

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

**Seventy-Ninth Session
April 26, 2017**

The Committee on Commerce and Labor was called to order by Chair Irene Bustamante Adams at 1:32 p.m. on Wednesday, April 26, 2017, in Room 3137 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/79th2017.

COMMITTEE MEMBERS PRESENT:

Assemblywoman Irene Bustamante Adams, Chair
Assemblywoman Maggie Carlton, Vice Chair
Assemblyman Nelson Araujo
Assemblyman Skip Daly
Assemblyman Ira Hansen
Assemblywoman Sandra Jauregui
Assemblyman Al Kramer
Assemblyman Jim Marchant
Assemblywoman Dina Neal
Assemblyman James Ohrenschall
Assemblywoman Jill Tolles

COMMITTEE MEMBERS ABSENT:

Assemblyman Paul Anderson (excused)
Assemblyman Chris Brooks (excused)
Assemblyman Jason Frierson (excused)

GUEST LEGISLATORS PRESENT:

Senator James A. Settelmeyer, Senate District No. 17
Senator Heidi S. Gansert, Senate District No. 15



STAFF MEMBERS PRESENT:

Rocky Cooper, Legislative Auditor
Shannon Ryan, Audit Supervisor
Kelly Richard, Committee Policy Analyst
Kathryn Keever, Committee Secretary
Earlene Miller, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Gwen Braimoh, Vice President, State Board of Cosmetology
Marcus Allen, Manager, Masterpiece Barber School; Member, Nevada Barber Association
John Davis, Director of Instruction, Expertise Cosmetology Institute, Las Vegas, Nevada
Randy J. Brown, Director, Regulatory and Legislative Affairs, AT&T Nevada
Randy Robison, Director, State Legislative Affairs, CenturyLink
Samuel S. Crano, Assistant Staff Counsel, Public Utilities Commission of Nevada
Mike Eifert, Executive Director, Nevada Telecommunications Association
William Horne, representing the Board of Dental Examiners of Nevada
Dan Musgrove, representing the State Board of Oriental Medicine
Chris Bosse, Vice President, Government Relations, Renown Health
Liz MacMenamin, Vice President of Government Affairs, Retail Association of Nevada
J. David Wuest, Deputy Secretary, State Board of Pharmacy
Adam D. Porath, representing the Nevada Society of Health-System Pharmacists
Jason Penrod, Private Citizen, Reno, Nevada
Jay Parmer, representing Sierra Pharmacy, Reno, Nevada

Chair Bustamante Adams:

[Roll was called.] We have five bills today, and we are going to take them out of order. I will open the hearing on Senate Bill 206 (1st Reprint).

Senate Bill 206 (1st Reprint): Revises provisions relating to barbering. (BDR 54-535)

Gwen Braimoh, Vice President, State Board of Cosmetology:

Thank you for allowing us to be here to speak on behalf of Senate Bill 206 (1st Reprint) today. The only amended changes that I want to address are the increase in the terms of the appointments of the Board members to not serve more than three terms, which requires terms of a member of the Board beginning on or after January 3, 2011 to count toward the limitation on the number of terms that may be served.

Another change that we have as far as the requirements go is for a registered barber to attend barber school to become a barber instructor no less than three years. In section 4, it states that a "licensed barber," but I can turn it over to Marcus Allen, and he can speak more about a registered barber.

Marcus Allen, Manager, Masterpiece Barber School; Member, Nevada Barber Association:

I am with Masterpiece Barber School, the Nevada Barber Association, and I am also helping to represent the State Barbers' Health and Sanitation Board. I talked with them earlier, and we were talking about section 4, subsection 6, which is actually three years for a full-time license. When we last spoke, it is supposed to be a registered barber for three years instead of just a licensed barber for three years.

The reason for this is that it will not affect a cosmetologist actually becoming a registered barber. Once cosmetologists attend barber school, take the test, pass it, and become a licensed barber, they would be a registered barber. It was perceived that three years is the same as a registered barber. This is the same as a barber being licensed, and then licensed as an apprentice barber, comes back and takes a registered test, and then becomes a registered barber for the three years. It requires more experience for a person to actually pursue instructing a class of barbering.

We all know that it takes a lot of experience to actually teach this class. It is very serious. Why would we even think of lowering our standards? We really want quality more than quantity, and it produces more when you have more experience. It is like all the neighboring states. We keep lowering our standards to them. Why not set an example and let them bring their standards up to us? Whenever California catches a cold, it will make Nevada sneeze.

Chair Bustamante Adams:

Is there anyone else at the table who is going to present?

John Davis, Director of Instruction, Expertise Cosmetology Institute, Las Vegas, Nevada:

Not at the present moment. I am just here for barbering support.

Chair Bustamante Adams:

Let us take this from the top because we have some new legislators who have never heard about the State Barbers' Health and Sanitation Board. This is all new for them.

In section 1, it increases the length of the term of the appointed members of the Board to four years. Is that correct?

Gwen Braimoh:

Yes, that is correct. It increases the terms that the appointed member may serve to no more than three terms. I do believe that the "no more than three terms" is the four-year terms. Basically, this law was put in place so an individual who wants to become a Board member can have the opportunity to be appointed by the Governor.

Chair Bustamante Adams:

Yes, you are correct. The bill says that "The Board consists of the Chief Medical Officer or a member of his or her staff designated by the Chief Medical Officer, and three members who are licensed barbers appointed by the Governor for terms of 4 years." On line 12, it says, "An appointed member of the Board shall not serve more than three terms." You are putting a cap on it so you have new individuals serving. That is the purpose, correct?

Gwen Braimoh:

Absolutely, yes.

Chair Bustamante Adams:

Are there any questions from the Committee? [There were none.]

Your second suggestion on the bill is in section 2, and this talks about the Internet and the Board website. You want the Board to post the budget and all the financial reports. Mr. Allen, can you talk about that? Is that something the Board is prepared to do?

Marcus Allen:

At the present time, I am not sure about the finances part, but the State Board of Cosmetology does not pay finances to their website. I think it is about the Board keeping the website up to date. I think the finances and everything came about with that part.

Chair Bustamante Adams:

There is an agreement from the Board that they shall place that information on their website, correct?

Gwen Braimoh:

I think it was meant to have the Board be more transparent. I am not sure we met with the Board in December. To my knowledge, it was not even an agreement or disagreement. I think the transparency of information that needs to be given to the barbers should be on the Board. To what extent, I am not quite sure.

Chair Bustamante Adams:

Are there any questions?

Assemblywoman Neal:

I am trying to get an idea of the blue writing in section 2. Are you trying to eliminate these? Do you want that language in, or do you want it out? What I am hearing is you have an amendment. The original version of this bill—the reprint is what we are working from. Are you trying to change section 2 or keep it as is?

Gwen Braimoh:

We can keep it as is.

Assemblywoman Neal:

But you do not understand why there is a need to place the financial reports on there?

Gwen Braimoh:

I do understand.

Assemblywoman Neal:

What I heard was that the State Board of Cosmetology does not place their financial reports on the Internet. Do they?

Gwen Braimoh:

Being a Board member, we do get the financial information. I am not quite sure if it is on the website, but the State Board of Cosmetology is transparent.

