MINUTES OF THE
SENATE COMMITTEE ON COMMERCE, LABOR AND ENERGY

Seventy-sixth Session
March 31, 2011

The Senate Committee on Commerce, Labor and Energy was called to order by Chair Michael A. Schneider at 8:13 a.m. on Thursday, March 31, 2011, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 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 Michael A. Schneider, Chair
Senator Shirley A. Breeden, Vice Chair
Senator David R. Parks
Senator Allison Copening
Senator James A. Settelmeyer
Senator Elizabeth Halseth
Senator Michael Roberson

GUEST LEGISLATORS PRESENT:

Senator Barbara K. Cegavske, Clark County Senatorial District No. 8
Senator Valerie Wiener, Clark County Senatorial District No. 3

STAFF MEMBERS PRESENT:

Scott Young, Policy Analyst
Matt Nichols, Counsel
Suzanne Efford, Committee Secretary

OTHERS PRESENT:

Brett J. Barratt, Insurance Commissioner, Division of Insurance, Department of Business and Industry
Ed Guthrie, Executive Director, Opportunity Village
Matthew Sharp, Nevada Justice Association
Brian Patchett, President/CEO, Easter Seals Southern Nevada

Lisa Foster, Northern Nevada Association of Service Providers
Scott Anderson, Deputy for Commercial Recordings, Office of the Secretary of State
Rusty McAllister, Professional Firefighters of Nevada
Barry Gold, Director, Government Relations, AARP Nevada
Elisa Cafferata, President/CEO, Nevada Advocates for Planned Parenthood Affiliates
Larry Matheis, Executive Director, Nevada State Medical Association
Tracey Green M.D., State Health Officer, Health Division, Department of Health and Human Services
Weldon Havins, M.D., J.D., Director of Medical Jurisprudence and Ethics, Touro University Nevada
Carol Cohen, C.M.A., President, Nevada Society of Medical Assistants, American Association of Medical Assistants
Dianna Hegeduis, Esq., Executive Director/Board Counsel, State Board of Osteopathic Medicine
Katie Nannini, Statewide Director, Immunize Nevada
Cheryl Blomstrom, Nevada Nurses Association
Keith Lee, Board of Medical Examiners
Joan Hall, President, Nevada Rural Hospital Partners
Neena Laxalt, Nevada State Board of Veterinary Medical Examiners
Renny Ashleman, Nevada Health Care Association
Lynda Mathis, R.N.
Daniel Mathis, Chief Executive Officer, Nevada Health Care Association
Debra Scott, M.S.N., R.N., F.R.E., Executive Director, State Board of Nursing
Bobbette Bond, Policy Director, Nevada Health Care Policy Group
Marsha Berkbigler, Chiropractic Physicians' Board of Nevada
Paula Berkley, Board of Occupational Therapy; State Board of Physical Therapy Examiners
Kathleen J. Kelly, Executive Director, Board of Dental Examiners of Nevada
Nancy Kuhles, S.L.P., Nevada Speech-Language Hearing Association

CHAIR SCHNEIDER:
We will open the hearing with Senate Bill (S.B.) 289.

SENATE BILL 289: Makes various changes relating to insurance. (BDR 57-521)

SENATOR ALLISON COPENING (Clark County Senatorial District No. 6):
I have provided written testimony to introduce S.B. 289 (Exhibit C).

BRETT J. BARRATT (Insurance Commissioner, Division of Insurance, Department of Business and Industry):
As Senator Copening explained, S.B. 289 does two things. It allows Nevada to participate in the Nonadmitted and Reinsurance Reform Act of 2010 (NRRA), which is part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, in order to enter into a multistate agreement to collect premium tax on multistate risks; and it will bring Nevada into compliance with the Dodd-Frank Wall Street Reform and Consumer Protection Act.

The intent of the NRRA is for each state to adopt certain nationwide uniform requirements pertaining to nonadmitted insurance. The NRRA restricts the collection of premium tax to the home state as defined in federal law. Pursuant to the NRRA, Nevada must enter into a multistate agreement for allocating premium taxes by July 21, 2011, or it will lose all premium tax revenue on nonadmitted insurance risks not domiciled in this State or where the greatest percentage of risk is not located in this State.

To preserve their share of premium taxes, states must agree on an allocation mechanism or 100 percent of the premium tax for a given multistate risk will default to the home state of that risk. An objective of the multistate agreement is to preserve and generate additional revenue by collecting Nevada's portion of multistate premium tax from policies written in another home state. Many risks domiciled outside of Nevada have substantial exposures in this State, such as gaming or mining.

We are addressing the surplus lines market and the independently procured insurance market. These are typically markets where very sophisticated and large commercial users of insurance will go to obtain insurance when they cannot find it in the regular market. That is why it is called the nonadmitted insurance market. For example, a mining operation, domiciled in another state, has risks and buildings in a number of states. Only the home state of the entity collects the premium tax for all of the states in which the company has a risk. If there are two buildings in Nevada, we do not get our 3.5 percent premium tax; the home state gets our share of the premium tax.

The National Association of Insurance Commissioners Surplus Lines Implementation Task Force, of which Nevada is a member, was created to address the requirements of the NRRA. The Task Force developed a multistate agreement for premium tax collection and allocation referred to as the

"Nonadmitted Insurance Multi-state Agreement" (NIMA). Senate Bill 289 would change chapter 685A of the *Nevada Revised Statutes* (NRS) to grant authority to the Insurance Commissioner, Division of Insurance, Department of Business and Industry (Insurance Commissioner) to enter into a NIMA or any other multistate agreement to preserve Nevada's ability to collect multistate premium tax on nonadmitted risks located in Nevada. Senate Bill 289 also makes various changes to conform Nevada's law to the new federal law.

The significant changes are:

- Allowing the insurance commissioner to participate in a NIMA or another agreement for purposes of collecting the multistate premium tax.
- Allowing Nevada to participate in the clearinghouse, which would be in charge of collecting and disbursing to the states their portion of the premium tax.
- Allowing the insurance commissioner to adopt an allocation schedule included in a NIMA or other multistate agreement and to adopt regulations as necessary.
- Defining and exempting certain commercial purchasers from due diligence searches to comply with the NRRA. In the surplus lines market, a surplus lines broker would have to go into the admitted market and get three rejections of coverage from insurance companies before they could go to the surplus lines market. The NRRA removes that provision from Nevada law.
- Broadening the surplus lines chapter to include "independently procured insurance" and "surplus lines insurance" under the term "nonadmitted insurance."

The Division of Insurance (DOI), Department of Business and Industry, does not require funding to enter into a NIMA. It is anticipated the start-up costs for clearinghouse and program software will be provided by the vendor awarded the contract. The costs will be included within the filing fees when processing surplus lines filings through the clearinghouse. If something changes and there would be a cost to the State, the DOI would have the discretion not to enter into the agreement.

The enactment of this proposed legislation has minimal impact on the DOI. All transactions and reporting requirements for both multistate and single-state risks could be monitored by the existing Nevada Surplus Lines Association.

