

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

**Seventy-Eighth Session
February 9, 2015**

The Committee on Commerce and Labor was called to order by Chairman Randy Kirner at 1:30 p.m. on Monday, February 9, 2015, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Randy Kirner, Chairman
Assemblywoman Victoria Seaman, Vice Chair
Assemblyman Paul Anderson
Assemblywoman Irene Bustamante Adams
Assemblywoman Maggie Carlton
Assemblywoman Olivia Diaz
Assemblyman John Ellison
Assemblywoman Michele Fiore
Assemblyman Ira Hansen
Assemblywoman Marilyn K. Kirkpatrick
Assemblywoman Dina Neal
Assemblyman Erven T. Nelson
Assemblyman James Ohrenschall
Assemblyman P.K. O'Neill
Assemblyman Stephen Silberkraus

COMMITTEE MEMBERS ABSENT:

None



GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Kelly Richard, Committee Policy Analyst
Matt Mundy, Committee Counsel
Leslie Danihel, Committee Manager
Earlene Miller, Committee Secretary
Connie Jo Smith, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Nicole Willis-Grimes, representing State Contractors' Board
Margi A. Grein, Executive Officer, State Contractors' Board
Joanna Jacob, representing Associated General Contractors Las Vegas
Chapter and Nevada Contractors Association
Richard (Skip) Daly, Business Manager, Local 169, Laborers' International
Union of North America
Jack Mallory, representing Southern Nevada Building and Construction
Trades Council
Brett Kandt, Special Assistant Attorney General, Office of the Attorney
General
Colleen Platt, Deputy Attorney General, Office of the Attorney General
Keith L. Lee, representing Board of Medical Examiners
Michael D. Hillerby, representing Board of Dental Examiners of Nevada,
State Board of Pharmacy, and State Board of Nursing
Steven Burt, Reno, Secretary-Treasurer, Board of Examiners for Alcohol,
Drug and Gambling Counselors
Agata Gawronski, Executive Director, Board of Examiners for Alcohol,
Drug and Gambling Counselors

Chairman Kirner:

[Roll was taken, and a quorum was present.] We are going to take the bills out
of order, beginning with Assembly Bill 84.

Assembly Bill 84: Authorizes the State Contractors' Board to issue a written administrative citation to a person who acts as a contractor without an active license of the proper classification. (BDR 54-386)

Nicole Willis-Grimes, representing State Contractors' Board:

With me is the Executive Officer of the State Contractors' Board, Margi Grein, and she will take you through Assembly Bill 84.

Margi A. Grein, Executive Officer, State Contractors' Board:

Assembly Bill 84 seeks to remove some language and change the wording from "shall" to "may" with regard to the Board's authority to issue an administrative citation when a licensee has performed work outside the scope of his license. [Referred to a written overview ([Exhibit C](#)).] The Board's investigative efforts are comprehensive, and the outcome of such cases may vary based upon the specific circumstances involved. For example, we had a long-standing general building contractor a few years ago with no disciplinary history, and he made a very honest and minor mistake in performing work outside the scope of his license. We no longer have discretion to issue this gentleman a simple warning letter; we had to issue an administrative citation.

He appealed the matter to the Board, which he has a right to do under *Nevada Revised Statutes* (NRS) Chapter 624; yet the hearing officer, because of the restrictive language in the statute, could not do anything other than uphold the citation. There was a limited amount of work being performed, and we had no discretion. That is the crux of this bill, and we ask that the Board be allowed discretion in making a determination. It is not a one-size-fits-all situation regarding contracting.

Assemblywoman Kirkpatrick:

Can you explain where you currently have discretionary authority to work with the contractors?

Margi Grein:

Yes. Fred Schoenfeldt, who is in charge of our northern Nevada investigations, is also here if there are questions I cannot answer.

The Board has wide discretion with regard to workmanship issues where a contractor has performed faulty workmanship. We attempt to have the contractor resolve those issues and respond to the homeowner's issues. Disciplinary action may or may not be involved. The contractor may correct the work and we close the complaint.

With regard to all sections under workmanship, where they are possibly over their limit—or, for instance, when the contractor has a license limit of \$200,000 and a change order puts him over the limit by \$5,000, we have discretion to look at each case on its own merit. It is my understanding that is the only section of the statute that requires an administrative citation, and that it is not permissive.

Assemblywoman Carlton:

My concern is that the contractor did not say he was innocent. It was a mistake and something was done about it. It seems to me that the problem is not in the citation process but in the appeal process. I am confused, since rules were broken and there was a fine, correct?

Margi Grein:

That is correct.

Assemblywoman Carlton:

How large a fine is it? Do we know?

Margi Grein:

The penalty varies.

Assemblywoman Carlton:

Because there is flexibility with the penalty?

Margi Grein:

Yes, and that is set forth under the administrative rules.