John Davis:

The financials for the State Board of Cosmetology are not listed on the website. However, whenever you go to one of their state board meetings, all of the financials are available to any constituent who comes into the meeting. I think this came from one of the other legislative meetings [Senate Committee on Commerce, Labor and Energy, March 15, 2017]. Senator Spearman had gone to the website, and she asked about the posting of their meetings, updates, and different things. She could not find out where their meetings had been held and posted. Some of these things were what she wanted to make sure were transparent about the Board.

Marcus Allen:

At the meeting, a lot of the information was there, so it is fine.

Assemblywoman Neal:

Thank you for that. It got confusing for me, but I appreciate your input. Now I am clear on what it is. You are okay with this section; you just want to make sure that you are not doing anything that the State Board of Cosmetology is not already doing. You do not want two different standards; you want everyone to do the same.

Gwen Braimoh:

Yes.

Chair Bustamante Adams:

We are going to go to section 3, subsection 3. It says "Not less than 60 days before the date of an examination described in this section, the Board shall provide notice of the examination on the Internet website maintained by the Board." Is that also something that Senator Spearman requested? Where did that originate?

Marcus Allen:

I believe that when we first had that legislative meeting this was one of the issues. Now, all of the issues have been worked out, and it is now produced on the website. I believe it has been taken care of; it is just old language that is coming back again.

Chair Bustamante Adams:

The last one is in section 5, subsection 5 where it says, "That the barber school will have at least two instructors who provide instruction at the school." Is there any insight on that?

John Davis:

I believe what happened was that some of the language had to be changed. What they said at first was that there had to be two instructors that "owned," so it had to be struck. We have no problem with the reading of section 5, subsection 5, "That the barber school will have at least two instructors who provide instruction . . ."

Chair Bustamante Adams:

Are there any other questions from the Committee members? [There were none.]

Marcus Allen:

I think we skipped over one. Did we go to section 4 and 6 for the registered barber for three years? We did not speak about that—did you have any questions about it?

Chair Bustamante Adams:

Thank you, Mr. Allen, I actually did miss that. I do not have any questions. Would you give some insight on section 4, subsection 6, and changing it to three years?

Marcus Allen:

As it states right now, you have to be a registered barber for five years to actually become a barber instructor. It was voted to bring it down to three years as a registered barber, but it says here "licensed barber." That would mean that anyone with a license could actually be an instructor with three years.

Gwen Braimoh:

I believe what Mr. Allen is trying to state is that as a licensed barber, once you graduate from barber college and you go into a barber shop or spa to be employed, you are considered as an apprentice first. So with the lack of experience to become an instructor, I believe what he is saying is you have to be a registered barber for three years, not a licensed barber. It is a little different type of a license.

Chair Bustamante Adams:

That helps, Ms. Braimoh. I think we may want to clear that up because to me it is a little confusing. Actually, the way you explained it provides some insight, and I appreciate it.

Assemblywoman Carlton:

My question is for any Board members who might be present. Are there any State Barbers' Health and Sanitation Board members present?

Marcus Allen:

At the present time, the president of the Barber Board just lost his brother, so he is in mourning right now. I spoke with him earlier, hoping that he would make the meeting. I told him there was no pressure, to take care of his family first, and I would do the best I could.

Assemblywoman Carlton:

Okay. My questions all go to the Board, so I do not have any questions on this bill until they can answer them.

Marcus Allen:

Our Board's main concern was about the registered barber.

Assemblywoman Carlton:

I am sorry; it is my question, not their concern. It is my concern. When someone from the Board is available, I will get my concern addressed.

Chair Bustamante Adams:

Is there anyone in Las Vegas or Carson City who is in support of S.B. 206 (R1)? [There was no one.] If there are individuals in Las Vegas who are in support of the bill but are not planning to testify, would you please stand up? [There was no one.] Is there anyone in opposition to S.B. 206 (R1)? [There was no one.] Is there anyone in neutral of S.B. 206 (R1)? [There was no one.] I will close the hearing on S.B. 206 (R1). I know that Assemblywoman Carlton still has questions, but we will look for someone from the Barber Board for answers.

I will open the hearing on Senate Bill 412.

Senate Bill 412: Revises provisions related to lifeline service. (BDR 58-624)

Randy J. Brown, Director, Regulatory and Legislative Affairs, AT&T Nevada:

Senate Bill 412 is fairly simple. It makes the state lifeline administrator position permissive rather than required. For a little background on the state lifeline program, there are actually two programs that aid low-income households with their telecommunication services. One is the federal Universal Service Fund, and the other is the Nevada Universal Service Fund.

In the recent past, the Federal Communications Commission made changes to the qualification standards for the federal Universal Service Fund. Shortly after that time, the Public Utilities Commission of Nevada opened up a docket to align the Nevada Universal Service Fund with the newly realigned federal Universal Service Fund. The qualifications to participate in the two funds are identical as a result of the Commission's proceeding.

Under the old regime, there was a federal lifeline administrator who handled the qualification and those types of administration for the federal program, but there is also a state lifeline administrator who handles the qualification and administration of the state fund. The state administrator is a company located in Kentucky by the name of Solix, and the state administrator is paid for through this Nevada Universal Service Fund to the tune of about \$300,000 per year.

Once the two programs became aligned, the Federal Communications Commission is in the process of setting up a national verifier, or a federal administrator for this program. Since the two programs align, once that national verifier is up and running, they will be able to qualify participants for both the state program and the federal program. We will not need the duplicative state administrator any longer.

This bill simply makes the state administrator permissive—rather than required—and once the national administrator is up and running, it will be the decision of the Public Utilities Commission of Nevada (PUCN) whether or not to release the state administrator. The result of releasing the state administrator is really a savings to consumers in the state. As I said, it is about \$300,000 per year that is paid for by a surcharge on consumers' phone bills, so that will be eliminated as a result of eliminating the state administrator.

That is the gist of the bill. To try and preaddress any questions that may come up, I would like to mention a few things. This does not affect participants in the program. If you qualify under the program today, whether you qualify using the national verifier or the state verifier, it is not going to make any difference. The qualifications to enter the program remain the same before this bill and after this bill. I think there might have been some concern if people were being removed from the program or if eligibility was being eliminated, but that is not the case with this bill. With that, I am happy to answer any questions you may have.

Assemblyman Marchant:

Is AT&T the sole provider as far as the Universal Service Fund? Are you the only provider who does this service for people?

Randy Brown:

No, we are not. In order to participate in the state lifeline program as a carrier, you have to be an eligible telecommunications carrier. An AT&T wireline is an eligible telecommunications carrier in the state for our service territory, as is CenturyLink in southern Nevada and many other small-scale providers of last resort as well, which are primarily rural carriers. If you really want to get into this, it is important to understand

that something like between 80 and 90 percent of all lifeline subscribers receive their service via wireless, not wireline. So the wireline carriers like AT&T and CenturyLink have a very small interest in this business. Consumers are simply choosing to get it via wireless.

Assemblyman Marchant:

What companies provide most of this service for the rural areas and people who are far away from a large city?

Randy Brown:

I do not know for certain. I have an idea that probably one of the largest lifeline providers in the state is TracFone, which is a wireless provider. A lot of wireless providers' business model is providing free equipment and an allotment of minutes every month, such as 250 minutes for no cost whatsoever. Our lifeline offering at AT&T is simply a \$3.50 discount off the normal rate each month. For a lot of reasons, wireless carriers are more attractive at this point.

Chair Bustamante Adams:

Are there any other questions? [There were none.] So the state administrator selected—is that a state employee or is that just the name they label it as?

