54 broadens the fingerprint requirements for disciplinary action to all licensees.

The intent of section 57 is to give the complainant a voice, the physician a voice and the Board staff a voice directly to the Board, who will make the

decisions. Also, a decision will be issued from the board within 30 days of the hearing.

CHAIR CARLTON:
Nothing in any of this language gets involved in any other civil matters that may be before a judge somewhere else. You are not attempting to prevent the patient from pursuing medical malpractice against a doctor or any of the other professionals. Is this strictly disciplinary?

MR. LING:
Yes, this is strictly disciplinary. We get the cases after the civil filing has been resolved. Discipline will be imposed separate and apart from what happened in the civil court.

Section 87 repeals NRS 630.175 and 630.348. Section 88 removes the endorsement statute that was not working. Section 89 is the grandfathering language for the existing perfusionists in this State. Section 90 changes the name from "restricted" license to "authorized facility" license for psychiatrists.

DR. HAVINS:
Section 67 allows the State Board of Osteopathic Medicine or an IC of the Board to issue a letter of warning, a letter of concern or a nonpunitive admonishment, before the Board takes any action.

Many of the provisions in sections 66-78 are to bring the State Board of Osteopathic Medicine into agreement with the Board of Medical Examiners as far as how physicians are treated under the law.

Section 68 changes the standard proof in the disciplinary proceedings from "substantial" evidence to "a preponderance of the evidence"

Section 69, subsection 1, paragraph (i) allows the use of silicone oil to repair a retinal detachment.

Section 71 requires proof of completion of a residency program be provided to the Board.

Section 72 changes the wording from "must" to "may" hold an examination annually. The Board has not held an annual examination in the last 20 years.

Section 73, subsection 2, removes the requirement of having to complete a hospital internship.

Currently, gross or repeated malpractice must occur in order to discipline a licensee. This is in opposition to NRS 633.528 which requires that if there is a judgment, award or settlement for malpractice, the Board must investigate and decide whether to issue a disciplinary action or not. Section 74, subsection 4 will remove that conflict by allowing a single case of malpractice to be subject to disciplinary action.

Section 74, subsection 8 addresses completion of the residency program.

Section 74, subsections 9-12, brings chapter 633 of the NRS into agreement with chapter 630 of the NRS.

Section 75 provides that a diversion program staff member would be able to discuss a case in diversion with a member of the Board. Currently, the confidentiality limitations make that problematic.

Section 76 makes disciplinary action apply to all licensees of the Board. The Board licenses osteopathic physicians and physician assistants.

Section 77, subsection 1, paragraphs (f)-(j), expand the provisions for licensure discipline to agree with those in chapter 630 of the NRS.

Section 78 provides for immunity for a member of the diversion program acting in good faith within the scope of their diversion program.

CHAIR CARLTON:
I need to clarify the definition of "community service." If there was a problem with a licensee and part of their probation was either pay a fine or do community service, is this the definition of "community service?"

DR. HAVINS:
Yes, this is the same language that is in chapter 630 of the NRS.

CHAIR CARLTON:
Mr. Ling, did we clarify the definition of "community service?"

MR. LING:
No, there is no clarification other than the service is truly service to the community through public hospitals or programs that provide medical care to the indigent. There is no definition for "community service."

CHAIR CARLTON:
My concern is if a physician does community service, that he does not try to use the "Good Samaritan umbrella" when applying their trade.

MR. LING:
That would not be appropriate. Good Samaritan care is for emergent situations. Community service would be something ordered by the Board. They are two entirely different things.

CHAIR CARLTON:
There is a provision for volunteers serving the underserved, or serving the uninsured, that had been previously inserted into "Good Samaritan" care.

I want it to be clear that if community service is done in lieu of a fine, it will not be under a community-service umbrella that has the Good Samaritan protections.

Dr. Havins, is that your understanding also?

DR. HAVINS:
Yes, there is a provision in the Good Samaritan act, "subsection 3505," which provides if a physician gratuitously renders professional services for a governmental entity or a nonprofit organization, he is protected from normal malpractice.