The NRRA also restricts licensing of surplus lines brokers. Before the enactment of NRRA, a surplus lines broker was required to be licensed in all states where the broker issued a policy to cover a risk. Now, under NRRA, a broker writing multistate risks is only required to be licensed in the insured's home state. This will mean a loss of broker licensing revenue to this State. However, it is expected Nevada will generate additional premium taxes, fees and penalty revenues collected from multistate risks.

It is unknown what Nevada will collect in multistate premium tax because multistate premium tax was not required to be reported. Since the policy was not reported, there is no way to pursue enforcement. When policies begin to be processed through the clearinghouse, the location of the risk will be reported.

The estimated loss of licensing fees to the General Fund will be approximately $75,000 per year; to the DOI's Enterprise fund, approximately $35,000 per year; and to the Education fund, approximately $6,000 per year.

I have not been able to determine what Nevada might gain by entering into a multistate agreement to collect premium tax on multistate risks because the data is not available. However, if we do not pass S.B. 289 to provide the opportunity to enter into the multistate agreements, we know for certain Nevada will not collect any additional taxes. There does not seem to be a downside to entering into these agreements. It can only be a positive revenue source for Nevada.

I have also provided written testimony explaining S.B. 289 (Exhibit D) and a document containing an explanation of Nevada's Surplus Lines Law (Exhibit E).

CHAIR SCHNEIDER:
We will close the hearing on S.B. 289, and I will entertain a motion.

SENATOR SETTELMEYER MOVED TO DO PASS S.B. 289.

SENATOR ROBERSON SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR PARKS WAS ABSENT FOR THE VOTE.)

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CHAIR SCHNEIDER:
We will open the hearing on S.B. 293.

SENATE BILL 293: Makes various changes relating to certain nonprofit organizations. (BDR 3-1011)

CHAIR SCHNEIDER:
I will disclose for Senator Cegavske that she is on the board of Opportunity Village (OV). I have been on the OV board for over 20 years. It is a nonpaid position.

SENATOR BARBARA K. CEGAVSKE (Clark County Senatorial District No. 8):
Senate Bill 293 is intended to address a problem involving certain entities establishing nonprofit organizations for the purpose of competing with legitimate nonprofit Community Training Centers (CTC) approved and funded by the Division of Mental Health and Developmental Services (MHDS), Department of Health and Human Services (DHHS). The bill accomplishes this purpose by ensuring that organizations participating in these training programs are bona fide nonprofit organizations.

It establishes criteria which must be met by a nonprofit organization as a condition of participating in programs to provide jobs and day-training services, and to operate certain rehabilitation facilities or workshops. These criteria include: the organization must be approved by the Secretary of State as a legitimate nonprofit organization which is operating exclusively for the public interest; and it is not owned, controlled and operated by a natural person or a for-profit entity for the benefit of the person or entity.

Certain provisions in this bill, including those requiring the certification of CTCs by the Secretary of State, may not be workable.

ED GUTHRIE (Executive Director, Opportunity Village):
Opportunity Village is a CTC providing assessment, training, employment and therapeutic day services for over 1,500 individuals. This number does not include the hundreds of people who attend our recreation events and the hundreds more who receive advocacy or referral services. Over the course of a given year, OV serves over 3,000 individuals with severe disabilities.

I have provided an executive summary of the "Community Impact Assessment" completed by Applied Analysis (Exhibit F). Applied Analysis estimates OV, because of the services it provides, saves Nevada taxpayers about $22 million every year.

Opportunity Village asked Senator Cegavske to sponsor S.B. 293 which would require nonprofit CTCs, wanting to participate in the Preferred Purchase Program (PPP), to be certified by the Secretary of State. This would enable the Secretary of State to ensure the CTC is not improperly controlled by an individual or a for-profit corporation. The Secretary of State could charge a fee to cover the costs of this service. However, the Secretary of State indicated this was not feasible for them to do and had some other ideas. We had not been able to review those ideas prior to this hearing; therefore, we will need more time to discuss this with the Secretary of State. Also, we might have some other alternatives from the Department of Employment, Training and Rehabilitation (DETR) and MHDS.

Under the PPP, nonprofit CTCs have the ability to negotiate directly with a state or county government to provide goods or services without going through the competitive bid process. The idea is to allow the CTC to hire a number of individuals to provide those goods or services.

The PPP has been successful in Nevada. In 2010, over 1,500 individuals were employed manufacturing goods or providing services to State agencies through the PPP. Another 260 individuals have graduated from the PPP into competitive employment. Research has shown each individual placed in competitive employment reduces the burden on state and federal taxpayers for welfare, Medicaid and other benefits by $5,000 per year per person, for a total of $1.3 million per year.

We are hoping to expand the PPP, but to accomplish this we also want to guarantee its integrity. The purpose of this bill is to allow us to do that. I have submitted some additional information on S.B. 293 (Exhibit G) and on OV (Exhibit H).

SENATOR SCHNEIDER:
Would you please explain noncompetitive contracts and how they are priced?

MR. GUTHRIE:
The pricing for the contracts is negotiated between the state or local government agency and the nonprofit. The market price for the service is reviewed. This is usually from the prior contract for the service, which starts the terms for the negotiation. But, there is flexibility to return to the state or local government agency and renegotiate if the agency is having budgetary problems. This process enables us to retain jobs. Through this program and the AbilityOne Program, OV pays about $4 million in wages every year to individuals with severe disabilities who are providing goods and services to government agencies and commercial businesses

SENATOR SCHNEIDER:
The wages of clients of OV are adjusted according to the amount of work they are able to perform.

MR. GUTHRIE:
Everyone on the service contracts in the community where they are providing goods and services to state or federal government agencies is guaranteed the minimum wage. They also receive the same health insurance benefits I receive as the director of OV. Our facility-based contracts are performed on a piece-rate basis. The piece-rate contracts are paid on the number of pieces completed.

CHAIR SCHNEIDER:
Will you be consulting with the Secretary of State?

MR. GUTHRIE:
We will be consulting with the Secretary of State, DETR and MHDS. The DETR and MHDS already have provisions for certifying CTCs. We may be able to enhance those provisions and not need the Secretary of State at all.

MATTHEW SHARP (Nevada Justice Association):
The Nevada Justice Association has limited opposition to S.B. 293. The issue is the liability limitation of $100,000. There is no public policy justifying a liability cap to a nonprofit. A nonprofit is still responsible for the harm they inflict.

SENATOR SETTELMEYER:
Under NRS 41.485, charitable organization volunteers are completely immune from liability. Why are you opposing the liability limitation?

MR. SHARP:
The nature of allowing a private nonprofit limited liability is a "slippery slope." This is the premise of our objection. It is not consistent with our society where we hold individuals responsible for the harms committed.

SENATOR SETTELMEYER:
It is consistent. It is already in NRS 41.485 for charitable organizations. This is just an extension of it. How is this significantly different? I understand why the law is necessary because it is slightly different. But if society has already decided to allow charitable organizations to be immune from liability, how is this so different that it should not also be allowed?

MR. SHARP:
Perhaps I am misunderstanding the point. There are many charitable organizations that are fully responsible for the harm they have committed. This would be a public policy issue the Committee will have to address. In my opinion, public policy holds people responsible for the harm they commit. The innocent person who is injured should not bear the financial burden of the injury.