Randy Brown:

The state administrator is actually a contracted entity. It is not a state employee. It is a company that does this type of work throughout the country, and the company's name is Solix. They are located in Kentucky.

Chair Bustamante Adams:

The surcharge that Nevadans pay now—is that equal across the state?

Randy Brown:

That is correct. The surcharge is applied equally across the state to all customers. The amount of the surcharge is dependent on what is sought from the fund. The fund pays for not only discounts to low-income households, but there is a high-cost component to this fund as well that assists small rural carriers who need additional funding in order to remain in business. There are several elements to this fund, but the surcharge is applied equally across the state.

Chair Bustamante Adams:

I want to verify. You say that if this is approved and becomes permissive, the PUCN makes that decision. My question then is did you say the surcharge would be eliminated?

Randy Brown:

If I said that the surcharge would be eliminated, I misspoke. I apologize for that. The surcharge will remain in effect, but in theory, the surcharge can be reduced because we are not going to be spending approximately \$300,000 per year with this third-party administrator. That work will be done by the federal administrator. It will be a savings to consumers. It will not eliminate the surcharge.

Chair Bustamante Adams:

How many consumers take advantage of the lifeline now?

Randy Brown:

Unfortunately, I do not have that number. There is a federal website that I could get for you, which tells you how many Nevadans get lifeline. I would be happy to get that to you.

Chair Bustamante Adams:

I would appreciate that. Thank you. The last question I have is if the surcharge were to be reduced, how would Nevadans know? I do not know how many people pay attention to their phone bill that closely, but how would we know?

Randy Brown:

The Universal Service Fund surcharge is a line item on the bill—at least on AT&T's bills. The consumer would see a reduction in that surcharge. I understand that not everyone reads their bill, but we would include a bill page message that says there has been an adjustment to the surcharge.

Assemblywoman Carlton:

I think one of the things that would be helpful for the Committee to hear is that this is the eligibility portion where they say if the person is eligible to get the phone or the service. Is that correct?

Randy Brown:

This administrator does qualify individuals for entrance into the program. There is also an ongoing responsibility to recertify individuals annually after that. Yes, that is work that this administrator does.

Assemblywoman Carlton:

So by changing to this federal administrator, will our constituents see any changes? If they have a problem, will it be more difficult to get it resolved through a federal administrator rather than how we are doing it now, knowing that the person is in Kentucky and not in the state anyway? Do you see any problems that someone might bring to us if there is an issue?

Randy Brown:

Generally what happens is if there are issues, the consumers go to the carrier and ask why they did not qualify or why the discount is not being applied to their phone? The carrier generally handles those. If there was a problem with the application with the documentation

to confirm eligibility, that is handled by the administrator. I would point out—because it is a concern that we heard previously, so I appreciate your raising it—that at any time the PUCN can make the decision to reinstate the state administrator if things were going poorly at the federal level. They have complete flexibility.

Assemblywoman Carlton:

Thank you; I just want to make sure it is seamless for our constituents who use these services.

Chair Bustamante Adams:

Is there a minimum number of Nevadans that each carrier must try to reach out to? What kind of effort is there to promote this?

Randy Brown:

There is language—it is either in the *Nevada Administrative Code* or in the *Nevada Revised Statutes*—that requires eligible telecommunications carriers like AT&T and others to reach out to constituents via advertising. I think it is a quarterly requirement. It is required across your geographic service territory. We use various means to do that, such as radio and print advertising. There is information in our directory about it, and we also notify consumers on their phone bills at least annually.

Chair Bustamante Adams:

There is no minimum, such as having to have 1,000 individuals? We probably know the number who are eligible—maybe it is 5,000—but among all the carriers, there are only about 400 who have actually applied. There is not a minimum for each carrier for a number they must reach. Is that correct?

Randy Brown:

No, there is no minimum.

Chair Bustamante Adams:

Is there anyone who is in support of S.B. 412?

Randy Robison, Director, State Legislative Affairs, CenturyLink:

We support the bill and echo what Mr. Brown communicated to you, both in his testimony and in response to the questions.

Samuel S. Crano, Assistant Staff Counsel, Public Utilities Commission of Nevada:

We are in support of S.B. 412 and stand ready to answer any questions you may have.

Mike Eifert, Executive Director, Nevada Telecommunications Association:

We represent the rural providers of last resort that were mentioned by Mr. Brown. We rise in support of this bill.

Chair Bustamante Adams:

Is there anyone in opposition to S.B. 412? [There was no one.] Is there anyone in neutral on S.B. 412? [There was no one.] I will close the hearing on S.B. 412. The next three bills we have are from Senator Settlemeyer. I will open the hearing on Senate Bill 256 (2nd Reprint).

Senate Bill 256 (2nd Reprint): Revises provisions relating to the Board of Dental Examiners of Nevada. (BDR 54-549)

Senator James A. Settlemeyer, Senate District No. 17:

Senate Bill 256 (2nd Reprint) is a recommendation from the Sunset Subcommittee. This is not my personal bill; I am just shepherding it along through the process. I would like to thank the Chairwoman for serving on the Sunset Subcommittee. I have always felt it has been a great committee to try to work out some of the concepts in a bipartisan way and try to find some solutions for our constituents in the state of Nevada.

Senate Bill 256 (2nd Reprint) relates to the Dental Board of Examiners in Nevada and its review and considerations of findings and investigators appointed by the Board. The Sunset Subcommittee reviewed this in the 2015-2016 Interim. The Subcommittee is authorized to review every board, commission, committee, and similar entity created by statute to look at these boards and commissions and figure out if they should be continued, modified, consolidated, or terminated.

The Board of Dental Examiners of Nevada was established by the Legislature in 1875. It has been operating with very few revisions since the Nevada Dental Act was passed in 1951. The Board consists of 11 members appointed by the Governor. The Board's main purpose is to license and discipline dentists and dental hygienists. Because it is in charge of disciplining the licensed professionals, S.B. 256 (R2) is before you today.

All boards and commissions that are viewed by the Sunset Subcommittee are asked to submit their financial records, minutes of meetings, budgets, and other records. The Dental Board was reviewed by the Sunset Subcommittee on December 15, 2015. After several meetings, dentists and hygienists commented on the record about the disciplinary process used by the Dental Board. When the Sunset Subcommittee examined the budget information submitted to us by the Dental Board, the members had some concerns about the amounts allocated for legal investigative purposes. At that time, the Sunset Subcommittee recommended to the Legislative Commission that an audit should be done on those expenses for calendar years 2014 and 2015. The auditor is here today to explain what the Division found and its recommendations. Before he and his staff begin a presentation, I will briefly explain the provisions of S.B. 256 (R2).

The auditor made 14 recommendations to the Dental Board. They accepted most of them. However, the Board did not accept the recommendation to institute an independent review process regarding complaint investigation and resolution. The Dental Board testified to the Sunset Subcommittee that it did not believe it had the statutory authority to insert

a review process between the initial investigation conducted by the disciplinary screening officer (DSO) and the DSO's subsequent reporting to the Board's outside counsel. As a result, the legislative auditor found that the Board's staff rarely receives documentation of the results of the investigation, the conclusions reached by the DSO, or the corrective actions recommended by that DSO.

