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

Seventy-Eighth Session
March 23, 2015

The Committee on Commerce and Labor was called to order by Chairman Randy Kirner at 12:13 p.m. on Monday, March 23, 2015, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 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 H. 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
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Gary Landry, Executive Director, State Board of Cosmetology
Gwen Braimoh, Director of Instruction, Expertise Cosmetology Institute, Las Vegas, Nevada
April Gonzales, Private Citizen, Carson City, Nevada
Lu Suarez, Regional Campus President, Euphoria Institutes of Beauty Arts and Sciences, Las Vegas, Nevada
Debbie Ritchey, Owner, Body Spa Salon, Las Vegas, Nevada
Liberty Elmer, Director, Paul Mitchell The School, Las Vegas, Nevada
Alexis Miller, representing Sunshine Health Freedom Foundation
Diane Miller, Legal and Public Policy Director, National Health Freedom Action, and National Health Freedom Coalition, St. Paul, Minnesota
Jim Jenks, Owner, Herbal Rose, Vitality, Washoe Valley, Nevada
Hans Frischeisen, Private Citizen, Reno, Nevada
Kym Maehl, Certified Clinical Hypnotherapist, Carson City, Nevada
Nancy Epstein, Certified Hypnotherapist, Minden, Nevada
Diane Mitchell, Private Citizen, Reno, Nevada
Elisa P. Cafferata, President and Chief Executive Officer, Nevada Advocates for Planned Parenthood Affiliates
Laura Rocha, Private Citizen, Minden, Nevada
Glenn Hausenfluke, Private Citizen, Reno, Nevada
Kelsey Kirkpatrick, Private Citizen, Reno, Nevada
Mark Bauman, Private Citizen, Reno, Nevada
Ron Maehl, Private Citizen, Carson City, Nevada
Stacy Woodbury, Executive Director, Nevada State Medical Association
Denise Selleck, Executive Director, Nevada Osteopathic Medical Association
Keith Lee, representing Board of Medical Examiners
Donald Jayne, representing Nevada Self-Insurers Association
Daniel Schwartz, Attorney, Las Vegas, Nevada

Robert Ostrovsky, representing Employers Insurance Group
Jason Mills, representing Nevada Justice Association
Cory A. Santos, Attorney, The Law Firm of Joel A. Santos, Reno Nevada
Craig Kidwell, representing Nevada Justice Association
Jack Mallory, representing Southern Nevada Building and Construction Trades Council
Andrei Razsadin, D.C., Private Citizen, Las Vegas, Nevada
Doug Newson, Private Citizen, Las Vegas, Nevada

Chairman Kirner:
[The roll was taken. A quorum was present.] We will start with the work session.

Assembly Bill 180: Revises provisions governing the biennial audit requirements for the Public Employees' Retirement System. (BDR 23-569)

Kelly Richard, Committee Policy Analyst:
Before the Committee for work session today is Assembly Bill 180. [Referred to work session document (Exhibit C).] We heard this bill in Committee on March 6, 2015. It requires the Public Employees' Retirement Board to select an independent public accountant to perform audits of the Public Employees' Retirement System through a request for proposal not less than once every four years. It also precludes the Board from considering a bid or proposal from the person who was selected in the immediately preceding cycle.

Chairman Kirner:
Is there any discussion? [There was none.]

ASSEMBLYMAN O'NEILL MADE A MOTION TO DO PASS ASSEMBLY BILL 180.

ASSEMBLYMAN SILBERKRAUS SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN PAUL ANDERSON, CARLTON, FIORE, AND KIRKPATRICK WERE ABSENT FOR THE VOTE.)

We will move to Assembly Bill 246. We are limited in time and want to give equal time to the proponents and opponents.

Assembly Bill 246: Revises provisions governing cosmetology. (BDR 54-267)

Assemblywoman Irene Bustamante Adams, Assembly District No. 42:
I am presenting the bill with my colleague, Assemblywoman Olivia Diaz. We thank you for the opportunity to present this bill, which gives an overview of the changes to the practice of cosmetology. We both have an appreciation for the industry and have many constituents who participate in the profession. We are interested in making sure that this industry thrives in Nevada and that we stay competitive from a regional standpoint. Gary Landry of the State Board of Cosmetology will take you through the changes we are recommending you consider.

The practice of cosmetology within the state of Nevada was written into the statutes in 1931 and has a long history of public safety, sustained growth, and excellence in performance of services. Many of the salons and licensees have won prestigious national awards, and Las Vegas is the home to the largest salon in the United States. The Board and its staff take great pride in the work they perform in protecting the public through testing, licensing, and inspection of nearly 26,000 active licensees.

Assemblywoman Olivia Diaz, Assembly District No. 11:
We have been working very closely with Mr. Landry and his team for the last year regarding the proposed changes to *Nevada Revised Statutes* (NRS) Chapter 644. The recommendations for changes have come about through a long process of meetings and active public involvement. A series of eight workshops by the Board's Law Review Subcommittee were publically noticed in accordance with Nevada's open meeting laws and were held with video conference capabilities connecting Carson City and Las Vegas for each meeting. A public hearing was conducted along with the Board meeting to approve the proposed changes with participants from both the north and the south. Once we received the final draft of the bill draft request, we held a town hall meeting from Carson City connecting to Las Vegas so we could receive additional feedback. Throughout this process, our focus has been to have the public engaged and aware of what we want to evolve in this industry.

Gary Landry, Executive Director, State Board of Cosmetology:
The first section deals with job creation. [Referred to topic index (Exhibit D) and topic index overview (Exhibit E).] We are asking to add a shampoo technologist license. It provides for a new license type with minimal training requirements. The shampoo technologist license will allow for students to work and earn a living while attending school. It is also a license that will provide an opportunity for single mothers, working mothers, and others who are looking for full-time or part-time careers with minimal investment.

The second job creation deals with an apprentice program. It adds the aesthetician's apprentice, nail technologist's apprentice, and hair designer's apprentice programs to the existing cosmetologist's apprentice and electrologist's apprentice programs. This will provide an opportunity, particularly in the rural areas of Nevada, for potential licensees to train with a licensed professional to remove the hardship of long-distance commuting or relocation near a cosmetology school for them to enter the profession.

The third job creation aspect of the bill deals with the limited license. This is an existing license type for out-of-state licensees, and we would like to allow in-state licensees to apply for a limited license to practice limited cosmetology services outside of a cosmetology salon. It is now illegal for a licensed cosmetology professional to provide services for weddings, quinceañeras, proms, fairs, and festivals, which drives business to unlicensed individuals. This change will open up a vast opportunity currently unavailable to in-state licensees. [Continued to read from topic index overview (Exhibit E).]

The fourth area of job creation deals with cosmetology schools. The first change is to reduce the education from 1,800 to 1,600 hours and remove the 5,000-square-foot and 25-student minimum requirements to be authorized by the Board to open a cosmetology school. It also removes the requirement for at least one instructor to be licensed in all branches of cosmetology and only requires that a cosmetology school have instructors licensed for the areas in which they practice and instruct. The reason for this is that 92 percent of the citizens in the United States live in states requiring 1,600 hours of education or less for a cosmetology licensure, and that includes Arizona, California, and Utah. The square footage and minimum number of student requirements are being changed because we have a request for opening up a cosmetology school within the women's correctional facilities, and this would allow smaller schools that do not practice all branches of cosmetology. A U.S. District Court judge ruled that it was unconstitutional for a cosmetology school to be required to provide instructors with knowledge outside of what was being taught in the schools. This is to comply with that ruling.

The next areas concern the safety of the public. The first will authorize the Board to ban devices from cosmetology establishments rather than having to see the device in actual use at the time of inspection. The protection of the public is jeopardized by licensees who utilize dangerous devices that have been prohibited from being used in all 50 states. The current law requires observation of the device in use at the time of the inspection. [Continued to read from topic index overview (Exhibit E).]

Protection of the public also deals with advertising. We have defined advertising and require the name and license number in all advertisements, similar to the State Contractors' Board requirements. This protects the public so they know that the services are being provided by a licensed professional. The policing of unlicensed activity advertisement is difficult without the name and license number being included in the advertisement.

We are adopting the Americans with Disabilities Act requirements for the definition of service animals. The requirement to allow pets in cosmetology salons creates an unsanitary and unsafe situation. Conformance with the federal standards allows the public to better comprehend and comply with the uniform practice across all establishments.

We are requesting some administrative changes. We are requiring licensees to indicate every cosmetology establishment they work in as well as their personal mailing address, email address, and telephone number. This will bring contact information to current methods of communication so that we can communicate with the licensees easily. We also are requesting to transfer the responsibility of making deposits from the treasurer of the Board to the Board staff. The Board staff has been charged with deposits for decades and this makes existing practice in compliance with the law. We are clarifying the supervision requirements in cosmetology establishments. Some licensee confusion was noticed on the supervising requirements based on the current language in the statutes. It is being clarified for the licensees.

The next section deals with two- or four-year licensing. We would like to provide a two- or four-year licensing option for the licensees, similar to the Department of Motor Vehicles. This would reduce the administration costs for both the licensees and the Board staff. The reason we are using two or four years is that the choice provides licensees who are not certain of their stay in Nevada, like military personnel and their families, the ability to choose a two-year versus four-year license. If a person is getting ready to retire, he or she would not be required to renew for four years. A two-year license option would be available to all licensees. [Continued to read from topic index overview (Exhibit E).]

A change in the threading requirement requires the Board to inspect threading establishments and provide copies of sanitation regulations to threading establishments. It provides a nominal fee for the threader registration. It is not equitable for other licensees to pay for the registration and inspection of threaders; having the responsibility for threaders but no regulatory control leaves the Board susceptible to legal problems in the future.

In the hair braiding section, we are asking to change the photograph size and remove voter identification as being proof-of-age documentation. Standard passport photographs are now 2 inches by 2 inches rather than the 1 ½ inch square specified in the law. Voter identification does not provide a forgery-resistant means of identification, nor a picture identification for the Board staff. We are also asking to add testing verbiage to be consistent with all other license types. That way, wording on the hair braider license would be consistent with all other license types; it adds one sentence to the licensing for consistency.

The next section deals with changes with barbers. It requires nail technologists in a barber shop to be separated from the area where barbers are performing services such as straight razor shaves. The reason is that all nail technologists are required to follow the provisions of the cosmetology laws and regulations, and mixing the two license types in the same space causes jurisdictional confusion and potential safety problems. It also increases the training requirements for a barber to become a cosmetologist from 400 hours to 600 hours, but reduces the requirement for a barber to become a hair designer from 400 hours to 0 hours. The requirement for training a barber in hair, skin, and nails should not be the same as training the person for hair only, which is what currently exists in the statutes. The Board feels that a practicing barber has all the training and skills necessary to be able to test to become licensed. This is an automatic licensure that allows the barber to test to become a hair designer without additional training.

The Legislative Counsel Bureau (LCB) has moved the scope of services from all license types into the definition section so it is easier for both the public and licensees to find scope of services. The LCB has also defined license types that are allowed to practice in cosmetology establishments, and they have replaced the term "cosmetology services" to "services relating to cosmetology." This consolidation of scope of services in the definition section makes it easier for the statutes to be navigated. It also provides clarity on which license types are allowed in cosmetology establishments. Since the term "cosmetological" is not found in the dictionary, it retitles cosmetological services as services relating to cosmetology. [Continued to read from topic index overview (Exhibit E).]

We have one change that affects the Board of Massage Therapists. It exempts licensed cosmetology professionals practicing within their permitted scope of services from the jurisdiction of the Massage Board. Limited massage techniques are practiced by cosmetology professionals within their permitted scope of services. Currently, the Board of Massage Therapists has a law

change request to exempt the professions that they know, but we are adding a nail technician and the other apprenticeships, which they would not have known.

The bill provides for the Board to create sanitation regulations for threaders and to ban specific devices by regulation. The Board currently has the responsibility to oversee threaders but has no regulatory provisions for specific sanitation standards. That is one thing we are looking to correct. The Board is looking to ban certain devices through the regulation process by appearing before the Legislative Commission.

Chairman Kirner:
Are there any questions from Committee members?

Assemblywoman Seaman:
With all these regulations, I do not share the view that this will create a lot of jobs. I have spent over 23 years in this industry and have a lot of experience behind me. How many other states license shampooers and how many people in this state have been injured by unlicensed shampooers?

Gary Landry:
There are six states that license shampoo technicians. The nonlicensure in other states often means that no one is allowed to shampoo other than a hair designer or a cosmetologist, as is the case in the state of Nevada. There are no national statistics that are consolidated into one area for those injured by a shampoo technologist who is unlicensed. We do get complaints at the Board about unlicensed individuals. They are often hard to prosecute because those unlicensed individuals do not share their real name with the person receiving the service nor do they have a license number that we can track. We do have cases substantiated in the state with unlicensed people providing harmful services to the public. Because they often are not licensed, those are the cases that go unsolved.

Assemblywoman Seaman:
Do you know of any cases where somebody was harmed by unlicensed shampooers?

Gary Landry:
We do not track the unlicensed activity by license type or alleged license type.

Assemblywoman Seaman:
Is that a no?

Gary Landry:
It means I would have to research our data base and look for a specific complaint for shampoo activities.

Assemblywoman Bustamante Adams:
The shampoo technician position is what attracted me to this issue. It costs a substantial amount of money to pursue being a cosmetologist. Three hundred hours for shampoo tech training appealed to me for my younger constituents, for women going back into the workforce, or for military families transferring into the state. I think it is job creation, and I am excited about this portion of the bill.

Assemblywoman Neal:
Does the shampoo tech dilute the current business model? When you bill, shampooing is a part of the cost. When you had the town hall meetings, there were concerns. How were you able to mitigate or manage that? I did not see any amendments.

Gary Landry:
We do not feel there will be a dilution of the practice because the request for this change came from a licensee. Many licensees have worked in other states where a shampoo technician is allowed and is available. I have been told that you have one shampoo tech for every cosmetologist. We had both support and opposition to the shampoo tech position at the town hall meeting. One of the people talking in opposition was actually providing support that we were on the right track with this. She said that shampoo techs could earn $100 to $300 per day in the profession. She was in opposition because they may not complete their schooling.

We think it is a good job and would provide good wages. We have empirical data from another state, West Virginia. They have had 245 people licensed in three years. Of those, 105 have completed additional licensure in cosmetology. We have some empirical data that says it is not a program where people will drop out of school, and we have empirical data that it will have a job creation effect in Nevada.

Assemblywoman Diaz:
I do not see it as a dilution of a business model, but a possible way to have a more efficient business. I have gone to businesses where it takes a couple of hours to get your hair done. I see it as a means by which some beauty salon owners can make their establishment more efficient and give someone who does not have the desire, or the means, to complete cosmetology school the opportunity to get her feet wet. This would give them that opportunity.

Assemblywoman Bustamante Adams:
Salons will have the option to offer this curriculum or not. This would give more options to someone who is looking at this industry.

Assemblyman O'Neill:
Why does it take 300 hours to learn to wash hair?

Gary Landry:
You do not touch your hair and then go touch 36 other people's hair in a day. You are probably not concerned about the practice of infection control and sanitation. You are also not trained in discovering, viewing, and giving advice on diseases of the scalp. A cosmetologist or a shampoo tech would notice some abnormality on the scalp. They are trained to notice what those types are, and they give advice on seeking medical help. There are documented cases of people's lives being saved. It is not about the actual application of shampoo. You want to make sure that you are using the right chemicals. In your house, you do not have the dangerous chemicals that are used in perms, straightening, weaves, and coloring. They learn sanitation and disinfection, diseases of the skin and scalp, and disinfection of the area where they work to make sure they are not passing a disease from one person to the other. It is the same reason that cutting hair at home does not pose the same risk to the public that it does when working in a salon environment.

