

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

**Seventy-Seventh Session
March 6, 2013**

The Senate Committee on Commerce, Labor and Energy was called to order by Chair Kelvin Atkinson at 1:37 p.m. on Wednesday, March 6, 2013, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 5100 of the Grant Sawyer State Office Building, 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 Kelvin Atkinson, Chair
Senator Moises (Mo) Denis, Vice Chair
Senator Justin C. Jones
Senator Joyce Woodhouse
Senator Joseph P. Hardy
Senator James A. Settlemeyer
Senator Mark Hutchison

STAFF MEMBERS PRESENT:

Marji Paslov Thomas, Policy Analyst
Caitlin Brady, Committee Secretary

OTHERS PRESENT:

James T. Overland, Sr., D.C., M.S., Preferred Chiropractic
Marlene Lockard, Nevada Chiropractic Association
Dr. Derek T. Day, Anthem Chiropractic
Dr. Joseph Nicola, Nicola Chiropractic
Dr. Roper Dollarhide, Vice President, Nevada Chiropractic Association; The Pain Clinic
Dr. Lisa Berger, The Pain Clinic
Benjamin Lurie, D.C., Vice President, Chiropractic Physicians' Board of Nevada
Marsha Berkbigler, Chiropractic Physicians' Board of Nevada
Andrew Priest, Ed.D., PT

Chair Atkinson:

We will not be hearing Senate Bill (S.B.) 126 today. We will open the hearing on S.B. 198.

SENATE BILL 126: Establishes provisions governing certain acts of pharmacists.
(BDR 54-101)

SENATE BILL 198: Revises provisions relating to the practice of chiropractic.
(BDR 54-834)

Senator Joseph P. Hardy (Senatorial District No. 12):

The bill allows a chiropractic assistant of a doctor of chiropractic to perform therapeutic services if the chiropractor is not on the premises but is available through telephone, facsimile or electronic means. The chiropractor must have deemed the Assistant to be capable and competent. The chiropractor must have performed a diagnosis or created a treatment plan and ordered the services. The bill defines direct supervision and indirect supervision in sections 2 and 3 respectively. Section 4 specifies Assistant trainees must perform their duties under direct supervision of a doctor of chiropractic. The majority of the intent of the bill is included in section 7. The services of an Assistant can be used when the chiropractor is not in the office but available by other means. Section 5 of the bill allows the Chiropractic Physicians' Board of Nevada to adopt appropriate regulations to ensure chiropractors and Assistants are meeting all requirements.

James T. Overland, Sr., D.C., M.S. (Preferred Chiropractic):

I have submitted written testimony ([Exhibit C](#)) explaining the need for the bill and what it hopes to accomplish. I will read it.

Senator Settlemeyer:

Does this apply to office assistants? Is there a statutory definition of a chiropractic assistant?

Dr. Overland:

This only applies to Assistants. The requirements for qualification and certification are located in *Nevada Revised Statute* (NRS) 634.123.

Senator Settlemeyer:

The Assistants would not perform adjustments, only therapeutic ancillary services. Correct?

Dr. Overland:

That is correct. They will perform the exact same duties they have previously performed on patients. We want them to be able to continue with indirect supervision.

Chair Atkinson:

Can someone please explain this in simple terms?

Marlene Lockard (Nevada Chiropractic Association):

The bill enables certified Assistants to see patients for their routine therapy if the doctor of chiropractic is out of town. If the doctor was at a conference and his or her plane was snowed in, not all the appointments would have to be cancelled. The Assistant could see patients coming in for routine therapy, not for adjustments. This will affect the compensation Assistants receive. They will be able to work a full day instead of only half a day if the doctor is out.

Chair Atkinson:

Would the Assistants be able to see new patients?

Ms. Lockard:

No, they would not.

Senator Hutchison:

Are there different malpractice insurance rates for direct versus indirect supervision?

Dr. Overland:

The largest malpractice insurance carrier, NCMIC Insurance Company, and other carriers provide coverage of professional services for employees including Assistants. They do not differentiate between direct and indirect supervision. If the activities are within the scope of practice defined by statutes, malpractice insurance coverage is applicable.

Senator Hutchison:

If there were a problem with indirect supervision, I would think an insurance carrier would have a different rate. Are you aware of any differentiation in insurance rates?

