

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

**Seventy-Eighth Session
February 16, 2015**

The Committee on Commerce and Labor was called to order by Chairman Randy Kirner at 1:34 p.m. on Monday, February 16, 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
Assemblywoman Marilyn K. Kirkpatrick
Assemblywoman Dina Neal
Assemblyman Erven T. Nelson
Assemblyman James Ohrenschall
Assemblyman P.K. O'Neill
Assemblyman Stephen H. Silberkraus

COMMITTEE MEMBERS ABSENT:

Assemblyman Ira Hansen (excused)



GUEST LEGISLATORS PRESENT:

Assemblywoman Teresa Benitez-Thompson, Assembly District No. 27

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Paula Berkley, representing Board of Examiners for Audiology and Speech Pathology
Loretta L. Ponton, Executive Director, Board of Examiners for Audiology and Speech Pathology
Michael Grogan, Manager, Government Affairs, International Hearing Society, Livonia, Michigan
Melissa Maestas, Chair, Board of Hearing Aid Specialists, Las Vegas, Nevada
Thomas Rainford, Vice President, Rainford Hearing Aid Service, Las Vegas, Nevada
Renee Erno, President, Nevada Hearing Society, Henderson, Nevada
Lisa O. Cooper, Executive Director, Board of Massage Therapists
Gary Landry, Executive Director, State Board of Cosmetology
Patrick Shea, Private Citizen, Reno, Nevada

Chairman Kirner:

[Roll was taken, and a quorum was present.] I will open the hearing on Assembly Bill 115.

Assembly Bill 115: Revises provisions governing audiologists, speech-language pathologists and hearing aid specialists. (BDR 54-165)

Assemblywoman Teresa Benitez-Thompson, Assembly District No. 27:

Two sessions ago, the Sunset Subcommittee of the Legislative Commission was created with the primary mission to review a minimum of ten boards during each interim and to make recommendations to the Legislative Commission, and then to this body, as to whether a board should be retained, modified, merged with another board, or terminated. [Continued to read from ([Exhibit C](#))].

Assembly Bill 115 is the result of the Sunset Subcommittee's recommendation and the Legislative Commission's approval to merge the Board of Hearing Aid Specialists with the Board of Examiners for Audiology and Speech Pathology. I believe when you hear the benefits and the advantages of this merger, you will agree with the Sunset Subcommittee's decision. The Chair of the Sunset Subcommittee, Ms. Bustamante Adams, is on this Committee. I appreciate her subcommittee's willingness to spend the necessary time during the interim to study the boards and make recommendations to the Legislature based on their conclusions.

Paula Berkley and Loretta Ponton met with me a number of times during the interim, keeping me abreast of the bill progress while they were weighing all comments and suggestions. I have attached a list of the board meetings, including the public workshops, all of which were properly agendaized and noticed by the Open Meeting Law ([Exhibit C](#)). Over 18 months, each iteration of this bill was posted on the board's website for all parties to view, to read, and to provide comments. I think you will agree that the board has made every attempt and done its due diligence to vet the language and make sure all interested parties were aware of this bill.

I have asked Ms. Berkley to describe how the intent of this bill was developed and to give you a brief overview of the benefits of the merger. Then, Ms. Ponton, Executive Director of the Board of Examiners for Audiology and Speech Pathology, will review this bill section by section.

Paula Berkley, representing Board of Examiners for Audiology and Speech Pathology:

When the board came to me, the members talked about having two goals. One was to review all their statutes because they had not updated their *Nevada Revised Statutes* (NRS) since the board's inception in 1979. Over time, the profession has evolved, and words and definitions have changed. The board held hearings, and individuals could attend and make sure their testimony was relevant without having to sit through parts of hearings that were not pertinent to them.

The second goal of the audiologists related to their concern that they had to have two licenses in Nevada in order to be both an audiologist and a dispensing audiologist—"dispensing" meaning recommending and fitting hearing aids. Nevada is the only state in the nation that requires dual licensure. In 35 states, once the Ph.D. is completed, licensees are automatically allowed to dispense hearing aids.

In 12 states, the audiology and hearing aid specialists boards have merged. In those cases, a test is required to make sure the people are competent in fitting hearing aids, as is being done now in the second board.

The first option we considered was to see if the audiologists should add the ability to fit hearing aids to their statute. There are only 50 hearing aid specialists who are not audiologists in the state of Nevada. So, if the audiologists left the state—there are 57 of those—it would be such a small board it would not be fiscally solvent. That option was eliminated. We then looked at merging the two boards, and that is why we asked for the Sunset Subcommittee's review.

Another concern from dispensing audiologists is the expense to be both a dispensing audiologist and an audiologist. I created this chart so you can see the fees and what we are proposing ([Exhibit D](#)). Look at the first green line. To be a hearing aid specialist, the fee to enter that field is \$550. For a dispensing audiologist, the fee is \$700. To be a regular audiologist, which does not require dispensing, the fee is \$150, and a speech language pathologist's fee is \$150. When you are an audiologist and also want to be a dispensing audiologist, it costs \$850, and that is pretty steep.

The proposed fees are on the blue line. For a hearing aid specialist, the fee remains the same. The fee decreases \$150 for the dispensing audiologist because a dual license is no longer needed. We increased the audiologist and speech language pathologist fees to \$250 because they had not been increased for over 30 years, and we felt that was a reasonable increase. We received no objections in any of the hearings for that increase.

The good news can be seen in the renewal fees for the existing parties. The hearing aid specialist fees for renewal each year would be reduced \$100. The dispensing audiologist fees every year would decrease \$150. The audiologist and speech pathologist fees would remain the same. The Sunset Subcommittee was pleased that the fees were not going up in price but would decline.

Other advantages came out in the Sunset Subcommittee hearings that gave validity to merging the two boards. One is better communication with the public and with their profession. The Board of Hearing Aid Specialists has an answering machine, and in the Audiologist Board office there are two people who answer the telephone at all times. If you want to register a complaint, or if you have a concern about your profession, you can now get a full-time person to answer those questions.

Also, the hearing aid specialists, because they do not have a great deal of funding, process everything manually. The Board of Examiners for Audiology and Speech Pathology has upgraded their computer system and are fully automated. That means the hearing aid specialist would be able to pay the fees online and check in to see what is going on with the profession.

One of the things the Legislature is always interested in is the fiscal viability of the boards. The Board of Examiners for Audiology and Speech Pathology has \$150,000 in reserve. The Board of Hearing Aid Specialists is not particularly fiscally stable. They have collected \$31,000 in revenue this year, and their staff costs are \$25,000. That means the board has to be managed on \$6,000. They have a \$10,000 certificate of deposit (CD), which could be used if needed. But if they have a disciplinary hearing, there would not be enough money, and the board would have to go to the General Fund.