CHAIR CARLTON:
We are not going to allow community service to fall within that provision are we?

DR. HAVINS:
No, we are not.

JUSTINE HARRISON (Vice President, Legal and Government Affairs, Nevada Cancer Institute):
We support S.B. 269 (Exhibit E).

LARRY MATHEIS (Executive Director, Nevada State Medical Association):
We support the provisions of S.B. 269. However, there are a couple of areas that may need some clarification.

Section 18 makes it clear that if the Board grants a privilege license, it is able to revoke it. It is removing the reference to NRS 630.348, which deals with the process the Board goes through for that. But, in section 56, NRS 630.348 is amended and then in section 87, NRS 630.348 is repealed.

There is a lot of concern in section 25 about the executive director being able to sign and issue a subpoena without having to clear it anywhere else. The Board or the Board president should be consulted before the executive director goes ahead with the subpoena. We do not oppose it, but there should be some additional assurance that, as soon as possible, the Board's officers have reviewed and approved the executive director's actions.

DR. HAVINS:
I would like to see definitions of "unsafe" and "unsound" in section 42, subsection 14. Unsafe is very broad. Any surgery is unsafe.

In section 49, subsection 2, the Board can summarily suspend a license and hold a hearing within 45 days after the investigation is complete. Sometimes it takes the Board two years to complete an investigation. In the Nevada Administrative Procedure Act, chapter 233B of NRS, it is mandated that if there is a summary suspension, a hearing is to be held within 60 days. That is more consistent with reasonable due process.

GRAHAM GALLOWAY (Nevada Justice Association):
We applaud the efforts to make the application and disciplinary process more transparent. However, we have some concerns and would like to see additional transparency and reluctantly oppose this bill.

Our first concern is with section 31 which involves providing information regarding malpractice claims an applicant may have had for the previous ten years. This information used to be available to the public, and at some point

the Board made it confidential. This information is appropriate for public dissemination.

CHAIR CARLTON:
Licensure information is not provided to the public.

MR. GALLOWAY:
Past malpractice-claim information, which is provided to the Board for licensure, is not made available to the public.

CHAIR CARLTON:
You want this information made available after the physician has been given a license, as part of their history.

MR. GALLOWAY:
That is correct.

MR. LING:
We agree that malpractice information should be made public. In the new iteration of our Website, malpractice information will be available as well as disciplinary history.

SENATOR HARDY:
At what point does the malpractice information become available?

MR. LING:
The information would be on malpractice claims that have been adjudicated.

MR. GALLOWAY:
When a malpractice claim is filed, and the Board requires the doctor to file an answer, we would like a provision requiring the answer be given to the complainant.

Our final issue is with section 37, subsection 1, paragraph (f). We would like to add that if someone is given a limited license to come into this State to do an IME, they do so with the provision that they subject themselves to the jurisdiction of this State. Currently, if we need a doctor to come back to testify, he is not subject to the jurisdiction of this State.

DINO DICIANNO (Executive Director, Department of Taxation):
We were asked to do a fiscal note on sections 83 and 84 of the bill, which includes the term "perfusionist" as a licensed physician who purchases equipment in their practice. This is exempt. There is no additional fiscal impact with respect to lost sales and use tax.

CHAIR CARLTON:
Mr. Ling, did you want to answer Mr. Galloway's concern, or do you need time to review it.

MR. LING:
We are going to have to give it more review.

CHAIR CARLTON:
Can a criterion be added, that in order to get the license, if the physician was needed, he would have to come back to this State?

MR. LEE:
I need to study this. The issue is that when a doctor from out of state comes here to perform an IME on a patient, the IME is something plaintiffs' lawyers would like to get. When the doctor returns to his home state, he is beyond the traditional subpoena power of the State. They have to go through a process to issue a commission to the other state and it is a long, protracted process.

If a physician is licensed pursuant to this section, he must honor a subpoena that is served upon him via mail or other means, regardless of what jurisdiction he lives in. I do not know if that is a procedural issue or a constitutional issue.