Leslie Roste, who works for Barbicide, makers of disinfectants, and is a licensed nurse and a microbiologist, has said a cosmetologist will have more skin contact with people than an emergency room nurse during an average day. The nurse is typically wearing gloves, and the cosmetologist is not. It is very important that they maintain and practice great sanitation and infection control. That is the reason for the hours. It is also for consistency. Any person who is in a cosmetology school today must have 300 hours before they are allowed to touch the public.

Assemblyman Ellison:
Do you have to have a license and a background check to be a cosmetologist?

Gary Landry:
You have to have a license, but we do not do background checks. According to state law, you do have to be a citizen or be permitted to work in the state.

Assemblyman Ellison:
So you can have any criminal history and be a cosmetologist or a shampoo tech.

Gary Landry:
The applicants swear under oath that they have not been convicted of a felony. If they have been convicted of a felony, they have to give us a description of the events and all the court documents surrounding the conviction, and I review those. If it warrants that we would not allow licensure, they can appeal to the Board so the entire Board reviews the record.

Assemblyman Nelson:
In section 29, subsection 3, there are a number of provisions to allow apprentices to work under the supervision of a licensed cosmetologist. Why did you not include a shampoo technologist there? Could you add a paragraph (i) to say that a shampoo tech could work under the supervision of a cosmetologist?

Gary Landry:
That was not considered, and it was not discussed at the public meetings or at the Board meeting. There is no reason that could not be done.

Assemblywoman Kirkpatrick:
I want to commend the sponsors for their time and work in trying to get the public to express their concerns. I believe this gives the opportunity for a person to get into the field without the expense of cosmetology school. It seems that people are hung up on one section of the bill, but there are a lot of other places in the bill that help bring clarity and consistency.

Is there anything outside of the shampoo piece that we want to highlight as far as changing our current direction in job growth? In southern Nevada, quinceañeras are a big deal, so this may allow you to shop around.

Gary Landry:
We feel that job creation is going to be addressed not only by the shampoo technologist but also by the apprentice program in the rural areas. It will allow the rural areas to take advantage of the ability to have license types other than just cosmetologists and electrologists. Those would be the aestheticians, nail techs, and hair designers. The limited license change has been well received in the public meetings for allowing licensees to be able to practice outside of a salon for limited services for special occasions, which is an illegal activity today and is done by unlicensed people from outside of the state. They may be licensed in another state and come to Las Vegas for weddings, providing services, and taking away business from our existing licensees. The last area where we are addressing job creation is in the cosmetology schools, where we are reducing the number of hours required from 1,800 to 1,600 to be in line with our adjoining states.

Assemblywoman Neal:
Section 39, subsection 3, paragraph (6) has limiting language. In subsection 4, it says, "Not more than one cosmetologist's apprentice or apprentice of a single branch of cosmetology may be employed at any time at a licensed cosmetology establishment." Why does it only include one, and what are the mechanics behind it?

Gary Landry:
We did that because if you are an aesthetician, you can be trained by a cosmetologist because the cosmetologist has training in hair, skin, and nails. An aesthetician can only be trained by either a cosmetologist who has training in all three areas or an aesthetician. These provisions are trying to indicate that you would have to be trained by someone who has the expertise in the area. That is what we are trying to clarify.

The other clarification that you will see is that as a cosmetology establishment owner, you cannot advertise the apprentice as being licensed, just as a school must let the public know that those performing services are students. If they are not licensed, they need to be under the direct supervision of someone who is licensed to protect the public.

Assemblywoman Carlton:
I want to address the barber issue. I want to make sure we are not going to have any jurisdictional problems. As we allow barbers to become qualified as cosmetologists, they would have both licenses. What is the scope? The nail technologist is licensed by the State Board of Cosmetology but working under the jurisdiction of the State Barbers' Health and Sanitation Board which is very confusing. How will that be addressed?

Gary Landry:
The change to the licensure requirements is twofold. For a barber to become a cosmetologist, we are asking that the statute be changed from 400 to 600 hours. Additionally there are existing provisions that they must also pass a test. They will take a nationwide test, both written and practical, before they become licensed. For a barber to become a hair designer, the Board felt that it was not necessary for them to receive any additional training. With no additional training, they could test and prove that they have the skills necessary to become a hair designer, not skin or nails. Currently, the law requires 400 hours to do hair, skin, and nails, or hair only. The Board did not feel that was equitable.

The nail technicians are under our jurisdiction whether they are working in a barber shop or not. There is an exemption provision which causes some

jurisdictional questions about a nail technician practicing in a barber shop. We were trying to provide clarification. They are required to have a wall and a lockable door separating the two service areas. We would be in charge of inspecting and servicing the nail tech, and the Barbers' Board would have jurisdiction over the barbers.

Assemblywoman Carlton:
I want to make sure that the nail tech understands that working in a barber shop is a much more dangerous place. We have had incidents where people have been hurt. I want to be sure that they have the training and background to know what they are supposed to do in that establishment.

Gary Landry:
That is why we are asking for this change. They would be required to have a wall and lockable door separating the two practice types, as is the case with any other practice type being mixed in with cosmetology today. As long as you are a licensed cosmetologist, aesthetician, nail tech, or hair designer—those licensed under the State Board of Cosmetology— you are allowed to practice freely. If you are an aesthetician practicing, for example, in a medical spa, you are required to be separated by a wall and a door from the medical practice where the doctor has jurisdiction.

Assemblywoman Seaman:
Is it not illegal for cosmetologists and aestheticians to give medical advice?

Gary Landry:
It is absolutely illegal to give medical advice, but it is legal for them to say that they spotted something and that they would suggest that the customer seek medical attention. They are taught in school that when they notice a skin or scalp disease, they refer the customer to a doctor. They do not diagnose.

Chairman Kirner:
Is there any opposition to the bill? [There was none.] Is there any neutral testimony? [There was none.] Is there any testimony in support of the bill?

Gwen Braimoh, Director of Instruction, Expertise Cosmetology Institute, Las Vegas, Nevada:
I support the changing of the square footage for the correctional institutions. I know that across the country there are a lot of correctional institutions that are going in the direction of reentry programs in the facilities where cosmetologists can be trained and prepared to reenter the workforce upon release. The current law requires 5,000 square feet and a minimum of 25 students. I am sure the correctional institutions do not have the space

available and the 25 students. The equipment law needs to be lifted. I was not aware the square footage and number of students would be changing for private schools. So I do not know if I am supporting or opposing.

Chairman Kirner:
Are there any questions? [There were none.]

April Gonzales, Private Citizen, Carson City, Nevada:
I am a cosmetology student in Reno. I support this bill. It could make a huge change in the field of cosmetology by allowing apprenticeships and adding the position of shampoo technician. It could make a big change for students like me. After I complete 300 hours, I could work for someone and see how a salon works. It gives the opportunity for people to try the field.

Chairman Kirner:
Are there any questions?

Assemblyman O'Neill:
Do you think you need 300 hours of training to wash hair? Do you think you could do it in a shorter time limit?

April Gonzales:
I understand that you think it is long, but we are learning how to adapt to different hair types, to be able to give advice, and to identify diseases. The hours are also for practice so we know we are fully trained. It is the same concept for us to be cosmetologists. We have to be able to work for the first three months and train until we pass a test before we go on the floor to give services. I am in school for at least 14 months. The first 3 months are for training, and the rest are for practicing on people. The 300 hours for the shampoo tech is to make sure we have the foundation and know we are doing everything correctly. You have to know what you are doing.

Chairman Kirner:
We will move to Las Vegas.

Lu Suarez, Regional Campus President, Euphoria Institutes of Beauty Arts and Sciences, Las Vegas, Nevada:
I have been a licensed cosmetologist since 1977 and a cosmetology instructor since 2004. I have always been infatuated with this business, as my mom was a cosmetologist. I wanted to be an architect, but things changed. In 1975 I landed my first job at a small salon as a shampoo girl. I knew how to shampoo hair because my mom had taught me. I worked there for a few months, and then the stylist invited me to a hair show. It was at that moment

that the architect dream went out the window and my love and passion for the cosmetology industry was born. I never just wanted to shampoo hair; I wanted to do it all. I wanted to cut, color, and whatever I could do that was involved with hair.

In 2009, I became the Campus President of Euphoria Institutes. We interview over 600 students every year. In the interview process, we always ask a very important question: Why do you want to become a cosmetologist? No one ever says, because I want to shampoo. Their answers are always the same. They love to do hair, cut it, color it, and whatever is involved in doing hair. Many of our students are single parents between the ages of 18 and 25 who have to work in addition to going to school. They work at Taco Bell, Walgreens, Lowe's, or wherever they can find a job to help provide for their families while they strive to improve their future job prospects. Then they graduate and begin the licensing process while still working their job at Taco Bell, Walgreens, or Lowes to provide for their families. How awesome would it be if they could work instead as a shampoo technologist at a salon while in school? They could continue shampooing through the licensing process, and once licensed they could automatically have a position as a stylist with a salon where they had been working throughout school.

Another very important factor is accreditation. The Accrediting Council for Independent Colleges and Schools is our accrediting agency that allows us to accept Title IV funding. Title IV funding helps students with the cost of tuition, which currently hovers around $20,000. There are targeted benchmarks that we must maintain for accreditation. One of those benchmarks is to place 70 percent of our graduates. The shampoo technologist license will give a student the ability to work in a salon prior to completion of her program. Once she graduates and receives her license, her duties in the salon can change to reflect her new status. This transition from shampoo tech to cosmetologist will now allow us to place her. Accreditation helps make cosmetology school affordable to those who would otherwise be unable to attend.

Cosmetology is a business built on relationships. Going to beauty school teaches you how to maintain good sanitation and to cut and color hair. Building relationships happens in the salon. The relationship building starts by being a shampoo technologist in a salon while in school. By the time you are a licensed cosmetologist, your understanding of the business, the relationships, and the experience will already be started, and that gives them an edge on success. Self-esteem, staying engaged, on-the-job learning, building relationships, and working in a field they are passionate about gives our students a fighting chance to not end up stuck in a minimum wage paying job

and gives them permission to be successful. Pass the shampoo technologists license. Maybe someday that student will thank you when she is cutting your hair.

Debbie Ritchey, Owner, Body Spa Salon, Las Vegas, Nevada:
I have been a hairstylist for 40 years. I own the largest salon in the world. I employ 287 people who work as independent operators. On a day-to-day level, I work in every single salon that I own. I see a need for this bill to be passed. It will create more jobs. I tell the people who I interview that when they get out of cosmetology school, it is your job to see if this is for you. They have already spent all that time and money, and I know that the majority of them do not have a fighting chance. I feel strongly that this bill be passed. It will give an opportunity for the top professionals in my industry who work independently to use a shampoo tech. They will pay for them, and they can make an incredible amount of money.

I want to comment on licensing for people to go to hotels. I make available a space of about 1,800 square feet, which I lease, to over 600 operators under a body spa that they can use for special occasions, such as bar mitzvahs and anything else where people need to do hair, skin, and nails. We really need this. It will give me the opportunity to free that space for other things needed in our industry.

This industry is changing at a fast pace. Regarding the prisons, I think that inclusion will create jobs for people who are incarcerated. It is an industry where you are self-driven, not managed. It would benefit these people who are coming out of prison to create jobs. Please think about this shampoo bill. We need it at the top of the profession.

Liberty Elmer, Director, Paul Mitchell The School, Las Vegas, Nevada:
I am here to request serious consideration to decrease the number of hours for cosmetology school from 1,800 to 1,600 in Nevada. As you have heard, the number of required hours in our surrounding states is 1,600 with the national average of hours being 1,500. Many students leave the program to go to another state simply because that state requires fewer hours. As cosmetology schools, we are held accountable and penalized for these students' actions but have no control over this whatsoever. The Department of Education requires us to sustain a minimum of 50 percent completion rate, 70 percent licensure rate, and 60 percent placement rate. A reduction of hours is necessary and beneficial because the students will be able to graduate sooner and find employment more quickly, and it would help to support our industry against gainful employment issues that are surfacing. Quicker employment means the

ability to start repaying student loans, which allows students to reduce interest debt on their loans.

The reduction of hours could slightly decrease the amount of money a student needs to borrow, limiting excessive or unnecessary debt. Student repayment on loans is crucial. Cosmetology schools are held accountable for meeting specific metrics from the Department of Education in order to sustain our federal funding. Without federal funding, many cosmetology schools would not be able to continue operation. Reducing the number of hours could also help to attract individuals who are considering a career in the field of cosmetology whether they are residents or are considering relocating to Nevada because our requirements align with the national average. This helps to nourish our small business owners and support revenue for the state.

Chairman Kirner:
Are there any questions from the Committee?

Assemblywoman Seaman:
Have you thought about the cost of the 300 hours for the shampoo tech schooling?

Debbie Ritchey:
If I were the student, I would not want to pay more than $500 to be honest. The weak always fall off and the strong survive. When they get in there and see they cannot make any money, it will eliminate a lot of the people who are uncertain.

Lu Suarez:
We have not gotten that far. I think the first step is to see if the bill is passed. We would then need to decide what we are going to charge. Our current tuition rate is $10.17 per hour. If we applied that to the 300 hours, it would be about $3,000.

Assemblywoman Bustamante Adams:
Each school would have the liberty to choose that for their business. During the drafting, we found some drafting issues of a technical nature, so there is a proposed amendment (Exhibit F). We appreciate the opportunity for this hearing.

Chairman Kirner:
I will close the hearing on A.B. 246 and open the hearing on Assembly Bill 295.

[Assemblywoman Seaman assumed the Chair.]

Assembly Bill 295: Revises provisions relating to the provision of certain health care services. (BDR 54-698)

Assemblyman Randy Kirner, Assembly District No. 26:
Today we are presenting Assembly Bill 295. This is a bill related to certain health care services. This bill is by request, and with me are people who will take you through the details of the bill.

Alexis Miller, representing Sunshine Health Freedom Foundation:
We are here in support of A.B. 295 and thank Assemblyman Kirner for introducing it on our behalf. This bill provides for health care freedom within Nevada by protecting the complementary and alternative wellness service industry while maintaining the integrity of the practice of medicine. We will be presenting an amended version of the bill (Exhibit G). It takes any reference to complementary or alternative medicine or health care and changes it to "wellness services" to avoid any confusion about the actual service or industry about which we are talking.

Assembly Bill 295 as amended provides an exemption to the requirement of professional licensing for wellness service providers who wish to consult clients on wellness; perform noninvasive, complementary, or alternative procedures; or recommend over-the-counter herbal supplements. These services range from light therapy and magnetic field treatment to herbal and mineral supplements. Some of our members and local practitioners will testify later about some of these services, the health benefits, and why they specifically should not require state medical licensing. For example, the current definition of practice of medicine in *Nevada Revised Statutes* (NRS) 630.020 is, in part, to "diagnose, treat, correct, prevent or prescribe for any human disease, ailment, injury, infirmity, deformity or other condition, physical or mental, by any means or instrumentality."