Regarding disciplinary issues, the Board of Hearing Aid Specialists has not had a full hearing on any complaint for at least five years, with the exception of the Sunset Subcommittee hearing. That action was brought as a result of 40 complaints, and I would hope that, most of the time, there would be a hearing before 40 complaints were lodged. Again, if there is a complaint and there is not enough money to hire lawyers and expert testimony, then disciplinary actions cannot be scheduled. In fact, the minutes indicate that people show up and the board answers the complaint, but there is no legal process required by law.

Chairman Kirner:

I am looking at the bill's fiscal note. It seems to me that if these boards were consolidated, there should be savings. I am not clear whether savings are reflected in the fiscal note from the Board of Examiners for Audiology and Speech Pathology. Would you comment on that?

Paula Berkley:

I will let Loretta Ponton comment because she wrote the fiscal note.

Loretta L. Ponton, Executive Director, Board of Examiners for Audiology and Speech Pathology:

The Board of Hearing Aid Specialists' fiscal note did not show that they would have a reduction of \$31,000 in their revenue source—that is their budget for licensing both hearing aid specialists and dispensing audiologists. There are approximately 120 licensees between those two professions. Their fiscal note specifically addressed what the fiscal effect might be to a licensee, not to the board.

In our fiscal note to this bill, I reflected an increase of \$21,000. That would be the offset from the hearing aid specialists' additional licensees coming in under this revised fee schedule. It would be increased revenue, offset by the costs. There is a net, no-fiscal impact to the Board of Examiners for Audiology and Speech Pathology. Between the two, there would be a net savings of \$10,000 to \$15,000.

Chairman Kirner:

Thank you for the clarification.

Assemblywoman Benitez-Thompson:

Ms. Ponton is ready to walk us through the bill section by section. There are lots of changes.

Chairman Kirner:

We can go through the bill. Members of the Committee, if your questions can wait, that would be fine.

Loretta Ponton:

A lot of time and effort has been put into this arduous process, and we have had significant input from our stakeholders who will all be impacted by this bill. As it was stated, Assembly Bill 115 reflects the evolutionary changes that have occurred in the practice of speech-language pathology, audiology, and the fitting and dispensing of hearing aids. It expands the existing Board of Examiners for Audiology and Speech Pathology by incorporating the oversight, licensing, and regulation of hearing aid specialists and abolishes the Board of Hearing Aid Specialists pursuant to the recommendation of the Sunset Subcommittee. The bill names the resulting board the Speech-Language Pathology, Audiology, and Hearing Aid Dispensing Board.

Stakeholders who participated in this presentation included the American Speech-Language-Hearing Association, Nevada Speech-Language Hearing Association, International Hearing Society, Board of Hearing Aid Specialists, University of Nevada, Reno's Department of Speech Language Pathology and Audiology, licensed speech-language pathologists, school-based speech pathologists, licensed audiologists, licensed hearing aid specialists and apprentices, and representatives from the public. [Read from prepared text ([Exhibit E](#)).]

Not all comments or recommendations were accepted: for example, the composition of the new board. An additional hearing aid specialist and/or public member was requested, specifically from the Board of Hearing Aid Specialists and their representatives of hearing aid specialists who participated in our

meetings. The comments and testimony received did not support the rationale to increase the board's size. The practice of fitting and dispensing hearing aids crosses two professions: audiologists and hearing aid specialists, who provide the professional expertise on the Board needed when those issues come before the Board.

Public members are objective contributors to the board. Professional members provide the same objectivity for matters outside their profession and expertise as do the public members. The bill provides authority to add nonvoting advisory members if additional expertise is needed. We believe that advisory board addresses those issues brought up during the open public forum and the development of this bill.

I will not go through every section of the bill that does not relate to the changes we have made.

Section 1 of this bill changes NRS 629.031 to add speech-language pathologists and audiologists to the definition of health care providers. This will ensure that they are held to the same standards and provisions as other health care providers serving the public. [Read from prepared text ([Exhibit E](#)).]

Additions and revisions to NRS Chapter 637B begin at section 8 on page 7 of the bill. Sections 9 through 15 add definitions directly related to the oversight for hearing aid specialists and the fitting and dispensing audiologists. These definitions are aligned with those in the current Hearing Board law and the Nevada Administrative Code (NAC) sections. Additional resources were the American Academy of Audiology and the International Hearing Society's model practice act.

Section 16 establishes the authority to appoint additional nonvoting advisory board members. [Read from prepared text ([Exhibit E](#)).]

Section 22 creates a provisional license for speech-language pathologists who are completing the clinical fellowship required for certification by the American Speech-Language-Hearing Association. A speech-language pathologist may take up to three years to complete the clinical competency requirements for certification. This would delineate those who are still in that training period, after they have completed their master's degree and while they are getting their certificate of clinical competency. Audiologists complete that competency period during their educational period.

Assemblywoman Carlton:

I have a question on the boards. You are dissolving the five-member Board of Hearing Aid Specialists and taking one of those members—just one—and incorporating that person into another board.

Paula Berkley:

Basically, yes.

Assemblywoman Carlton:

The public member who was on the other board will not have a spot on the new board.

Paula Berkley:

There were three public members on the previous board. The previous board had one audiologist, one hearing aid specialist, and three public members.

Assemblywoman Carlton:

The position will not have a place on the board?

Paula Berkley:

No.

Chairman Kirner:

Please continue.

Loretta Ponton:

Section 23 establishes the requirements for endorsement of an audiologist to fit and dispense hearing aids, including passing an examination for the fitting and dispensing of hearing aids. This is an examination that the Board of Hearing Aid Specialists has currently. The same examination will be required of a dispensing audiologist as is required for a hearing aid specialist. We are not changing that requirement.

Section 24 prescribes license and practice provisions for audiologists and speech-language pathologists who use tele practice to provide services within the state. This specifically requires anyone who is providing services to be licensed by this board, no matter by what means.

Sections 25 through 35 are new and specific to hearing aid specialists and apprentices. [Read from prepared text ([Exhibit E](#)).] These sections were reviewed and incorporated from the existing Board of Hearing Aid Specialists provisions in the NRS and NAC and from the International Hearing Society

model practice act and the American Academy of Audiology. [Read from prepared text ([Exhibit E](#)).]

There was a question brought up by the Sunset Subcommittee regarding Internet sales of hearing aids, which is covered in section 35. We asked the Legislative Counsel Bureau to research the requirements and see whether we could not allow them to sell by Internet mail and catalog. It was determined that under federal law we cannot have that requirement. We cannot make anything more restrictive than what is federal law. The current language was in the Board of Hearing Aid Specialists' *Nevada Administrative Code* regulations, not in their law. We incorporated it as part of the law, updated to include Internet sales. [Continued to read from prepared text ([Exhibit E](#)).]