CHAIR CARLTON:
It seems it is almost an issue of fairness. If someone has issued an opinion in a case, everyone involved in the case should have the opportunity to ask questions of that person.

I will now close the hearing on S.B. 269 and we will go on to S.B. 297.

SENATE BILL 297: Revises provisions relating to the credentialing of mental health professionals from other states. (BDR 54-1076)

SENATOR BARBARA K CEGAVSKE (Clark County Senatorial District No. 8):
The intent of S.B. 297 is to increase the number of mental health professionals practicing in Nevada by opening up a new path for professionals from other states, with excellent records in their field, to become licensed in Nevada.

This bill affects both psychologists and marriage and family therapists (MFTs). There is an amendment to the bill which will remove reference to the psychologists because the Board of Psychological Examiners is already authorized to grant temporary licensure without examination. An MFT or clinical professional counselor who has met specific requirements while practicing in another state shall be issued a license to practice in Nevada.

Senate Bill 297 is important because Nevada continues to have one of the Nation's highest suicide rates. Nevada has the lowest number of health-care providers per capita of any state. Several fields in Nevada have been opened up to experienced, ethical and high-quality practitioners from other states. Mental health practitioners are needed in this State and should be welcomed if they meet the requirements outlined by this process.

GARD JAMESON (Chair, Children's Advocacy Alliance; Chair, Children's Advocacy Center; Children's Welfare Network):
I have provided written testimony in support of S.B. 297 (Exhibit F) as well as a proposed amendment to the bill (Exhibit G).

MARVIN GAWRYN (Marriage and Family Therapist):
I support S.B. 297. I have been practicing for 28 years, and despite my best efforts, I have not been able to get licensed in Nevada. The problem is the longer an out-of-state therapist has been in practice, the more difficult it is to get licensed here. That is because the longer ago you completed your graduate work, the more your course work differs from Nevada's current educational requirements. When I first applied for Nevada licensure in 2003, the Board of Psychological Examiners required that I complete an additional full year of college courses before I could sit for the licensing exam. They even required that I complete the initial practicum courses taken by college students who have had no counseling experience. I would have had to shut down my practice and survive without any income for a full year, which would have been impossible. I tried again in 2005 and was told the educational requirements would be the same.

Other states address this problem by establishing a licensing policy which allows reciprocity for professionals who are licensed in another state. If S.B. 297 is adopted in Nevada, I would be glad to work with the licensing board and staff to help with the implementation of procedures.

MR. JAMESON:
Madam Chair, did you receive the documents showing the amendment to S.B. 297?

CHAIR CARLTON:
Yes, we did.

This is very good credentialing language. We do not necessarily do reciprocity because that does not allow us to consider the individual coming into the State. We want to make sure those professionals coming into the State are meeting our standards.

There seems to be a component missing in this language. In other credentialing language, we have allowed the Board to look at whether the professional has been actively practicing for the previous five years and to look at their record for those five years, to determine if they will be allowed to practice in this State.

MR. JAMESON:
That sounds reasonable to me.

MR. GAWRYN:
That would probably be in procedure, not in the bill.

CHAIR CARLTON:
We do those things in statute.

Section 4, subsection 1, paragraph (d), says ... "Has not been refused a license to practice marriage and family therapy or clinical professional counseling in this State, ..." There can be a problem with this language because if you have already applied and you have already been refused, under this legislation you could not reapply.

MR. GAWRYN:
I am not sure I was refused. What we are talking about here is not yet qualifying to sit for the examination.

CHAIR CARLTON:
We should define "refused."

MR. GAWRYN:
Yes, clarify that language.

CHAIR CARLTON:
We also want to review section 4, subsection 1, paragraph (e).

MR. JAMESON:
What we are looking for is consistency of policy across the boards.

COLLEEN PETERSON, PH.D. (President, Board of Examiners for Marriage and Family Therapists and Clinical Professional Counselors):
We are reluctantly opposed to S.B. 297, but we do not oppose the spirit and intent of the bill.