Assemblywoman Carlton:

It seems to me that no one is saying that the contractor was innocent. I would hate to see permissive language that allows someone who is guilty of doing something to be declared innocent of doing it. If there is a change in the appeal process, maybe that is what needs to be done so that extenuating circumstances can be taken into consideration.

Assemblyman Nelson:

I know this is not part of the amendment, but I am curious. The language says "the Board or its designee" may do something. Who is the designee, usually? Is it the Executive Officer? Who does the Board use to do these things?

Margi Grein:

We designate our investigative officers to issue citations. The investigator will investigate the case and make a recommendation. The citation comes back through the process, and I sign the citation on behalf of the Board.

Assemblyman Nelson:

Do you have any discretion in that regard?

Margi Grein:

No, I do not with regard to the way the statute is written on this particular issue.

Assemblyman Ellison:

The "may" is, basically, discretionary for the investigator in the field, correct? For example, say I am doing a \$10,000 project in the field and my limit is \$10,000. Say we are in the middle of this project trying to complete it, and I have a change order for \$5,000. I could not go back to get a limit increase, so this is a "may" type issue, correct?

Margi Grein:

Yes, Mr. Ellison. Currently, this particular section that we are asking to be amended applies to someone working outside the scope of his license. That is the only portion that has restrictive language; the limit is still discretionary. That would depend on the circumstances involving each investigation.

Assemblyman Ellison:

I think that is a good bill.

Chairman Kirner:

Does anyone wish to speak in support of this bill?

Joanna Jacob, representing Associated General Contractors Las Vegas Chapter and Nevada Contractors Association:

I want to acknowledge that the Contractors' Board had reached out to us to talk about this measure. We support the bill.

Assemblywoman Carlton:

Are there instances when any of your members have encountered problems under this? Do you have examples?

Joanna Jacob:

I have no particular examples. I know that the Contractors' Board reached out to industry representatives and we vetted it through our members. I can provide you with examples if you would like.

Assemblywoman Carlton:

I would like to know how big a problem it is, or if it only happens every once in a while.

Joanna Jacob:

I would be happy to do so.

Chairman Kirner:

I see no others in support. Is there anyone in opposition to this bill?

Richard (Skip) Daly, Business Manager, Local 169, Laborers' International Union of North America:

I think taking away the "shall" opens it up too much when talking about giving the Board discretion. It also gives discretion to the investigator who is on site. He can say I "may" issue a citation or not because I am the designee. I think it is too much discretion. If you are operating as a contractor without a license, or without the proper license for the work you are performing, that should get to the Board. The Board may want to look at what their discretion is once it gets there, but I think this is not the proper way to do it.

During the interim I and others in the building trades, and in meetings with the Contractors' Board over a variety of issues, had these discussions. One case concerned a contractor who was working in downtown Reno installing a rock-climbing wall. The contractor had a B2 contractor's license, meaning the contractor can only do residential work under four stories. He was working on the old Fitzgeralds Hotel, now the Whitney Peak Hotel, which is about 16 stories high. The Board issued a citation after a complaint was filed.

I do not want that investigator to have the discretion to write a citation. If the Board wants to use discretion later, that is great, but that contractor was outside his license. He knew he had a B2 license; he knew it was a multistory building, and he should have received the penalty because he violated the law. I do not agree that this type of discretion warrants that. The Board has a lot of discretion through the *Nevada Administrative Code*—from a letter in your file, permanent or not, up to \$50,000. I believe if a person is outside the scope of his license, in essence, acting as if he were a contractor without the proper license, I think the minimum fine in statute now is \$1,000. If there is no

discretion but to uphold the penalty, do not break the law. Stay within your license scope and you will be fine.

Chairman Kirner:

You are expressing concern in the change where it says "the Board or its designee." It is the "or its designee" that is an issue for you. You are not opposing the Board having any discretionary powers.

Richard Daly:

Yes. The way the law is written now, it says if the Board finds by a preponderance of the evidence that a person has contracted outside the scope of his license, he shall be issued an administrative penalty. The prescribed penalty for that may or may not be \$1,000 up to \$50,000.

The next paragraph states that if you commit any other penalty, the Board "may" issue an administrative penalty. If you are outside the scope of your license or over your license limit, the person who can write the citation—the police officer, if you will—does not have to give you the ticket. If you do not have a license, you will be given a ticket. At that point, the Board testified that it does not have the discretion it may want to have for that violation. I am saying that it is too much discretion for an investigator in the field. The citation should be written every time and the Board needs to follow up with the penalty.

Assemblywoman Neal:

Do you think it makes the "preponderance of the evidence" standard too flexible? You are saying that the investigator is in the field looking for X, Y, and Z. When you shift from "may" to "shall," your evidence standard clearly becomes flexible, because now you are saying I have an option to do this or not.

Richard Daly:

The Board members do not investigate a complaint. An investigator/designee is sent to do that. If the investigator finds someone who is working without a license outside the scope, the investigator is compelled, under this law, to write a citation, and then it will go to the Board, which can impose a lesser penalty.