BRIAN PATCHETT (President/CEO, Easter Seals Southern Nevada):
Easter Seals Southern Nevada fully supports S.B. 293. This is very significant. We also operate a CTC and an adult day program. It is crucial that those who are delivering these services are legitimate nonprofit organizations.

LISA FOSTER (Northern Nevada Association of Service Providers):
Northern Nevada Association of Service Providers is a coalition of three organizations, similar to Opportunity Village, providing training, support and employment opportunities for individuals with intellectual disabilities.

Senate Bill 293 will further the mission of organizations working with these individuals. It will put safeguards in place to help deter the fraud found when an organization claims to be nonprofit, but may not be. This bill will provide some limits on the liability of our organizations.

SCOTT ANDERSON (Deputy for Commercial Recordings, Office of the Secretary of State):
There are some provisions in this bill which we cannot support because of the requirements placed on the Office of the Secretary of State. However, the

sponsors of the bill are willing to work with us, and we have proposed some language changes.

CHAIR SCHNEIDER:
We will close the hearing on S.B. 293 and open the hearing on S.B. 329.

SENATE BILL 329: Revises provisions governing prescriptions. (BDR 54-904)

SENATOR SHIRLEY A. BREEDEN (Clark County Senatorial District No. 5):
Senate Bill 329 makes several important changes to Nevada law concerning prescription labeling. Existing law authorizes a doctor to ask if a patient wishes to have the symptom or purpose for which the drug is prescribed on the label of a prescription container. At the patient's request, the doctor must also include that information on the written prescription. This bill changes what is currently permissive language and makes it mandatory. It requires the doctor to include the information for which the drug is prescribed. It also requires the doctor to ask the patient if the information is to be included on the label which would be attached to the drug container.

There are many drugs with dual purposes. I have provided a handout which lists drugs with dual purposes used to treat more than one symptom (Exhibit I). This is a common sense bill for patient safety.

Sections 1-3 and 7 of this bill require the practitioner to include the symptom or purpose for which the drug is dispensed on the written prescription. Section 2 requires the practitioner to ask the patient if the patient wants such information included on the label attached to the container. The written prescription must contain a notation of whether or not the symptom or purpose for which the drug is dispensed must be included on the label. This is optional at the request of the patient, but it is mandatory for the practitioner to ask.

Section 6 requires a prescription filled by a practitioner be dispensed in a container with a label which clearly shows the symptom or purpose for which the drug is prescribed, if the prescription contains a notation that the symptom or purpose must be included on the label as requested by the patient.

I was advised that if the notation is not on the label, the pharmacist cannot fill the prescription. It was not our intent to make this harder. The intent is to make

it easier on caregivers and others. I know there is more work to do on this bill, and we need to get clarification from pharmacists.

SENATOR ROBERSON:
I am concerned about increasing physician liability. How does this bill address the failure of physicians to offer to the patient the option of having the symptoms listed on the prescription? Is there additional liability on the physician?

SENATOR BREEDEN:
The intent was not to add liability to the physician. Perhaps there could be a form the physician keeps in the patient's chart, but in speaking with the Legal Division while we were drafting this bill, they suggested the doctor make the notation on the prescription pad. The pharmacist would not know if the patient wants the purpose or symptom noted on the prescription label.

SENATOR ROBERSON:
If we are going to create a new duty, there must be a liability if the doctor does not fulfill that duty. This is my concern.

SENATOR BREEDEN:
The whole purpose of this bill is to give the patient the option to have the purpose or symptom on the prescription label. Cannot the doctor ask the patient that question? There might be a way for the physician to work with the pharmacist to standardize this. Why cannot a patient ask the physician to put that information on the prescription?

SENATOR ROBERSON:
The patient can ask all they want, but to have the government tell doctors they have a new burden is going to create potential liability. You are asking us to pass a bill which is going to create more liability on doctors in Nevada. Maybe we can work on the language to improve it, but this is my concern.

CHAIR SCHNEIDER:
I perceive this burden is more on the pharmacy. The pharmacy knows what the intent is when it is referred by the doctor's office. Maybe, when the prescription is referred, the doctor can tell the pharmacist what the drug is intended to treat. There are a lot of drugs with dual purposes. This is a good bill, and maybe we can work through it.

SENATOR BREEDEN:
I disagree; it is not the pharmacist's duty. The pharmacist fills the prescription, but the patient may not want the purpose of the drug on the label. That is why it is discretionary.

SENATOR SETTELMEYER:
I agree with the concept of making it optional. Is there an issue with someone reusing the drug container for a drug other than the one for which it was intended?

SENATOR BREEDEN:
There are some people who do that. My concern is to have it on the label so anyone can see what the drug is for.

SENATOR SETTELMEYER:
What happens if there is an emergency and a paramedic has to give a drug to a patient and the drug in the container is not the drug noted on the label?

SENATOR BREEDEN:
I have no control over what someone does in their home.

RUSTY MCALLISTER (Professional Firefighters of Nevada):
Senator Breeden had asked if this bill would have any impact on making firefighters' jobs better or easier. In reviewing it, I can say it would. We respond to thousands of patients a year. It is not unusual to go to a scene and be handed a shoebox full of medications. We will recognize a number of the medications based on experience, but now with so many generic drugs there are many with which we are not familiar.

Many patients are not coherent, and having something written on the prescription label would be helpful to us in the information gathering process. Many of the patients to whom we respond have many physicians who prescribe medications, but they have no idea who prescribed which drug. They also have the prescriptions filled at multiple pharmacies. The intent of this bill is to protect the patient.

As mentioned before, there are multiple uses for some medications. Emergency medical technicians do not give medications. They can assist patients who are mentally aware take their medication.

BARRY GOLD (Director, Government Relations, AARP Nevada):
I have provided written testimony in support of S.B. 329 (Exhibit J). Patients are oftentimes confused or scared when they go the doctor's office and do not always ask what the medication being prescribed is for. If they do ask, they are handed a piece of paper, and by the time they go to the pharmacy they have forgotten what the doctor told them. The doctor should have responsibility in helping patients know what their medications are for. People go to multiple physicians and take multiple medications, and one physician does not know what another physician has prescribed.

Pharmacists cannot be responsible on their own for putting what the drug is for on the label because there are multiple uses for drugs. To put the burden on the pharmacists is wrong. Doctors must have some responsibility in their patients' health-care outcomes.

There are complicated, intricately intertwined facets that can improve the health-care system. However, putting information on the label is a simple, easy thing to do. The AARP members want to stay healthy. On behalf of our 340,000 members across the State, AARP Nevada supports S.B. 329.

CHAIR SCHNEIDER:
This year is the first year the "baby boomers" turn 65 years old. How many are there a day nationwide?

MR. GOLD:
I do not know that.

CHAIR SCHNEIDER:
It is 1 million a month or more. It is a huge number coming through the nation. A large number of them are on medications. This bill is a good first step to try to deal with this problem. I do not know if the responsibility lies with the doctors or the pharmacists. They both probably share responsibility and they will have to work together. Senator Breeden, there is still some work to do on this bill. Could you please work with the interested parties on some language for this bill?