Based on the legislative auditor's recommendations and the position taken by the Dental Board, the Sunset Subcommittee recommended *Nevada Revised Statutes* (NRS) be revised to include a panel for review of its investigations. This bill requires the Dental Board to appoint a panel through the findings and investigation, including files and records. The review panel will then submit to the Dental Board its recommendations to accept or reject their findings. The bill requires the Board to consider the findings of the review panel before it can take disciplinary action. The bill also provides that the records obtained by the review panel are confidential. The bill extends to members of the review panel the immunity from civil liability provided under existing law to members and employees of the Board.

The bill before you today includes two amendments adopted by the Senate to make the review panel more effective. The first is to require that if the subject of the review panel is a dental hygienist, the review panel should include a licensed hygienist. The second is to require two of the three members of the review panel must be members of the Board of Dental Examiners. This is meant to ensure the review is conducted by Board members and not turned over to disciplinary screening officers or hearing officers. The current practice actually makes it possible for the complaint to be investigated and resolved without involving any member of the Board. We found that problematic and made those recommendations. A similar review process is currently used for the Board of Medical Examiners.

Rocky Cooper, Legislative Auditor, Audit Division, Legislative Counsel Bureau:

The audit of the Board of Dental Examiners was conducted as a result of a special request, as mentioned by Senator Settelmeyer. This audit was issued and presented to the Audit Subcommittee of the Legislative Commission in May 2016, and presented to the Sunset Subcommittee of the Legislative Commission in June 2016. We have one remaining audit recommendation, and that is to institute an independent review process regarding complaint investigation and resolution. This is a key recommendation because complaint investigations have been a significant issue with the Board of Dental Examiners, and a review process such as a review panel is a fundamental internal control to provide oversight. The Board has maintained that a statutory revision is necessary to implement this review process. I will now turn the presentation over to Shannon Ryan to provide a brief summary of our report.

Shannon Ryan, Audit Supervisor, Audit Division, Legislative Counsel Bureau:

The Board's mission is to protect the dental health interests of Nevadans by ensuring qualified professionals are licensed, and violators of the regulating laws are sanctioned as appropriate. The Board consists of 11 members. The Board receives

complaints from the public, which must be verified in writing. The Board can also authorize investigations if it receives sufficient verifiable information that some provision of NRS or *Nevada Administrative Code* (NAC) Chapter 631 has occurred.

As shown in the exhibit of our audit [([Exhibit C](#)), page 4], the Board received 374 complaints between July 1, 2013, and December 31, 2015. Of those complaints, 64 percent were remanded. Remands occur when an investigation just performed by a dental screening officer determines that evidence does not exist that a violation occurred. Corrective action of the Board occurs when the DSO determines that a violation likely has occurred. When the Board enters into corrective action agreements, investigation costs are covered.

We provided a flow chart on page 6 of our report ([Exhibit C](#)) which shows the disciplinary and complaint resolution process. We provided some information in the report regarding the difference between a nondisciplinary agreement and a disciplinary agreement since the Board enters into both of these. For purposes of our report, we refer to the process as a disciplinary process. Our audit focused on the Board's disciplinary process and costs assessed for investigations for calendar years 2014 and 2015. Our audit objective was to determine whether the Board assessed reasonable costs to licensees for investigating and resolving complaints in disciplinary matters.

Our findings and recommendations begin on page 8 ([Exhibit C](#)). We found that the Board did not always assess reasonable costs to licensees for investigating and resolving complaints in disciplinary matters. *Nevada Revised Statutes* 622.400 allows the Board to recover fees from licensees for costs incurred as part of its investigative, administrative, and disciplinary proceedings. The Board overcharged licensees in about half of the investigations, including several over \$1,000. Overcharges were likely due to the Board lacking an effective process for determining investigation costs. Four licensees paid over \$140,000 to charitable organizations that provide health-related services as part of provisions and stipulation agreements. We requested legislative counsel review this activity of the Board. Legislative counsel concluded the Board is not authorized to provide for a charitable contribution from a licensee as a condition of a stipulation.

On page 13 ([Exhibit C](#)), we discuss the Board's legal fees. We indicate the Board's legal expenses were higher than reported because legal expenses were reduced by cost recoveries related to disciplinary matters. We also note that the Board could save approximately \$100,000 per year by hiring a general counsel.

The last area we discussed starts on page 16 of our report ([Exhibit C](#)). We discuss the need for investigation results to be reviewed by supervisory personnel or an independent review committee. A review process would help verify conclusions and recommendations are based on clear and sufficient evidence. We also discussed that the DSO is the sole authority for determining whether violations occurred and the associated sanctions with each investigation. Preliminary conclusions and recommendations are reported directly to the Board's outside counsel as instructed in the assignment letter. As a result of this, this documentation is rarely received at the Board.

A review is important for ensuring complaints are resolved consistently. Our analysis found that certain DSOs executed actions more frequently than others. For instance, two DSOs accounted for 49 percent of all disciplinary actions but were only assigned 31 percent of cases. Variations in DSO decisions can be found on page 18 of our report ([Exhibit C](#)). Further on this page, we discussed that all other boards we contacted, either other Nevada medical boards or other state dental boards that assign a staff member to investigate a matter, have a review process in place by at least one other independent party.

Although the Board's outside counsel indicated a review process would make it more difficult to achieve the Board's goal of resolving complaints within 90 days, we found the average time to resolve disciplinary matters involving Board actions is already over 400 days. We continue with information on page 19 that the Board's files were incomplete and disorganized. All 14 of our recommendations are on page 55. As noted previously, recommendation 10 was for the Board to institute an independent review process, which the Board rejected.

If you have any questions, I would be happy to answer them.

Senator Settelmeyer:

The Sunset Subcommittee voted unanimously to recommend this revision of the Dental Board. As you know personally, there were hours of public testimony and testimony from dentists and hygienists when the subject came up about some concerns and issues that they had. The proposed changes that have already been taken forth through the auditing board and then adding these, I believe, will go a long way to resolving those conflicts. The fact that you do not have an hour of testimony today is good evidence of that.

Assemblywoman Neal:

From what the audit says, the DSOs are dentists. Are they also lawyers?

Shannon Ryan:

No, they are not. They are licensed dentists or licensed hygienists, depending on the complaint they are investigating.

Assemblywoman Neal:

I know you are trying to fix this, but what is confusing to me is why would the dentist be in the position to—from the audit; it says that the DSO can determine the jurisdiction. They are also creating the findings for the disciplinary action. What you found in the audit was that the findings were not reviewed, and there was not sufficient guidance for the disciplinary action that occurred. What was the general counsel actually reviewing or doing? If there were individuals who basically may have been a part of an action where there was not sufficient evidence, what are we doing to repair or offer some kind of reparation for that activity?

Senator Settelmeyer:

I think you have hit the nail on the head. Those are the issues that came about and brought about this bill. The concept with this bill is dentists are individuals who are familiar with the trade and the concepts that are going on in the day-to-day practice. If you want to know more about how the legislature works, you ask a legislator. Part of the complaint was that you had supervisory staff or people who were traditionally in an office job that were reviewing these in conjunction with an attorney who had never had his or her hands in the mouth of a patient and may not be familiar with the practices and how things work within the dental field. That is where the recommendation came to have people who were familiar with practices overlook the processes to determine if investigatory actions were warranted or if this was a common practice of the trade. That was somewhat—in my opinion—how this bill came about.