Dr. Overland:

No, I am not. They do not differentiate between direct and indirect supervision.

Senator Denis:

If the Assistants are not performing adjustments, what are they doing?

Ms. Lockard:

I go to a doctor of chiropractic office and often do not see the doctor. Between adjustments, the Assistant will put gel and an electric massager on my neck or other areas in need of attention. Assistants are not doing adjustments.

Senator Denis:

When I was in high school, I pulled my hamstring. I went to a doctor, not a chiropractor, who attached electrodes to my leg. One time the assistant did not check the machine and it was on full voltage. I jumped off the table about one foot. Do Assistants perform similar types of activities?

Dr. Overland:

The doctor probably used electrical muscle stimulation. It is one of the many modalities in which Assistants are trained and tested. They use electrical muscle stimulation as well as other modalities. They are well trained and perform these activities on a regular basis. In most offices, the doctor is not present with the patient when the Assistant is performing therapy.

Chair Atkinson:

The doctor of chiropractic is in the building but may not be in the room while the Assistant is administering treatment. Correct? Is the equipment used today different from the equipment used when Senator Denis was in high school?

Dr. Overland:

That is correct. The techniques and the equipment have improved.

Dr. Derek T. Day (Anthem Chiropractic):

I support S.B. 198. This bill will expand the scope of practice for Assistants. Assistants have been trained by doctors, have experience with patient care and will not be performing services they do not already perform. There have been some questions about malpractice insurance. Typically, malpractice insurance coverage for doctors of chiropractic also covers their employees. There would not be any added expense to the Assistants. A few insurance companies offer

separate policies for Assistants, but it is not necessary. In the current economic conditions, this bill has the potential to create jobs. Doctors will see value in hiring additional Assistants they could delegate medically necessary treatment to if the doctors are not able to be in the office. The intent of the bill is not to allow Assistants to have carte blanche authority to treat patients on a daily routine without a doctor of chiropractic. This type of legislation is in place in other states and is working well in those states. They have not had a history of complaints or injuries. The bill will also help curb the loss of income to the staff if the doctor is unable to be in the office.

Dr. Joseph Nicola (Nicola Chiropractic):

I have found the services of Assistants extremely valuable. They perform passive modality services, take patients through rehabilitative exercises and perform various therapies. I do not need to be present for the Assistants to perform these tasks safely. They have been trained and licensed. We only want to change the requirement of needing the doctor of chiropractic to be on site while the Assistants perform their duties. The Assistants do not adjust, evaluate or diagnose patients. They do not interpret x-rays or diagnostic tests, and they do not form treatment plans. Once a treatment plan is established by the doctor, the Assistant can perform the services. This will be beneficial to doctors when they are ill or running late. It will also provide a continuity of care for the patient. If the doctor is ill, his or her appointments must be canceled. Patients who have medically necessary treatment may choose not to get treatment or they may choose to see another doctor of chiropractic. If they choose to see another doctor, there could be redundancy in x-rays or evaluations performed. This will allow for continuity in care. Providers of health care have been doing this in medicine and osteopathy. Nurses routinely perform standing orders. We are asking for the same type of professional relationship with Assistants as other professions.

Dr. Roper Dollarhide (Vice President, Nevada Chiropractic Association; The Pain Clinic):

Nevada is one of very few states where Assistants are required to be licensed. Licensure ensures patients receive care from trained professionals. There are high standards for licensure and continuing education requirements for relicensure. The Assistants in Nevada are some of the best trained in the Nation. The bill would allow the Assistants to administer the same care they currently provide without jeopardizing public safety in any way. Expanding the scope of practice to allow Assistants to provide unsupervised care will create jobs. The

Assistants are performing these services without the doctor in the same room now. They are performing their duties safely. The intent of S.B. 198 is to allow the Assistants to provide the same services without the doctor of chiropractic in the building.

Dr. Lisa Berger (The Pain Clinic):

I agree with the previous testimony. I support S.B. 198.

Benjamin Lurie, D.C. (Vice President, Chiropractic Physicians' Board of Nevada):

The Board is opposed to S.B. 198. We have not had the opportunity to review the language and vote on it as a Board. Our function is to create regulations to enforce NRS 629 and 634 and *Nevada Administrative Code* 634. As a chiropractor, I appreciate the spirit of the bill. The Board must look at it from a public safety point of view. There are four issues with the bill.