Although we appreciate the intent of the law, it is far too broad. It prohibits consumers from being able to seek a broad range of health and wellness options and jeopardizes small business owners for simply trying to provide wellness services that typically complement traditional medical protocol. Under the current definition, a member of the Committee who recommends vitamin C to another member who has a cold is illegally practicing medicine and could be subject to civil or criminal penalties. It does not make sense. Our goal is to create an exemption in the NRS for wellness service providers within specific confines. We believe this is a reasonable way to approach this problem to ensure both the integrity of the practice of medicine and to allow these wellness providers to flourish in our state.

The process we propose is as follows. Section 3, subsection 1 of this bill states that a wellness service provider is allowed to consult with and sell product to clients without having to be licensed by the state of Nevada. It also clearly states prohibited acts, including but not limited to performing surgeries, setting fractures, prescribing prescription medications, or recommending to discontinue current medical treatment. Section 3, subsection 2 requires a wellness service provider to provide a disclosure clearly stating that he or she is not licensed by the State of Nevada as a provider of health care, the nature of the service to be provided, and a recommendation that the client notify his or her provider of health care of the wellness service to be provided.

As a mom and a consumer, this bill is important to me. My son has been undergoing treatment for leukemia for the past three years. He will be done on April 26 of this year. I have followed every bit of advice the oncology team has given me, and I have done exactly what I have been told. We are blessed that he has received world-class care and has as good a prognosis as one can. As we approach the end of his treatment, I have been asking his team what I need to do to keep him healthy. He has undergone over three years of chemotherapy, and his system has been decimated. I have been assured that he will be fine and that we will continue to do monthly lab draws to monitor his blood counts, but that is all. No one has talked to me about lifestyle, supplements, or nutrition. Under current law, I am not allowed to have that conversation with anyone except a licensed medical practitioner. Sadly, I am not getting the answers I need from them. I feel it is my right to be able to get counsel from a variety of sources so I can make the best, most important decision regarding the health of my family and myself.

We understand there are some concerns with the bill, and we look forward to working with all interested parties to find a common solution.

Diane Miller, Legal and Public Policy Director, National Health Freedom Action, and National Health Freedom Coalition, St. Paul, Minnesota:

Thank you for the opportunity to testify today in support of A.B. 295. I am an attorney and work nationally as the Legal and Public Policy Director for National Health Freedom Action (NHFA) and its sister educational organization, National Health Freedom Coalition (NHFC). National Health Freedom Action provides resources to states that are working to pass legislation that would protect consumer options in the broadest categories of wellness resources and services. National Health Freedom Coalition hosts the annual U.S. Health Freedom Congress, bringing together leaders from across the country who are experts in key areas of consumer-driven concerns. Both NHFA and NHFC have provided information and testimony at a number of state legislatures on legislation similar to A.B. 295.

According to a number of professional studies, millions of Americans are using complementary and alternative health care wellness services and are paying out of pocket to do so. Clients find that alternative practitioners often offer approaches that are either more natural or may help consumers address their concerns by lifestyle changes or noninvasive healing techniques from a broad variety of methods that consumers have become aware of through their own research and networking.

The Nevada Sunshine Health Freedom Foundation has been in contact with our organization and requested our assistance. We have worked to help them with this legislation. Currently nine states have passed similar laws, including Minnesota, Rhode Island, California, Louisiana, Idaho, Oklahoma, Arizona, New Mexico, and Colorado. We are working with another ten states that are in the process of passing or introducing this type of legislation.

We support A.B. 295 because it ensures consumers their broadest access to wellness information and services, and it provides practitioner protection and guidance for herbalists, and many other wellness services, as long as the service provider avoids a list of prohibited conduct and gives out proper disclosures. If a practitioner goes outside of the parameters of the law, they do not receive its protection. The laws also empower consumers to communicate with their medical providers what other types of services they might be using.

We believe that A.B. 295 will provide a practical solution for Nevada to address the wide use and growth of these complementary and alternative wellness services and businesses in the state and to ensure consumers have continued access and availability to these many natural wellness services. Services will be provided by those who avoid the list of prohibited conduct and those who give out proper disclosure to their clients.

I am privileged to live Minnesota, which has a law similar in concept to A.B. 295. We appreciate the protection of the broad range of wellness options in our state, and we believe that consumers are empowered in taking charge of their own lifestyle choices with their use. We are grateful to the citizens of Nevada who have worked to provide a bill that provides a solution to a pressing public need. We hope that you support this bill and give it your positive encouragement and attention.

Jim Jenks, Owner, Herbal Rose, Vitality, Washoe Valley, Nevada:
I am owner of an herb shop and have been in the business for over 45 years. This business has been a real blessing because I have learned how to care for myself and my family. I greatly appreciate the knowledge I have received from both the medical and natural sides. This bill will enable us to better educate our

customers about our products and thus grow my business even better. This bill will give us more freedom and allow us to share with our customers our personal experiences and knowledge acquired from many lectures, conventions, and seminars. It is then their choice to accept these ideas and to encourage their own research for their own health needs.

It will provide for more freedom to educate. People are really seeking our help with this education today. We are excited because we feel our customers are protected by the disclosures in the bill and by the prohibited acts. It is laid out in plain language. Assembly Bill 295 is asking for our health freedom, to have more access to all health care information, so the public can make the best, most informed health care decisions without unnecessary government interference.

Chairman Kirner:
Thank you for considering our testimony today. There are others who want to testify in support of the bill. We have done our best to try to narrow the scope of practice and not to interfere with the practice of medicine or any other profession.

Vice Chair Seaman:
We have no questions from the Committee, so we will move to support.

Hans Frischeisen, Private Citizen, Reno, Nevada:
I am an herbalist and a bike rider. I have ridden a bike around the earth five times. The most important thing to me is to travel with a very solid immune system. That is critical particularly if you go to exotic places. I must be good with that because I claim that I have not been sick a single day since 1972. I think that should be the dream of any society. You may appreciate that with my experience and knowledge, I feel an obligation to share how to build and maintain health with anyone I talk to, or through lectures I give and publications I write. The right to do so should not be an issue in a true democracy. Sadly, four years ago in this very facility, a certain self-serving interest group tried to pass legislation to limit sharing of nutritional information. That would have hurt all of us. Fortunately, they did not prevail. For the sake of our health, I submit to you to safeguard and protect sharing health information by supporting this health freedom bill.

Kym Maehl, Certified Clinical Hypnotherapist, Carson City, Nevada:
I am a counselor, a clinical hypnotherapist, and a life coach in Carson City. I have a Ph.D. in holistic ministries, a master's degree in counseling and educational psychology, and a bachelor's degree in criminal justice. I am here today speaking on behalf of the value of complementary and alternative

therapies, both alone and in conjunction with traditional Western medicine. I would like to do that by sharing a personal experience in which I believe, by being afforded the opportunity to choose alternative therapies, my medical condition was more effectively and thoroughly addressed than it would have been through Western medicine alone.

A number of years ago, I suffered from cerebral shingles, which can be both dangerous and painful. At that time, feeling symptoms of the condition, yet not yet knowing what it was, I had several alternative treatments and therapies, including Bowen Therapy, a powerful form of energy work, in addition to acupuncture and herbal therapies. Upon seeing me, my acupuncturist, who was also a Western medical doctor, told me to go to the emergency room where they could quickly diagnose and treat me if it were shingles. I did this and was treated.

What makes this profoundly applicable is that because of the combination of therapies, my shingles were uncharacteristically gone within two weeks, with very little scar tissue or nerve damage. This is not the case with most sufferers of this condition, which usually goes on for months or even years and can have lasting implications. In my case, I feel very fortunate for the opportunity to choose alternative therapies. I would like to conclude by stating that I strongly support A.B. 295, and I encourage you to support it as well.

Nancy Epstein, Certified Hypnotherapist, Minden, Nevada:
I am a hypnotherapist certified by the American Council of Hypnotist Examiners. I would like to share a statement in support of A.B. 295 from the president of our association, Dr. John Butler. The statement reads as follows:

> On behalf of our members both in the state of Nevada and throughout the United States, we confirm our support for the above bill. We believe that provisions of this bill provide both protection of public safety and freedom of choice for the practice of healing arts and therapies for the personal well-being and health of citizens. We consider that public safety and the rights of citizens to freedom of choice are best served by having full and correct information available. The provisions of this bill put every consumer in this good position.

I am educated and trained to share the tool of hypnosis for self-improvement. I have the pleasure of helping my clients stop smoking and relieve stress. I urge passage of A.B. 295 so we may continue to fulfill the needs of our clients.

Diane Mitchell, Private Citizen, Reno, Nevada:
As a businessperson, I believe that putting unreasonable restrictions and requiring licensing of services which do not necessitate the education or training of the licensed field limits my ability to serve the people of Nevada. I have experience as a hypnotherapist who was compelled to leave the state to practice in California due to a cease and desist letter which I received, opened, and was out of business at that moment. The letter said, immediately stop practice. I went to California to be in compliance. The people who were coming to me wanted to continue, and they went to California. To have been required without a cause to stop practicing, nothing to indicate anything was wrong with our work, I felt I was essentially being driven out of state.

This bill supports access to consumers. As a consumer, I want to be able to look at all avenues. If something happens to me, as a consumer, I want to be able to look at all possible resources. I will get multiple opinions from anyone who has information to share. I will take that information and choose what is best for my personal intention. I do not want my choices limited by overregulation. Everyone would agree that there are different levels of service. We have regulations in place for those professions that diagnose diseases, prescribe medications, perform surgical procedures, and other things. Of course, training for all of that and licensing is appropriate.

I teach my clients to access their own personal, innate resources and to use those resources to support their goals and intentions. In doing that work, I welcome working with a team. I have doctors who refer to me, and I refer to other professions. Working as a team best serves those people receiving the service. This bill requires disclosure of education and training. I believe it is important to inform people. This bill requires giving that sort of information with reasonable restrictions. It maintains the integrity that we all desire. The public can then perform their due diligence in making decisions for their optimal well-being. Thank you for the effort you are putting into this.

Vice Chair Seaman:
We have a few questions.

Assemblywoman Kirkpatrick:
I am concerned about the definition of health care services because it appears to only apply to this section of the law, but there are many other pieces that apply. Section 2 seems to be more than a preamble. It seems to be a perception that everybody should want to embrace, and I would like to know why that language was included. Please explain those sections.

Chairman Kirner:
The first part of your question had to do with section 2 in reference to the health care services. If you look at the amendment, you will see that all the references to health care services have been struck and replaced with wellness.

Diane Miller:
This section is not necessary in this bill, but it gives an explanation for the legislators with a history. It is not part of the implementation of the bill. Some states do not allow that type of language in their bills, but we provided it as a draft nationally in case they needed it.

Assemblyman Nelson:
My questions are for Ms. Epstein and Ms. Mitchell. Are you practicing hypnotherapy?

Nancy Epstein:
Yes, sir.

Assemblyman Nelson:
Do you have a degree in psychology or psychiatry?

Nancy Epstein:
No, I do not. I am specifically educated and trained. I am certified as a hypnotherapist. I have a disclaimer and a disclosure that I share with every client that says I am not a psychologist or counselor and that I do not diagnose, treat, or prescribe.

Assemblyman Nelson:
Who certifies you?

Nancy Epstein:
The American Council of Hypnotist Examiners. We have continuing education units requirements to meet every two years.

Diane Mitchell:
My situation is exactly the same.

Assemblyman Nelson:
Is it your understanding that you are allowed to practice hypnotherapy with that certification in Nevada?

Nancy Epstein:
There is not a specific licensure or certification in the state of Nevada for hypnotherapists. I got the education so that I could share hypnosis as a self-improvement tool. I do not represent myself as a psychologist using hypnosis. I am a hypnotherapist sharing the tool of hypnosis for self-improvement, and for behavior modification to change behaviors and habits. I am limited to that specific scope.

Assemblyman Ellison:
Will this bill have any impacts on businesses that sell health foods and vitamins?

Alexis Miller:
It should not.

Assemblyman Ellison:
Should not or will not?

Alexis Miller:
We will try to get a legal opinion. Our intent would be to extend some protections to those providers so they could have a more open dialogue with their clients and customers about the benefits of their supplements.

Assemblyman Ellison:
We spent a lot of time trying to be sure that these small shops who sell nutritional products were not going to be thrown into the licensing agreement. I want to be sure this bill does not do that.

Chairman Kirner:
We will be glad to follow up on that.

Vice Chair Seaman:
Are there others in support of the bill here or in Las Vegas?

Elisa P. Cafferata, President and Chief Executive Officer, Nevada Advocates for Planned Parenthood Affiliates:
We have three health centers in Nevada, and we focus mostly on preventive health care with licensed and trained staff. We are still working with the bill sponsors to make sure that the list of prohibitive practices does not impact practices that we want to be sure are available in the state. I was just in the Committee on Health and Human Services talking about a rapid human immunodeficiency virus (HIV) testing which is being presented in Assembly Bill 243. We support that bill and want to be sure we can move it forward.

We are supporting this bill because we have had the experience of pregnancy centers throughout the country offering services. We believe in educating and counseling clients in an unbiased, medically accurate way. When some of the pregnancy centers offer services like pregnancy tests and ultrasounds, we think it does imply there is a health care professional on staff. Often, they are run by volunteers and it is not the case. We support the disclosure elements of this bill so the people know the care they are getting and from whom they are receiving it.

Laura Rocha, Private Citizen, Minden, Nevada:
I am very grateful for the services of hypnotherapy that I received from Diane Mitchell and the services I received from other providers. I have four herniated discs in my back that are ruptured, and I was required to have surgery. I was told that I would automatically be 4 percent more disabled. I was already diagnosed as 67 percent permanently disabled, and I did not want to increase that, nor did I want to have surgery. I sought the help of hypnotherapy as well as craniosacral therapy. Within four weeks, I was able to move and get off of Norco.

I hope that you will consider how important this is to me as a citizen of Nevada. I would like to be able to choose who I see for my health care, and I do not want to be told that I cannot see certain people. As the result of my experience seeing a counselor who has a master's degree, I have decided to go into that field myself. The licensure requires that you be in a box, diagnosing people, and I do not think that that is the best way for everybody. I am currently pursuing my master's degree. I want the choice to be able to be licensed or not so I can help people. I do not want to be defined by laws that say you have to do it one way. I want to be able to help people, as I have been helped, in the best way possible for the individual. For that reason, I am strongly in favor of this bill and hope you will consider this in your decision.

Glenn Hausenfluke, Private Citizen, Reno, Nevada:
I hold a Ph.D. as a naturopathic physician in Nevada since 1990. I am currently in practice. I think one thing that would be really helpful for everyone here to understand is that over the last five years, with the economy taking the turn that it has and Obamacare still trying to figure things out, everything is about money. The all-important human body does not matter; it is all about money. As a consequence, when you see patient after patient upset over the choices they have with allopathic medicine, you get an idea of what is going on here. The Western doctors are relegated to doing unconscionable practices on the human body because it is the only way they get paid. Simple examples include operating on sciatica. Most people in the alternative medicine field would know that you do not operate on something like sciatica. It usually always goes

wrong. The patient will end up in pain and then start the routine of pain medications, depression, and everything else that you can think about.