Assemblyman Ohrenschall:

In section 53, the existing language of NRS 637B.250 talked about felonies that could initiate disciplinary action by the board. Under the proposed new language, it is being extended to include gross misdemeanors. What is the rationale behind that? Is there an issue with gross misdemeanors? I would think the normal course for most other boards would be that a felony would trigger disciplinary action, not a misdemeanor or gross misdemeanor.

My other question has to do with section 55, subsection 1, paragraph (f), changing the maximum penalty from \$1,000 to \$5,000 for each act constituting grounds for disciplinary action. What is the rationale for those two proposed changes?

Loretta Ponton:

I do not have a specific answer for adding the gross misdemeanor, but there are certain acts that are now considered gross misdemeanors. If you are dealing with children, adolescents, or the elderly who may be impaired, I believe there are some actions considered gross misdemeanors that we would like to take into consideration.

Regarding the \$5,000 limitation, I would have to verify and get back to you on the specific reference, but I believe the civil penalty was raised to the maximum amount in legislation approved at the last legislative session.

Assemblyman Ohrenschall:

Regarding section 53 and the expansion to cover gross misdemeanors, are there particular gross misdemeanors that would disqualify someone?

Loretta Ponton:

I have none specifically.

Assemblywoman Seaman:

What are some of the other major issues you have had with the language as it was, besides the dual licensing?

Paula Berkley:

One of the concerns that the audiologists had is that it takes up to one year to qualify as a dispensing audiologist. We are projecting it will take about the same time as is currently required for an audiologist, which is an average of two to three months. That is one area we wanted to improve.

When we talked to hearing aid specialists, there were two main concerns. The fear was that they would be part of a larger board, which they would be, and they are concerned that the hearing aid specialists will have a minor role because there will be three speech pathologists, two audiologists, and only one hearing aid specialist on the board. They are feeling intimidated by that. That is understandable, except that the number of speech pathologists is eight times larger, so we need those three speech pathologists. Theoretically, there will be more complaints regarding speech pathologists than for hearing aid specialists. We tried to make it proportional to the number of professions affected, and that is what we came up with.

On the other hand, the audiologists realize that they are not experts on hearing aid specialists in their environment. So we created that advisory board so we could call in more hearing aid specialists if we felt like we did not know enough about an issue that would only be specific to hearing aid specialists. The actual fitting, which is what is regulated, and the actual requirements and skills are exactly the same for a dispensing audiologist and a hearing aid specialist. That is what they were doing on the board before, and they are doing the same thing now—taking the same test that is required here and we brought them over. We want no degradation. No audiologist who testified ever said, I do not want to take the test. They all said, No, that would be a mistake. Let us keep taking the test. Make sure that everyone is paying attention while getting their Ph.D.

The day-to-day function that concerns the board, to protect the public, remains the same. The board will have two audiologists, at least one of whom is dispensing, and one hearing aid specialist. Those will be the two experts on dispensing hearing aids.

Most of the complaints that we reviewed with the Board of Hearing Aid Specialists were on federal warranty regulations—somebody not backing up what they sold. Most of the laws that are processed by this board, historically, have been on warranty issues.

Chairman Kirner:

Are there any questions?

Assemblyman Nelson:

I am curious about tele practice in section 24, subsection 1. Obviously, it works or you would not allow it. In reading the definition, can you explain how that works? Is someone prescribing or testing hearing from a remote location and everything is done electronically?

Loretta Ponton:

This section is specific to speech-language pathologists and audiologists, not to hearing aid specialists. We are not dispensing hearing aids by tele practice. Tele practice is usually done for consultation purposes and outreach to rural areas. For example, in school districts, they can observe a child in a schoolroom via video feed to find out whether the child would need services. It would also help in eliminating transportation issues. As you know, "telehealth" is the buzzword for this year, and it is happening. We know it works. We want to make sure that when it is being done, the health care providers are properly licensed and regulated within the state. We need to protect everyone.

Assemblyman Nelson:

Licensed, regulated, and also trained? Do you provide training for the tele practice, or is that done through the seminars?

Loretta Ponton:

No, we do not provide training. We are saying that the providers must be adequately trained. If we received a complaint about tele practicing, we would look at the training to see if the provider was doing something for which he or she was not properly trained and then take appropriate disciplinary action.

Paula Berkley:

At this point we have no jurisdiction, which is why we had this language included. It is enabling legislation. After this session, we would write regulations which are more specific to that. Also, Assemblyman Oscarson has a fairly comprehensive bill on telehealth, and we will be following that. But we wanted to get our foot in the door and start looking at the profession.

Assemblywoman Kirkpatrick:

I want to be clear regarding your advisory board that there is an avenue for consumers to address all of the issues, since the advisory board has a physician as opposed to a speech pathologist. I received a call from a neighbor about this bill. When I explained the bill, my neighbor was much more comfortable with it.

I think if this bill passes, there will need to be a huge education process. Although there have been 18 hearings, and the Legislative Commission approved this as one of the bill drafts, I think there is a lot of miscommunication.

Paula Berkley:

I agree. We have been frustrated in getting anyone from the Board of Hearing Aid Specialists to attend any of our hearings. We will need their help when we develop regulations. The advisory board was designed specifically for that purpose so that we can expand the expertise, as well as obtain the public members' feedback on what is helpful and logical and best for the public.

Chairman Kirner:

Two boards are being combined. There are financials in both boards. I did not see anywhere in the bill where you addressed how you would handle the money that is sitting in one board. Would you automatically bring that over, or how would that work?

Loretta Ponton:

In the transition provisions of the bill it states "upon passage." It becomes effective immediately. We are anticipating that funding would be made available to the new board during the transition period. We expect them to have less than \$20,000 at that point, but during the transition period, we would work out the logistics.

Chairman Kirner:

That would include discharging any debts?

Loretta Ponton:

Yes.

Assemblywoman Carlton:

I have concerns about one board taking over another. I do not see a problem with either of the boards and the lack of representation for one person. The board is regulatory in nature. They are meant to deal with complaints. An advisory board has no power to deal with complaints; it is only advisory. You would have one professional from that board dealing with complaints, whether they are about warranties or not. I do not feel that addresses the situation when we have had these discussions on other boards in the past.

We have tried to keep the representation whether the licensees are proportional or not. It is regulatory and there is a workload that needs to be dealt with. I do not understand why these two boards need to be merged. I receive regular

reports on different boards, and these two seem to be doing a very good job. I get the feeling one board is taking over the other, and I think that is a problem.

Paula Berkley:

That may have been my fault for not being clear. The purpose of boards is to protect the public. If one board is not implementing disciplinary actions, that is a concern. The Sunset Subcommittee asks each board to give it three minutes to see what they are doing. As an example, in a board meeting, which was not a hearing, they heard a complaint that one of the licensees sold used hearing aids as new. The board told him to give those individuals new hearing aids instead.