Shannon Ryan:

The way we understood the process to work when we did the audit was that they assigned a dental screening officer, who is either a dentist or hygienist, depending on the type of person they were investigating. They could be a specialized dentist, such as a periodontist. That person went out, did their investigation, and then they would recommend directly to general counsel whether or not this was a matter that should be remanded or whether it was a matter that should be brought to the Board for some sort of disciplinary action on the licensee. It is our understanding that the general counsel then basically took that recommendation from the DSO, and it was either remanded or brought forward. There was nothing in between where someone was concurring that this was indeed a matter that was serious enough for disciplinary action.

Assemblywoman Neal:

So from the audit, the general counsel was paid—I do not know if it is the same individual, but it said the legal fees were roughly around \$200,000. That is a lot of money for what you are indicating was not oversight. What is going to happen? I understand the bill did not go anywhere, but someone needs to give some money back or those cases need to be reviewed to determine if the adequate result was found. Based on this report, no one should be walking around with any kind of disciplinary action that does not get a second review about what happened and what should be the outcome, whether they were right or wrong. I do not know if that has occurred, but it would be good to know whether or not those DSOs and whatever they screened, that there is another review that happened post audit. Did it?

Shannon Ryan:

Not to my knowledge, no.

Assemblywoman Neal:

So someone could be walking around with a disciplinary action that may not be proper, and you have a general counsel who got paid who did not actually do their job.

Senator Settelmeyer:

The concept of the bill is just trying to go forward, not trying to fix the problems for those people that, unfortunately, may have had problems in the past. If it provides any more comfort level, I am told they have done a review process, and the person who was counsel is not going to be counsel going forward. They have gone through a new process to hire their own internal counsel—that was also one of the recommendations—so that is being changed.

As for those individuals who got fines in the past, there were discussions through the Sunset Subcommittee about some of those fines. A lot of it came down to stipulated agreements on settlements. They would come to them and say that they owed a certain amount of money, and instead of that amount of money, they would settle for something lower that they would then usually pay to a dental program for underprivileged individuals to help people get teeth, to help them with job interviews, and things like that. However, then we found out within the statutes that did not exist either. They were doing things that were problematic, to say the least. The Sunset Subcommittee felt this was the most reasonable way to try to address the problems on a going-forward basis, not trying to solve problems for past activities. The opinion of the Sunset Subcommittee was to try to solve problems going forward, not to try to figure things out retroactively. I know it does not provide you with any comfort in that respect, but that is what we do.

Rocky Cooper:

We had one recommendation, which was to refund the amounts overcharged to licensees, and they originally rejected that recommendation to refund the overcharges that we found. However, through pressure from the Sunset Subcommittee, the Board decided to refund those amounts that were overcharged. As Senator Settelmeyer has mentioned, the audit recommendations were trying to get everything implemented. The piece we are doing right now is the last remaining recommendation.

Assemblywoman Neal:

I understand the idea not to go backwards, but according to this—and I may be misquoting it—there were 49 percent of the complaints resulted in some kind of disciplinary action from July 2013 to December 2015. If I am in this space, regardless of whatever, if there was an improper action that happened on my license and no one has dealt with it, what am I supposed to do? Am I supposed to say, Oh, these two years are suspect? I do not know where the disciplinary action goes or how they have to report it, or whether they have to report it to their clients, but if it is sitting out there in space that they were disciplined and then you have a wide disparate review where the action may not have been founded on facts or evidence, then what do they do with the taint on their license? What are they doing in the interim? I know everyone wants to go forward and make it better, but if people still have a taint on their license for the disciplinary action, then what do they do? That is hurting that person with that license.

Chair Bustamante Adams:

I think that might be a question more appropriate for the Dental Board. I think I see a representative, Mr. Horne, so I will save that question and come back to it. Are there any other questions?

Assemblywoman Carlton:

I have been dealing with this Board since before I got into this building. There is one thing I want to put on the record on the dental screening officers. Years ago, they went to dental screening officers, from my understanding from the history that I was taught, because there were problems with dentists doing discipline on other dentists. They tended to have a personal interest. People did not feel they could be objective. That is why they tried to remove some of them from that because some people thought that if they had a shop up the street from the other dentist, the dentist might try to put them out of business. There were some issues. This is a long time ago. It is my understanding that one of the discussion points about the screening officers was to make sure that everything was objective and there could be no personalities involved with the profession. That was from a very long time ago.

I understand where we are trying to go here, but I want to make sure that, as the Board moves forward with this recommendation, they make sure that, maybe in the opening part of it, names are redacted so no one can use it to get even with someone they lost to in a golf game or they have a problem because their dental office is right up the street from them. We just want to make sure that we keep those things out of it as much as possible and keep it as objective as possible. People will file complaints on each other just to cause problems with each other. It is a very cutthroat business, and it is the thing that I have learned with this Board for a very long time. We want to make sure that the correct safeguards are put in to make sure a Board member does not use their position in a disciplinary capacity to hurt another licensee.

Chair Bustamante Adams:

Mr. Horne, I believe you represent the Dental Board, is that correct?

William Horne, representing the Board of Dental Examiners of Nevada:

Yes.

Chair Bustamante Adams:

Would you come to the table to answer the question from Assemblywoman Neal? The question was that 49 percent of the individuals in the performance audit report had a disciplinary action. If a license is now tainted, what is the recourse if it had been inappropriately done? What is the recourse that the individual may have?

William Horne:

I am not sure my answer to the question would be adequate. That presumes there is not an appeal process that is already in place for those who believe that their hearing, stipulation, et cetera, was not done within statute. Some of the Board members may remember that the Attorney General's Office also issued an opinion on the actions that had been taken by

the Board up to that date and found that their actions had been done legally. As we are here today, as the Board testified in the Senate, the Board is neutral on these changes that are proposed in this legislation. The testimony was correct that all but one of the recommendations by the audit were accepted by the Board. The reason for this piece of legislation is to handle the procedures going forward because it was the Board's opinion that we could not unilaterally change the due process steps that were being taken in these situations. They had to reject that one item of the recommendations in order to get a legislative correction.

Assemblywoman Neal:

It is good information to know that the Attorney General looked it over, but what is still confusing to me is, based on this audit, they rarely receive documentation. What was given had so many disparities or inconsistencies, I am trying to figure out what they reviewed. If they did not collect anything where they made a surface decision, what did they review? How did they arrive at the determination that nothing happened that was improper if the audit division found there was no proper documentation to record the investigation to even get to the end result? Do you know what happened? If not, I definitely would love to know offline because in my head, if you have a professional license, if you got tagged with something, and you are a part of this two-year thing, there needs to be something better than that.

I need more information that the taint on that person's license was properly reviewed and not just skated over because it looked like a political nightmare. It looks like this was a political nightmare and people did not want to deal with it and would rather gloss it over and not look backwards. I am sure it is confidential, but I would love to know from the Attorney General what the review was and what they actually reviewed in terms of documentation. I am not pointing you out, Mr. Horne. You currently represent them. I do not know how long you have been representing them, but that is a conversation outside of this Committee. I would love to know, in all honesty, what they reviewed.

William Horne:

What I would like to know, or what I think would be helpful for you, Assemblywoman Neal, is are we talking about those issues that have gone to a formal hearing or all this documentation is reviewed in totality, or is this through the informal hearing to where it gets to a point to where a stipulation is offered to the health provider, the dentist or dental hygienist, and a settlement has been entered into at that time? A lot of these things do not go onto their record. I hate to use the analogy of a criminal matter, but if you settle a matter before going to trial, there is a long list of evidence and documentation that does not go into the record. I do not know if what you are inquiring about consists of only formal hearings or is encompassing any practitioner who was brought before the Board or by the DSO.