SENATOR BREEDEN:
Yes, if the interested parties would come see me, that would be helpful.

SENATOR ROBERSON:
I want to make it clear, I am not opposed to the concept of this bill. We should do what we can to increase patient safety. We need to be careful, because I do not see a lot of health-care experts testifying today. We are changing law which affects health-care providers and patients.

SENATOR COPENING:
I am in support of this bill, and I know it needs some further work.

CHAIR SCHNEIDER:
Over 7 people per minute are turning 65 years old, which is over 11,000 per day. This is a "tidal wave" coming, and we have to be prepared for it.

ELISA CAFFERATA (President/CEO, Nevada Advocates for Planned Parenthood Affiliates):
I provided my testimony on S.B. 329 in writing (Exhibit K).

LARRY MATHEIS (Executive Director, Nevada State Medical Association):
We support the basic intent of S.B. 329. There are some practical issues to be worked out with the pharmacists. We supported this idea in the last several sessions to try to expand the notations in helping patients be aware of purposes of the various prescriptions.

There are problems with changing permissive language to mandatory language on asking the patient, only because there are settings in which it is not possible; i.e., the patient's condition. There is a potential for liability. We will be happy to work with Senator Breeden. We are not in disagreement with the intent of the bill or most of the additional language. We would like to make sure we do not create problems later on.

CHAIR SCHNEIDER:
We will close the hearing on S.B. 329 and open the hearing on S.B. 388.

SENATE BILL 388: Establishes provisions concerning medical assistants. (BDR 40-189)

SENATOR VALERIE WIENER (Clark County Senatorial District No. 3):
Senate Bill 388 deals with medical assistants (MA). There was a concern raised from an incident in southern Nevada about Botox injections and the training and authorization of MAs to administer drugs.

Provisions in NRS 454.213, address who, in the health-care community, is allowed to give injections. Page 4, line 23 of S.B. 388 addresses MAs under the supervision of a physician or a physician assistant (PA). One of the concerns regarding this bill was establishing some level of credentialing for those who would be giving injections with drugs which could put patients at risk.

There is a tier system in the bill with effective dates. On or after January 1, 2012, before individuals begin employment as MAs, they must be trained and certified. There will be a national certifying organization which will set the standards. Individuals serving as MAs prior to January 1, 2012, have five years after that date to become certified. Medical assistants would be limited as far as the injections they could administer until they become certified. This is a tier system until March 31, 2017, when MAs would be expected to be certified if they are going to be involved in injection practices.

SENATOR SETTELMEYER:
I appreciate the concept of this bill. Under current law, MAs cannot give injections. Yet, in the same respect, we have an archaic law that says anyone who is not trained can give an injection with written authorization. Have you given any thought to addressing this part of the law?

SENATOR WIENER:
This bill focuses on MAs in a medical setting.

TRACEY GREEN, M.D. (State Health Officer, Health Division, Department of Health and Human Services):
The Health Division, DHHS, is in support of clarifying the situations in which MAs can provide immunizations. From a public-health perspective, we are very concerned that without this health-care force we will see a great loss to the children in this State.

CHAIR SCHNEIDER:
Because these two bills are similar, we will keep the hearing open on S.B. 388 and open the hearing on S.B. 294.

SENATE BILL 294: Establishes provisions governing medical assistants. (BDR 40-16)

SENATOR CEGAVSKE:
Senate Bill 294 addresses the possession and administering of certain drugs by MAs. The clinical MA works closely with patients and physicians in administering medical services. But unlike physician assistants (PAs), they do not examine or help diagnose medical conditions. The MA's job is limited to assisting with procedures such as taking medical histories, recording vital signs, explaining medical procedures to patients, preparing patients for examinations and assisting physicians during examinations. They might prepare patients for X rays, take electrocardiograms, remove sutures, change dressings, administer eyedrops or perform other clinical tasks which help keep the physician's office running smoothly.

It is important to note, MAs perform these duties under the supervision of a physician. The actual duties of MAs can vary substantially, depending on the medical specialty or procedures commonly handled in a particular medical office. It is my understanding, MAs have been administering various drugs under the supervision of physicians in this State for more than 30 years. However, the question has come up concerning the authority under which MAs are allowed to process and administer these drugs.

Senate Bill 294 adds MAs to the Nevada existing list of persons who may possess and administer dangerous drugs. It requires those MAs be under the supervision of a physician. The bill defines an MA as a person employed by a physician to perform clinical tasks under the direction of the physician, but who does not hold a license, certificate or registration issued by a professional licensing or regulatory board to perform these clinical tasks. This definition is currently in regulation. The term MA does not include a person who is employed by a physician or perform nonclinical tasks such as administrative, clerical or executive functions.

A physician who employs an MA is required to notify the Board of Medical Examiners or the State Board of Osteopathic Medicine (SBOM), as applicable, within 30 days after hiring or terminating the employment of a MA. The physician also must perform adequate supervision for the MA.

The bill also requires the Board of Medical Examiners and the SBOM each to maintain a registry of MAs employed by physicians and to adopt regulations governing the employment and supervision of MAs. The regulation must prescribe limitations on the possession and administration of dangerous drugs by MAs. Senate Bill 294 provides that failure to supervise a MA adequately constitutes grounds for the regulatory board to initiate disciplinary action or deny licensure.

The Nevada Nurses Association has proposed a clarifying amendment addressing the wording in section 7 of the bill, to which I have no objections (Exhibit L). The Nevada State Board of Veterinary Medical Examiners has also proposed an amendment (Exhibit M).

CHAIR SCHNEIDER:
Committee, you have been provided with a comparison of S.B. 294, S.B. 388 and S.B. 411 (Exhibit N), which will assist you with your review of these bills.

WELDON HAVINS, M.D., J.D. (Director of Medical Jurisprudence and Ethics, Touro University Nevada):
This bill clears up any ambiguity about whether or not MAs can administer dangerous drugs or prescription medications under a physician's supervision. It also delegates to the medical boards, with an amendment proposed by the Nevada State Board of Veterinary Medical Examiners, Exhibit M, the responsibility for regulation promulgation to specify what limitations there are on MAs. It also provides for a registry and discipline for inadequate supervision of MAs by the supervising physician.

It is substantially different from S.B. 388 which requires a general accrediting process and has some problems. It is general and has no provisions for MAs in specialty areas.

Effective January 1, 2012, a provision in section 4, subsection 1 of S.B. 388, would not allow an MA who has been working under the supervision of a physician and administering a hazardous drug for the past 20 years to continue that procedure until passing a general certifying exam; and the MA would have until March 31, 2017, to take and pass the exam.

There are problems with S.B. 388; therefore, I support S.B. 294. There are proposed amendments which will clarify and improve the bill. Senate Bill 294

would allow the Board of Medical Examiners to develop regulations to mandate certain supervision limitations on physicians and their MAs.