About a year and a half ago, we added the clinical professional counselor designation for licensure within the State. We have spent the last two years working on the regulations. The current regulations were adopted on September 18, 2008. They now state that for specific course work and clinical experience, which would be the practicum or the internship experience, with regard to a course in diagnosis and assessment and also with regard to substance abuse, we have the ability to accept experience in lieu of course work.

We wanted to make sure we did not minimize or change the rigor and the high standards for the profession. However, we would embrace language similar to that which was substantially equivalent, giving the Board the opportunity to look at that. Our understanding, from the deputy attorney general, was that we did not have the authority in statute to grant reciprocity or equivalence. In that spirit, we embrace this bill and hope you will be willing to look at the language to maintain the substantially equivalent portion.

CHAIR CARLTON:
Are we currently licensing clinical professional counselors?

DR. PETERSON:
Yes we are.

CHAIR CARLTON:
How many do we have?

DR. PETERSON:
We licensed three in the fall meeting, and we reviewed eight at the Board meeting we just had on Friday, March 27, 2009.

CHAIR CARLTON:
How many have applied?

DR. PETERSON:
We have 30 applicants.

CHAIR CARLTON:
Thirty people have applied and we have licensed eleven.

DR. PETERSON:
Not all of the applications have been complete. Fingerprinting on some is still pending. We also require verification from the state where they are licensed and also verification of their clinical experience.

HELEN FOLEY (Marriage and Family Therapist Association of Nevada):
In the bill, as it is written, someone would have never have had to practice marriage and family therapy to be licensed.

CHAIR CARLTON:
That was one of the things that was brought up about actively practicing, and looking at their record for the previous five years. This is boilerplate language we have used in the past for credentialing.

The goal is to allow people who are actively practicing in another state to come into this State.

MS. FOLEY:
There should be a master's level degree and the requirements should be equivalent to this State.

MR. JAMESON:
We also need to consider retired MFTs who wish to volunteer their services for nonprofits like "Volunteers in Medicine" and other nonprofits who are attempting to serve our community.

DR. PETERSON:
In our regulations, we do have a provision for an interim permit for those who are licensed in another state but have not taken the national exam. We have not had the authority to grant a full license without taking that exam because part of the statute stated that if there was a national exam, we had to use it.

CHAIR CARLTON:
How many licensed MFTs do we have in the State?

DR. PETERSON:
We have close to 700.

CHAIR CARLTON:
Where does that put us in the national ranking?

DR. PETERSON:
I do not know, but I could get that information.

CHAIR CARLTON:
I would find that very interesting. I would like to know where we stand.

We have some written testimony in opposition of S.B. 297 from Dr. Elizabeth Neighbors to be submitted for the record (Exhibit H).

I would ask those who have concerns with S.B. 297 to work with Mr. Jameson from Las Vegas. We will try to get a good amendment back to the Committee.

We will close the hearing on S.B. 297 and open the hearing on S.B. 8.

SENATE BILL 8: Makes various changes related to the process for appointment to certain medical boards. (BDR 54-216)

SENATOR MAURICE E. WASHINGTON (Washoe County Senatorial District No. 2):
Senate Bill 8 addresses the lack of transparency in the appointment of members to certain boards. It revises the process of appointing members to the Board of Medical Examiners, the Board of Homeopathic Medicine and the Board of Osteopathic Medicine.

The appointment process allows nominations of members to a medical board by the University of Nevada School of Medicine (UNSOM), professional associations and others. The Legislative Committee on Health Care may investigate the nominees. The list of nominees will be submitted to the Governor who will appoint members from the list.

The bill also provides clarification of the ethical standards that apply to each board member.

CHAIR CARLTON:
What are the timelines? How will this actually work?

SENATOR WASHINGTON:
Section 3 lays out the timeline. "... At least 90 days before the beginning of any term of office of a member of the Board, or within 30 days after a position on the Board becomes vacant if it becomes vacant more that 120 days before the beginning of the next term of office for that position, ...".