Assemblywoman Neal:

To save this Committee from my further irritation and annoyance, I will highlight the pieces in this audit where I want to know what the Attorney General reviewed. We can talk about some paragraphs outside of this Committee that I think were suspect in terms of the Attorney General reviewing it, and the next thing you know, all is good. However, it said

there was not sufficient evidence to arrive at a conclusion. If there was not any evidence presented and there was not any evidence collected, what did they review? Did they review and pull the documents that should have been put into the record? Apparently, it looks like there was no record, or the record that did exist was improper and insufficient. I will not drag this out.

Shannon Ryan:

When the DSO does their investigation, they are getting the medical records of the person who is filing the complaint. They are getting the actual complaint. They get the medical records from the dentist who actually provided the service, and then that DSO, who is also a licensed practitioner, will typically go out and have that patient come into their office. They will look at them and do their own medical review of the work that was done.

All of that documentation comes into the dental board. It is required to be provided by the dental practitioner who originally provided the service. From what we saw, the documentation being received by the outside counsel was simply an email from the DSO saying they believe a violation occurred, that they did not receive adequate care, and therefore that is a violation of NRS Chapter 631, and they should be sanctioned in the following manner, whether that meant their being put on monitoring for six months or their having to repay the person who received the service. That was the documentation that was received.

As far as the medical records went, all of it was turned in by the original practitioner. We did not look at those medical records to try and determine whether a violation occurred or not because we are not qualified to do that. We thought it was important that if all that was being received from the DSO was simply that their opinion was that a violation occurred, there should be someone else that is also agreeing that a violation occurred, and it was not just the opinion of one person.

Assemblywoman Carlton:

I want to make sure we are all on the same page, Mr. Horne, when it comes to the discussion pointing out the stipulations. I can tell you I personally had three or four hygienists call me in tears over the phone because they felt like if they did not take the stipulation, the cost of going on beyond that was beyond what they could afford. Hygienists do not make as much as dentists do, and they felt like they were forced into taking the stipulation just so they could keep their job.

I do not want the Committee to think that a person accepting a stipulation has any more weight other than the fact that that particular licensee was just trying to survive at the moment. It is not like a court case where it is a lower charge. They still have to pay. There is still a ding on their license. If they do not have the resources to hire a lawyer and go in front of the lawyer that the Board had at the time, that is where I think a lot of the concern came from over the past four years—the abuse of the stipulation process.

I do not want people to think that the stipulations were the arrow that solved the problem. I think the stipulations were the actual problem when it came to this. I hope it will be fixed in the future, and people do not feel like they have to take a stipulation to keep their license. They have options to be able to tell their side of the story. I am not thoroughly convinced. I do not have a lot of hope for this Board, but that is just 20 years of experience dealing with this Board. This Committee can make up its own mind as they deal with this Board going forward.

Chair Bustamante Adams:

Is there anyone in support of S.B. 256 (R2)? [There was no one.] Is there anyone in opposition of S.B. 256 (R2)? [There was no one.] Is there anyone in neutral on the bill?

William Horne:

I am here to testify in the neutral position on S.B. 256 (R2). One issue we caught was the second amendment that was added after testimony in the Senate. If the Committee would look at section 1, subsection 1, paragraphs (a) and (b) where it says ". . . two members of the Board other than a member appointed pursuant to NRS 631.363" Just for clarification, Senator Settlemeyer's testimony seemed clear that this would be fine in how he articulated how this would operate; however, in reading this, the wording in paragraph (a) and also paragraph (b), on line 16 of page 2, where it deals with a dentist, if you substituted "members of the investigative panel" instead of "Board," it will be clearer. There is a possibility that if you pull a couple of members off the Board to serve in this capacity, and it goes to a formal hearing, you end up with a quorum problem. The Dental Board is not as large as the medical board, so if you do that and end up with a quorum problem, then they cannot function should it go to a formal hearing. As Senator Settlemeyer testified, that is not how it is supposed to operate, but it is something that was noted by the executive director this morning. We are not trying to wordsmith this, but we wanted to bring it to the Committee and Senator Settlemeyer's attention. We remain in the neutral position on this bill.

Chair Bustamante Adams:

Is there anyone else in neutral? [There was no one.] Senator Settlemeyer, would you like to give any closing remarks?

Senator Settlemeyer:

I appreciate and share your concerns and frustrations, Assemblywoman Carlton. After having so much discussion about this Dental Board, it became obvious that some changes needed to occur. Assemblywoman Neal, I understand exactly what you are saying as well. We ran into the same discussion. Again, there was a discussion. They have been repaid for that period of time. How far you can go back, though, is a completely different matter. More than anything, all the testimony repeatedly before us was to solve the issue going forward.

Find a way to solve it. This recommendation to create this informal hearing panel came from our legislative auditors, and the Sunset Subcommittee felt it was the best way to try to address the issue combined with the aspect that the legal counsel that was once there for such a long period of time will no longer be there in the future. Added to the fact that there have been some changes on the Dental Board itself, I think will help provide some different perspectives to try to resolve some of the issues that have occurred in the past.

Chair Bustamante Adams:

We will close the hearing on S.B. 256 (R2). Just to stay with the board topic, we will open the hearing on Senate Bill 466 (1st Reprint).

Senate Bill 466 (1st Reprint): Makes various changes relating to the State Board of Oriental Medicine. (BDR 54-557)

Senator James A. Settelmeyer, Senate District No. 17:

Senate Bill 466 (1st Reprint) is before you today dealing with Oriental medicine. It is a recommendation from the Sunset Subcommittee of the Legislative Commission, which I was the chair of in the last interim. Before we get to the provisions of the bill, the Oriental Medicine Board was created in 1973. I am told that it was actually the first Oriental Medicine Board created in the United States. We are at the forefront, first on a good list for once, as Assemblywoman Carlton would say.

The State Board of Oriental Medicine consists of five members appointed by the Governor. Its main purpose is to license and discipline practitioners of Oriental medicine. The Board is authorized to approve the establishment and curriculum of the school of Oriental medicine in Nevada. All of the boards and commissions that are reviewed by us have the opportunity to come to us and ask for things to make their boards more efficient. This Board was reviewed in the 2011-2012 Interim. At that time, the Sunset Subcommittee recommended continuation without any modifications. It was brought back in December 2015 because of concerns about its operations.

In 2014, the Board proposed regulation that would exceed the statutory requirement that the applicant would have to meet in order to be issued a license. This actually created barriers to licensing people through the State Board of Oriental Medicine. Senator Parks, who has always been very familiar with the Board and has had several bills on it, had problems with it and, therefore, recommended it be reviewed again. Representatives from Wengu University of Oriental Medicine in Las Vegas, the only college of Oriental medicine in Nevada, urged another review by the Sunset Subcommittee because of these concerns about getting their curriculums approved. Others contacted Sunset Subcommittee members to complain about the Board's operations and meetings. Again, that is what brought this about.