First, we need to review the educational process for Assistants. There is formal schooling and training available in chiropractic colleges. Most Assistants, however, are trained in the office by a licensed doctor of chiropractic. They are required to complete 6 months of on-the-job training after which they take a State certification exam. We offer the exam twice a year. The pass rate of first-time takers is below 50 percent.

Second, we must discuss the possible abuses by doctors of chiropractic. We need safety parameters for doctor availability and hiring multiple Assistants who only perform therapeutic services.

Third, the Board may need additional staff, and we are considering attaching a fiscal note to the bill. Our two staff members have a full workload reviewing applications, issuing certification and administering exams. If we see an increase in applications with this bill, we would need to add a third staff member to the Board.

Fourth, we must consider why patients visit a chiropractor. If a patient comes to a routine therapy session with an Assistant and has new complaints or problems, there might not be a doctor on the premises to evaluate the patient, change therapy or modalities or refer the patient for a second opinion. We need to review the educational background of Assistants and how they are trained in reporting new symptomatology.

Most malpractice insurance will cover any type of injury covered under the state's regulations. There are injuries associated with some modalities. Patients can receive electrical burns from muscle stimulation or ultrasound burns, or they can be injured doing therapeutic exercises. I have been speaking with Dr. Overland, and I agree with the spirit of the bill. The Nevada Chiropractic Association and the Board have some language issues to massage out before moving forward.

Senator Hutchison:

Are you aware of any malpractice insurance carrier who acknowledges an increased risk when an Assistant is indirectly supervised?

Dr. Lurie:

The NCMIC will cover any injury occurring in a chiropractor's office if those services are covered in the practice acts of the state in which the doctor practices. I do not have specific information about the number of Assistants that have been sued. I am sure it is very low. Chiropractic malpractice insurance cost is very low. Chiropractors can be covered for a \$1 million/\$3 million policy for about \$3,000 per year. It is low because the type of care we provide is not invasive, patients are not normally injured and a doctor of chiropractic has advanced training in spinal manipulation and physiotherapy. It is not a requirement for a doctor of chiropractic in Nevada to carry malpractice insurance. Doctors without malpractice insurance would not be able to have Assistants perform any type of therapy in a clinic without direct supervision.

Senator Hutchison:

Is there a requirement in the licensing or regulatory provisions for doctors of chiropractic to carry malpractice insurance?

Dr. Lurie:

No, there is not. According to NRS 634.1295, doctors of chiropractic are not required to carry malpractice insurance coverage. They are required to notify patients they do not carry malpractice insurance.

Chair Atkinson:

You mentioned a variety of ways a patient could be injured or burned during services performed by an Assistant. How does this bill change that? Those same injuries could occur now.

Dr. Lurie:

The injuries could happen now. However, there is a doctor on site to evaluate the patient and render aid if necessary. Sometimes burns are not visible. The Board must consider the public safety aspect. What happens if an injury occurs and a doctor is not on site? Who will evaluate the patient? The patient may have to be sent to his or her primary care physician or the hospital because Assistants are not properly trained to examine or diagnose the patient. This is rare, but we must consider all possible situations.

Senator Hardy:

When you used "we" and "the Board" you are actually saying "I, as a Board member" because you have not had a Board meeting. Correct?

Dr. Lurie:

That is correct. We have not had a meeting to discuss S.B. 198. The Board will discuss these issues at our next meeting.

Senator Hardy:

Section 5 of the bill allows the Board to adopt regulations governing the implementation of this process. If you are going to discuss the issue at your next meeting, you could also discuss what would be needed to implement this safely. In terms of a possible fiscal note, there will be the same number of inspections and offices. This does not affect how many chiropractors are practicing. It may affect how many people are employed in their offices.

Dr. Lurie:

After we discussed the bill with the Board's executive director, we found we would need to hire additional staff for the Reno office and an additional investigator to go to clinics.

Senator Hardy:

Do you mean you, as a Board member, and not the Board?

Dr. Lurie:

Correct. That was my direct conversation with the executive director.

Chair Atkinson:

According to section 5, the Board may adopt regulations governing the process a supervising physician should use to evaluate an Assistant. The doctors of

chiropractic are not required to supervise Assistants indirectly, and the Board could ensure it is done safely. Correct?

Dr. Lurie:

The Board would not be required to, but we would put forth regulations to address public safety.