CHAIR CARLTON:
In section 3, subsection 2, it states if there are fewer than three names submitted, the Governor may immediately appoint any qualified person. There may be some problems with this because there is an investigation to look at the character and fitness of the person. What if the Governor appoints someone, then after the investigation it is determined that the person is not suitable for the position?

SENATOR WASHINGTON:
I understand. This can be fixed. I would leave that up to the Committee. If you want to set the same timeline or a shorter timeline for the selections by the Governor, that would be appropriate.

CHAIR CARLTON:
Is the ethical-standards portion basically the same financial disclosure form that Legislators fill out?

SENATOR WASHINGTON:
Yes, they are basically the same.

CHAIR CARLTON:
The medical board does not require a physician to list where he practices. He could be in five different practices, and there could be a problem in one of those practices and we would never know that.

SENATOR WASHINGTON:
The real concern was, when there is an investigation, whether there is really a conflict of interest with the physician or the owner of the practice who may be in violation of some ethical standard.

CHAIR CARLTON:
We would want them to recuse themselves in the interest of propriety.

I will close the hearing on S.B. 8, and open the hearing on S.B. 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)

SENATOR WASHINGTON:
Senate Bill 362 addresses the cooperation of boards with law enforcement agencies in investigating licensees. It gives authority to licensing boards to temporarily suspend licenses of health-care professionals who are being investigated pursuant to their potential involvement in the creation of a public health-care crisis or emergency.

It provides for consistency in the manner in which licensing boards address a conflict of interest or an apparent conflict of interest. It also provides for consistency in retention of complaints filed with the board and for the board's ability to provide public information about the licensee and the location of the practice. The licensing boards will maintain a list of complaints and whether there was any disciplinary action taken.

CHAIR CARLTON:
Is that the ten-year component?

SENATOR WASHINGTON:
Yes, that is the ten-year component.

DR. KALEKAS:
We have no issues with S.B. 362.

We agree in theory with S.B. 8 with the exception of section 9, subsection 1, paragraph (b). It states that UNSOM can be a nominating agency. We have a fully accredited osteopathic medical school in Nevada, Touro University. It would be more appropriate that the educational institution which educates osteopathic physicians be the nominating body, rather than UNSOM.

MR. MATHEIS:
We are neutral on S.B. 8. The issue of having fewer than three people nominated should be handled in the same manner that three or more nominations would be handled.

We agree that Touro University should be added to S.B. 8, section 9, subsection 1.

CHAIR CARLTON:
Does UNSOM educate D.O.s?

MR. MATHEIS:
It does not; however, it often has D.O.s in its residency program.

CHAIR CARLTON:
Leaving UNSOM in the bill would provide another option.

MR. MATHEIS:
The intent was to open up the process of soliciting qualified candidates before the Governor made the selection. The Board of Osteopathic Medicine would want to solicit candidates from Touro and it would be their choice if they wanted to solicit from UNSOM also.

CHAIR CARLTON:
Right now there is nothing to prohibit any of these boards from submitting names to the Governor for any of these positions.

MR. MATHEIS:
There is nothing to prevent anybody from submitting names and nothing that makes the Governor read those names.

TOM RAY (General Counsel, University of Nevada School of Medicine):
The UNSOM is neutral on S.B. 8, but if the Committee passes it, the school is happy to serve in the capacity as contemplated by the bill.

We would not be opposed to changes in section 9 along the lines discussed today. We have D.O.s as residents and we employ D.O.s.

BRYAN GRESH (Touro University):
If it is the Committee's will to include Touro University as an option in section 9, that is fine.

CHAIR CARLTON:
Even if Touro University does not become part of S.B. 8, there is nothing to prohibit them from submitting a name.

MR. LING:
We support S.B. 362 and look forward to having the extra tool you are giving us in this bill.

HAROLD COOK, PH.D. (Administrator, Division of Mental Health and Development Services, Department of Health and Human Services):
I support S.B. 362 with the exception of one very specific and unintended consequence.