Medical doctors will have you believe that they do not know what causes high blood pressure. Your brain is comprised of 85 percent liquid. When you get chronically dehydrated, your brain is going to go into your organs and start leeching water from your organs in order to keep your brain functioning properly. The action back and forth is what constitutes the high blood pressure. If you go to a medical doctor for high blood pressure, they are going to simply put you on high blood pressure medication and not even give you an opportunity to explore anything else, like drinking water for ten days to see if your blood pressure has normalized. Assembly Bill 295 would be a wonderful addition because it would allow for people to continue to be healed as opposed to having to suffer needlessly from being put through surgeries and/or toxic horrific pain medications.

Kelsey Kirkpatrick, Private Citizen, Reno, Nevada:
I am a flight paramedic out of Elko and Reno. I am a paramedic in Portola, California. I have been teaching for about six years, and I teach advanced cardiac life support for the American Heart Association. I have been teaching for about six years, and I teach for Kaiser Permanente Hospitals. Most of my experience comes from working as a paramedic in Stockton and Oakland, California. I have seen how people live. I go into their houses when they are sick, broken-down, and do not know what to do. I see what medical problems they have and what medications they use. People do not know where to go anymore. Medical doctors do not know what to do anymore. Medical professionals know how broke the industry is. Unquestionably, 95 percent of us know it is broke. We know that real healing comes from alternative medicine and life coaching, which gets into your life to learn what is causing your illness. Most doctors do not have resources to refer people to anymore. They do not know what to do, and they do not know what is available. Some doctors like the money and they are bound by liability. Assembly Bill 295 is going to help open the door for more people to pursue alternative medicine and put more of a label on it. It will become more professional and have more validity behind it. Hopefully, it will open the door for more insurance claims. Currently, insurance does not cover most of these practices. If it can become a more lucrative alternative, people can actually pursue it.

Vice Chair Seaman:
Is there anybody else in support of A.B. 295?

Mark Bauman, Private Citizen, Reno, Nevada:
I am a user of herbs and vitamins. I am here in support of this bill. When I was 28 years old, I had 163 tons crush my wrist. That was in Modesto, California. An orthopedist, Dr. Moore, reconstructed by wrist, which was thinner than a piece of paper. I had to wait for him for over 10 hours. He told me that my bones had been away from the blood supply for so long that they would turn to powder. He wanted to fuse my wrists. I did not want to have it fused; I wanted to heal it so I could have movement. He said I would have to come back later and have surgery to fuse it. He did the surgery and did not fuse it. I took a lot of bone knitting herbs on the advice of my in-laws. I have full flection in my wrist today over 30 years later. The ability to be able to talk to someone to heal your body is different than going to the medical profession who put it back together. There is room for both. I needed Western medicine—it is the best medicine in the world—and I was thankful for Dr. Moore. I am also thankful for the advice from my father-in-law about historical bone knitters, which are the herbs I took to help my wrist heal. I am thankful to have been able to get both sides and to heal my body properly.

Ron Maehl, Private Citizen, Carson City, Nevada:
I am educated as a professional mining engineer. I have no license, no registration, and no certification in Nevada for anything to do with wellness. Twenty years ago, I had two near-death experiences. I awoke after those, and for the last 20 years I have been helping people. I am here to help. This bill, if passed, is a beginning. The power in every one of these lights operates because of a frequency that passed between a negative and positive pole of energy. If you talk to doctors about energy medicine, you will get a blank look. The first habit of highly effective people across all history, according to Stephen Covey, the well-known author of *The 7 Habits of Highly Effective People*, is being proactive. The subtle therapies that are mentioned in this wellness bill are of a proactive nature. I have been crushed underground and have had many bones in my body broken. I have had medical assistance from some of the best in the country and the world. I needed it. As far as the subtle parts of energy, energy flow, and wellness therapies, they serve to be proactive and keep us well.

We have heard today that the health care system is a bit broken. We are here today and the Health Freedom Coalition is involved because of overreach by state agencies in Nevada working to regulate therapies of which there is no knowledge, no certification, no licensure, or registration processes. Yet, industries like hypnotherapy and Bowen Therapy were closed by these same state regulatory agencies. Without that impetus, we would not be here.

A wise person once said that government is here to benefit the people and not the other way around. Ten years ago there was a lot of movement toward making Nevada an alternative and complementary health care state. Thousands of people a day are going to Mexico for some of the best medicine in the world. They could possibly come to Nevada because of all of the industries that are established here, such as travel and hotels, while gambling is dying. This could be the start of something very big.

Vice Chair Seaman:
Is there anyone else in support? [There was none.] Is there anyone in opposition?

Stacy Woodbury, Executive Director, Nevada State Medical Association:
I represent physicians licensed to practice medicine in Nevada. We have a few concerns with the bill. I spoke with Alexis Miller before the meeting, and I look forward to addressing those concerns with her.

Vice Chair Seaman:
Is there anyone else in opposition here or in Las Vegas? [There was none.] Is there anyone to testify in a neutral position?

Denise Selleck, Executive Director, Nevada Osteopathic Medical Association:
We have received the proposed amendment through Alexis Miller, and we appreciate the changes that have been made. We are neutral on the bill in anticipation of the amendment.

Keith Lee, representing Board of Medical Examiners:
We are the allopathic physician licensing board. We appear as neutral on the bill and are pleased with the amendment shared with us by Alexis Miller. We think that is a good starting point. I want to clarify that in section 3, the way it is written, we are fine, but as many of you may know, we have in Chapter 630 of the *Nevada Revised Statutes* (NRS), under the supervision of physicians and physicians assistants, medical assistants who are not licensed under any chapter. They are empowered under the law to perform certain clinical procedures under the direct supervision of a physician or physician assistant. That often includes administering shots, which are generally flu shots. We want to make it clear that medical assistants who work under the supervision of a licensee under Chapter 630 of NRS would not come within section 3 as written, particularly under subsection 1, paragraph (a), which includes any procedure which punctures the skin of any person, which obviously means administering a shot.

Vice Chair Seaman:
Are there any questions from the Committee?

Assemblywoman Carlton:
I did not think our medical assistants were allowed to do those.

Keith Lee:
I will check this to determine if I am correct, but it is under the supervision of a physician or physician assistant. It is not a frequent practice, but in terms of administering flu shots and shots that are intermuscular in nature, I believe a medical assistant may do those.

Vice Chair Seaman:
Are there any other questions from the Committee? Seeing none, I will ask the sponsors to make closing comments.

Chairman Kirner:
Thank you for hearing our testimony today. We have been and continue to be open to working with those who might have objections to the bill.

Vice Chair Seaman:
I will close the hearing on A.B. 295.

[Assemblyman Kirner reassumed the Chair.]

Chairman Kirner:
We will move to Assembly Bill 229.

Assembly Bill 229: Revises provisions governing workers' compensation. (BDR 53-754)

Donald Jayne, representing Nevada Self-Insurers Association:
The Association represents members who satisfy their workers' compensation obligations in Nevada either through individual self-insured programs or through self-insured groups that come together for the purpose of workers' compensation. Since workers' compensation was privatized in 1991, the issues involved focused on fairness for workers while maintaining cost-effective programs for employers. This bill seeks to enhance the effectiveness of workers' compensation while maintaining a cost-effective program for employers by removing inefficiencies and opportunities for abuse. The Self-Insurers Association realizes that workers' compensation is designed to treat injured workers, including rehabilitation if necessary, and focus on returning injured workers to work as quickly as physical limitations allow.

I have been involved in workers' compensation in Nevada since 1991, when I was the General Manager of the State Industrial Insurance System. For four and a half of the last six years, I was the Administrator of the Division of Industrial Relations (DIR). In the periods in between, I ran my own business and did some government relations work and assisted the insurance industry in putting together different programs in that industry. I will go through the bill.

Section 1 addresses *Nevada Revised Statutes* (NRS) 616A.250. We are attempting to address incarceration. With new technologies, people can be put on house arrest or weekend incarceration. We would like for the people who are not available to work to not be paid their benefits when they cannot work and are, in fact, incarcerated. This section impacts several different sections within the NRS, including NRS 616C.475, which is temporary total disability; NRS 616C.500, which is temporary partial disability; and NRS 616C.590, which impacts vocational maintenance. If they are incarcerated during those periods, we do not believe they are eligible for those benefits.

In section 2, the Nevada Self-Insurers Association is recommending that we shorten the period of time in NRS 616C.020 from 90 days to 30 days. Our intent is to get injured workers in for treatment more quickly. The worker has seven days to complete the C-1 form, which identifies an incident, and he has 90 days to seek treatment. We find that employees try to wait. It is our opinion that if they go to the doctor sooner, we will be able to get the diagnosis more quickly. Daniel Schwartz can give more clarification.

Daniel Schwartz, Attorney, Las Vegas, Nevada:
I am appearing on behalf of the Nevada Self-Insurers' Association. I have been a practicing defense attorney since 1993. I litigate approximately 250 cases per week. I see a lot of these cases. The proposed change does not include the seven-day reporting requirement. There is no proposed change to the excuse provisions that are contained within NRS 616C.025, meaning the same reasons for failing to seek medical attention within the first 90 days, as the law currently requires, will exist if this is shortened to 30 days. One of the main reasons behind this is to try to get the injured worker into treatment earlier so we can start moving the claim and the medical treatment as it progresses. I want to stress that there was no proposed change to the excuses for failing to do something within 30 days. Mistake of law and mistake of fact and the other restrictions that currently exist will remain. There is no proposed change to Chapter 617 of NRS, which is the occupational disease section. That currently reads 7 days to report your claim and 90 days to seek medical attention. It will stay the same because we believe the development of an occupational disease can take longer than the development of an industrial injury.

Don Jayne:
Section 3 addresses how injuries are rated. We are talking about the American Medical Association's (AMA) *Guides to the Evaluation of Permanent Impairment*. It is the guide that Nevada and most every state that I am aware of uses to evaluate the permanent partial disability, which is the damage to the body, and do a rating. Back to 2003 in Nevada, statutory language was put in place requiring the review and, if appropriate, the adoption of the most current version of the Guides. In 2009 the law was changed, and we now remain static with the Fifth Edition of the AMA Guides. The Sixth Edition has been out for some time. You will hear why people oppose the Sixth Edition. The Self-Insured Association thinks it is appropriate that when new guides come in that they be evaluated and adopted by Nevada to keep us current with technology and changes. Every guide has changes with which people may disagree.

It is my understanding that the U.S. Department of Labor, for its Division of Federal Employees' compensation, adopted the Sixth Edition of the guide in 2009 and feels it results in equal justice under the law for all claimants. The federal programs talked about going back more than 50 years working with the entity and the surviving entity that creates these guides. They feel it is appropriate, and they acknowledge in their verbiage that different people will see changes in these guides when they come through.

Daniel Schwartz:
We have had various changes over the course of the years, and we skipped one of the versions of the AMA Guides. The law has always been, until the Fifth Edition was in place, that we use the most recent edition. I am sure people in opposition will say that it makes ratings on certain body parts go down and others go up. From my experience, every time a guide changes, something goes up and something goes down. The intent has always been to use the most recent edition. For some reason, since 2009, we have been stuck on the Fifth Edition. In our opinion, it is time to move on to the most recent edition.

Chairman Kirner:
We have questions from the Committee.

Assemblywoman Kirkpatrick:
We have always tried to have working groups on workers' compensation issues because they are so complicated. In 2009, we had a lot of discussion about the Sixth Edition and decided to wait, and many states who did adopt it have since rescinded their decision. Why is the discussion different now than it has been since the early 1990s? What has changed in the process when it comes to protecting the worker?

Don Jayne:
We feel that updating to the most current technology is appropriate. That is why we are bringing it again.

Assemblywoman Kirkpatrick:
Why are other states reversing their position to adopt it and we are doing the opposite? What is the compelling reason? If we are going to have this conversation and not have working groups, then we need to talk about specifics as opposed to generalities.

Don Jayne:
I believe that my testimony is going to remain very similar to what it has been. It is our desire to bring into consideration the more current technologies acknowledged in the Guide. I personally do not know why other states may or may not have moved away. Nevada was in a position where we would have accepted the Sixth Edition, and we moved away from it in 2005. We know the Guides will age and become unsupportable in the long term. We want to get it back to the situation where Nevada is reviewing those Guides and then determining what to adopt from them. In reviewing the Guides through the administrator at the DIR, Nevada could choose to adopt a portion of it, all of it, or reject it. Those processes were done at the legislative basis so it is in statutory language. We are trying to come back to where it is in the regulatory process and have it evaluated for Nevada when it comes up within the 18-month criteria that we had in similar language in the past. We look forward to working with the different groups as this bill moves forward.

Assemblywoman Carlton:
Workers' compensation is supposed to be the grand bargain. The worker gives up their right to sue their employer and in exchange they get their benefits, their medical care, and the possibility of a future job. This bill takes away a lot of the options that we gave the worker in the grand bargain in exchange for not suing their employer. We want to start whittling away at benefits, reopening, job training, and the average monthly wage. Somebody is on house arrest for something that may not be related to their disability. We are talking about the permanent and temporary disabilities.

The 12 sections of this bill do nothing but hurt injured workers. If you want to get rid of the grand bargain, we should just do it and stop wasting the Legislature's time and all the money in drafting and just let the employees sue their employers. If not, we need to be reasonable and have something on both sides. I understand there may be a couple of small issues in here that we will need to address. If people are on house arrest, how are we going to track when they get paid? How are they going to appeal if their paycheck is short? This is

what people need to survive. This is part of the deal we made, and we did discuss these things for the last decade or so. I am upset about the house arrest part and some of the other parts that are just about taking away benefits from people who have few resources.

Don Jayne:
We have worked on workers' compensation issues for a long time. There have been a lot of different deals that have been done and a lot of different things that have happened. The workers' compensation laws continue to evolve. Every session there is at least one bill about workers' compensation. We are really concerned about keeping that system in balance. We saw that in the early 1990s when the system got too far out of balance and we had the major reforms of 1993. Since then we have been revisiting it as it comes back every session. We view this as a similar way we would like to visit with these issues. I would like to meet with the different parties involved. We are trying to keep the system tuned up and in balance. We want to make sure that it is as efficient as possible and provides benefits to injured workers and some balance for employers.

Assemblywoman Carlton:
This is not balance.

Assemblywoman Neal:
Texas did a study comparing the AMA editions. They showed that the Sixth Edition reduced the impairment rating. Between the Fourth and the Fifth Editions it was a 0.3 percent change, and between the Fifth and Sixth Editions the impairment rating for supplemental income benefits decreased by 5.4 percent. So there is a significant reduction between the two editions. Help me understand the meaning of that.

They also discussed the average impairment rating. This study was done by the Texas Department of Insurance, and they had three independent reviewers who presented separate results in the AMA Guides. They said that between the Fourth and Fifth Editions the average impairment rating of the cases increased 1.3 percent, but between the Fifth and Sixth there was a decrease by 1.7 percent. I understand that impairment ratings are used to calculate the workers' compensation that could be owed. Help me understand the meaning of that. I want to understand what the Sixth Edition means and if the application changes.

Don Jayne:
The components which you are talking about are used in the calculation of the rating. Each guide may have a slightly different look at the way things are

developed. The current guide brings in activities of daily living, which may not have been in past guides, as we have learned how those things impact an injured worker. The guides are put together by a bureau that is staffed by physicians and others who do this work. It is not necessarily disadvantaged by either side. They try to recognize the current science that is out there. An example would be a knee injury. The current medical technology is much better in rebuilding those knees and rehabilitating that body part. The percentage of the award may be lower because the damage to the whole man is lessened by the medical technology. Those are components that drive the math that determines the percentage for the award.