Under that agency's professional conduct rules, if a licensee sells used hearing aids as new, that is a standing for unprofessional conduct. That person could have lost his license. They did not have a hearing or an investigation. Those are the types of things that I think the Sunset Subcommittee took notice of and said that the board is not up to par. If you look through the board's minutes, there were many complaints that were dealt with by the board. It was not that they were not trying to do a good job, but the legal responsibility to hold disciplinary actions and give due process was not given.

The other big issue that the Sunset Subcommittee looked at was that the board was not financially viable. If the board had to go to court or have a hearing, the board would not have had the money to hold the hearing. In their defense, that is probably why they never dealt with complaints—the board could not afford them. The board in and of itself is not that large. The costs are exorbitant, and there is never enough money to perform the board's business. I think those are the two biggest reasons it was recommended that the boards merge.

I am sorry they feel like it is a takeover. As soon as we knew we had an issue, we wrote to the Board of Hearing Aid Specialists and asked to present to them. We invited them to comment and work with us. They declined right up to the last month. We could not get them to read the bill, let alone discuss it with us. I think because their fees will decrease, and because they will have a fully automated board that can respond to customer complaints and questions, my expectation is they are going to be very pleased with the new board.

Chairman Kirner:

Ms. Bustamante Adams, you were the Chair of the Sunset Subcommittee. Would you like to make some comments?

Assemblywoman Bustamante Adams:

Yes. Originally, when we were selecting the boards to review during the last interim, Senator Parks, who utilizes hearing aids, brought forth the bill on behalf of his constituents that had received complaints about the boards' duplication. Senator Spearman was the other advocate. It was a unanimous vote on the Sunset Subcommittee after hearing the testimony from both groups.

Assemblywoman Benitez-Thompson:

Thank you for hearing this bill. One of the things I am most excited about is that there has been a tremendous amount of work and growth in the area of hearing aids and new technology. I think as hearing aids are becoming more discreet, younger persons such as myself who wear them can now connect to Bluetooth. I see many more folks across different age ranges who are likely to wear hearing aids to address their hearing needs because of the technology. I would love to talk further about this with anyone who is interested.

Chairman Kirner:

You have some well-qualified people with you at the table. Is there anyone who wishes to testify in favor of the bill? [There was no one.] Is there anyone opposed to the bill?

Michael Grogan, Manager, Government Affairs, International Hearing Society, Livonia, Michigan:

The International Hearing Society (IHS) is a professional membership association that represents hearing aid dispensing professionals in Nevada, around the United States, and internationally. The IHS is also the author of the International Licensing Examination for Hearing Healthcare Professionals, which is the licensing examination used in this state, 38 additional states, and four Canadian provinces. I am here to offer IHS's opposition to Assembly Bill 115. [Read from prepared text ([Exhibit F](#)).]

We believe that the profession plays an important role in the hearing health care continuum of care, and we are always working toward promoting the highest professional standards. Above all, our society and our members are focused on ensuring public safety and consumer protections. As a result, we feel we must oppose this legislation before the Committee today because we believe it could lead to diminished standards and weaken consumer protections.

The practice of dispensing hearing aids constitutes a distinct and separate profession, a reality that is recognized under current Nevada law by the establishment of an independent Board of Hearing Aid Specialists. It is those activities that you are regulating, regardless of the number of licensees and whether they are all dispensing audiologists or hearing aid specialists or, as it is

and will remain, a combination of the two. It is the peculiar nature of the specialty that requires regulation and what we feel should be separate regulation through an independent board. This is a profession that requires specific training and education in order to be performed safely and effectively. [Read from prepared text ([Exhibit F](#)).]

I understand the concept and the appeal of a proportional design, but when there is only one person sitting on the board representing an entire profession, a lot of the expertise, differing opinions, and different knowledge of the profession are lost. One person sitting on a board that regulates the profession is inadequate to provide the knowledge about the practice. [Read from prepared text ([Exhibit F](#)).]

We are happy that the testimony indicated that the licensing examination for both dispensing audiologists and hearing aid specialists would be the same going forward. We would encourage that to be more clearly spelled out in the law. [Read from prepared text ([Exhibit F](#)).]

Speaking to Assemblywoman Carlton's issue regarding a merger as opposed to a takeover, the legislation before the Committee today was not requested nor is it desired by the hearing aid specialists in the state. We have heard concerns from a lot of members in this state. It is an instance of one profession, or multiple professions, potentially, being able to exert undue influence over another profession without that profession's representation.

Chairman Kirner:

My understanding of this bill is that the interim subcommittee had 18 hearings. At how many were you present, and at how many did you testify?

Michael Grogan:

The IHS provided comments to the Legislative Commission in written form. I work for the national organization. I think we will have testimony from the Nevada Hearing Society, as well as the board chair. They can talk more about their individual activities in the state.

Chairman Kirner:

I am curious that we have gone through this entire process over the last year and a half, and now you are here testifying for the first time.

Michael Grogan:

Again, we provided written comments on the proposal in June of 2014.

One other issue I would like to address is that the bill changes the licensing requirements for hearing aid specialists. By adding the requirement for board certification for initial licensure to the statute, that requirement is currently in the regulations governing the profession. I would like to point out that board certification for initial licensure is very unusual when it comes to licensing practices across the country. I believe the conversation should be had in the state regarding the approach to licensure in trying to find a pathway to move the practices in this state more in line with best practices across the country. We have been in conversations trying to find a best way. Obviously, you want to find that sweet spot between making sure you have very high standards but also not reducing competition or creating barriers of entry into the profession. Unfortunately, this bill would short-circuit that conversation by placing into statute the board certification requirement, which would make it very difficult to address that in the future. [Read from prepared text ([Exhibit F](#)).]

The best way to accomplish the goals of encouraging high levels of professionalism and protecting consumers is through an independent board that regulates the practice of dispensing hearing aids as the distinct, licensed service that it is.

Chairman Kirner:

Are there questions for Mr. Grogan?

Assemblywoman Carlton:

As the national representative of the society, do you know how many states have independent boards for this profession?

Michael Grogan:

I do not have the information with me today, but I would be happy to follow up with the Committee and provide an overview of across-the-country dispensing practices, licensing requirements, and board composition.

Assemblywoman Carlton:

If you could also provide whether those boards are considered providers of health care, because I believe that has financial impact on all the states under the Affordable Care Act.

Assemblywoman Kirkpatrick:

Today you are here representing the International Hearing Society, and you believe we will likely hear from the Nevada Hearing Society aid individuals, is that correct?

Michael Grogan:

That is correct.