The way this bill is written, when the designee goes out in the field, he can take it upon himself not to write the citation. In the example I gave, of the man with the B2 license performing work outside his scope, he was given a citation. Yet, he was able to finish the job. The Board said it had no power to force him to stop. I suggested the Board work on that. I was hoping for a bill like that, where the Board could give him a stop-work order. I am troubled that the Board wants to go the other direction and then give discretion to the investigator.

Many of the problems we have had have been with the investigators. I think this is not a step in the right direction based on our experience.

Assemblyman Ellison:

The way I am looking at this, you are right. If they were out of scope with the license, that is an issue that should be taken up, and I think that would be done. I do not think any investigator in the field would not say whether a person with a B2 license needed an A license. I do not think that is the issue. You used the word police. If a police officer stops you for speeding, it is his or her discretion to write you a ticket. It does not say I shall write you a ticket; it is discretionary. I think the problem is with these contractors who have minor offenses. The Contractors' Board is bogged down. To go back and issue every citation to take back to the administration and to the Board, I think that is not the intent. I think the intent is minor problems that can be handled in house. It is not totally out-of-scope issues.

Richard Daly:

As the language is now written, without changes, the only place where the citation must be written is when people are outside their scope. They are, in essence, acting in the capacity of a contractor without a license. When you read section 1, subsection 1, paragraph (b), which also has language removed, the Board currently has discretion. The word "may" is already there. All those other things are in existing law for that designee of the Board to say we are going to let that go. They do not have to issue an administrative citation. We have had many experiences where the investigators have been lenient.

As legislators, you spend a lot of time passing these laws. There is not one word on this page that was not scrutinized and put in place for the best public policy. Acting outside one's scope as a contractor, without a license, is a big deal. I think we should not take away the mandatory part of the citation. Let them explain themselves. Other things do not bog down the complaint.

Here is another example where I think the Board did a good job. There was a contractor working on the Hard Rock Hotel at Lake Tahoe. It was a firm from Florida. The company was hired by the owner and things went well except there was a problem. The company had no license whatsoever—not even outside their scope—in Nevada. A complaint was filed and an investigation ensued. The person was cited, and that is an ongoing investigation.

We have seen circumstances where investigators, if they have that discretion, may not have issued that citation and said, it is okay, they are in the process of filing for their license, they will have it in a couple of months, and the investigator let it go. I think it is wrong and it is not good public policy.

Assemblyman Ohrenschall:

Can you explain what you see as possible safety concerns?

Richard Daly:

When a person acquires his contractor's license, there are myriad steps and thresholds one must meet in order to obtain that license: have verifiable experience in the field; pass a competency test; and prove financial stability that shows you can contract for the work, be bonded, and complete the work. When all that is in place, we hope we have contractors who are qualified in the scope for which they are licensed and have a license limit that protects the public. That is why we have the regulations. If a person then performs work for which he has not been tested—he may not be bonded or financially qualified to do the work or does not have a license for the scope of work that he is performing—I think it creates a safety issue. Otherwise, you are saying that if those are not issues worth enforcing, why did we make the rule in the first place? If there is a rule but there is no penalty, I would say there is no rule.

Chairman Kirner:

Is there anyone neutral on this matter?

Jack Mallory, representing Southern Nevada Building and Construction Trades Council:

Where I agree with Mr. Daly is out of an abundance of concern regarding individuals who knowingly break the law. That is always a concern for us organizationally. I tend to part ways with Mr. Daly when there are issues of individuals who are not knowingly breaking the law.

An instance that we have come across is where the worker was misclassified as an independent contractor and treated as such. The worker filed a wage claim because he had not been paid almost \$30,000. The originating contractor filed a complaint with the State Contractors' Board claiming the individual had been a subcontractor and was not properly licensed. A citation was filed and ended up before a district court judge. I can see the instance where an investigator and the Board itself needs to have some discretion as to whether or not a citation will be filed.

Chairman Kirner:

Are there any questions? [There were none.] Ms. Grein, would you like to make a closing comment?

Margi Grein:

Thank you for listening to us today. As previously mentioned, this is not a one-size-fits-all document. Although Mr. Daly's concerns were legitimate, I believe

those incidents happened some time ago. We would like that discretion so that we can make the determination on a case-by-case basis.

Assemblywoman Kirkpatrick:

I receive your updates about unlicensed contractors and pass that information along to my constituents so they know whom not to call. Will we still see the citations or would this wait until you go through that same procedure? Is that report changing?

Margi Grein:

The language we are proposing to amend is only related to licensed contractors. Administrative citations are public record and posted on our website. The unlicensed citations we issue go through the court system and are available through the court. I see no change in what we disclose to the public. We truly appreciate anything you can do to help us get the word out to the consumers of Nevada, but I do not feel that this bill has any effect on the public disclosure or the consumers.