Daniel Schwartz:
The study that you referenced gives two different findings. One is about weeks of disability, which many states use and we do not. The other is about pure disability percentage. What happens at the end of a workers' compensation is that rating physicians evaluate an injured worker, and they try to figure out the part of the injured worker that is not ever coming back. If you lose a piece of your finger, that is worth a percentage of your hand, which is worth a percentage of your upper extremity, which is converted up to a whole person. In Nevada, we take that whole person and use two other factors, the worker's age and wage, which are not referenced in the AMA Guides. That comes out with a monetary award.

In Nevada, unlike states such as California and Texas, that percentage of impairment does not get converted into a weekly benefit for purposes of permanent partial disability. It gets converted into either a lump sum or an installment payment. As far as the differences between the Guides, I cannot argue with those because they do ebb and flow. When we skipped the edition in Nevada, we saw a dramatic increase in rating awards for backs and a decrease for knees and extremities. I believe the Sixth Edition decreases backs and increases knees and extremities. The percentage changes you refer to in the study are accurate.

Assemblyman Ohrenschall:
In section 2, subsection 1, where it changes the time limit from 90 days to 30 days, I do not know how many people would know about the time limit and whether people will be caught in a trap. What is the compelling reason for this change? Is there a problem with the 90-day limit now? What happens to the person who does not act within the 30 days if this bill passes?

Don Jayne:
The Self-Insurers Association believes if the injured workers present for treatment sooner, it will alleviate some of the problems in that they can be

diagnosed and begin treatment quicker. The majority of claimants initiate their treatment quickly. Then there are the outliers who take longer. The outliers are few in number.

Daniel Schwartz:
The legal reporting requirement is to report the accident or injury within 7 days. When it is reported and the C-1 form is completed, the form lists rules, including that the injured worker has 30 days to seek medical attention. This is the seeking medical attention portion only. This is not reporting. We are trying to address if a person has 30 days to seek medical attention but allows it to go to 55 days. In litigating a lot of cases over the years, people usually miss the deadline by a few days or are way outside the deadline. The concern is getting the treatment going as quickly as possible. We are trying to address letting the treatment linger without it actually occurring. That is why we chose 30 days and did not change the time to report from 7 days or the excuse provisions under NRS 616C.025, which includes mistake of fact. "I did not know I was really hurt" is one of the excuse provisions contained within that statute. We are not changing that at all. We are asking that the C-1 form say 30 days in the hope that it makes some, if not most, of the injured workers seek their medical attention within 30 days as opposed to waiting until day 90.

Assemblyman Ohrenschall:
If the injured worker misses the 30 days, is their only remedy going to be to go into court?

Daniel Schwartz:
If they miss this deadline, they still have the excuse provisions—mistake of law, mistake of fact, and fraud or duress on behalf of the employer—to raise if a claim is denied based upon 31 days, 35 days, 92 days, or 93 days. Nothing will change in that statute.

Assemblyman Ohrenschall:
My concern is that it will lead to more courtroom time and litigation.

Don Jayne:
Section 4 addresses NRS 616C.230. What we are trying to accomplish in this section is when an injured worker seeks emergency medical care and was not able to acknowledge that their employer has a postaccident drug testing program, that the employer is entitled to receive a copy of those drug tests. This will make it consistent with the postaccident drug testing programs for the employers.

I want to acknowledge that we have added prohibited substances as well as controlled substances. The controlled substances are the ones that are on the schedule; the prohibited substances are substances that are simply ones that are prohibited. The easiest example for me is marijuana. We want to have the tests available to the insurer.

Daniel Schwartz:
Under section 4, subsection 5, paragraph (b), it changes the requirement from the injured worker has a nonindustrial condition that makes it impossible for them to treat, to expand it to mean that the worker has a nonindustrial condition that makes it impossible for him to be treated, tested, or examined. We did not touch what used to be paragraph (b) and is now paragraph (a), which still requires that it must be within the ability of the injured employee to correct. We are not asking to change it to mean that every time you have some nonindustrial problem that precludes you from treatment, your benefits get suspended. It would still obviously have to be within the ability to correct. We wanted the clarification of the fact that it is treatment, testing, examination, and the inability to move medically forward.

Don Jayne:
Section 5 of the bill is addressing sections for rehabilitation. There was a language change in 2007, and "gross misconduct" was entered into the statutes. We are asking that it be returned to "misconduct." We also are asking to include that temporary total disability and vocational rehabilitation maintenance benefits would be denied in those cases. It is cases where the injured employee is terminated for misconduct or was unable to work for the employer in either a temporary or permanent modified capacity. Therefore, they should not be eligible to receive temporary total disability benefits or vocational rehabilitation.

Daniel Schwartz:
The change in this section is twofold. The first is the change from gross misconduct back to misconduct. We have no definition of gross misconduct that we are able to follow when it comes to litigation perspective. We have definitions of misconduct in the unemployment forum, and that is one of the reasons we want to change it. When this law was originally drafted, it said that if someone is terminated for misconduct, the person is not entitled to compensation. My understanding is that insurers were using that to deny not only temporary total disability benefits and vocational rehabilitation benefits but also medical benefits. The change was made that says this only affects temporary total disability benefits.

If you look at NRS 616C.475, it talks about an injured worker not accepting a modified duty job, which is different from being terminated for misconduct. The way the law currently reads, even if an injured worker is terminated for the "gross misconduct" and we are able to demonstrate that, and we are able to have a hearing or appeals officer rule that it was, in fact, gross misconduct, you are left with an employer who at some time in the future is going to have to either rehire an employee or provide them with vocational rehabilitation. Only on the standard of misconduct, not for someone who simply does not want to come back to work, that the worker should lose their ability to have temporary total disability benefits when they have restrictions, and their ability to have vocational rehabilitation. If this is not done, the employer is left in a situation where they cannot bring the worker back because he was terminated for "gross misconduct" and there is nothing they can do with the worker. This is to make it clear that it only affects those two types of benefits, not any other form of compensation. It applies to "gross misconduct," which is clearly not just about not accepting a job.

Assemblywoman Diaz:
You want to lower the burden from "gross misconduct" to "misconduct"?

Don Jayne:
In the drafting of the bill, the term "gross" was not struck.

Assemblywoman Diaz:
If something happens to a worker and he can no longer perform the duties of his previous job, it seems to me that it will be cyclical that you will come back and punish the injured worker because he cannot do the job he did pre-injury. It does not sound right. Why would you tell a maid she was no longer employed because she had horrible damage to her spinal column and can no longer do the duties of the job, but we cannot accommodate you? It does not make sense.

Don Jayne:
Maybe Mr. Schwartz can give you another example to clarify that.

Daniel Schwartz:
If you look at NRS 616C.232 in the proposal, one of the things that was not changed is section 5, subsection 1, paragraph (a). It specifically says it cannot be for any reason relating to the employee's claim for compensation. If you have a maid who cannot do a certain number of rooms because of her injury, that would not qualify for the definition of misconduct because it would be the result of her injury. We are looking at things like stealing and absenteeism. We are not looking for things caused by the injury. The determination of

whether it is misconduct or not will ultimately be decided by a trier of fact. In your example, Assemblywoman Diaz, if we terminate the employee and say they do not get benefits, and an appeals officer determines they were terminated for misconduct, the employee would not get benefits. I would not argue against someone who cannot meet their work quota as the result of their injury.

Assemblywoman Neal:
I want to address the strike-outs in section 5, subsection 2. The language originally said that an insurer waives its rights under subsection 1 if the insurer does not make a determination to deny or suspend compensation. Now the language says that the insurer may deny compensation for total disability and vocational rehabilitation services to the injured employee. You had some flexibility and although the "may" is permissive, it only says "deny" and strikes out "suspend." We only have action, denial, no suspension, and we no longer have a waiver. What is the effect of that change on claims?

In section 4, subsection 5, you have struck out "other than accident benefits." Technically, compensation could now be a catch-all phrase which captures multiple things, including the accident benefits, that typically were excluded in the language. What is being captured by the strike-out?

Don Jayne:
Our intent in section 5, subsection 2 was when the injured employee voluntarily resigns, or if the person loses his or her employment due to misconduct, it would suspend the temporary total disability and the vocational rehabilitation services. That is an accurate read of what would be left. The impact of removing the strike-outs is better answered by counsel.

Assemblywoman Neal:
You struck the semicolon and turned it into a colon, so it is now a list of things that come under "An injured employee's compensation must be suspended if" and then lists whatever occurs.

Daniel Schwartz:
The reason for the change on the top of page 6 is because of the way it was written. It said an injured employee's compensation other than accidents must be suspended if a physician or chiropractor determines the employee is unable to undergo treatment, testing, or examination. That is the definition of accident benefits. We were suspending the employee's temporary total disability benefits if certain criteria were met. Those criteria only included the inability to treat. If we are only suspending if an injured employee cannot be treated, then there are no accident benefits to suspend.

When we add the language in section 4, subsection 5, paragraph (b), which is treatment, testing, or examination, we do not need that anymore because it is at the bottom. It means the employee cannot be treated, tested, or examined. That is the prerequisite for the suspension to come into play. In order for the suspension to come into play they cannot be treated, tested, or examined for a nonindustrial reason. The ability to correct remains. Those are the only accident benefits they would get other than temporary total disability benefits. The reason it was removed was that it was redundant. The way the statute used to be written, we could allow anything unless the worker could not treat, period. A physician would have to say, because of this injured worker's condition, he or she cannot treat at all. Then we could suspend the person's temporary total disability benefits, but not his or her treatment benefits, but the person was not getting any treatment benefits.

Assemblywoman Neal:
How does it work on page 6, line 20, when it says compensation must be suspended until the injured employee is able to resume treatment?

Daniel Schwartz:
We have a suspension until they are able to resume treatment.

Assemblyman Nelson:
I have a question about the prohibited substances. In section 4, subsection 6, it says prohibited substances are as defined in NRS 484C.080, which includes marijuana. In section 4, subsection 1, paragraph (d) it says that if you have a valid prescription for a prohibited substance, then it is all right if it is in your system. Then it mentions NRS Chapter 453A, which is the medical marijuana statute. Does this mean that if you have a valid prescription for that, even if it is in your system, it will not preclude coverage?

Don Jayne:
I think your understanding is correct. One of the challenges would be, if they test positive for marijuana and they have the prescription, we would not necessarily suspend them or terminate benefits. But just as alcohol is legal, it is not legal to be at work under the influence. We wanted to bring it in the prohibited because it was left out. I think you are looking at it correctly.

Assemblyman Nelson:
If you look at paragraph (c), one of the reasons for denying coverage would be proximately caused by the employee's intoxication, and that is what you are getting at.

Don Jayne:
Yes. Just as it is not appropriate to be intoxicated, it is not appropriate to be under the influence of marijuana. The prescription would explain it being in the system, but you should not be drunk or stoned at work.

Assemblywoman Carlton:
Under section 4, if the injured worker has a condition that is outside of their injury, such as a cancer, and they have to have chemotherapy, and they cannot do the other treatments that they need to do as an injured worker, we are going to suspend their benefits?

Daniel Jayne:
I would say yes, because they are not available for treatment. It is the doctor who decides if they can or cannot be treated based on the nonindustrial incident.

Assemblywoman Carlton:
So they would lose their benefits, which would be the two-thirds that they are living on.

Daniel Schwartz:
That is why we left section 4, subsection 5, paragraph (a) in there. It says that it must be within the ability of the employee to correct the nonindustrial condition or injury. In the case of someone who is diagnosed with cancer, it would have to be within his ability to correct in order for us to suspend. There have always been two prerequisites. The first is no treatment can be had. We are asking that to be modified to treatment, testing, or examination. The second is that it must be within their ability to control. Nothing about the ability to control has been changed. We are asking that it not be limited to simply a declaration by a physician that says this injured employee cannot treat. We are asking that it be expanded to be a declaration by a physician that this injured employee cannot treat, test, or be examined. We would still have to demonstrate that it is within their ability to control and/or correct, which is not a change.

Assemblywoman Carlton:
Could you share an example of the ability to correct in conjunction with your new language?

Daniel Schwartz:
For example, a person who is diagnosed with uncontrolled high blood pressure. They have the ability to seek treatment to correct.

Assemblywoman Carlton:
I have the ability to seek treatment for cancer. My high blood pressure will be with me for the rest of my life. If this is this confusing for us, how will the injured worker figure out what he or she can or cannot do?

Chairman Kirner:
We are going to recess in order to allow the people in Las Vegas to move into Room 4406. We are in recess [at 3:02 p.m.].

[Assemblywoman Seaman assumed the Chair.]

Vice Chair Seaman:
The meeting is called back to order [at 3:12 p.m.].

Assemblywoman Carlton:
My question is about the ability to correct and how it fits in with the current standard. The ability to correct language is what is so confusing.

Daniel Schwartz:
The ability to correct language has not been changed. It would be something the worker has been diagnosed with and has the ability to attempt to fix and chooses not to fix it. There would have to be an affirmative action on behalf of the worker to not pursue some type of fixing of that condition. It would have to be within the ability of that worker to correct. It would not include cancer.

Assemblywoman Carlton:
I would see this as a situation where I made a medical choice that I thought was best for me, but because you did not agree, you denied my benefit. You say I have the ability to correct it, and I feel as though I do not. So rather than my doctor and me making the determination, my benefits will be denied. When you put the two sections together, you are going to override my medical choices and take away my benefits.

Don Jayne:
It is my understanding that it was the medical provider who triggered the fact that they could not treat based on the condition.

Assemblyman Ellison:
In section 4, subsection 5, paragraphs (a) and (b) it says "or." What are you trying to do there?

Daniel Schwartz:
You have to go to the beginning of subsection 5, which says. "An injured employee's compensation must be suspended if...." What used to be paragraph (a) is now part of that sentence. The first and foremost has to be a determination from a physician or chiropractor of an inability to undergo treatment. The way it used to read, there were two prerequisites. We are making one of those prerequisites part of the entire language of the bill. The reason the semicolon is removed after the word "if" is because what used to be subsection 5, paragraph (a) is now added to subsection 5. It now reads, "An injured employee's compensation must be suspended if a physician or chiropractor determines that the employee is unable to undergo treatment, testing or examination for the industrial injury solely because of a condition or injury that did not arise out of and in the course of employment." Then it includes the new paragraphs (a) or (b). First and foremost, there has to be a determination from a physician that the injured worker cannot undergo any of those things because of a nonindustrial condition.

Vice Chair Seaman:
Are there any more questions from the Committee? [There were none.]

Don Jayne:
Section 6 of the bill addresses NRS 616C.235. The operative provision in this section is when the injured worker has been through most of the system. The appropriate course of medical care has happened, we have attained maximum medical improvement (MMI), and now we are looking at the ability to close a claim. But we may have an individual on pain management. The person is receiving medications, but there is nothing we can do to get beyond the MMI and the ratable. So, we are putting into the law, in section 6, subsection 6, a provision that would say that insurer could continue the pain medications. It is permissive. They may continue those pain medications. If we have a treatment plan, measurables, and a detox plan, those are things the insurers would approve and be willing to continue. But to just provide pain medications without a treatment plan or recognition from a doctor, we want that to be permissive, which is why we have the "may."

Assemblywoman Kirkpatrick:
It would be decided by the insurer, and it says this may not be appealed. Is that going to be through regulations when those incidents occur? How will you enforce that piece? I have four pages of questions that I will give you. You can put all of this in statute, but there has to be a follow-through place.