Several years ago, Dr. Elizabeth Neighbors' supervisor directed her to pursue licensing for Lake's Crossing Center. Lake's Crossing Center is the forensic mental health facility for the State. After a lot of work, Dr. Neighbors was able to secure a provisional license for the facility. The provisional license is in jeopardy based on a noncontemporary standard fire-alarm system. Unless we can upgrade the system we may lose that license.

CHAIR CARLTON:
How did we get to fire alarms from licensure?

DR. COOK:
Licensure is contingent upon a number of health, safety and physical plant standards, one of which is a fire-alarm system which meets contemporary standards. Dr. Neighbors is the director of this facility, which does not have a fire-alarm system which meets contemporary standards.

CHAIR CARLTON:
It is very disconcerting that we have a facility that does not have a contemporary fire-alarm system. We could also lose a professional because of that inadequacy.

DR. COOK:
That is why I am here. The facility is 30 or 40 years old. The fire-alarm system was never questioned until we sought licensure. When the licensing board came in, they made note that the system needed to be upgraded for a full license.

At this time, the Division of Mental Health and Developmental Services (MHDS) may not have sufficient funding to pursue the upgrade of the fire-alarm system. My concern is under S.B. 362, through no fault of her own, Dr. Neighbors' professional license as a psychologist could be in jeopardy.

CHAIR CARLTON:
How do we address a fire-alarm system? It is not good that we have this situation, but it needs to be fixed.

ELIZABETH NEIGHBORS, PH.D. (Director, Lake's Crossing Center):
The problem with our fire-alarm system is while we have a visual alarm, we do not have an audio alarm. The system needs to have that audio component added. We are trying to find ways to accommodate that.

We do have a very elaborate vigilance system, watch sheets and people constantly being monitored. In the event of a catastrophe, we would have very good capacity to know exactly who was where, and who needed to be evacuated immediately. Obviously, the preferential choice would be to correct the alarm system.

There are not many alternatives available, and we are working with the Health Department. Our license will be renewed this coming fall in November. There is an issue between now and then to get resolved.

CHAIR CARLTON:
Thank you for bringing this forward. Do you have any suggestions on how to solve this problem?

DR. COOK:
I became aware of this problem yesterday when I received a phone call from the deputy attorney general for MHDS. The only thing I could think of was some sort of language in the bill that would provide for individuals currently in this situation to be grandfathered.

CHAIR CARLTON:
The biggest problem is there is no fire-alarm system.

DR. COOK:
We do have a fire-alarm system; it just needs to be upgraded.

DR. NEIGHBORS:
We regularly have the fire marshal inspect our facility, and this system has been acceptable to the fire marshal, but it is not to the Bureau of Health Care Quality and Compliance.

There has been some discussion if buildings the age of the one we are housed in now are actually required to have this type of system with both audio and visual. Obviously, it is preferable to have both for the safety of all involved.

CHAIR CARLTON:
I still do not understand why you are here.

DR. COOK:
A provision in S.B. 362, allows a board to revoke a license of an individual who is a director, or is in some way involved in the direction of a facility. If Lake's Crossing's license is revoked, the Board of Psychological Examiners could, under S.B. 362, revoke Dr. Neighbors' license as a psychologist.

CHAIR CARLTON:
There will be a solution to this problem.

MR. MATHEIS:
We do support S.B. 362. The issue is that it gives additional grounds on which a licensing board can look at a professional, which do not currently exist. This bill was the result of the hepatitis C situation that occurred in southern Nevada.

If this problem with the State mental health facility cannot be handled in the next several months, the facility can always be exempted.

CHAIR CARLTON:
We will close the hearing on S.B. 362. We will have to hear S.B. 364 at a later date.

SENATE BILL 364: Revises provisions relating to professional licensing boards and professional licenses. (BDR 54-220)

CHAIR CARLTON:
Having no more testimony, we will adjourn this meeting of the Senate Committee on Commerce and Labor at 5:08 p.m.

RESPECTFULLY SUBMITTED:

_____
Suzanne Efford,
Committee Secretary

APPROVED BY:

_____
Senator Maggie Carlton, Chair

DATE: _____