Assemblywoman Kirkpatrick:

It is interesting that we went through that process and, as Chair of the Legislative Commission at the time, I received a few emails from individuals saying not to consider the bill, and never had an opportunity to follow up with them. Where were you? What is your role in the bigger plan, if this bill stays as it is? What role do you play with Nevada's side of this? It is concerning to hear that someone is selling used hearing aids, and that is not beneficial to anybody. At some point, consumer protection has to be given to you.

Michael Grogan:

In the development of this hearing, we submitted formal comments from the International Hearing Society about the proposals and outlined what we thought best practices were with an approach to licensure and standards. I think the Nevada Hearing Society will be testifying later and can talk about some of the work they did independently.

The answer to the second part of your question is that I think it goes back to consumer protections. I think an independent board is the best way to do that. They can respond quickly. I know concerns have been raised, together with administrative issues. I believe the chair of the Board of Hearing Aid Specialists will be testifying. I know she has comments on that and can provide responses as well.

If there are concerns, if things have not been done properly or handled appropriately in the past, my suggestion would be to work to improve those at the independent board level. Whatever the deficiencies were in terms of the administrator responding, I do not know if merging the boards and providing less competent and less professional oversight is the best way to respond to those deficiencies. I would work to reform the current board and maintain the independent focus, because I do believe this is an independent specialty that requires that sort of focus. As far as going forward, the International Hearing Society is happy to work with the Legislature, and with the boards, to determine best practices. We can share what is done in other states; we can share the expertise of our members in helping to craft good public policy.

Chairman Kirner:

If I heard you correctly, you are saying that if we combine the boards, there will be less competency?

Michael Grogan:

The focus is being reduced. You are taking a board that focuses solely on the practice of dispensing and fitting hearing aids and merging it into a board that has to focus on the activities of speech-language pathologists, the activities of audiologists beyond dispensing, and the dispensing of hearing aid specialists.

Chairman Kirner:

So in your view that reduces competency?

Michael Grogan:

I think anytime the focus is broadened, that reduces the ability to focus on any one issue. I think that could lead to less competent oversight.

Chairman Kirner:

We heard testimony earlier that said the Board of Hearing Aid Specialists had not done anything for five years.

Michael Grogan:

I will let the chair of the board respond to that. In a general idea, I think an independent board is the best way to go. If there have been problems with the board, I would suggest working with the board to try to figure out best practices moving forward. I do not think eliminating the independent board, which focuses on the specialty, is the best way to increase consumer protections of people receiving care from hearing aid specialists or dispensing audiologists.

Chairman Kirner:

Is there anyone else who wants to testify against this bill?

Melissa Maestas, Chair, Board of Hearing Aid Specialists. Las Vegas, Nevada:

The Board of Hearing Aid Specialists voted on February 2, 2015, four members to one as opposed to the board's merger. Our concerns include diminished board representation for hearing instrument specialists and unclear educational requirements. [Read from prepared text ([Exhibit G](#)).]

If the bill is to include hearing aid specialists and dispensing audiologists in the same area of expertise, why are dispensers not found to be health care providers? Ms. Ponton indicated it is because dispensers have a tendency to work for organizations like Costco or franchises. However, audiologists do that

as well. Optometrists are listed as health care providers, and they work for franchises and for corporate retail stores. How is it that hearing instrument specialists are not health care providers?

Section 23 completely leaves out hearing instrument specialists.

Educational standards in sections 14, 25, and 26 deal with the education level. However, one of the sections talks about people who repair hearing aids and are offering help to the public. People who are licensed are not the only people who repair hearing aids, so why would they be required to be licensed under these sections?

There also needs to be uniformity among all educational systems. If we are going to have audiologists take exams, then I am happy that Ms. Ponton indicated that they are keeping the same testing we do presently. However, it is not stated that way in the bill.

Regarding consumer safety, Ms. Ponton touched on section 35. It is unfortunate that Internet sales of hearing aids, including through catalogs, is still legal in the United States. I suppose we have to keep that provision since that is the best way we can protect consumers.

Ms. Berkley stated that our board has poor communication. Consumers can go online and state their complaints for the board to hear. The board receives very few complaints. The matter of 40 complaints, which were received more than five years ago, happened over a six- to eight-month period. The attorney general at the time advised us not to move forward seeking disciplinary action against that dispenser.

Also, it is not just hearing aid dispensers who are sometimes unethical. There have been times in my own practice when patients who have seen audiologists have portions of hearing aids in their ears. However, consumers are not always comfortable coming forward with a complaint because they feel that they will be complaining against their doctor of audiology.

Ms. Berkley stated she had not received any communication or cooperation from our board. We did not see the bill until a few weeks ago. I testified before the Sunset Subcommittee in April 2014, and the International Hearing Society had already been notified. They had already given their thoughts on the bill and, at the time, I was the liaison to communicate those thoughts.

The concern with the hearing aid dispensers is not that we will be part of a larger board. It is that we are not going to have as much say in how we practice in the state of Nevada.

The argument was made that audiologists take almost one year to receive their dispensing license, which at this point is not the case. The written evaluation is done online, and it only takes a dispensing audiologist approximately three months to acquire the dispensing degree.

Chairman Kirner:

Committee members, are there any questions?

Assemblyman Ellison:

How many times during the year do you meet? Are there any special meetings?

Melissa Maestas:

We typically meet three to four times a year. In the past, before the new online testing was available, we would schedule a written exam one month after the meeting. The process has been streamlined considerably.

Assemblyman Ellison:

How many current board members do you have?

Melissa Maestas:

There are five: one dispenser, myself; one audiologist; an otolaryngologist; and two consumers.

Assemblyman Ellison:

How many applications for licensing does your board review during the year?

Melissa Maestas:

I do not have that number, although 2014 was a record year. I would say close to 40 applicants.

Assemblyman Nelson:

Do you have any response to the testimony that you did not have enough money to conduct investigations or provide due process?

Melissa Maestas:

Most complaints we receive are due to manufacturing such as dispenser not abiding by what the manufacturer requires. Our executive director goes through the complaint and responds to the consumer while giving feedback to the dispenser or to the dispensing audiologist. Quite often, once we see the

dispensing audiologist at a board meeting, the recommendation has been taken care of. We do not have a lot of complaints. Ten to fifteen years ago, we had many complaints, and that was prior to the previous chair and me. For the last three to four years, the number of complaints has been minimal. So far this year there have been two that we will hear in April. I have not seen those as yet.

Assemblyman Nelson:

Do you have enough money to fulfill the functions that you are asked to do under statute?

Melissa Maestas:

I feel we do, because the types of complaints we receive are not leading to litigation. For example, if a dispenser did not refund the correct amount of money, the executive director drafts a letter saying a certain amount of money needs to be refunded. In another example, the manufacturer's warranty states two years, but the member's warranty says one year. We need to abide by the manufacturer's standards. I feel our board is financially sound because we do not have the type of complaints that would lead to those sorts of litigation.