Senate Bill 466 (1st Reprint) increases the number of board members from five to seven and requires that one member must represent a school or college of Oriental medicine in Nevada. The Senate added an amendment to provide that the second additional member be a licensed practitioner of Oriental medicine. The bill also provides that the members of the board serve

at the pleasure of the Governor. Over the three interims that the Sunset Subcommittee has operated, we have learned that the Governor or other appointed authorities often do not have any statutory authority to remove members of these boards or commissions if there are issues. Therefore, the Sunset Subcommittee recommended that the Governor be given that authority to remove a member of the State Board of Oriental Medicine if he needs to.

The bill exempts licensed physicians from the provisions of *Nevada Administrative Code* Chapter 634A. The effect of this recommendation is to enable physicians licensed under *Nevada Revised Statutes* Chapter 630, medical doctors or osteopaths, to treat their patients with these kinds of procedures without obtaining a degree or licensure directly from the State Board of Oriental Medicine. Let me assure you that they are already trained in Oriental medicine in those fields. One of the things that I personally look at is the concept of not allowing someone to use a pushpin on you per se, but we are letting them carve into you with a scalpel. It seems to be counterintuitive. If you want to let someone carve on you with a scalpel blade and they have the requisite training in Oriental medicine, they should be allowed to operate.

Finally, S.B. 466 (R1) requires the Board to submit to the Sunset Subcommittee a report every six months throughout the 2017-2018 Interim. A list of items that will be included in the report are in section 4 of this bill. We have required this in the past when we had problems with the Funeral and Cemetery Services Board. We had them report back, and that is what we are doing here. Those are my concluding remarks. It was approved by the Sunset Subcommittee. If you have any questions, feel free to ask. I may not be able to answer them, but there probably will be someone here who can.

Chair Bustamante Adams:

I am going to present a bill in the Senate, so I am going to ask Vice Chair Carlton to continue any questions and testimony either in support or opposition of the bill.

[Assemblywoman Carlton assumed the Chair.]

Vice Chair Carlton:

I am surprised that the Governor did not have the authority to remove people from this Board because I think that is typical on almost all other boards. That must have been an oversight when the Board was established so many years ago.

Senator Settelmeyer:

We have found out there are several boards over the years that, for whatever reason, do not have this authority. To me, it seems to be problematic. If there is a problem, I think that the Governor, whoever he or she may be, should have the ability to remove individuals who are potentially deemed to be problematic.

Vice Chair Carlton:

That is strictly to Board members?

Senator Settlemeyer:

Correct. Since the Governor has the ability to appoint these individuals, in my opinion, he should have the ability to remove them.

Vice Chair Carlton:

We do not want to take it down into employees because the Board hires their own employees. We want to make sure where the bright line is.

What is the thought process behind the school or college? Do we just want to make sure that the people who are doing the training have a voice on the Board?

Senator Settlemeyer:

The concept from the Sunset Subcommittee was that there seemed to be a disconnect potentially between the only school in the state of Nevada who trains individuals in Oriental medicine and the Board that actually oversees them. It was a recommendation to go ahead and place someone from that school on the Board, but in doing so, you are creating a six-member board. As we all know, it is usually better if you have the ability to not have a tie. Then it became a question of seven members. Then the seventh person was not defined. It was a recommendation in the amendment process in the Senate that that other individual also be trained in Oriental medicine as well.

Vice Chair Carlton:

I want to clarify the language that is in the bill to make sure we do not have something that is contradictory. In section 3, subsection 3, "The Governor shall appoint one member to the Board who . . ." and then you go through (a), (b), and (c). So in paragraph (a), "Does not engage in the administration of a facility for Oriental medicine or a school for Oriental medicine." So currently, they are prohibited, but then in section 4, we are adding them in. It seems to me that if you just took that out, you could appoint one. I think we have contradictory statements in that section.

Dan Musgrove, representing the State Board of Oriental Medicine:

You are essentially looking at two different people. The one who is under section 3, subsection 3 is essentially a private citizen. You want to make sure that they did not have any relationship to a board or anything and are actually the private citizen. In section 3, subsection 4, is the new addition, which is the person who is the owner of the school.

Vice Chair Carlton:

Good. We just want to make sure that there is a public member. Is there currently a public member?

Dan Musgrove:

That is the one that starts on section 3, subsection 3.

Vice Chair Carlton:

I just want to make sure I was not reading contradictory statements. Do you represent the Board, Mr. Musgrove?

Dan Musgrove:

I do.

Vice Chair Carlton:

This Board has had a problem with membership in the past and financial viability because of the small number of people who are licensed by the Board. Can you tell me how many licensees we are talking about right now?

Dan Musgrove:

I was actually just hired about two weeks ago, so I do not have all the information. I would be happy to get the information to you. I believe it is right around 55, but I do know that there has been a lot of turnover on the Board in a positive way. The new president, Dr. Maggie Tracey, is a changemaker, and everything we have heard from people who she is working with is that they are very pleased with her leadership on the Board and the executive director that we have. They are financially viable at the present time. The mindset of the Board now—especially with the help of the school—is to license as many people as they can to get more people into the state. Before, the old Board wanted to make them the only people in town.

I have data now—it is 56 active licensees.

Vice Chair Carlton:

In adding these two new members with the compensation that would be included with the Board, would they need to raise their fees to the licensees, and have they reached their cap?

Dan Musgrove:

We will get that information to you.

Vice Chair Carlton:

I always want to make sure that they have the resources they need because they will make the policy decision. If it causes a rise, then licensure fees—if they have not reached their cap, they have to come back to us. It requires a two-thirds vote, and it is a vicious circle. I want to make sure we cut that circle off before we get too far down the road.

Dan Musgrove:

Senator Settlemeyer gave me data that the 2015 licensing information is at 58. We have increased by two since 2014.

Vice Chair Carlton:

I would like more numbers from you, such as reserves and along that line. I want to make sure if we are doing this that everything is solvent, and there are no other issues that need to be addressed.

Dan Musgrove:

I would be happy to provide that.

Vice Chair Carlton:

Are there any other questions from the Committee members? [There were none.] Is there anyone else in support of S.B. 466 (R1)?

Dan Musgrove:

I would like to go ahead and enter our support of the bill. We appreciate the work that the Sunset Subcommittee has done. I must say that we believe that the additions to the Board will be positive, and we are absolutely doing all the reporting that this bill requires of us now and will continue to do so. As you know, President Tracey is very open and wants to have full disclosure of what is going on and appreciates the fact that the Sunset Subcommittee has worked with them.

Chris Bosse, Vice President, Government Relations, Renown Health:

I represent Renown Health. I want to speak in support of the bill. I certainly appreciate the work that the Sunset Subcommittee has done, specifically in section 1, subsection 3, the clarification that allows physicians, both medical doctors and osteopathic doctors, to be overseen by their own licensing boards. It is a cleanup piece that I think over time has created a conflict. This clarifies it, and we appreciate it. The American Board of Medical Acupuncture has been around for over 15 years, so medical doctors and osteopathic doctors get board certified and are overseen by their own licensing boards. We appreciate this clarification.

Vice Chair Carlton:

Are there any questions? [There were none.] Is there anyone else in support of the bill? [There was no one.] Is there anyone in opposition? [There was no one.] Is there anyone in the neutral position? [There was no one.] I will close the hearing on S.B. 466 (R1).

I will open the hearing on Senate Bill 337.