Chairman Kirner:

With that I will close the hearing on A.B. 84 and move to Assembly Bill 72.

Assembly Bill 72: Revises provisions governing state professional licensing boards. (BDR 54-161)

Brett Kandt, Special Assistant Attorney General, Office of the Attorney General:

We appreciate the opportunity to present Assembly Bill 72 to you today. [Referred to letter from the Office of the Attorney General ([Exhibit D](#)).] Deputy Attorney General Colleen Platt will go through the details because she is the expert on this subject matter.

Generally speaking, A.B. 72 grants the boards and commissions that are established in Title 54 of the *Nevada Revised Statutes* (NRS) clear and uniform enforcement authority. These Title 54 boards and commissions are required, pursuant to NRS 622.080, to carry out and enforce statutory provisions regulating various occupations and professions for the protection and benefit of the public. However, many of these regulatory bodies in Title 54 do not currently have expressed statutory authority to issue citations for violations of their respective chapters, and that is a power necessary for the effective regulation of a particular area.

Colleen Platt, Deputy Attorney General, Office of the Attorney General:

Assembly Bill 72 revises NRS Chapter 622, which governs these regulatory bodies, and specifically grants those regulatory bodies the statutory authority to

issue citations to persons when the regulatory body believes that the person has committed an act which would constitute a violation of that chapter. This bill goes on to provide the types of actions which the regulatory body may take when issuing the citation, including a cease and desist letter, administrative fines, and asking the person to take corrective action or to reimburse the regulatory body for costs associated with the investigation. This bill also sets forth a statutory procedure for a person to request a hearing and the steps that the hearing must entail. Assembly Bill 72 ensures consistency among the regulatory bodies concerning citations and the appeal process of those citations for the protection of the public.

Assemblywoman Carlton:

The concern I have is that this is in NRS Chapter 622. There are some boards that are sophisticated enough to comply with something like this. We have some boards that are barely making ends meet. Having consistency is great, but unfortunately we do not have consistent boards across the state. I understand wanting to go in, and with some of the things we have read in the news, being able to go in and do a cease and desist order without the due process language that would need to be incorporated into this. I have concerns with someone walking in and shutting down a business.

When we look at an order to pay an administrative fine, that would be a new fine for some boards, so it would have to be established in statute. This would give them the authority, but they would have to come back with a legislative measure in order to be able to establish a fine by statute. If this passed early enough, they could do that; otherwise, they would not be able to do anything until the next legislative session, if I understand the logistics of it all.

Unless there is a fee parameter already within their fee structure, and they have not bumped up to their cap, they could raise the fee or adjust it, but if they do not have a particular fee structure, they would have to return and talk to us about a new fee. I want you to be able to go in and get the bad guys; that is what boards are all about—public safety. The last thing I want to do is have a member of my family or a friend be treated by someone and have something terrible happen, but we have to be very careful how we structure this. By putting it in NRS Chapter 622 instead of touching the larger, more sophisticated boards that would be able to do this, I am afraid if we gave this power to a small board and it could not handle the change, we would be setting up the state for liability for not enforcing something that we did not give them the resources to do.

Colleen Platt:

In section 1, subsection 1, paragraph (a), the citation could include a cease and desist letter. In subsection 2, the person who receives that letter could then request a hearing before the Board to question the cease and desist letter; that is the due process element. The Board would agendize the meeting, both sides would present testimony, and the Board would determine whether or not the violation should be upheld.

Assemblywoman Carlton:

To clarify, it is the time frame involved? If you shut down a dental office, and they are scheduled to see 200 people within the next 30 days, and the process takes 30 days, that is 200 people who did not receive care. That is my concern.

Colleen Platt:

This bill is mainly geared toward giving the boards the authority to go after primarily unlicensed activity. You could include a licensee, but the gist of it is to identify unlicensed activity. Some boards do not have the ability to cite licensees, but it would pertain to those boards as well and to their licensees.

We could possibly amend the cease and desist letter to include language that talks about a tolling, or staying, of the procedure until such time as the hearing is held.

Assemblywoman Carlton:

I want you to go after those who are unlicensed. We had people pulling teeth in a garage in Reno. The Board of Dental Examiners of Nevada addressed it and wrote it into their code.

Colleen Platt:

This bill is meant to supplement the statutes in place, not supplant them. It is supposed to work in conjunction with what a board already has; some boards do not have this ability.

Assemblywoman Carlton:

It goes back to the fact that not all boards are the same. Not all are sophisticated; some need to be sunsetted. We have sat through some long hearings in this room because a lot of boards were not doing the jobs they have now, much less anything in addition. You are trying to do the right thing, and I appreciate that.