Don Jayne:
Section 6, subsection 6, is our effort to put this into conversation. I do not believe that the language is so locked up we could not work with it. Perhaps, there was something we could do to identify that this would occur only after a detox plan had been put in place and we had tried to detox the injured worker. We have the concern that these medications are problematic and that we need to utilize them in the right way. If there are some improvements in the language, we would work with the opponents of the bill.

Daniel Schwartz:
This is an attempt to get this into discussion. If you review our statutes and regulations, there is nothing about continued pain medication or postdischarge medication. It simply does not exist. Maybe we can get some dialogue or compromises. Let us authorize for six months or a year in the hope that someone is going to tell us what to do after that six months or a year is up.

Assemblyman Ellison:
Would the doctor be the deciding factor about the medications?

Daniel Schwartz:
In the perfect world, that would happen, but we are getting doctors saying someone needs to be on lifetime medication with no variance. There are developments in medication and in individuals. We have to have the ability to monitor and control from a medical and legal perspective what is necessary in the future. Is this something where an injured worker needs medication to undergo a vocational rehabilitation program? That is a justifiable reason for postdischarge medication. If the worker is able to function in society because of the medication, that is also a completely justifiable postdischarge medication program. We have no guidelines at all. If a doctor says yes, we will give it to him for a period of time to see what happens.

Assemblywoman Neal:
In section 5, subsection 2, what do the strike-outs mean? What is the effect of the language?

Daniel Schwartz:
The way the statute currently reads is that an insurer has to make a determination in reference to this section within 70 days of their knowledge of an employee's termination. We have taken that language out. Currently, it refers to the insurance company's knowledge. Normally this comes up when an injured worker or his counsel asks for disability benefits. The insurer then asks the employer for the current status for the injured employee. The employer tells the insurer that the person has been terminated, and the

insurer issues a determination letter. Currently, there is a 70-day period when the insurer has knowledge, which normally does not come until the insurer knows to ask. It was struck because it does not make much sense as written. It is changed to "may" because there is no suspension of disability benefits under this; they are always denied. We took the words, "or suspend" out because we cannot find a practical meaning as to when it would actually happen. If the worker asks for temporary total disability benefits and has been terminated for gross misconduct, we will deny it.

Assemblywoman Neal:
Give me an example of the type of misconduct that we will encounter, because now the burden is lower, so misconduct could be different types of activities.

Daniel Schwartz:
You are correct. This is lowering the burden from gross misconduct to misconduct. It is no longer going to require an affirmative action by the employee, like stealing or punching his or her boss in the head. It will require something that meets the unemployment definition of misconduct, like not coming to work, sleeping on the job, or things for which a noninjured employee could be terminated. It would not cover things such as the inability to do their job because of their injury. It is a lowering of the standard, which is the unemployment standard of misconduct.

Assemblyman Nelson:
In section 6, subsection 6, in the second sentence, if the insurer decides not to continue the medication, that decision cannot be appealed. Why is the right of appeal removed?

Daniel Schwartz:
This is the starting point. This is the language to get dialogue going so we can figure out exactly what we need to do to find out what should or should not be allowed. The idea would be that once we have a list of what should be allowed, that would be the list, and there would be no appeal rights once there is a list. Medication to assist someone in their vocational rehabilitation program is on the list. Medication to assist someone in functionality, assuming we have a definition, is on the list. We are trying to eliminate lifetime medication. The ideal situation would be for a duration and revisit it after the duration.

Assemblywoman Kirkpatrick:
There are other ways to get dialogue in this building than to put some crazy section in a bill that takes away a worker's rights to get medication and then to appeal the process if they do not like what you say. I think what you are saying is very narrow, because medications do change, and typically when you are on

some type of workers' compensation, you have the ability to choose from a list. I do not know if that list is going to be good in 10 or 15 years, but that does not stop you from providing the right to give me a lifetime medication if that is what the disability warrants. I feel as if you are saying that we are only going to do it for a short time, and then we are done with you. Is that the dialogue we are having?

Don Jayne:
I agree we need to try to improve this language. We are concerned about unlimited, unrestrained medication. We want the injured worker to receive some kind of a treatment plan, including detox if needed. I agree the verbiage needs work, but the intent is to work with the injured worker, and we are now into pain management. We have examples of injured workers who have gone through detox, and a lot of things in life have gotten better when they have gotten off the drugs. We would like to work with you to find language that would facilitate that. We do not want to see people put on medication indefinitely.

Assemblywoman Carlton:
We have not discussed the medication or services. What is the definition of services? We have an employee who is permanently disabled and reached the maximum of their benefits. What are the services we are talking about denying?

Daniel Schwartz:
The services are the follow-ups that are required in order to get the prescribed medications. We cannot authorize without the injured worker going back to the doctor. Depending on the medication, it could be every 90 days or every 30 days. In the life of the workers' compensation claim, this individual is MMI, so this is a postdischarge medication situation. We currently authorize the medication and the follow-ups associated with it. That is what we meant by services.

Assemblywoman Carlton:
So we are going to deny the medication and the follow-up visits to the doctor.

Daniel Schwartz:
The injured worker has reached MMI. The doctor has said, you are as good as you are going to get and you are discharged from medical care. Frequently, associated with that discharge, we get the same doctor saying, I believe you are going to need a certain medication. Usually that doctor is not going to continue to care for that individual. They are going to ask for a pain management doctor to take over the care. The services are the follow-up visits with that pain

management doctor to get the prescriptions. Pursuant to federal law, we cannot say you can have the medicine and you do not ever have to see a doctor for that medicine. There is no other treatment at this point in time, absent some other part of the statute that is being denied. This is the medication and the medication services.

Vice Chair Seaman:
I would like you to walk through the rest of the bill and take questions when you are finished.

Don Jayne:
In section 7 we are looking at an appeals officer's decision that the insurer wants to appeal and the circumstances in which the appeal stands and how they obtain it.

Daniel Schwartz:
Currently, if you appeal from a hearing officer to an appeals officer and request a stay motion, the matter is stayed until the appeals officer rules upon it. It is done when the appeals officer rules upon it. I give you that because this is trying to make the system consistent. The way the law is currently written, if you appeal from the appeals officer to the district court, you must obtain a stay from the district court within 30 days or the other side stipulates to a temporary stay not addressed in statute. The problem with that is from a timing perspective. According to Nevada rules of civil procedure, once a motion is filed, the other side has a period of time to respond and the appealing party has a period of time to respond. Frequently those two periods together are somewhere between 15 and 20 days. Then we have to ask the district court to put it on their docket, and they cannot get them on that fast. The reasons we are asking for this change are simply to make it consistent going from hearing officer to appeals officer and because there is a docketing problem with the stay motions heard. The appeals officers generally do not have oral arguments on motions for stays. They can decide them faster on pleadings. The district court puts it on calendar, and we will most likely get it to them within 30 days. We are asking that it be changed to be consistent with the rest of the statute with regard to stay motions.

Don Jayne:
Section 8 addresses lifetime reopening. When the bill was originally drafted, we had it amended to eliminate the first section to coordinate it with some Medicare situations that we found for a Medicare set-aside that requires claims over $25,000 to be reported and approved by Medicare.

Daniel Schwartz:
Originally the proposal was to put sunsets on reopening requests based on the percentage of impairment. In attempting to balance this with federal law, we discovered that would cause problems with Medicare. We used the Medicare figure of $25,000 as the threshold to have lifetime reopening rights. That is the change you see in subsection 2, paragraph (a). There was another change in what was originally subsection 5. The way the law was written, you had one year to request reopening if you were not off work as the result of your injury and you did not receive a rating award as the result of your injury. We attempted to make this a little clearer by indicating under subsection 6, paragraph (a), that you did not receive benefits for temporary total disability, which means that you would have had to be off work five days or more. Under paragraph (b), it indicates that a zero percent rating is the same as no rating at all. Under those circumstances you would only have one year to request reopening. If you retire or otherwise remove yourself from the workforce while the claim is closed, and then you reopen, you are not entitled to disability benefits. We added in the misconduct language that takes us back to the other statute as well.

Don Jayne:
Section 9 looks at reopenings for permanent partial disability (PPD). The provision in law today does not have any limitation on time, and we think it is appropriate to have a one-year time frame after the date the claim was closed.

Section 10 addresses NRS 616C.440. Currently employees are able to receive vocational rehabilitation lump sum buyouts. After the buyout, they are entitled to ask for a permanent total disability (PTD). We are trying to parallel some sections in the PPD area. If they have opted to receive a lump sum buyout for the rehabilitation, which can be very expensive, it states that they cannot ask for a PTD without verifying and showing that they have used that money in the original lump sum for training. If they have not used the money for training, the insurers want the ability to recoup that in a similar fashion as in the PPD claims.

Daniel Schwartz:
The first change in section 11 is in subsection 5, paragraph (a), and affects NRS 616C.475. It was originally written to say that temporary total disability benefits must cease when a physician or chiropractor determines an injured employee is physically capable of any gainful employment for which the employee is suited, given consideration to the employee's education, training, and experience. That takes the decision out of the physician's hands. A lot of times what you are capable of doing on a temporary basis is not a medical decision. We are trying to make it the way it is currently being interpreted,

which is if the worker is released back to the job he was doing at the time of his injury by his treating physician, his temporary total disability benefits cease. They can restart if this part of the statute is no longer there. The purpose of that change is to try to make clear the distinction between somebody who can work without any restrictions and someone who is capable of full duty or returning to his preaccident employment.

Subsection 5, paragraph (b) indicates that disability benefits would end when the employer offers the employee employment that is modified. We removed the words "light-duty employment" because it is not a legal term. It is the same thing, and the rest of the section remains the same. In subsection 8, many years ago the sentence that says "If the employer makes such an offer, the employer shall confirm the offer in writing within 10 days after making the offer" was not there, and we would get a lot of litigation. There would be disputes about whether a job was offered, and it would come down to who the trier of fact decided to believe. We are trying to clarify that the employee does not have to wait ten days to start the job. You can start the job at the next available shift if the job is available. The idea behind this is coupled with the *Nevada Administrative Code*, which says for temporary modified-duty jobs that are immediately available, the requirements to give a seven-day waiting period are not there. The practical effect is that we have injured workers who go to a clinic and get restrictions of no lifting over ten pounds. The employer creates a job, offers it, and when the worker goes back to the clinic, the restriction changes to no lifting over five pounds. Trying to put together a formal job offer as required on permanent modified duty is not going to work. A change was made to require the confirmation of the offer, but the proposal is to make it clear that you could be offered a job and be required to start the next available shift. You do not have to wait ten days to take the job, because the restrictions may have changed.

In section 11, subsection 8, paragraph (a), the way the law was written was that a temporary modified-duty position had to be substantially similar in terms of location. The language proposes to change "hours" to "shift schedule." We had injured workers who could legitimately not report at a different hour. We would not know that, and the injured employee would not get benefits. In paragraph (b), subparagraph (1), we are trying to make it a little clearer what the gross wage provision means. The gross wage must be the same as the preaccident employment.

Subparagraph (2) defined what happens if it is a different job classification. This has been there as long as I can remember, and we still have no definition as to what "substantially similar" means. That percentage is dictated differently depending on who you are in front of and what part of the state you are in.

We tried to make it clear as to what that means. This applies to an injured worker who is brought back to temporary modified duty in a different job classification than his or her preaccident employment. It was an attempt to make it clearer so we do not end up with disparate rulings from different courts making it impossible to figure out exactly what we need to offer in order to make the job valid. Paragraph (c), the last part of section 11, subsection 8, reflects recent changes in federal law. The law said a temporary modified-duty job offer has to have the same employment benefits as the position the employee had at the time of his or her injury. In certain federal law areas, that is not possible any longer. We are trying to make sure they are getting the benefits they are entitled to, but we will not be required to provide those benefits that we cannot provide.

Don Jayne:
Section 12 impacts NRS 616C.570. It involves on-the-job training programs. When we put it into the law, the intent was good. It would give an injured worker a chance to get some on-the-job training. Workers would be able to market themselves upon the completion of training into a new work position. There is a lot of language struck out at the end of section 12. The current language is too cumbersome and promotes temporary employment only for the purposes of the trial period. Our experience is it does not work. We are trying to simplify the language and attempt to create a program where injured workers could be trained to learn skill sets and get training that would help them when they apply for jobs. We would like to find a way to get the on-the-job training back into play.

Daniel Schwartz:
The changes in section 13 are to NRS 616C.595, and they start with the addition of subsection 6. This is an attempt to say if injured employees are retrained, and they subsequently reopen their claim, it leaves the determination to the physician. If the physician indicates that they are capable of doing what they were retrained to do, they would not be entitled to temporary total disability benefits for periods of time that they are released with those restrictions. If the physician indicates that they are not capable of doing what they were retrained to do, they would be eligible for temporary total disability benefits during the reopen section. That is what subsection 6 is designed to do. That would be the physician's determination.

Vice Chair Seaman:
Are there any questions from the Committee?

Assemblyman Ohrenschall:
In section 8, subsection 7, paragraph (a), subparagraph (3) it talks about the denial of vocational rehabilitation services on a reopening of a claim if, after the claim was closed, the employee was terminated for misconduct for reasons unrelated to the injury for which the claim was made. I do not understand the denying of those vocational rehabilitation services if this occurred after the on-the-job injury.

Daniel Schwartz:
This relates to the changes to the termination provision where we request that it include both temporary total disability and vocational rehabilitation benefits. They go hand in hand. It would mean if the claim were reopened and the injured worker had been terminated for misconduct or gross misconduct, depending on what standard is adopted at the time the claim was still open, they would not be eligible for vocational rehabilitation services. It is an attempt to make those sections work together.

Vice Chair Seaman:
Is there anyone else to testify in support of A.B. 229?

Robert Ostrovsky, representing Employers Insurance Group:
I would like to provide some historical background as you deliberate policy that is right for injured workers and employers in this state. Section 3 of the bill talks about the AMA's *Guides to the Evaluation of Permanent Impairment*. Long ago we used the Third Edition, then the Fifth revision. We hung on that for such a long time that the AMA stopped publishing that Guide. We started to make Xerox copies until we got a letter from the AMA that it was a copyright infringement to do that. Various parties have a vested interest in what Guide we use. When we went to the Guide that we are currently using, it was part of a grand bargain. People like these Guides from the standpoint that they added language about activities of daily living (ADL), which increased the cost of settling these claims at closure. I think you will hear testimony that the new Guide would reduce costs for employers. I do not know what the next Guide has. Whether you change this as a matter of policy or not, we will be back to talk to you about future Guides as they are published. We have been talking about whether or not this is the right Guide.

In section 5 we talk a little bit about intoxication. I wanted the Committee to know that Senate Bill 231, which will hopefully move to this house, will address issues relative to intoxication that add to this section. That bill would define intoxication. Right now, if you used marijuana two weeks ago and you are injured on the job today, you will test positive. Under current law, insurers and employers could deny that claim. That bill will change that to reflect

the intoxication levels that we set for driving an automobile. Because drugs like marijuana stay in your system for a long time, you will only be denied the claim if your level of intoxication rose to a level where you could not drive a vehicle. Employers are stuck with employees having medical marijuana cards, so what decision do you make when an employee tests positive even at a very low level. It is a problem, and we hope that is addressed so employers have a test to determine what intoxication is. We have settled on some language in the Senate with the Nevada Justice Association to allow exceptions to the rule where there is clear and convincing evidence otherwise regarding intoxication.