SENATOR SETTELMEYER:
Section 3, subsection 1 of S.B. 294 uses the word "employed." I am concerned there could be a problem with a local medical facility with three or four doctors but owned by one doctor. Would it make more sense to remove the word "employed" and add "under a doctor's supervision?"

DR. HAVINS:
Yes, there have been discussions on this issue. It should be addressed in a proposed amendment. Rural hospitals may also have an issue with this. The MA in a rural hospital is not employed by a physician but would be supervised by a physician. There is some concern by the SBOM about writing regulations regarding employment. It might be better to use the word "supervision."

SENATOR COPENING:
If there are amendments, I would like to make sure Senator Sheila Leslie's name also appears on this bill.

CHAIR SCHNEIDER:
We will make sure it does.

CAROL COHEN, C.M.A. (Society of Medical Assistants, American Association of Medical Assistants):
The Nevada Society of Medical Assistants (NSMA) supports S.B. 294 with one proposed amendment (Exhibit O). The proposed amendment addresses the deletion of lines 41 and 42 on page 4 and the deletion of lines 1-4 on page 5. The rationale for deleting the duty of the physicians to report the hiring and termination of MAs is it would lessen the cost of employing MAs. It would also lessen the monitoring costs of the two Executive Branch boards without relieving physicians of the duty to abide by other provisions of this bill and any regulatory provisions issued by the boards pursuant to this bill. Consequently, the public health and safety would not be compromised by these cost-reducing deletions.

Other than the proposed amendment, the NSMA and the American Association of Medical Assistants support S.B. 294.

MR. MATHEIS:
The Nevada State Medical Association supports the intent of both S.B. 294 and S.B. 388. Senate Bill 294 would be easier to implement and entail fewer costs in its implementation, while still gathering the information necessary to ensure regulating the appropriate use of MAs.

Both bills have an issue involving the definition of MAs in section 3, subsection 1, paragraph (a) and the confusion surrounding employment and supervision. This is an issue in primary-care clinics, urgent-care centers and rural hospitals. The physician who is supervising the MA may not be the employer of the MA. Our suggestion is to delete the wording "... by a physician ...," in section 3, subsection 1, paragraph (a).

The idea of a registry is much easier to implement and monitor. If the registry is insufficient, then going further with regulations might be justified. At this point, we have had over 30 years of experience under existing regulations which have not produced problems. They did produce inconsistencies when the issue of the growth, over the last 10 years, of the use of drugs for cosmetic purposes has become a complicating factor. This is what precipitated the crises in the fall of 2009 which led to a closure of pediatric immunizations. A lot of other necessary activities are waiting for clarification.

This is the opportunity to clarify, but not to over-regulate. Senate Bill 294 strikes a better balance, but S.B. 388 has many of the same features. Whichever one is processed, we look forward to working with the sponsors to develop the best implementable bill.

DIANNA HEGEDUIS, ESQ. (Executive Director/Board Counsel, State Board of Osteopathic Medicine):
The registry would present a problem for the SBOM. The SBOM would have to update its online services and the Website, and there might be personnel issues. Also, the bill speaks to disciplining a doctor for the supervision of a MA but does not address the doctor who does not report the MA's employment or termination to the SBOM. This is an omission to be addressed.

We are in agreement with Ms. Cohen that the registry and the doctors reporting to it would relieve some of our financial burden. We also had an issue with defining employment. We do not want to get into dictating an eight-hour workday or taking a ten-minute break in the morning. We are more comfortable

in the supervision area. We know what MAs do for our doctors and the specialties out there. Employment is not really our area. The supervision of MAs and the physicians and the PAs are more our area.

Referencing the SBOM and Dr. Havins' comment on S.B. 388, page 8, section 10, subsection 2, MAs cannot administer dangerous drugs until they have obtained certification. This may deprive the doctors of the use of their MAs until they get the certification.

The course currently offered by the community colleges is a one-year course and costs approximately $2,500. If MAs are currently working, the one-year course could actually take two or three years for them to get certified. This may present a problem for the physicians in utilizing their MAs.

We look forward to working with the sponsors of these bills. Medical assistants serve a great purpose in immunizing our children. It does need to be addressed and monitored. These bills are a step in the right direction.

CHAIR SCHNEIDER:
We would like to have all of the interested parties get together next week with Senator Cegavske and Senator Wiener to work on this bill.

MS. COHEN:
I too would like to work with the sponsors of these bills.

CHAIR SCHNEIDER:
Yes, absolutely.

KATIE NANNINI (Statewide Director, Immunize Nevada):
The mission of Immunize Nevada is to increase vaccine rates in Nevada through provider education, parent outreach and communication, and advocacy. Immunize Nevada supports S.B. 294. While there is no tracking in place for the number of MAs who give immunizations in Nevada practices, it is safe to assume that due to tight budgets and limited staffing issues in many Nevada practices, providers more often than not rely on MAs to give immunizations. In order for Nevada's immunizations to continue to improve—we are currently 45th in the Country—it is imperative MAs are allowed to give injections and immunizations. If possible, we would like to support having language in this bill similar to what is in S.B. 388 relating to training and education.

CHERYL BLOMSTROM (Nevada Nurses Association):
We have worked with Senator Cegavske to clarify the relationship between physicians and advance practice nurses. In order to do that, we proposed an amendment to S.B. 294, Exhibit L, page 6, section 7, and to S.B. 388, section 7 (Exhibit P), where we have reordered the supervisory role. The advance practice nurse in a physician's practice works in collaboration with the physician, not in a supervisory role. We would like to clarify this in the bill. I have spoken with Dr. Havins, Senator Cegavske and Senator Wiener and this is acceptable to all three.

KEITH LEE (Board of Medical Examiners):
We have proposed an amendment to S.B. 294 (Exhibit Q), which is the regulation adopted by the Board of Medical Examiners after a year of public hearings.

The proposed amendments to section 3 of both S.B. 294, Exhibit Q, and S.B. 388 (Exhibit R) are substitutes for those sections. In this amendment, we define rural supervision, direct supervision, delegating authority and the responsibilities of an MA under the supervision of a licensee of NRS 630. This is important because in some instances the MAs work under the supervision of a PA. We are asking this be expanded with respect to who has supervisory authority of MAs.

We share some concern with respect to the registry and certification. There are a lot of issues, not the least of which is the expense. There is no provision for who will pay the fees for the registry or the certification. Does the doctor pay for the MA or does MA have to pay? We are not suggesting the MA should pay. That should not happen. The MA is a very integral and important part of the health delivery system. We wish to maintain it at a minimal cost to the practitioner, and ultimately at a minimal cost to the patients who receive care.

This all came about through some "Botox Shooters." I would suggest we have some serious discussion about the difference between delivering therapeutic immunizations and cosmetic injections. This is an important piece of legislation, and I would be happy to work with Senator Cegavske. We must be careful about any unintended consequences.

JOAN HALL (President, Nevada Rural Hospital Partners):
We represent 14 of Nevada's 15 rural and frontier hospitals. Seven of these hospitals own ten rural health clinics. As discussed previously, we employ both PAs and MAs. We have spoken with Senator Cegavske, and we have some proposed amendments to both S.B. 294 (Exhibit S) and S.B. 388 (Exhibit T) to address our situation.