Colleen Platt:

Regarding the fines, section 1, subsection 1, paragraph (b) states: "An order to pay an administrative fine prescribed by the regulatory body," so the regulatory body will have to prescribe the fines. In subsection 7, a board would be limited to its administrative fine capabilities. If the fine is \$10,000, the administrative fine that they are allowed to prescribe would be capped at \$10,000. They could have various regulations depending on whether the statute is violated. That could be \$100 for a first violation and \$200 for the next on a progressive scale. I have seen those in the administrative regulations, which would then come before the Legislative Commission for approval.

Assemblywoman Carlton:

I am concerned that the ones you are trying to fix are the ones that do not have any penalties and, therefore, would have to return for something statutory.

Colleen Platt:

Possibly.

Chairman Kirner:

Are there any other questions?

Assemblywoman Kirkpatrick:

I feel as if we are getting away from the language within the bill, and I want to talk about it. There are two things. Looking at section 1, subsection 1, in all other chapters when it mentions ability, if you have "reason to believe," it talks about evidence. This does not say that you believe there is evidence. I think that is inconsistent with what other boards have the ability to do.

In subsection 1, it says, "A citation issued pursuant to this section may include." It does not say "shall," which we just talked about. That does not mean that paragraph (a) through subsection 2 actually apply, correct? You "may" but it does not say you "shall" follow this procedure. For me, this is disappointing because there are 57 boards that are affected by this, and there are not 57 people in this hearing room. Fifty-seven is a broad range of boards statewide that you are giving the ability to issue citations and other things.

My last point is that it says the board, the regulatory body, can set up regulations. Regulations cost money; they are not free. What about the smaller boards? Based on the fiscal notes I receive from the agencies and boards, regulations are about \$5,000 to \$7,000. You are now putting another fee onto the business sector, which is going to say that you do not have to have evidence to do all these things. I am not an attorney, but I know "may" and

"shall" make a difference, just as "and" and "or" make a difference. I want to understand how you see it differently.

Colleen Platt:

In subsection 1, paragraphs (a), (b), (c), and (d) were meant to give flexibility to the boards because in some situations, the boards may want to issue a cease and desist order as opposed to a fine. It gives the boards the ability to send a citation based on the circumstances of that particular situation. I understand that regulations cost money. This is meant to provide these boards a tool so they can effectively regulate their profession.

Assemblywoman Kirkpatrick:

We have had this problem in Medicaid with group homes and the ability to issue several fines. I worked on those bills in 2007, but we heard one board at a time where the biggest problem was. I think it is ironic because the Contractors' Board is one of these boards and no one is here to testify. Why not start with the boards where the biggest problem is, as opposed to doing one blanket bill? When that is done, it takes us so much time to go back and remedy the problem if it is out of control. If we start with the bigger boards or the ones that have the issues, it is a lot easier for people to understand how they work.

Colleen Platt:

I will say that most of these boards have a very short statute that says they may issue a citation. Then it says that a person who receives that citation has 30 days to appeal. There is nothing in that particular statute that is copied and pasted throughout Title 54 that says what those citations can look like, what happens at the hearing, and what types of things must occur. That is what this bill is trying to do, aside from giving the citation authority. The bill tries to provide a consistent mechanism so that people are on notice and know what will occur during a citation process.

Assemblyman Hansen:

Of the 57 boards, how many of them do not have citation authority now or are not exercising it? For those boards that do not have the authority, how do they discipline them if at all, if there is an issue with somebody they license?

Colleen Platt:

Title 54 of NRS has more than just boards; there are a few other entities which are included. There may be five boards that do not have specific citation authority. Some boards have a very vague citation reference, but nothing that says, "Here is a citation and this is what you can do." The rest of those chapters have that very short statute that says you may issue a citation. Some boards, even though they have the authority, do not use the citation ability.

Some boards forward unlicensed activity to other offices, such as the sheriff's office or the Office of the Attorney General. Some boards actively prosecute the unlicensed activity. Other boards do not have the resources to do that.

Assemblyman Hansen:

In the absence of those resources, and in spite of the passage of this law, are you not going to have to give them those resources to give this validity? If that is the case, why is there no fiscal note attached?

Colleen Platt:

I cannot force a board to cite people. I can just give them the tools to help regulate their profession in a more proficient and efficient way.

Chairman Kirner:

Seeing no further questions, is anyone in support?

Keith L. Lee, representing Board of Medical Examiners:

We are one of the Title 54 boards and commissions. We support this legislation. We have this authority under our own provisions; NRS 630.400 gives us the authority to issue cease and desist orders and to issue citations for a number of violations of the Medical Practice Act of Nevada, embodied in NRS Chapter 630. We think it is a great idea. Our Board has the resources to do this.

Our investigators are not law enforcement officers or Peace Officers' Standards and Training Commission (POST) certified. Some of these situations can be dangerous given the area where an activity may be occurring. As a matter of practice, we ask the local law enforcement officials to go with us because there is a danger and a safety factor for our investigators. This is another tool that is very useful, and we support the legislation.