Another point in section 5 is the difference between misconduct and gross misconduct. I was in the discussion when we determined that we wanted to use the language "gross misconduct." We all agreed at that time that there was no definition of gross misconduct. We all agreed that we knew it when we saw it, as with theft, for example. Because there is no other statutory reference to gross misconduct, it became very difficult for employers to determine what it is. This is an effort to try to push it more toward the definition that is used for employment security. The employment security law is written so it favors the employee in most cases. That is another policy issue. Gross misconduct got into the language as part of a grand bargain where that was the best we could come up with at the time.

As to the reopening statutes, I know there will be lengthy discussion from the parties who do not agree, but we are one of the few states, if not the only state, in the nation that has lifetime reopening. An employer could never close a claim. You have to keep the claim file somewhere in a drawer. Employers Insurance Group, which used to be the State Industrial Insurance System and before that was the Nevada Industrial Commission, still has claims from the 1950s in a warehouse because those claims could eventually be reopened. This proposed law would not change any of the rights of anyone who has a current claim. This would only apply in the future. So all the people who think they have reopening rights would not be touched by the proposed language. It would only affect the claims after the date of enactment. We are dealing with something that will have an impact in the future and has no intent to impact current injured workers.

In section 12 regarding the job retraining language, we all know what vocational rehabilitation is, but the language about on-the-job training was negotiated many years ago. It is so complex that most employers look at it and say, with all the requirements, I am not even going to go down that road. Whatever language that you can come up with to improve on-the-job training for an injured worker is a good thing. If we can get them back to work and gainfully employed, it is good for the employer and saves them money. It is good for the employee

because being at work is important to getting better and being a productive member of society. The language there now is really difficult for employers. The proposed language may or may not be the right language, but that section of the law needs some improvement.

Vice Chair Seaman:
Are there any questions? Seeing none, is there anyone to speak in support of A.B. 229? [There was no one.] Is there anyone in opposition?

Jason Mills, representing Nevada Justice Association:
The purpose of A.B. 229 is not to actually fix any particular major problems from a financial standpoint that are currently posed to the insurance industry and the workers' compensation in the state, but rather to try to grab ahold of the political advantage that they think they may have at this point. We think that is problematic, especially in regard to a couple of the sections in this bill which are massive overhauls to our workers' compensation system, particularly the changes to the reopening provision and the change to the AMA's *Guides to the Evaluation of Permanent Impairment,* Sixth Edition (Exhibit H).

I know there was some brief testimony about the grand bargain. When we refer to the grand bargain, what they are talking about is that about 100 years ago, around the country, injured workers had to sue their employers to get benefits when they were hurt on the job. That was problematic for both the employer and the employee. What it effectively did was require employees to sue their employer to get those benefits, and the employer would then potentially be subject to huge judgments in civil court. They came up with this grand bargain that has been put in place in all 50 states. It has been in place since 1913. With the grand bargain, you cannot limitlessly remove the benefits and rights of the injured worker because at some point the grand bargain collapses in on itself. That is starting to happen around the country. In particular, in Florida and Oklahoma, judges have allowed tort suits to proceed against employers at this stage because those states have trimmed back the workers' compensation rights and benefits so far, and it has caused chaos in those states. Kansas has switched to the Sixth Edition, and their secretary of state has warned their Senate that that may be the straw that breaks the back in Kansas to allow tort cases to be opened in that state. I fear that if we push this bill through as it is written, that might become a reality in this state. That serves no one's purpose. It does not serve the purposes of business or injured workers. That is a huge problem.

It is important to point that out because, as I indicated, the insurance representatives did not mention that there was any financial crisis in the workers' compensation system in the state with regard to their premiums.

There was a study done by Oregon in 2015 (Exhibit I) that indicated that Nevada had the sixth lowest workers' compensation premium in the nation out of 51 jurisdictions, including the District of Columbia. Nevada was 46th lowest. That study indicated that from 2010 to 2014, the workers' compensation premium rates went down 8.5 percent. Since 1988, according to a comparison of the 50 states by the Oregon Department of Consumer and Business Service, Nevada's premiums were down about 260 percent. That drop is true across the country.

The reopening section in section 8 is extremely problematic. I have heard it said that Nevada is the only state in the Union that allows reopening rights. That is incorrect. There are seven states that allow reopening for lifetime in the United States. This is current as of yesterday, because I checked *Larson's Workers' Compensation Treatise*. The states are Delaware, Kansas, Kentucky, Minnesota, Nevada, North Dakota, and Utah. Of those, five are typical conservative states. Reopening for life is not a position that is typically seen as a liberal or easy-going standard. The reason is that cases for indemnity and medical close in this state. Other states do not allow for medical benefits to ever close unless the injured worker and the insurer enter into a mutual agreement to settle their future medical benefits. To make it sound as if we have lifetime reopening rights in Nevada, and it is overreach by workers, is contrary to reality. You have to remember that the sponsors are trying to set a $25,000 threshold in section 8. The problem is that they say when the claim was closed, the total amount paid was over $25,000. What does that mean? Does that mean the total amount of money for short-term disability and their compensation award? Does it mean the total amount that was paid for their short-term disability, their compensation award, and the medical benefits they received?

Vice Chair Seaman:
Have you met with them? You seem to have a lot of questions.

Jason Mills:
I told them last week that we were very interested in meeting with them about these issues.

The problem with this $25,000 threshold is that it does not take into account the severity of the injury. If it is an older worker, the compensation award is lower than it is if it is a younger worker. The factors that go into the compensation award are age, wage, and disability. An older worker or a lower wage worker who has the identical injury to someone who is younger with a higher wage, may be in a scenario where he/she cannot reopen the claim because they have set an arbitrary value on to the claim, even though the injury

is identical to someone who is similarly situated. I do not know if that creates an equal protection problem or not. That is a question that needs to be considered. You will notice that nothing else about the reopening statute has changed in any way. That includes what we have to prove, which is the change in circumstances, or the primary cause of the change in circumstances for the injury that was attached to the original claim, or that the application was attached by a doctor's certificate. That burden has not changed, but they attached a dollar amount to it. We believe that is entirely problematic.

In the same section, I have heard there is no definition for "gross misconduct." That is also incorrect. It has been codified in Nevada law for public employees and I believe teachers. It is mimicking the federal Consolidated Omnibus Budget Reconciliation Act (COBRA) standards. The federal courts have defined "gross misconduct" as a substantial disregard for the employer's interest. There is case law defining what that means, such as stealing, robbing, yelling racial slurs at your boss, and fighting on the job. What is not as well defined is "misconduct." What used to be used as misconduct in this state was just about anything: your uniform is not on correctly, your hat is a little sideways, or you could be terminated for being a few minutes late. Then the benefits would be denied. I know because I litigated those cases before the changes were in place. Many of the judges upheld those very low burdens to the disadvantage of the injured worker.

Cory A. Santos, Attorney, The Law Firm of Joel A. Santos, Reno, Nevada:
I have a couple of concerns about this bill, but particularly the Sixth Edition change. I am an attorney and practice in various areas of law in Nevada. I am a native Nevadan. My father, Herb Santos, has been an attorney in Nevada since the early 1960s. Over the years I have held multiple positions with the Republican Party, and I think I would like to bring a different perspective to this, coming from a Republican standpoint.

When asked my opinion of this bill, I was greatly concerned because in my opinion as a Republican, it appears to be a Trojan horse which would shift drastically the burden of care for injured workers from workers' compensation insurers to private insurers, Medicare, Medicaid, and government-funded hospitals and clinics. This will affect the Nevada taxpayer. Regarding the Sixth Edition, we know it came out in the latter half of the 2000s, and since that time a few states have enacted it. Of the states that have enacted it, many accepted it because their statute says they are to accept the most recent edition of the Guides. There was no debate or concern. In New Hampshire, they looked at it, they enacted it, and the governor had to sign a bill to change it back to the Fifth Edition because it had so many problems. In Iowa, there

was a strong push to enact the Sixth Edition. After a very detailed study (Exhibit J), they determined they were not going to go to the Sixth Edition. Currently, there are only nine states that use the Sixth Edition. When you look at which states are in the majority and minority, the Sixth Edition is actually in the minority.

Why are we concerned with making the transition to the Sixth Edition? When you think of the Guides being updated, you might think of a textbook being updated with new information, but that is not the case. The Sixth Edition has been criticized strongly by physicians reviewing it, saying that it is not updated science. We heard earlier that this is to keep Nevada current with new technology. Unfortunately, there is no evidence to back up that claim. For example, if someone had a cervical fusion in 2007, there is no evidence that the treatment and outcome would be any different today than it was then.

Another concern with the Sixth Edition is that it does certain things with which we do not generally agree based on Nevada statute. For example, it rates pain. There was a marketing scheme behind the Sixth Edition. They wanted to market it so it would be applicable in Europe as well. They used the World Health Organization's classification system. That is a drastic paradigm shift from what we have been doing in this country. Going to the Sixth Edition is not just going to an updated version of the Guide. It is a dynamic change. The Texas Insurance Commission did a study, and one of the things that they were concerned about was that they found a wide discrepancy using the Sixth Edition with what the doctors found.

In Nevada, we want to keep the awards somewhat consistent. We feel the Fifth Edition seemed to do that quite well. For example, in the Fifth Edition it says heart disease and hypertension are serious disabling diseases. I would note that they directly affect firefighters, policemen, and people on the frontline. They are the people who come down with diseases on a regular basis. But then in the Sixth Edition, it lowers those awards with no explanation. Therefore, the effect of going to the Sixth Edition would be drastic. Hispanics in low wage jobs, women, and firefighters are affected. We have presented testimony given before the U.S. House of Representatives States Subcommittee on Workforce Protection by Northeastern University law professor Emily A. Spieler (Exhibit K). Professor Spieler noted that the Sixth Edition made reductions in percentages of impairment across the board with a few minor exceptions. For example, bladder disease changed from 70 to 29 percent, urethral disease from 40 to 28 percent, vulvar and vaginal diseases and cervical and uterine diseases from 35 to 20 percent. Pulmonary impairment and hypertension was reduced from 100 percent to 65 percent. Those are big changes.

If injured workers cannot get back on their feet or get treatment, they will turn to the government. The effect of this bill goes beyond the language. It is like an iceberg, and we are only seeing the tip. It will increase visits to the University Medical Center of Southern Nevada and emergency room visits in the rural counties because it is ultimately a huge shifting of financial responsibility. I would recommend that the Committee appoint an interim committee to study the effect of this, as many other states have, and not make Nevadans test subjects to see how it goes.

Craig Kidwell, representing Nevada Justice Association:
You have found out that there are no answers to some of your questions. There are black holes in this bill. You have my notes [submitted notes and suggested amendments (Exhibit L)]. There are some issues with the bill, and we are willing to work with the parties to come up with something that does not cause this shift. This is a huge shift. We believe we can work with the issues in section 1. Section 2 is about limiting the 70 days to 30 days. The law requires that you have to notify your employer immediately after injury, but in no more than 7 days. That gets rid of fraud. You do not want the employee coming in two weeks after the incident and saying, I remember I hurt my back, and I did not tell anyone. This bill does not fix anything like that. For at least 25 years of law, the injured worker has the opportunity to sit and wait. They had 90 days to determine what they wanted to do. The bill would change that to 30 days. That is not very long if you have a shoulder strain or something for which you may not want to seek medical care.

We oppose section 4 of the bill. We hope we can work with the other side to fix it. I had a claimant who was pregnant, and she broke her arm. Because of the pregnancy, she could not get the needed surgery for medical care on her arm. Under current law, she would still be paid a wage replacement and can receive medical care. With this change, in section 4, subsection 5, paragraph (a), there is an "or." That "or" changes the game. Under the scenario I gave, she does not get paid. Some people can work while receiving cancer treatment but if something happens, they cannot get medical care for an industrial injury. Under current law they can get medical care as the doctor sees fit and paid a wage replacement if they are not able to work. We would like to work with the other side on that as well.

As the law sits right now, there is a definition of gross misconduct in federal and state law. The term should remain "gross misconduct." In section 6, the bill sponsors want to get away from lifetime medications. In the perfect claim, the claim would close. You would reach MMI status.

Under section 6, subsection 6, there is a Nevada Supreme Court case that gives us guidance. Assemblyman Ellison asked, is it up to the doctors? It is. The Nevada Supreme Court has looked at this. The case is *Flamingo Hilton versus Gilbert*, 122 Nev.1279, 148 P.3d 738 (2006). The court said, even if you are not 100 percent, your claim does not have to close. You can get maintenance care. The court said you can get the medications you need; however, it is not a lifelong thing. The third-party administrator can revisit that and look at it. In that case they said every 12 months, but I have had cases where they said every 6 months. They had the right to revisit it. New medications come out. You have heard the argument why we need the change, but that is already in place. We believe we can work with the other side on section 7.

I will discuss one last section and leave you with my notes. In section 11, subsection 8, paragraph (b), subparagraphs (1) and (2), the new part says, "If the position is in the same classification of employment and the physical limitations or restrictions specified are within the physical requirements of the employee's employment." If you think about that, it is a full-duty release. They can go back and do their old job. If you have a work restriction, and there is an "or" there, now subparagraph (1) does not apply to you, so you go to subparagraph (2). If you do the math, starting on line 22, it says, "If the gross wage earned is less than the employee would be entitled to receive for a temporary total disability." The gross wage earned is less than temporary total disability, which is 66 and 2/3 percent of your average gross wages up to a statutory maximum. Temporary total disability is not taxed. They are saying you get a gross wage, and there are taxes taken out of that. So a person working light-duty will make less money than a person sitting home on temporary total disability. That does not make sense.

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

This bill comes down to money. The National Council on Compensation Insurance released a study in 2012. It showed the effect of changing from the Fifth Edition to the Sixth Edition. The states of Tennessee, New Mexico, and Montana saw a substantial decrease in their average impairment ratings for both partial and whole body. Tennessee saw a 16 percent decrease in partial body, 25 percent in whole body. New Mexico saw a 6 percent decrease in partial and 32 percent decrease in whole. In Montana they saw a combined total decrease of impairment rating of 28 percent. All of that comes down to savings.

Section 4 is problematic for a couple of reasons. I understand the concept of not wanting somebody who is under the influence or intoxicated on the job. There are other issues that need to be considered with this. One issue is the

Americans with Disabilities Act (ADA). For those individuals who have substance abuse problems, if they are in a program and complying with the terms of that program, they are covered by the ADA. The way this language is written, if a worker is injured on the job and has a trace amount of marijuana in his system, because there is no official determination of intoxicating amount, it would be determined that they have a proximate cause under statute and most likely he would find his claim denied. In section 4, subsection 2, paragraph (b), subparagraph (2), it states, "The results of the examination and testing must be made available to the insurer or employer upon request." I question whether that may or may not be in violation of the Health Insurance Portability and Accountability Act of 1996.

In section 5, subsection 4, it discusses discharge or voluntary resignation from employment. I have concerns about using voluntary resignation from employment as a test as to whether or not somebody is going to be entitled to benefits under the statute. I know this issue has been brought up on reopening, but it has not been stated that sometimes conditions manifest over a period of time. I had an injury in 1991 while I was in the Navy and damaged my knees. I was given a partial disability service connected rating, and in 2011 I had surgery on both knees to repair the damage that was done 20 years earlier. Because I did not have more than $25,000 worth of compensation as the result of my service connected disability, under this scheme I would not be granted those reopening rights and offered coverage for what was a contributing circumstance to that injury.