Assemblyman Nelson:

I think you said those things are taken care of. Are you saying that by the executive director writing a demand letter, in essence, the manufacturers or the warrantors are living up to their obligations?

Melissa Maestas:

Correct. There are additional financial issues. According to information I received in early February, there are 750 speech-language pathologists, 125 audiologists, and 55 hearing instrument specialists. The cash from the Audiology and Speech Pathology Board, at the time, was \$250,000, and ours was \$10,000. Under the proposed bill, the merger would bring our membership to 930. If you break down the allotment, there would be a higher percentage of money per person if hearing instrument specialists stayed independent of the proposed board. Even though the other board has more money, it would also have more members and higher statistics that might lead to liability. If the board needed to access the \$250,000, that money could be depleted by any sort of trial. The speech-language pathologists and the audiologists, I would imagine, probably have more complaints than we do, based on their numbers.

Assemblywoman Kirkpatrick:

It seems that every time we try to combine or dissolve a board after going through the Sunset Subcommittee, we have this situation where nobody wants the change. Last session, the Sunset Subcommittee was tasked with finding

boards that do not necessarily serve the public in the way they were originally intended. Did you not work with the other board for 18 months? I go back to the consumer protections. If you are one of those boards where I can only go online, that is a problem for me. Not everybody has a computer in my district. If I call and get an answering machine, I want to be able to call someone back. Is that the way your board is run?

Melissa Maestas:

Yes, it is.

Assemblywoman Kirkpatrick:

If that is the case, is there some way that the two boards could come together so there are more resources for consumers with fair representation. Those are big issues. A hearing aid makes a difference in somebody's quality of life. Speech makes a difference in somebody's quality of life.

Until the Sunset Subcommittee heard the bill, I had no idea we had separate boards. That is part of the problem for the Legislature. We create boards because we think we are doing the right thing. We lose track of them, and 20 years later a new Legislature comes in and nobody knows what happens to them. This is a way for us to come together and provide the best consumer services so that everybody wins. Is there not an opportunity to do that? It is unfortunate that the consumers are going to be caught up in a disagreement. At the end of the day, consumers should be the number-one focus for any board.

Melissa Maestas:

Please tell me how an answering machine is making the difference between consumer safety and not consumer safety?

Assemblywoman Kirkpatrick:

Here is what I will tell you. If a senior citizen or a young family in my district has to call time and time again to an answering machine and cannot get a response, that changes the way they do things. Folks have jobs to go to. They have children and elders to take care of. Many of my friends live in multigenerational family. Maybe to you the answering machine is the way to go, but my answering machine at home today has 27 messages. I have not returned any of them. If I can call somebody and have direct telephone contact, that is going to help me do something better.

Chairman Kirner:

Are there any other individuals who want to testify in opposition to this bill?

Thomas Rainford, Vice President, Rainford Hearing Aid Service, Las Vegas, Nevada:

I am a past board member and have been involved with the Board of Hearing Aid Specialists since 1979, when I was first licensed. I have concerns that this bill is flawed. Assemblywoman Kirkpatrick asked whether there is a way of having the groups communicating or coming together. Yes, there probably is. But for a long time the national organizations that certify speech pathologists and audiologists have been trying to regulate out hearing instrument specialists. Distrust has developed between hearing instrument specialists and the two other groups. It should not be surprising that when they want to make a misrepresentation of the number of people representing each profession, we take offense to that.

Last year, the Audiology Board had a meeting and invited hearing aid people to speak when this merger was being proposed. At that time, I volunteered to present the bill before the bill draft was finalized. I was told, basically, that everything was under control, and that my services probably would not be needed, so I let it go at that.

I have proposed, if the boards are combined, that the new board be composed of five members. It would have one member from each profession—a speech-language pathologist, one audiologist, and one hearing instrument specialist. It would also have an otolaryngologist or physician and a public member. If the physician position on the board cannot be filled, it would be a good idea to provide the governor an opportunity to present a public member instead. That would give the board two public members for better representation.

There are a lot of instances in the bill where it favors speech pathologists and audiologists. One is under section 1, "providers of health care." We are providers of health care. We provide that care in a business-type location. There are hearing instrument specialists who have worked for doctors. Not only hearing instrument specialists have a storefront. They have the same footprint as an audiologist.

The bill suggests that a person who is a stockholder be excluded from being an advisory member or a member of the board. It is possible to be a stockholder in a company and not be aware because stocks are purchased in different specialties. We have a lot of people who have been involved in the industry, who worked for a particular manufacturer, and part of their payment was in stocks. They became a stockholder. Those people would now be excluded, and those individuals may have good information that may be important to the board. To exclude those folks, I think, would also be wrong.

Under section 26, subsection 2, it states if a person wants to dispense hearing aids, they must be certified by the National Board for Certification in Hearing Instrument Sciences (BC-HIS). It does not exclude audiologists at that point but would require that audiologists take the board certification test and work as an apprentice for two years. I have talked to a lot of audiologists and know that those folks would not want to be BC-HIS certified.

Also, to get a license as a speech-language pathologist or an audiologist, all one has to do is show that you are certified by a national organization. We have the BC-HIS certification, but the hearing instrument specialists are still required to take a test, whereas there is no test for audiology or speech pathology. I would propose that there needs to be a test given to potential licensees of audiology and speech pathology to make things equal.

From what I have seen, the current fees are at the ceiling required by statute. That means should the combined board require future funds, the only way the fees can be increased is by further statute changes. This would be a good time to leave room in that part of the statute for future changes.

There is a national trend to do away with the wording "hearing aids." That term is considered old-fashioned. The new suggested wording is "hearing instruments." This is a good opportunity to replace the words "hearing aids" in the bill with "hearing instruments."

Financially, I have not found that the assets would be combined very well in this bill draft, and I am not in favor of leaving it up to the combined board. I have some mistrust there and would prefer that those matters be handled ahead of time.

There are some education requirements that are now required by the regulations of the Board of Hearing Aid Specialists. I would like to see those put into the statute. If a person has a degree in hearing instrument science, hearing instrument technology, or audio prosthology, or has a master's degree or completes the IHS home study course, he or she can sit for the test. I would like to see that put into the statute so it would be harder for changes to be made later, should a group try to make it even more difficult for hearing instrument specialists to do their job.

I oppose this consolidation because these two boards have been functioning well independently. I sympathize with the audiologists since they are regulated by two boards. I think there is a better fix, and I believe smaller boards are more responsive and will represent the consumer much more effectively.

Chairman Kirner:

Are there any questions? [There were none.] Are there others who wish to testify in opposition to this bill?