Michael D. Hillerby, representing Board of Dental Examiners of Nevada, State Board of Pharmacy, and State Board of Nursing:

We support this bill. The three boards we represent have this authority, largely written the same way, but it has not been the same from board to board.

To briefly answer some of the questions that have come before, our boards regularly work with the State Board of Osteopathic Medicine, the Board of Medical Examiners, and others. We meet and talk about our concerns. The big ones have been the so-called medical spas, medi-spas, often under a cosmetology license. Some of these businesses have people employed who may not be licensed by any of the health care boards and might be using Botox

and other kinds of cosmetic injections or unlabeled drugs. We found a variety of things.

Then we talk about multiple boards trying to find people who may or may not be their own licensees and how do we accomplish that. To the extent that this language can be consistent for all those boards and have some strength to get those people and protect the public, we appreciate that. We have had sophisticated folks violate this who knew how to get around it, knew there was limited enforcement authority for some of those boards, and knew they could delay the inevitable for some time. In regard to the example that Assemblywoman Carlton mentioned—the dentist in Reno—he knew he was going to be out of the country by Monday morning; he was here just for the weekend.

To address Mr. Hansen's earlier question, we are not going to prevent all unlicensed care, but to the extent we can put some teeth in this and try to get people who are not aware of the law to become compliant, which often happens, and give a little more pause to those who would violate it willingly, we appreciate this.

Chairman Kirner:

Are there any questions?

Assemblyman Hansen:

I have a question about overlapping authority. There is a medical board dealing with medical doctors and there is a chiropractic board dealing with chiropractors. How do you prevent the medical board, which does not approve of some of the tactics of the chiropractic folks, from claiming they are operating outside the scope that their board says they are okay with. This is theoretical, but I see a danger in giving certain boards this sort of judge, jury, and executioner authority. How do you protect people who might be on the margins of what one board considers to be orthodox behavior and another feels is reasonable. There have been fights between the chiropractors and doctors on various issues over the years. I am wondering how you prevent a medical board from using this new-found police authority to challenge some of their competitors?

Keith Lee:

I am not sure I can answer that question. As Mr. Hillerby indicated, several of the boards meet frequently and talk about these joint issues. To my knowledge, having represented the Board of Medical Examiners for a number of years, we have not gotten into someone else's bailiwick in terms whether it is chiropractic that is somehow violating the provisions of NRS Chapter 630. I cannot think of

any instance where we have done that. Not to say that there would not be one, but we would look to the direction given us in NRS Chapter 630 and what composes the practice of medicine. We have not had that situation. I think we would not abuse our authority in looking at those situations.

Chairman Kirner:

I would like a response from our legal counsel.

Assemblyman Hansen:

I think we are talking about a scope of practice issue.

Matt Mundy, Committee Counsel:

This would not authorize the issuance of a citation by a regulatory body outside the scope of its authority, that is, outside the scope of its chapter. For instance, the Dental Board could not issue a citation under this bill for a licensee it perceives to be practicing outside of its scope or infringing on the scope of practice by the Dental Board.

The language in subsection 1, "constitutes a violation of any provision of this title which the regulatory body has the authority to enforce." To the extent that the medical board would not have the authority to enforce against a licensee under the chapter for dentists, they would not be able to do so either under this bill, if that makes sense.

Assemblyman Hansen:

It does, but we were talking earlier about unlicensed practitioners. If a medical board decides that somebody in chiropractic is practicing something that should be legitimately licensed through that board, they could claim they were practicing in an unlicensed format and, therefore, challenge them on the basis of the testimony that we heard today.

That is my concern with this judge-and-jury situation. Ideally, it would be limited exclusively to those who are licensed, but the original testimony was that this is about going after unlicensed people or people practicing outside their scopes.

Assemblyman Ellison:

I have been looking through this language and also NRS Chapter 624, which relates to the State Contractors' Board. If there are unlicensed people, why does the State Contractors' Board, under this law or existing law, not issue a cease and desist order?

Matt Mundy:

Regarding the section we just discussed, the contractors' bill, Assembly Bill 84, and this bill, A.B. 72, would operate harmoniously under specific statute control. If there is a statute that prescribes a certain administrative fine, that would be the limitation of the fine; they would not be able to go beyond that. Or if there was a limitation as to the amount of time in which they could appeal the citation, that limitation would apply rather than this broad statute. The specificity of the citation provisions in the individual chapters controls this. You can also see that in subsection 7: "To the extent possible, the provisions of this section are intended to supplement other statutory provisions." The other provisions control to the extent that those provisions provide more specific requirements.

To answer your question simply, both statutes work together but the contractors' statute would control if it differed from this or is more specific. You could enforce against an unlicensed person under both provisions.

Chairman Kirner:

Are there any other questions? Is there anyone in opposition? [There was no one.] Is there anyone neutral? [There was no one.]