Chair Atkinson:

That is to be expected. The proponents are shaking their heads yes in answer to my question.

Marsha Berkbigler (Chiropractic Physicians' Board of Nevada):

I agree with the testimony Dr. Lurie gave. In a way, we are neutral because we have not had a meeting to take a position on the bill. We did want to make the Committee aware of the reasons we did not automatically sign on to support S.B. 198.

Andrew Priest, Ed.D., PT:

I am a physical therapist and an expert in the modalities being discussed. I have taught these modalities at the doctoral level for 15 years. The modalities are generally benign. It is hard to injure someone, but I and people who work for me have unintentionally injured patients using these modalities. I have always been on site and able to assess a patient after injury. I am concerned about an Assistant's ability to apply the necessary technical skills having only had 6 months on-the-job training and passed a written exam. The Assistants do not have the ability to assess the effects of the modalities and determine if they are positive or negative. If the physician is not on site, the patient does not have the opportunity to have the injury assessed.

If I had the opportunity to not be on site in private practice, I could have more than one office and split my time. Two partnered doctors could open three offices and have Assistants running one office completely on their own. I would be abusing the system, but it is possible. Doctors could increase their revenue significantly by not needing to be present full time in an office. A practice could bill for chiropractic work without a doctor of chiropractic being present. There is a significant potential for abuse, and patient injury may not be assessed.

Senator Hutchison:

Could your concerns about abuse be addressed by the Board's regulations?

Mr. Priest:

It is possible. The Board does not catch all abuses. I am not sure the Board has the resources to investigate and prosecute all abuses.

Senator Hutchison:

I am not going to sue the Board if something happens; I am going to sue the doctor.

Mr. Priest:

I know the Board does not have the resources to prosecute without the Attorney General. I have seen this abuse happen in Texas and Iowa because their boards do not have the resources to prosecute. They could fine the abuser or rescind their license. This type of abuse is rare, but it does happen. I would be in favor of the bill if there were safeguards built into it. You cannot increase your revenue by expanding your practice without having a doctor present.

Senator Hutchison:

You have some legitimate concerns. I am not sure a chiropractor who would abuse a regulation would obey a law. The Board could address abuses in their regulations.

Senator Hardy:

If there were an amendment to preclude the known abuses, would you support the bill?

Mr. Priest:

Yes. I do not want to see people abuse this. Checks and balances need to be in place so chiropractors do not double their revenue without doubling their workload simply because they are no longer required to be in the office.

Senator Hardy:

I recognize the Board's responsibilities, and the bill allows them to create regulations on this matter. We need to be sure our Committee is not creating legislation that will lead to abuses.

Chair Atkinson:

I will close hearing on S.B. 198. We have three bill draft requests (BDRs) to introduce. I am requesting Committee introduction of BDR 54-963.

BILL DRAFT REQUEST 54-963: Revises provisions relating to home inspections.
(Later introduced as [Senate Bill 218](#).)

SENATOR DENIS MOVED TO INTRODUCE BDR 54-963.

SENATOR JONES SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Atkinson:

I am requesting Committee introduction of BDR 54-502.

BILL DRAFT REQUEST 54-502: Revises provisions governing the unlicensed practice of certain health-related professions. (Later introduced as [Senate Bill 220](#).)

SENATOR DENIS MOVED TO INTRODUCE BDR 54-502.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Atkinson:

I am requesting Committee introduction of BDR 54-503.

BILL DRAFT REQUEST 54-503: Revises provisions relating to enforcement authority of health-related licensing boards. (Later introduced as [Senate Bill 219](#).)

SENATOR HUTCHISON MOVED TO INTRODUCE BDR 54-503.

SENATOR WOODHOUSE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Atkinson:

There is no further business. The meeting is adjourned at 2:34 p.m.

RESPECTFULLY SUBMITTED:

Caitlin Brady,
Committee Secretary

APPROVED BY:

Senator Kelvin Atkinson, Chair

DATE: _____

| <u>EXHIBITS</u> | | | | |
|------------------------|----------------|---|-------------------------|--------------------|
| Bill | Exhibit | | Witness / Agency | Description |
| | A | 1 | | Agenda |
| | B | 4 | | Attendance Roster |
| S.B. 198 | C | 2 | James T. Overland, Sr. | Written Testimony |