SENATOR CEGAVSKE:
This is an important issue, and I am glad we are addressing it. I am asking for all proposed amendments to be submitted by the end of business on Friday. We will then start a process next week of meeting and working on these bills.

NEENA LAXALT (Nevada State Board of Veterinary Medical Examiners):
We are proposing an amendment to S.B. 294, Exhibit M, addressing veterinarian assistants. I have also submitted correspondence from Michelle Wagner, Executive Director, Nevada Veterinary Medical Association (Exhibit U), and from Larry L. Rinson, Pharm. D., Executive Secretary, State Board of Pharmacy (Exhibit V).

CHAIR SCHNEIDER:
We will keep the hearing open on S.B. 294 and S.B. 388 and open the hearing on S.B. 411.

SENATE BILL 411: Provides for the regulation of certified medication aides. (BDR 54-1104)

RENNY ASHLEMAN (Nevada Health Care Association):
Senate Bill 411 puts the proposed certified medication aides (CMA) under various "whistleblower" and other penal statutes applying to people engaged in the type of activities in which CMAs are involved. Some provisions relate to the fees to be paid the State Board of Nursing for proper supervision.

The bill creates a new category, CMA, which is a nursing assistant certified by the State Board of Nursing to administer authorized medication in designated facilities, which in this case means nursing homes. The bill gives the State Board of Nursing broad powers over CMAs, but with certain limitations. This can be found on pages 6 and 7 of the bill. At each point, the Board's regulations can authorize or prohibit any additional activities of these aides.

Starting on page 6, line 1, the Board can undertake supervision and can add requirements to the ones mentioned for the CMAs to be qualified properly. It would require a year of continuous, full-time employment as a nursing assistant, a high school diploma or its equivalent, literacy and reading comprehension, a screening process approved by the Board, a training course of at least 100 hours approved by the Board, passing an examination on such subjects as required by the Board and any other reasonable requirements the Board may prescribe.

There is a provision for allowing individuals who have been certified elsewhere in the country some degree of endorsement. However, there would still be an exam, and there would still be training requirements to ensure they have the qualifications of our CMAs.

Many states have CMAs, and the purpose of them is to allow nurses the time for other activities. Page 7 of the bill addresses the things CMAs cannot do, which are things nurses can do, in particular, evaluating reports of errors, performing treatments, discussing patient assessments and evaluations, and engaging in teaching activities for patients. Nurses spend a great deal of time administering routine medication and do not spend as much time as they would like with the evaluating, teaching and coaching processes.

LYNDA MATHIS, R.N.:
Much of the nurses' time is spent pushing a medication cart. The nurse is primarily responsible for assessment, planning, intervention and evaluation. We know from research that someone other than a registered nurse or a licensed practical nurse can safely administer medications. This allows nurses to do the more complex critical assessments and planning for the care of each individual patient or resident under their care.

In some of the data I gave you for your review (Exhibit W), there is information from the national health background which tells us about the primary reasons for medication errors. The number one reason is the lack of sufficient time for nurses to do proper patient assessment. At the bottom of the list, the last reason for medication errors, has to do with the person who is actually administering the medication. Delivering medication safely to an individual is a complex process, but it is a systematic process in which many things are involved, including the physician who writes the order, the pharmacy that fills the order and a listing of everyone involved.

Medications in nursing homes now have bar coding systems which help prevent errors. The bar coding system corresponds to the identity of the individual resident, once again to prevent errors. As we learn how to use systems better to prevent errors, nurses can now do the more important things for the critical care of our elders who have more serious illness. Twenty-two states use CMAs to give routine oral medications to residents in nursing facilities. It is working and is providing safe care for our elders.

I support S.B. 411. I have seen this work in many states. I have had CMAs working under my supervision. Medication errors were not a problem. The far bigger problem is the interruptions of the licensed nurse for other duties during the medication pass. This contributes to an increase in medication errors from an acceptable norm of 2.7 percent to almost double that norm in cases where the nurse is interrupted up to four times during the medication pass.

When we have competent CMAs deliver medications, they will not be interrupted by the phone calls nurses get because that is beyond their scope of practice. Their purpose is to be there to give the medications as prescribed by the physician. This will ensure a higher quality of care because the nurses will be better able to do the duties they have trained to do. The CMA can deliver routine medications. No nonroutine, pro re nata (as needed), or new order medication is ever given by a CMA. This bill addresses all of these issues very well and makes it clear if there is any kind of problem, the CMA's first response is to go to the higher level of supervision available.

MS. COHEN:
I would like to offer the assistance of Donald Balasa, J.D., M.B.A, Executive Director and Legal Counsel for the American Association of Medical Assistants. He has some expertise in the CMA issue about the correlation or overlap with MAs.

DANIEL MATHIS (Chief Executive Officer, Nevada Health Care Association):
In facilities with CMAs, the work flow for the patient care is smoother because of the lack of interruptions for the nurses. It is easy to think a nurse could be quite focused and get the medication pass completed, but when the physician calls, the nurse answers. When the family interrupts, the nurse will stop and talk with them.

In the facilities I have managed without CMAs, medication passes take much longer. For Nevadans who are in a skilled nursing facility, this bill would add a continuity of care or a smoother delivery of care for them.

DEBRA SCOTT, M.S.N., R.N., F.R.E. (Executive Director, State Board of Nursing):
Certified medication aides are very different from MAs. I heard in the discussion there was some overlap. There is no overlap. Certified medication aides have specific education and curriculum, specific national tests they must take and a specific scope of practice. Medical assistants are different because they work under the direct supervision of a physician.

CHAIR SCHNEIDER:
Do you support S.B. 411?

MS. SCOTT:
Yes, we do.

CHAIR SCHNEIDER:
Do you support S.B. 294 and S.B. 388 also?

MS. SCOTT:
We were in the discussions for the regulations promulgated by the Board of Medical Examiners. We gave them our input, and the movement to give more specifics to MAs is a good step in the right direction.

CHAIR SCHNEIDER:
We have received some correspondence in support of S.B. 294 and in opposition to S.B. 388 from Gregory L. Cohen, M.D., Sierra Eye Associates (Exhibit X), Steve Friedlander, M.D., F.A.C.S., Nevada Retina Associates (Exhibit Y), and Emil A. Stein, M.D., F.A.C.S., President, Nevada Eye Care Professionals (Exhibit Z).

We will close the hearing on S.B. 294, S.B. 388 and S.B. 411, and open the hearing on S.B. 354.

SENATE BILL 354: Makes various changes to regulatory bodies of professions, occupations and businesses. (BDR 54-254)

CHAIR SCHNEIDER:
Occupational and professional boards and commissions have jurisdiction over some of the most important and crucial functions in our society. Consider health-care delivery and all its many facets: physicians, nurses, dentists, pharmacists, optometrists, opticians, hearing aid specialists, audiologists and speech pathologists, interpreters for the deaf, physical and occupational therapists, long-term care facilities, psychologists, behavioral analysts, autism interventionists, marriage and family therapists, clinical professional counselors, social workers, and alcohol, drug and gambling counselors.