Renee Erno, President, Nevada Hearing Society, Henderson, Nevada:

I am a licensed hearing aid specialist in the state of Nevada and President of the Nevada Hearing Society, which is a chapter of the International Hearing Society. I think it is important to understand the why behind this proposed merger of the boards. I have not heard a strong argument for merger, so it is also important to understand why it is not in the best interest of the hearing professionals in our state.

To reiterate what we have heard in testimony from others, when the focus of a profession is diluted, the consumer is not being protected. The practice of hearing aid dispensing has been around since hearing instruments were invented in 1910. It was not until the late 1970s that audiologists were allowed to dispense hearing instruments, as that did not fall under their scope of practice. When that came under their scope of practice, they joined the hearing aid dispensing boards in numerous states because that system was designed to protect the scope of work as it pertains to hearing aid dispensing. I think that is still relevant today. As a licensed hearing instrument specialist, I do not do the work of a nondispensing audiologist; therefore, I am not regulated and do not fall under their board. However, a dispensing audiologist does the same job as a dispensing professional, and therefore the regulations should fall under that scope. I believe that the hearing aid specialist requirements in Nevada are some of the toughest and highest standards in the nation. I would hate to see that criteria change.

While I think we have a great opportunity to attract more professionals to our state, that is certainly an issue and a concern to many independent business owners I have met in the state. They feel it is very difficult to find licensed professionals. Since the testing and licensing requirements could change, I think this could affect our profession negatively. We are currently at a crossroads in our industry where the number of professionals exiting our field is much greater than the number of professionals entering our field. This is opening things up for Internet catalog and online sales, which is not the best way to provide hearing health care. You would not buy a prosthetic knee online and then take it to your doctor to be fitted. Looking at the situation from a federal standpoint, that is a different issue for another day.

I think the language in the bill, as I have read it, needs to support more of the dispensing. Also, the representation of the dispensing professionals on the board is under voiced. When the fiscal merger of the boards was discussed,

that did not make sense to me from understanding the history of the Nevada board. I have been a licensed professional since 1997. I have not known of major incidents of complaints that were not at a hearing. Hopefully, we can maintain that with our high standards, our review of the law and our ethics, and how we license and pass people to be a professional in this state and serving the community.

It is the position of the Nevada Hearing Society that the merger of the board is not in the best interest of the consumer, the professionals in the state, or the State of Nevada fiscally.

Chairman Kirner:

Are there any questions from the Committee? Seeing none in opposition, are there those who are neutral on this bill? [There was no one.] Are there closing comments?

Paula Berkley:

We are still hearing that the overriding concern of the hearing aid specialists is they feel they would be diluted on a larger board. I would like to dispel that concern. The former board had one hearing aid specialist on the board. The new board will have one. The former board had one dispensing audiologist. There will be a dispensing audiologist on the board. There will be an additional audiologist who has been trained in school. One of the people with a Ph.D. might not be ready to pass the test. We specifically named the test and specifically itemized that we wanted the same tests that are being done today to remain active. I think all testimony has reflected that.

The bill draft request (BDR) was announced about two weeks ago. It is true they did not see the bill until it was introduced, but the BDR was on our web page the month before, and every iteration for the last 18 months has always been available.

Regarding communication, the board receives complaints from individuals that no one answers the telephone or returns their messages, whether they require information because they are a hearing aid specialist, or dispenser, or a citizen. I have a series of emails that were forwarded to the Hearing Aid Specialist Board over the last 18 months, with the hope the board would respond. The record is documented, and I would be happy to provide that for the Committee, if you would like.

The requirement for certification was a request by a hearing aid specialist, and that is why we had the language put into the bill.

Chairman Kirner:

I will close the hearing on A.B. 115 and open the hearing on Assembly Bill 126.

Assembly Bill 126: **Revises provisions governing massage therapy.**
(BDR 54-207)

Assemblywoman Maggie Carlton, Assembly District No. 14:

This is a public safety bill, especially section 5. Those of us who have family and friends who receive massages may know there have been issues in the past with protections for those folks. The rest of Assembly Bill 126 deals with adjustments and cleanups, but section 5 is the most important part of this bill. I will turn this over to those who have more knowledge of this bill.

Lisa O. Cooper, Executive Director, Board of Massage Therapists:

This legislative session marks ten years for our agency. We have discovered situations that need to be corrected, or at least discussed, at the legislative level.

In section 1 of the bill, *Nevada Revised Statutes* (NRS) 640C.100, specifically lists the licensees that do not come under NRS Chapter 644, which is cosmetology. Unfortunately, nail technologist was left out, and that is an error. All other modalities were listed in cosmetology, so we wanted to clean that up by including nail technologist. [Read from prepared text ([Exhibit H](#)).]

In section 2 of the bill, NRS 640C.400, subsection 2, paragraph (c), subparagraph (1) specifically states that for an exam to be accepted in Nevada for massage, the agency providing the exam must be accredited by the National Commission for Certifying Agencies (NCCA) or its successor. The NCCA approves organizations that provide certification programs and credentialing. The National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) was the only agency that had that accreditation. They provided the massage exam. As of January 31, 2015, the NCBTMB no longer provides the exam, which poses a problem. [Read from prepared text ([Exhibit H](#)).]

Currently, in NRS 640C.700, subsection 3, the board can only look at criminal history within the past ten years. This is in section 5 of the bill. [Read from prepared text ([Exhibit H](#)).] Also regarding section 5—the handout ([Exhibit H](#)) erroneously says section 6—there is no language in NRS to cover the issue of mandatory reporting. A massage therapist needs to let us know if there is criminal activity.

Assemblyman Paul Anderson:

I have a question on section 5, subsection 10, where it says "knowingly failed to report." How do we prove and enforce that? Is it simply that if the person admits he knew of unprofessional conduct, the Board can hold him accountable?

Lisa Cooper:

Some of the larger areas are not reporting incidents that happen to clients. Management is not allowing therapists to report, but if a mandatory reporting system is required, then the therapists will be held accountable to report the occurrence. There have been multiple incidents in Las Vegas of massage therapists knowing of a situation, but because corporate would not let the therapist report the problem, there were issues.

Assemblyman Paul Anderson:

I recognize the need and I understand the concept. I am wondering how this would be enforced. Someone would have to admit to that before losing his or her license, is that right?

Lisa Cooper:

Yes.

Assemblyman Paul Anderson:

Does that then change the situation or the incident itself?

Lisa Cooper:

It does not change the situation, but it allows the therapist to tell his or her supervisors that "I have to report this."

Assemblyman Paul Anderson:

We are providing a shield or a cover for them.

Lisa Cooper:

Yes.

Assemblyman Ellison:

If a problem is reported, is the situation presented to a committee? Can the therapists not make the complaint directly to the board, as opposed to notifying their supervisor?