Assemblyman Ohrenschall:

In section 1, subsections 1 and 2, I wonder about the due process. If a citation is issued, a cease and desist notice is issued with an order to reimburse all the investigative fees. Maybe an outside investigator had to be hired and there is \$10,000 in investigative fees, and the dentist or doctor might have to wait 30 days to have a hearing before the board that shut down the business. Can you elaborate on that? I am worried a bit about that.

Colleen Platt:

If the person files an appeal of the citation, the cease and desist order, I would argue that it is tolled at that point.

Brett Kandt:

We could certainly be more explicit about that in the bill. The issue of "has reason to believe" has been brought up. If it would give the Assembly more comfort, we could refer to probable cause or a more defined level of evidence before these enforcement provisions take effect.

Chairman Kirner:

Seeing no further questions, we will close the hearing on A.B. 72 and open the hearing on Assembly Bill 85.

Assembly Bill 85: Revises provisions governing alcohol, drug and gambling counselors. (BDR 54-388)

Steven Burt, Reno, Secretary-Treasurer, Board of Examiners for Alcohol, Drug and Gambling Counselors:

This bill is a regulation rewrite, restructuring the wording in some of the statutes in order to bring it current with what we have been doing. We have not done a significant rewrite in two sessions. There are a couple of highlights I would like to review. In section 2, we are moving some of the functions of the Secretary-Treasurer to the Executive Director of the Board. I hope we are a sophisticated board, and we have an office and staff. The Secretary-Treasurer holds a few responsibilities that the Executive Director is performing.

In section 10, we are increasing the requirements to become an alcohol and drug counselor to an associate's degree level of education. In our conversations with Medicaid several months ago, they were uncomfortable reimbursing alcohol, drug, and gambling counselors when they had only a high school diploma in order to enter the field. We have increased the educational requirements to enter the field.

In section 24, we are asking to delete the certification of a detoxification technician pursuant to NRS 641C.500. This is a certification that the Board has not been utilizing, yet it has been in statute. It is being moved to SAPTA, the Substance Abuse Prevention and Treatment Agency, which is part of the Department of Health and Human Services, and their regulation rewrite includes this. In preparing for this presentation, we realized that we had intended to include the peer support specialist credential underneath 60 credit hours. That way, with a high school diploma and some education and training, people could enter the field as peer recovery specialists. However, that change was not included in the bill. The change was approved and voted on by the Board, and we are now asking for an amendment.

Also, in conversations in the room prior to coming to the dais, there was a question about whether these regulation changes affect the specific requirements to become a Native American substance abuse counselor. We are not addressing that issue in this bill.

Assemblywoman Kirkpatrick:

Section 4 says that you can give a person a license or you can choose not to. How is that determined?

Section 8 talks about changing the time frame for a certificate as a clinical alcohol and drug abuse counselor intern from six months to one year, and then

you do not have to give them a license after that. I am trying to understand the provisional piece. It seems as if there is a large gap. We are trying to get people to come to our state, and you are letting them come to our state, but it guarantees them nothing and they have to figure out if it is a good day or a bad day for the Board?

We heard a bill a few sessions ago where we included "shall" so that you had to give people a license, and here we are going backward. I want to understand how that piece is specifically supposed to work. I want to understand the timing in section 8 because you are now making it harder for people to get a license. For six months, you are hoping to get people through the system quicker, but I do not see where there is anything for them to do that. Are we trying to license these individuals or not?

Agata Gawronski, Executive Director, Board of Examiners for Alcohol, Drug and Gambling Counselors:

I hope I have a simple answer to your question. Regarding the provisional licensure, we want to change "shall" to "may" because Nevada is one of the most strict states when it comes to requirements for alcohol, drug, and gambling counselors. The majority of states do not have such high requirements for certification, including a master's degree for licensure. That is why we want to protect ourselves. I cannot imagine letting these people enter the field where their education is not relevant to our requirements. That is why we say we will determine licensure. You have time to meet the requirements, meaning to take the test and your oral boards, or we will accept your test if you have taken tests similar to the one we administer or approve.

We are trying to change the time frame from one year to six months because, previously, the national test was only available once a quarter; now it is available on a monthly basis. When coming to this state, one has six months to take the test, and the results are available within two to three weeks. You have plenty of time to finish the process, be licensed, and begin your practice.

Assemblywoman Kirkpatrick:

There is a difference between passing the written test and getting a provisional license. Now you are asking them to pass the written and oral tests. A person could do well on the written and flunk the oral, then retake it. It seems to me it is getting harder as opposed to getting easier, and it is subjective, as opposed to if you do what you are supposed to do, you are guaranteed a license. I do not know anyone who would go into the workforce today with a subjective license. I do not see where this helps the situation. I understand Nevada is strict but what has changed? Have we seen anyone having great difficulty? Or are people not taking the tests to be counselors?

Steven Burt:

People are moving through the system a lot quicker. We have always done orals; this is the first time it has been noted in the regulations. The oral presentation is to ensure that people are fit for duty; they have already passed the written exam.