There are boards with jurisdictions over vital areas of our economy such as architecture, engineering, construction, real estate, appraisers, mortgage brokers and bankers. Finally, there are boards over other important areas such as private investigators, court reporters, veterinarians, barbers and cosmetologists, athletic trainers, message therapists, and funeral directors and embalmers.

This is truly a cradle-to-the-grave spectrum of societal activities. Almost no aspect of our lives is untouched by these occupations and professions. Some people may question why these life activities are regulated and whether these regulations are simply governmental intrusions or burdens on businesses and professions; just an added cost or a drag on job creation.

Why do we regulate these important occupations and professions? The purpose is set out in NRS 622.080, the introductory chapter of NRS Title 54, Professions, Occupations and Businesses. In regulating an occupation or profession pursuant to this title, each regulatory body shall carry out and enforce the provisions of this title for the protection and benefit of the public.

The Nevada Legislature has been actively involved in this process. In every session, there are additional efforts to refine and improve these public protections. Unfortunately, despite our continual efforts during the 20 years I have served in the Legislature, I have observed too many occasions when a board has forgotten or ignored this directive and instead acted more for the benefit of the profession than the public. Perhaps the most egregious example in terms of its impact on innocent lives was the 2008 hepatitis C crisis. I still recall sitting in this building listening to excuse after excuse from the Board of Medical Examiners about why it could not take decisive action against the doctor responsible for the tragedy. The Board even defied the Governor's attempts to deal with the crisis. In fairness, the people who were responsible for that

inaction have been replaced by members and staff who pay more heed to the abomination of NRS 622.080. However, there is no guarantee another group of people in the future might not revert to the "good old boy" style of management that has too often characterized our boards in the past.

Senate Bill 354 will eliminate one of the fundamental causes of this phenomenon, namely the dominance of the boards by the very professions they are established to oversee. There are 37 occupations and professions subject to NRS Title 54 which have board or commission structures. Of these, three have no public members, the State Barbers' Health and Sanitation Board, the Real Estate Commission, and the Commission of Appraisers of Real Estate. Twenty-four have only one public member. Eight have two or more public members. The largest board, the Board of Dental Examiners of Nevada, has 11 members, but only 1 public member. Only one board has more nonprofessional members than professionals which is the Board of Homeopathic Medical Examiners.

Senate Bill 354 has three major changes to correct the imbalance between public and professional representation. It requires all boards to have at least two public members, with the exception of the State Barbers' Health and Sanitation Board, which has one; and one of those public members must serve as chair or president as appropriate in the particular chapter governing the board. The Governor would appoint one of the public members to serve as chair or president rather than the board selecting its own as at present. This individual serves in that capacity at the pleasure of the Governor. This provision gives the Governor more control over these appointive boards.

If the chair or president is not responsive to the Governor, the Governor can replace the person with another public member. However, the replaced person remains as a member of the board until the expiration of that person's term. This arrangement preserves the independence of the board. The chair or president appointed by the board would hire and fire the executive director, if the board has one; otherwise the chair or president would hire and fire staff. Hiring and firing is to be done after consultation with the other board members, but the ultimate authority over staff would rest with the public member who serves as chair or president. This arrangement prevents staff from becoming captive to the professional members of the board, but would still provide adequate input by the professional members.

Because the Governor appoints the public member, who in turn selects the staff, the staff itself is more responsive to the Governor than to the professional members of the board.

Senate Bill 354 does not remove any current board members. It is designed to phase in the changeover to public control as existing terms expire. This feature avoids disruption of board operations and provides for a smooth transition to public control. Since these boards are expressly established by the Legislature for the protection and benefit of the public, we owe it to the public to allow their representatives to determine the best way to accomplish that goal. We should no longer entrust this crucial task to the professionals who have an inherent conflict of interest and a tendency toward a cult of professional protectionism.

In the past, I have seen boards which were created by the Legislature to protect the public try to dictate to the Legislature the policies to be set. They hire professional lobbyists, with which I have no problem, to try to dictate their wills upon the Legislature. I bring this forward because we have a lot of new Legislators this Session, and I am trying to get the boards under control.

SENATOR SETTELMEYER:
Does this bill affect licensing boards only?

CHAIR SCHNEIDER:
Only boards under NRS Title 54.

SENATOR SETTELMEYER:
It is wise to have more individuals from the general public on boards. It may not be wise to require them to chair or be president of a board. There are many people who are qualified, and add a lot to a board, but they may not have the desire to be the chair or president.

BOBBETTE BOND (Policy Director, Nevada Health Care Policy Group):
Over the past four or five sessions, we have had several issues with several boards in the medical arena. Some of them have been fought out in this Committee. I appreciate the effort to try to bring public protection issues into the boards again. It has been very frustrating when the boards, their own attorneys, their own executive directors and their own chairs are dictating to

the Legislature that created them what their public mission should be. It is very difficult sometimes to protect the public mission in these boards.

MR. LEE:
I would like to stress the importance, for the Board of Medical Examiners, of having a medical professional as its chairman or president. This is not to suggest a layperson could not be elected by a board or commission to serve as the chair. In our experience, qualified laypeople have indicated they did not have the time or the desire to serve as chair because of some of the responsibilities the chair has to fulfill.

The chair of the Board of Medical Examiners, in addition to chairing the Board and working with the executive director and staff in developing the agendas, must also deal with matters occurring between the scheduled board meetings which require the expertise of a trained physician. Several of the meetings are for the investigative committees which work on complaints dealing with licensure by endorsement. The executive director and the chair need not wait until a board meeting to approve licenses of physicians who have applied for licensure by endorsement. Also, the chair serves on several national boards relating to boards regulating the practice of medicine throughout the Country.

There is a valid reason why the chair of the Board should be a member of the profession licensed by the Board. There is no prohibition against the Board electing a layperson or anyone else to be chair, but it has never occurred in the boards I represent.

MARSHA BERKBIGLER (Chiropractic Physicians' Board of Nevada):
The Chiropractic Physicians' Board of Nevada (CPBN) opposes S.B. 354 in its current form. We have the same concerns as the Board of Medical Examiners. The chairman of CPBN has always been a chiropractor. There are public members on the CPBN, but because the chair interacts with national boards and handles a lot of other professional issues relating to the practice of chiropractic, we would like to see that position remain with a professional member.

SENATOR SETTELMEYER:
Do any boards have a prohibition against a public member being the chair or president?

MS. BERKBIGLER:
No, not to my knowledge.

CHAIR SCHNEIDER:
One of the professional members could always be delegated to handle the professional issues and interact with national boards; and there could still be a public member elected as chair of the board.

MS. BERKBIGLER:
That is correct. We will be happy to work with you to try to resolve our concerns.

PAULA BERKLEY (Board of Occupational Therapy; State Board of Physical Therapy Examiners):
Nevada Revised Statute 640.030, subsection 5 states, "The Governor may remove any member of the Board for incompetency, neglect of duty, gross immorality or malfeasance in office." This is a much more direct approach. If you want the Governor to be more in control of a board member who is nonresponsive to this body or to the Governor, then you have that ability with the State Board of Physical Therapy Examiners. This particular provision is not in the Board of Occupational Therapy statute, but it could be put in all the boards' statutes. This would be more direct.