Lisa Cooper:

Many sexual assault victims do not come forward. Currently, we are trying to reach out to three victims who are not willing to testify. If we know of an incident, we can look further into that therapist's background and job history. We can find the therapist's clients and investigate. Occasionally, a former client discloses the circumstance and agrees to testify.

Assemblyman Ellison:

What happens then?

Lisa Cooper:

We bring that licensee before the board. If we have someone telling us about a complaint, we will go into that establishment and subpoena the records. As long as we know which therapist it is, we can move forward with disciplinary action. If people keep quiet and do not report these situations, the therapist is fired, moves to another establishment, and assaults more people.

Assemblyman Ellison:

Then this is based on hearsay? It is not coming from the person who was assaulted?

Lisa Cooper:

That is correct. We have had complaints where someone has called us and the complaint is not legitimate. We will investigate every place where the therapist worked. Usually there is a pattern. We know what to look for and we get them.

Assemblyman Ohrenschall:

I have questions regarding section 5, subsection 3. If the ten-year limitation is deleted, how will that compare with other jurisdictions? Do other jurisdictions look at someone's entire life, or is a limit set in terms of whether the person has stayed out of legal trouble in the last ten years and, if so, could that person apply to become a massage therapist?

Lisa Cooper:

If the misconduct was theft and is over three years old, I can approve those. If the violation was sexual assault, murder, larceny, or a crime of violence, that individual is brought before the board, and the board determines whether a license is issued. We have an in-house policy as to what can and cannot be approved by staff. Our concern in this section is when an applicant is a registered sex offender, as long as that offense is older than ten years, we cannot take that offense into consideration.

Assemblyman Ohrenschall:

That is exactly my question. If we remove the ten-year limitation, will that standardize us with other states?

Lisa Cooper:

No other boards do background checks as we do. They will do a state check but not a Federal Bureau of Investigation (FBI) check.

Assemblyman Ohrenschall:

Section 5, subsection 3, talks about a crime involving larceny, controlled substances, and prostitution or any other sexual offense. We have had legislation related to victims of human trafficking who may have received a prostitution conviction. Would such a conviction automatically preclude someone from becoming a massage therapist?

Lisa Cooper:

No. We have had people who were on probation.

Assemblyman Ohrenschall:

For prostitution?

Lisa Cooper:

Yes.

Assemblywoman Kirkpatrick:

Is there a form that will be required for documentation to prove the therapist knowingly did not tell you?

Lisa Cooper:

That can be added to the renewal form.

Assemblyman Nelson:

Looking back to section 5, subsection 3, the bill would remove the language "or a crime involving moral turpitude within the immediately preceding 10 years." Why not take out the language "within the immediately preceding 10 years"? Do you not want to be able to have disciplinary action against someone who commits a crime of moral turpitude?

Lisa Cooper:

Our attorney asked that the moral turpitude language be deleted because it is very subjective.

Chairman Kirner:

Seeing no further questions, is anyone in support of this bill?

Gary Landry, Executive Director, State Board of Cosmetology:

The State Board of Cosmetology is in support of A.B. 126, specifically section 1 where it exempts the nail technologist position who can currently perform massage from the elbow down to the fingertips, and from the knee down to the toes. We support A.B. 126.

Chairman Kirner:

Are there any questions? [There were none.] Is anyone opposed to this bill?

Patrick Shea, Private Citizen, Reno, Nevada:

I am opposed to this bill, specifically section 2. The wording that is being stricken takes a lot of the teeth out of the massage therapy law. It now requires an exam to be administered by an accredited board. Currently, there are no certified, accredited organizations offering an entry-level exam for massage therapy. The National Certification Board for Therapeutic Massage and Bodywork, which is duly accredited by NCCA, offers an advanced credential known as board certified massage and bodywork therapist. As part of its accreditation the program offers an approved exam which meets or exceeds the requirements for education, knowledge, and skill of core competency of the massage therapist.

Currently, the only widely recognized exam in a majority of the states is the Massage and Bodywork Licensing Exam (MBLEx) offered by the Federation of State Massage Therapy Boards. This exam is carefully designed to meet or exceed the core competency requirements for an entry-level therapist. The exam is psychometrically proven, and extreme vigilance is maintained on the security and quality of the exam.

With the new wording, some of the organizations offering an accredited exam offer it only to the graduates of their program. This does not support the local graduates of a bona fide, duly licensed massage therapy school. They cannot, for example, take the exam of the Rolf Institute and receive their license. That is offered only to the Rolf Institute graduates. These exams do not focus on the education or core competency of massage.

Although the techniques practiced by the therapists from these institutes are substantially similar to massage, they often do not measure the core competency of their massage techniques. There is a capability of a small modality offering an exam for a very limited massage technique and using that

to reach the full massage license. I think this is a violation of the original intent of the licensing program.

Chairman Kirner:

Are there any questions? [There were none.] Seeing no others opposed, is anyone neutral? [There was no one.]

Ms. Cooper, Mr. Shea has testified about the change on page 4, in section 2, where the reference to the National Commission for Certifying Agencies is deleted. Would you care to comment on that?

Lisa Cooper:

The National Certification Board for Therapeutic Massage and Bodywork gave three exams. One was the National Examination for State Licensing (NESL), which was strictly a licensure exam for the states. There was also a bodywork exam and a massage therapy exam, which are advanced certifications. Those exams are not core competence, and that is the problem. The requirements for a license should be core competence, and that does not meet those standards. The national board stopped taking applications as of November 1, 2014, to offer the exam for state licensure. The exam was no longer administered as of January 31, 2015.

Chairman Kirner:

The question according to the way the bill would read, is regarding the language "pass a written examination administered by any board that is accredited to examine massage therapists." Are there any boards that are accredited today?

Lisa Cooper:

The board is not accredited. The Federation of State Massage Therapy Boards is owned by the states, and they offer the exam; it is not accredited. I am willing to work with the individuals on whatever language needs to be changed.

Chairman Kirner:

Are there any other closing comments? [There were none.] We will close the hearing on A.B. 126. Are there any public comments? [There were none.] This meeting is adjourned [at 3:43 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 16, 2015

Time of Meeting: 1:34 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 115	C	Assemblywoman Teresa Benitez-Thompson	Prepared Testimony
A.B. 115	D	Paula Berkley, Board of Examiners for Audiology and Speech Pathology	Prepared Testimony
A.B. 115	E	Loretta L. Ponton, Board of Examiners for Audiology and Speech Pathology	Prepared Testimony
A.B. 115	F	Michael Grogan, International Hearing Society	Prepared Testimony
A.B. 115	G	Melissa D. Maestas, Board of Hearing Aid Specialists	Prepared Testimony
A.B. 126	H	Lisa O. Cooper, Board of Massage Therapists	Prepared Testimony