Regarding "may" and "shall," in prior sessions, we did not have the ability to crosscheck complaint requirements in other states that we have now. So when somebody has had his or her license suspended in another state, we would like the opportunity to review that at the Board level. That does not mean we are automatically going to reject them; it means the application is forwarded to the next regularly scheduled Board meeting for the Board's review.

Assemblywoman Neal:

In section 13, subsection 3, why are you adding language that allows you to consider any original charge filed against an applicant, licensed counselor, or certified counselor when renewing or issuing a license? It says "whether the person was adjudicated guilty of, or entered a plea of guilty or nolo contendere to, a lesser charge." I am confused. There is another statute saying if it is related to a criminal charge, I believe it is NRS 48.125, it is not admissible as evidence in a criminal proceeding. So how are you able to come back and use it? It is similar to prior restraint, even though prior restraint is used in First Amendment situations. Where did you get that?

Steven Burt:

The Legislative Counsel Bureau helped us write this, but this is where it is stemming from: We have not been refingerprinting renewals at the Board of Examiners for Alcohol, Drug and Gambling Counselors. We have learned, on several occasions, where those licensed individuals are in the field having had recent arrests since we did the original fingerprint card when they first applied.

Assemblywoman Neal:

Are you trying to go back, retroactively, and capture activity? You said there are people currently licensed who have had arrests, which you were not aware of, so this allows you to consider previous activity because it is "any" original charge filed against the person. You can walk backwards and challenge that person on what they did 60 days ago.

Steven Burt:

I see your point. Our intention was to capture arrests since we last ran the fingerprints. We may have incorrect wording. We do not intend to retry old cases.

Agata Gawronski:

I think there are two things. We are talking about the original applications and the renewals, correct?

Assemblywoman Neal:

In section 13, if you read subsection 2, it says, "Before renewing, restoring or reinstating the license." But in subsection 1, paragraph (a), it says, "To issue, renew, restore, suspend, revoke or reinstate." It seems to speak to all those categories, because I saw nothing that said otherwise.

Agata Gawronski:

I want to point out that in our field, we are working with a population where a high percentage of people have a background of alcohol, drug, and gambling abuse. A lot of people apply to become interns or counselors and have recent charges.

Our current law says you must be off probation, off parole, and with no arrests for two years. Then you are golden and good to go. We want to be able to bring the potential counselor to the Board and ask about those charges. If we receive a thick rap sheet, we want to be able to figure out if that person is the right fit for the field. We have renewals every two years, and when a renewal application is submitted with the fee, we might find out that within those two years there was an arrest and we were not told. So we want to make sure we keep the field safe by being able to check the criminal history. That was the intent. If it is not written correctly, that is another issue.

Assemblywoman Neal:

I was questioning "any" original charge. That is huge, and I am trying to figure out how you can do that, legally. You are explaining that a former alcoholic can become a counselor. He could have had a driving under the influence (DUI) charge and he is still counseling, and you want to be able to call him in and say that 30 days ago I found out you had a DUI charge, and I want to revoke your license or suspend it. That is what I thought I heard.

Steven Burt:

Correct, we want to be able to have a conversation with that person.

Chairman Kirner:

Are there any other questions? [There were none.] Are there others in support? [There were none.] Is there anyone in opposition? [There was no one.] Is there anyone neutral on this bill?

Assemblywoman Carlton:

Here is a little history for the Committee. This is one of the first board bills I worked on, in 1999 and 2001. I know there is some concern with the educational requirements. One reason they were written the way they were is because, at the time, there was not a lot of educational opportunity for this field within our community college system. For many folks who thought they would be good at the job and could be certified, having to wait four years to receive the full degree was a problem. At the time, we had people representing themselves as counselors, with no requirements, and people were being harmed by that.

There was a grandfather clause encapsulated within this for, I believe, the first four to five years that allowed people to come up to a certain level of certification. Now it appears that through this Board's request, it is evolving again to the associate's degree. I know there are classes for this field. I would hate to see the people who have been doing this successfully and helping people succeed over the last five or six years lose the opportunity to practice by changing this criteria. I did not see a grandfathering clause. I assume they will keep their license into the future, but we may want some documentation from the Board to make sure we do not lose professionals, rather than gain them.

Chairman Kirner:

I think there is work that needs to be done on this bill before we are ready to process it. I will close the hearing on A.B. 85 and open the meeting to public comment. [There was none.] The meeting is adjourned [at 2:50 p.m.].

RESPECTFULLY SUBMITTED:

Connie Jo Smith
Committee Secretary

APPROVED BY:

Assemblyman Randy Kirner, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: February 9, 2015

Time of Meeting: 1:30 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 84	C	Margi Grein, State Contractors' Board	Overview of bill
A.B. 72	D	Brett Kandt, Office of the Attorney General	Letter