The boards are also concerned about the public member. The State Board of Physical Therapy Examiners had a public member as chair at one time, but most often the public member does not want to be president or chair because of the responsibilities. They also expressed a concern about the long wait for a Governor to replace a board member.

KATHLEEN J. KELLY (Executive Director, Board of Dental Examiners of Nevada):
The Board of Dental Examiners of Nevada (BDE) is in opposition to S.B. 411 as it is written. The BDE has taken the responsibility and the privilege of self-regulation very seriously. The purpose and mission of our BDE is to protect the safety of the public and ensure the quality of dental care and the competence of the practitioners providing care. We have completed the mission and purpose effectively with the members of the public who have served with distinction on the BDE.

The president of the BDE can be elected by the members, as well as the secretary/treasurer. It could be a public member or a hygiene member, but traditionally it has been a dentist for the same reasons the other boards have expressed. The president of the BDE has also served on national committees and participated in the design of the dental examinations administered by the BDE.

We are still a clinical examining board in addition to handling the discipline of licensees and the application process of licensees. The president also has been instrumental in our infection control policies, regulations and implementation. The BDE is satisfied with its ability to elect its president and secretary/treasurer from its members. The BDE has come to this Committee on occasion to express concerns and perhaps point out the unintended consequences of legislation being considered.

SENATOR SETTELMEYER:
When your board members or president are sent to a national meeting, are they reimbursed for costs or do they have to cover them themselves?

MS. KELLY:
Yes, they are reimbursed in accordance with our regulations, statutes and the State Administrative Manual. The board approves the members who attend. We have been fortunate to be able to send a majority of the members of the BDE, including the public member, to national meetings.

MS. HEGEDUIS:
Our main opposition to this bill is who is chosen to be the president of the board. The presidents of the SBOM have been physicians because of questions requiring the expertise of a physician. A layperson being the president might create problems for the SBOM by not being able to handle matters expeditiously. Our board is very dedicated and serious about protecting the public.

Nevada Revised Statute 633.528, requires the investigation of any malpractice claim filed with our office. This cannot be sent to a layperson. A layperson would not know if a medical malpractice had been committed. They would not know if the situation was verging on malpractice or not, which would warrant a letter of caution. They might not know to send it on to an expert witness.

It would be beneficial to the SBOM to have one of the licensees, appointed by the Governor to be an SBOM member, be the president of the SBOM. Not only do we need the expertise, but it also saves us money. When matters are assigned to the individual SBOM members, they do not charge for their services. All malpractice cases coming into my office are assigned to the five SBOM members. They review the medical records without charging the SBOM for their services.

A public member cannot protect the public like a professional member can. Public members have their own special talents which they bring to the SBOM. One of our statutes requires doctors to report various matters to the SBOM. If they fail to meet the requirement, this issue can be sent to a public member for review. We want to leave the medical decisions to the doctors, but the nonmedical issues can be assigned to the laypeople on the SBOM for adjudication. The Governor appoints all of our SBOM members. If the Governor is unhappy with a SBOM member, the SBOM member can be removed.

CHAIR SCHNEIDER:
The issue of the Governor replacing a member of a board is a problem. The Governor can ask the board member to resign. If the member refuses, then there is a real problem and that person would have to be impeached. All the power is not with the Governor. The purpose of this bill is to give more power and control to the Governor when the Legislature is not in session. We are trying to give more power to the Governor to run the State, as he sees fit, as the head elected official, regardless of party.

MS. SCOTT:
The State Board of Nursing has a seven-member board. We have the opportunity now to have two consumer members.

I have an e-mail from my consumer member, Sandra Halley. She has been serving since January 2008, when she was appointed by then Governor Jim Gibbons. She holds this position in very high regard and believes most sincerely in the SBOM's mission, which is to protect the public. Senate Bill 354 suggests the appointment of a second consumer member would be beneficial and she thoroughly agrees. She does not agree, however, that a consumer member should always be president. In her three years' experience, it has often become necessary for the president to vote. It is necessary to have thorough

medical knowledge to assess certain situations, and it would be in the publics' best interest to have a medically trained professional.

NANCY KUHLES, S.L.P. (Nevada Speech, Language and Hearing Association):
I have provided written testimony containing recommendations on S.B. 354 (Exhibit AA).

CHAIR SCHNEIDER:
I have a letter from Susan Lloyd, Au.D., written on behalf of the Board of Examiners for Audiology and Speech Pathology expressing objections to S.B. 354 (Exhibit BB).

This bill has drawn a lot of attention. We will get together with all interested parties to work on this bill.

We will close the hearing on S.B. 354. Having no further business, the Senate Committee on Commerce, Labor and Energy is adjourned at 11:01 a.m.

RESPECTFULLY SUBMITTED:

_____
Suzanne Efford,
Committee Secretary

APPROVED BY:

_____
Senator Michael A. Schneider, Chair

DATE: _____

EXHIBITS			
Bill	**Exhibit**	**Witness / Agency**	**Description**
	A		Agenda
	B		Attendance Roster
S.B. 289	C	Senator Copening	Written remarks
S.B. 289	D	Brett Barrett	Written testimony
S.B. 289	E	Brett Barrett	Nevada Surplus Lines Law
S.B. 293	F	Ed Guthrie	Opportunity Village Community Impact Assessment
S.B. 293	G	Ed Guthrie	Opportunity Village Testimony
S.B. 293	H	Ed Guthrie	Opportunity Village Nonprofit Reform & Limiting Liability of Nonprofit Corporations
S.B. 329	I	Senator Breeden	List of Drugs with multiple uses
S.B. 329	J	Barry Gold	AARP Nevada comments
S.B. 329	K	Elisa Cafferata	Written testimony
S.B. 294	L	Senator Cegavske	Proposed amendment
S.B. 294	M	Senator Cegavske	Proposed amendment
S.B. 294, S.B. 388, S.B. 411	N	Chair Schneider	Comparison chart of three bills
S.B. 294	O	Carol Cohen	Comments
S.B. 388	P	Cheryl Blomstrom	Proposed amendment
S.B. 294	Q	Keith Lee	Proposed amendment
S.B. 388	R	Keith Lee	Proposed amendment
S.B. 294	S	Joan Hall	Proposed amendment
S.B. 388	T	Joan Hall	Proposed amendment
S.B. 294	U	Neena Laxalt	Correspondence
S.B. 294	V	Neena Laxalt	Correspondence
S.B. 411	W	Lynda Mathis	Data on CMAs
S.B. 294, S.B. 388	X	Chair Schneider	Letter from Gregory L. Cohen, M.D.

S.B. 294, S.B. 388	Y	Chair Schneider	Letter from Steve Friedlander, M.D.
S.B. 294, S.B. 388	Z	Chair Schneider	Letter from Emil A. Stein, M.D.
S.B. 354	AA	Nancy Kuhles	Written testimony
S.B. 354	BB	Chair Schneider	Letter from Susan Lloyd, Au.D.