There are concerns with the demands for repayment of vocational rehabilitation monies that are paid in lump sums. The reason for that is outlined in section 13, subsection 2. It states, "If the insurer and the injured employee execute an agreement pursuant to subsection 1, the acceptance of the payment of compensation in a lump sum by the injured employee extinguishes the right of the injured employee to receive vocational rehabilitation services under the injured employee's claim." While I realize that they are choosing to receive those sums in lump sum form, they are not receiving 100 percent of the sums to which they would be entitled under vocational rehabilitation. I believe the floor on that is 40 percent. They would be required to demonstrate that they had received vocational rehabilitation training. Otherwise, they would be required to repay those lump sums received under certain circumstances as outlined in section 10 and others.

Section 12 bothers me substantially. The representation made by the proponents was that this is very complex and not workable. Section 12 takes away incentive to retrain injured workers on the job. Subsection 3 of NRS 616C.570 reads that if an injured worker is receiving on-the-job retraining

and he submits proof of retraining to the insurer, then his employer would receive repayment from the insurer of up to 50 percent of the wages that he was paid. What is being proposed in this bill is that all of that be deleted and in lieu of that, the insurer may pay temporary partial disability benefits to that injured worker.

There are many problems with this bill and we are opposed to it. We will address some of the issues with the proponents.

Vice Chair Seaman:
We will move to opposition in Las Vegas.

Andrei Razsadin, D.C., Private Citizen, Las Vegas, Nevada:
I am a state rating physician in Nevada, California, and Kentucky. I am here to explain the difference between the fifth and Sixth Editions of the AMA Guides. I am in opposition to the bill. I am an advocate of the Sixth Edition, but I am an expert about both versions. I am on the advisory panel of the AMA Guides. I have been nominated and accepted as an advisor for the future AMA Guides. The AMA Guides are quasi-medical books. This is a medical/legal compromise. It is a medical document per se. It is a semi-objective tool that we use so that the determinations stay out of court. It is a way doctors come up with an impairment for which we can adequately compensate people for their injuries. With regard to examinations, the Guides are to be used to follow doctors and see that doctors work through transparency.

Doing an examination is not a robotic process. People refer to these Guides as a cookbook. I like to refer to the Guides as a thinking man's cookbook. As a doctor, you do not divorce yourself from your knowledge as a clinician. The AMA has written each edition with a very specific mindset and rule of liberality in how to address the guides and an injured worker. That is not to say that the examining physician is not objective in his or her examinations.

There is a big difference between the fifth and Sixth Editions. There is a huge paradigm shift where people have said that the Sixth Edition is by far much different from the Fifth Edition. The Sixth Edition has thrown out a lot of the clinician's ability to evaluate a patient's actual injury. It relies completely on a diagnosis-based examination. If the rating physician examines the patient and comes up with the wrong diagnosis, essentially the rest of the rating process is going to be wrong. That is not to say that the Sixth Edition is a bad book. Neither edition is a bad book. Each one has its inherent pros and cons.

The State of Nevada has an excellent workers' compensation program. You have done a wonderful job and should be commended for it. There is some subjectivity in the Fifth Edition, which is the range of motion. The Sixth Edition has taken out all ranges of motion in the process of evaluating an individual. Some say the Fifth Edition is very subjective and it could be altered. The Sixth Edition has that same ability, but it is different. With the Fifth Edition, we do a history, we do an examination, and we utilize diagnosis methods as well as range of motion methods and come up with a final impairment. It is called permanent partial disability, but in no way do we address disability. As rating physicians, we only address the impairments of the individual as far as whole person impairment.

I feel the Fifth Edition has a good thought process and built-in securities. The state legislators have set up stop processes for fraud. There are checks and balances that we have with the Fifth Edition that try to prevent fraud. How does that work? Once an impairment has been established, there is an option for the insurance company and the claimant's attorney to get a second or third rating. They compare and contrast physicians. Rating physicians make mistakes. I sit on the Division of Industrial Relations' panel and review doctors' work. There are errors. We try to be an educational board and teach rating physicians where their mistakes are. There are checks and balances which allow both sides to have someone else evaluate an examination to determine if the impairment is reasonable and equitable for both parties. I think it has been working quite well.

The Sixth Edition is not a horrible book either. It addresses a couple of things that we do not have in the Fifth Edition, specifically headaches. I have addressed headaches using the Fifth Edition when it has never been addressed specifically. We do that through analogies or organically from objective findings and clinical findings. We have compared and contrasted various books. The Sixth Edition addresses this.

The problem with the Sixth Edition is that it is heavily based on activities of daily living (ADL) and pain. As the statute is now, I am not allowed to address pain and very limitedly able to address ADLs. I can only address ADLs for the spine. I cannot incorporate those ADLs in other body parts. Using the Fifth Edition, we have to submit to the injured workers, and this is where the subjectivity comes in. The injured worker fills out a form stating his level of pain and what is being affected in his ADLs. That is incorporated in the Sixth Edition. If we were to move to the Sixth Edition, other statutes would have to be addressed, specifically pain and ADLs. Brushing teeth, combing hair, raising arms over the head, dressing, tying shoes, and other things would have to be addressed. The Legislature has set up the statutes so that the

Fifth Edition is incorporated. The Sixth Edition subtracts these chapters. Chapter 18 of pain exists in the Fifth Edition and it exists in the Sixth Edition, but the Sixth Edition is based off of ADLs and pain, which I am not currently allowed to address in this state. I can do it in Kentucky and California, but not Nevada. When I do these exams, I have already taken that into account, so there is no double-dipping. I am not allowed to give any more percentages. We have a pretty good system now with the Fifth Edition. If we go to the Sixth Edition, there will be other issues that we have to address, specifically pain and ADLs. If we do not address them, I do not think it is a good idea to go to the Sixth Edition.

Doug Newson, Private Citizen, Las Vegas, Nevada:
I have been a Republican my whole life and have never testified before a legislative committee. I have been through the workers' compensation program here in Las Vegas. I fell at work and injured my back. I have had fusion surgery, and I wish I could say I felt better. This bill seems to be very one-sided in favor of insurers and at the expense of the working person.

I would like to comment on sections 6 and 8 of the bill. Ongoing medication needs are a fact of life for many people. Being able to say that a person cannot have medication or see a physician for medication treatment without the right to appeal is wrong. Whether it is heart medication, lung medication, or pain medication, that is for a doctor to decide, not a committee or an insurer. Many medications for people who have gone through workers' compensation, such as myself, are needed for daily functioning and daily living. To bar that ability would take away the little bit of my life that I have where I am able to function on a daily basis.

Regarding reopening rights, it is very difficult to predict the future. I do not know that you can do it better than I can, and a doctor cannot do it any better than either of us. To know what kind of medical needs you will have in five or ten years is extremely difficult to predict. Perhaps someone could project based on experience, but it is difficult to predict. To put into the law that a person does not have reopening rights because he has not spent a certain amount of money, or because a certain number of years have passed, is crazy. It is crazy, unfair, and not right. I appreciate those who have asked questions today and who look at this as a big takeaway with no balance in what has been presented in this bill. I strongly oppose the bill and hope you will too.

[Assemblyman Kirner reassumed the Chair.]

Chairman Kirner:
Thank you for your testimony. Are there any questions?

Assemblyman Ellison:
Can you explain *Flamingo Hilton v. Gilbert*?

Craig Kidwell:
It is a Nevada Supreme Court case. Before the court ruled in that case, we had the problem that the statutes and the code did not address, as Doug Newson testified: what happens when your doctor is done with active care? Do you need something to help you such as maintenance care. The Nevada Supreme Court addressed that in *Flamingo Hilton v. Gilbert* and said, yes, you can get that in Nevada. However, it is not for life and it is not a free ticket and the insurer or the third-party administrator can review the case in a reasonable time. In that case it was 12 months. We have had insurers review it every six months to every two years, as long as they get to review it, to see if the doctor is still prescribing the medication, if the injured worker still needs it, and if the medication has changed. Those parameters were set up by the Nevada Supreme Court in that case.

Assemblyman Ohrenschall:
Has there been a comprehensive study by a policy or other group about transitioning from the Fifth Edition to Sixth Edition and what it would do to the injured workers and their benefits?

Jason Mills:
There have been studies on it. As was testified to earlier, there was a National Council on Compensation Insurance study that basically indicated the states that had switched from the Fifth Edition to the Sixth Edition, saw overall decreases in impairment ratings of 25, 28, and 32 percent. The AMA Guides have indicated in their own reports that between the Fifth and Sixth Editions, the overall impairments went down about 24 percent, and spines and pelvises went down 38 percent. It is a significant reduction. The problem, as we indicated earlier, is that the First through Fifth Editions followed one particular set of rules, and in the Sixth they completely changed the rules, but the underlying system on how we deliver the benefits is not addressed in A.B. 229.

Assemblyman Ohrenschall:
What does that mean in terms of dollars and the bottom line?

Jason Mills:
Let me give you an example. You have a 40-year-old worker who is making $2,600 or $2,700 per month. That is what we call half-max wage because the wages are capped. If they received a fusion surgery on their neck, under the Fifth Edition guide, they would have an impairment rating of 20 to 23 percent. For this person, if you take his or her age, wage, and disability, it would result

in somewhere between a $50,000 and $57,000 award. We are not talking about tremendous windfalls of hundreds of thousands or even millions of dollars. We are talking about tens of thousands of dollars under the Fifth Edition guides.

If you look at tables in the Sixth Edition guide, you could end up in a scenario where you get a 0 to a 9. That would result in a 0 compensation award to a maximum of about $22,500 if we were to compare that exact same person. We are talking about a significant decrease in the compensation award that the person is given which is why, if we are going to apply this new paradigm book, it is not merely an evolution of the old books but a revolutionary change. We also have to look at the factors that go into how the actual benefit is being paid; otherwise, it is going to immediately result in a decrease in benefits to those people who will have to look elsewhere for funds, such as unemployment and other social welfare nets.

Assemblywoman Diaz:
Mr. Kidwell, can you address the reduction of the statute of limitations to file a claim? I would like you to give me the perspective from a rural standpoint. I do not know if 30 days is a significant window of time for people to seek care.

Craig Kidwell:
I do see this issue in the rural counties. The way the workers' compensation statutes are written, everybody who is injured has to have them all memorized to understand their rights. There are only a few things that they have to be taught. One of those things is that you have 90 days to file the C-4 form. That is the document the worker fills out with the help of a doctor, and it is sent in to say he wants workers' compensation benefits. For over 25 years we have taught people that they have 90 days. The state statute requires a poster, which is in every employer's office by law. They all say 90 days. If the bill passes, we are going to have to teach people that they now have 30 days. In my practice in the rural areas, we have people who are drillers, miners, and mechanics who do not work in an office. They are all over the state. They get hurt and notify their employer within 7 days, but when will they know that the 30 days is in place? Mr. Schwartz said it is on the C-1 form, so we have to create those and get them out to everybody, even out in the field. I can see a serious problem with that, at least in the short term with regard to the posters and the teaching. Those employees are not in an office setting.

I see a lot of tough miners, and I see them trying not to file claims. They want to see if it gets better on its own. I see a lot of safety bonuses at the mines that are tied into if you file a workers' compensation claim, everyone on your team's safety bonus goes down. There are a lot of guys who sit and wait to

see if it gets better, and sometimes it does. This will penalize those people if it goes down to 30 days. If they wait past the 30 days, the claim is denied. Mr. Schwartz said you have the excuse provisions. Who knows about those? The worker will probably have to hire a lawyer and go to undue litigation. It is good for attorneys like me, but bad for injured workers.

Chairman Kirner:
We will move to Dr. Razsadin.

Andrei Razsadin:
I spent the last four days in an AMA seminar reviewing the Sixth Edition. The reality is the Sixth Edition has been created specifically to reduce the percentages. The percentages have changed, all have gone down, and it has given a lot more credence to the diagnosis. A fusion, as Mr. Mills was saying, could be anywhere from a 0 to a 33. There have been some increases and some decreases, but the reality is if a rating physician does this wrong, it will cheat an injured worker out of a percentage. There are going to have to be a lot more checks and balances.

The AMA is a business. They create a new edition because they sell the book. They have to continuously create income. They sell this all over the world. In the seminar, they mentioned that this book is now used in Germany and Australia. They were upset because New Zealand does not use the Guides, but they use something that looks very similar to the Guides. This is a change, and there is a decrease in percentage for any of the impairments.

Assemblyman Ohrenschall:
How much training will your colleagues need in terms of working with the injured worker under this transition?

Andrei Razsadin:
I think they will need at least several courses, and the courses are not cheap. The courses are minimally $1,500 per course, and it is four days away from the office. I have been part of discussions that all of the rating physicians will have to be retested at a cost of $500 per test, and there are two tests we need to take to be qualified for the Sixth Edition. At the minimum, it will be a six-month learning curve and then another six months to get correct ratings. There will be a lot of errors here. With the Fifth Edition, there is very little error. Everyone knows the Fifth Edition, and there is no worry whether we will have to go back and make copies and there are not going to be enough copies. The AMA is still teaching the Fifth Edition, and they will continue to teach the Fifth Edition because there are numerous states who are still using it.

I do not know why we are throwing the baby out with the bath water. It is not a bad book. Neither is the Sixth Edition, but for us to move to the Sixth Edition, there are a lot of changes that need to take place. The Fifth Edition already incorporates all of the things that you have addressed with regard to ADLs and pain issues. We do not address pain in this state, but we are going to have to start addressing pain. We do not really address ADLs, but we are going to have to address them within the next six months if this edition is allowed.

Chairman Kirner:
I think we have the point. There seems to be some consensus that the proponents of the bill should meet with the opponents and try to work on the bill. Do the Committee members have any objections? [There were none.]

Gentlemen, thank you for your testimony. It looks as if there is some work to be done, so I would ask that Mr. Jayne sit down with some of the opponents and then come back to visit with me so we can see where we need to go.

Don Jayne:
We would like to sit down with the parties to see if there are elements of this bill that we can improve and to identify those elements upon which we may not be able to agree.

Chairman Kirner:
I am going to close the hearing on A.B. 229. Is there any public comment? [There was none.] The meeting is adjourned [at 5:10 p.m.].

RESPECTFULLY SUBMITTED:

_____
Earlene Miller
Committee Secretary

APPROVED BY:

_____
Assemblyman Randy Kirner, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: March 23, 2015 **Time of Meeting: 12:13 p.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 180	C	Kelly Richard/Committee Policy Analyst	Work session document
A.B. 246	D	Gary Landry/State Board of Cosmetology	Topic Index
A.B. 246	E	Gary Landry/State Board of Cosmetology	Topic index overview
A.B. 246	F	Assemblywoman Irene Bustamante Adams	Proposed amendment by the State Board of Cosmetology
A.B. 295	G	Alexis Miller/Sunshine Health Freedom Foundation	Proposed amendment
A.B. 229	H	Jason Mills/Nevada Justice Association	AMA Guide State by State Chart
A.B. 229	I	Jason Mills/Nevada Justice Association	Workers' Compensation Chart
A.B. 229	J	Cory Santos/Attorney, Reno	Iowa Task Force Report
A.B. 229	K	Cory Santos/Attorney, Reno	Written statement by Emily A. Spieler, Northeastern Law School
A.B. 229	L	Craig Kidwell/Nevada Justice Association	Notes and proposed amendments.