Senate Bill 337: Authorizes registered pharmacists to collect specimens and perform certain laboratory tests. (BDR 54-945)

Senator James A. Settelmeyer, Senate District No. 17:

Senate Bill 337 came about during the interim. I was at the pharmacy and there was a gentleman buying a machine to check his own glucose level for diabetes. He had never done it before, and he was talking to the pharmacist. He asked the pharmacist to show him

how to use it correctly. The pharmacist said he could not help. I was watching and asked, "What do you mean you cannot help?" The pharmacist explained that under *Nevada Revised Statutes*, he does not have the ability to manipulate or move a finger in order to help someone utilize a device they can buy at the store by themselves and walk home and use with absolutely no training. However, a pharmacist who is actually more familiar with the item, is prevented from doing just that.

In discussion with the Retail Association of Nevada and other pharmacists, they suggested I talk with them and this bill came about. This bill allows pharmacists, who are trained in their particular skill levels, to actually help an individual learn how to use the test that they can buy over the counter. That is the bill in a nutshell. I can answer questions now or turn it over to the Retail Association to give you more information.

Vice Chair Carlton:

When I read this, it reads a lot broader than what you just described. I am trying to make sure I understand because adding a registered pharmacist to the list of things that can be done—I am not sure how it is in conjunction with the bottom on page 2, lines 9 through 11. That is "The technical personnel of a laboratory may collect . . ." so that does not apply. This is merely the section above it. However, it says "collection of specimens." That is a broad term. It is not just diabetes or blood pressure. There are a lot of biohazard things that go on with specimens, so I am a little concerned about that in conjunction with pure drugs in a pharmacy.

Senator Settlemeyer:

I believe that the concept, which is on page 2, line 4, that "The persons described in this subsection may perform any laboratory test which is classified as a waived test pursuant to Subpart A of Part 493 of Title 42 of the Code of Federal Regulations . . .," which are called Clinical Laboratory Improvement Amendments (CLIA) waiver tests. I believe the Retail Association can go into detail about what those types of tests are to provide you with a comfort level if you are acceptable to hearing that testimony at this time.

Liz MacMenamin, Vice President of Government Affairs, Retail Association of Nevada:

I will give you some background on what a CLIA waiver test is and what CLIA even stands for. It is an acronym for the Clinical Laboratory Improvement Amendments, which were passed in 1988 and finalized in 1992 to ensure accurate quality and reliability of laboratory test results. The CLIA requires laboratories to meet standardized certifications for the type of tests that the Vice Chair was talking about, but those types of tests—the waived tests for CLIA—only have a minimal level of complexity and a low risk of erroneous results. They determined that they could come up with an exception that could be granted to perform these types of tests in nonlaboratory settings, such as a pharmacy, clinic, or other nonlaboratory setting. These were done usually at the point of care, and typically must obtain a CLIA-waived certificate to be able to provide these tests. They are usually through the state Medicare or Medicaid offices.

Today, pharmacies and pharmacists are able to offer a variety of health care screenings and programs for a wide range of ailments and illnesses so patients may obtain a healthy lifestyle. Pharmacies are creating or partnering with centers and clinics so patients can obtain information on their asthma or diabetes, as well as take screening tests for blood pressure, cholesterol, and osteoporosis. These are simple tests that are found in a box. There are pharmacists here today who are willing to talk about some of these tests that might make it a lot clearer. We looked at what is happening around the United States. Nevada is the only state that does not allow this CLIA test. We have been prevented from doing this because of the way this manipulation language is written within the statutes. We looked at it in 2011, and at that time, Senator Cegavske had a bill passed in order to enable the pharmacist to perform a type of test for blood glucose testing.

However, after examination of our laws in Nevada, our members looked at it—the Retail Association Chain Drug Committee—and determined that this language prohibited them from doing this type of test. They were not able to do anything other than provide an instruction to that patient and ask that patient to perform the test on themselves. We have been looking at this for a while, and the profession has been diligently working on how to bring this forward. We looked at how it helps within the management of chronic diseases. We also looked at the fact that pharmacists were permitted under federal law to perform these point-of-care tests and using these tests waived by CLIA, but after looking at Nevada's law, we were able to ascertain that these tests could not be performed in our state. We are the only state. New York has allowed it, but they have made it so prohibitive in the state of New York that they do not count New York. There is one other state—I believe it is Wisconsin—that does not allow it. Every other state in the United States looked at this to bring the pharmacist in as part of a health care provider and part of the health care team in order to enable them to do these tests that they have been trained for while in school.

I will reiterate that a pharmacist has eight years of schooling, and when we are looking at some of these providers who have been allowed to do this for a long time, such as a medical technician, or a certified paramedic, a pharmacist typically has—in today's world—a doctorate of pharmacy. They have quite extensive training in a lot of these tests.

I will skip this really quickly and go to a story that was shared by one of our members in the state of Washington, where they are allowed to do this. A mom came into their pharmacy on a Friday night at 8 o'clock. Her doctor's office was closed and she needed to be seen. She was a teacher, and she had many students who had recently been sick, and she was not feeling well. She was especially worried because she had to be up the next morning at 5 o'clock to take her daughter to a gymnastics competition. Based on her symptoms and presentation, the pharmacist performed a strep test. The test was quick—it only took about 15 minutes—and the results came back positive.

In Washington state, they allow what they call a collaborative practice of pharmacy, and this Committee will be hearing about this practice at some other time with another bill that will be coming over from the Senate. However, with this agreement between a physician and a pharmacist, the pharmacist was able to medicate that mother, take care of her,

get her started, on her way to recovery, and allow her to do the traveling with her family and move on from there. The health care outcomes were shown to have been in this type of environment quick, efficient, and less expensive than visiting a doctor's office. This mother was quite happy.

This story is not unique. There are times when many of us, as patients, need quick and timely access to care for their minor and acute illnesses. Unfortunately, these cases oftentimes flood our emergency rooms or doctors' offices, and they could easily be handled right there in the pharmacy. In Nevada right now, a patient cannot access this type of care. If this strep test was done in Nevada currently, a pharmacist would then have to either send the patient to an emergency room for treatment and a prescription for antibiotics, which the patient would then have to return to the pharmacy to pick up the antibiotics; the mother would have had to wait until she could access the doctor or access someone out of town while she is on her trip.

We would like to thank this Committee for looking at this, considering the pharmacist as a part of the health care system that we have in our state, and as a helper to bring them in and to actually utilize them for what they are able to do.

Assemblywoman Neal:

I was looking up CLIA under the Centers for Medicare and Medicaid Services, and there are about 40 tests that are waived. I read the letters that were submitted on the Senate side. I know there is a movement to go to the clinic-kind of scene at the pharmacies, but that is not always a good idea. You need to determine the volume of each pharmacy because there are certain pharmacies that have retail pharmacists who have an extreme volume just with people coming in and getting a prescription. There is also pressure on the pharmacist. I do not know if there is a quota for how many vaccines you should give during flu season, but there are a lot of different things in play where you are putting a pharmacist directly in the center of what should be a doctor versus what the pharmacist should actually be doing at a retail pharmacy. There is not a lot of space in the pharmacy, and when you are asking them to do all these things, I think it is a bit much. That is my opinion.

It needs to be a store that has lower volume where you could do that kind of activity. There are certain stores where it is so busy all the time that you are just trying to get people in to get their prescription. I know certain pharmacists, such as my sister. She has her doctorate in pharmacy. She was at one pharmacy where she was having to manage, and it was so high maintenance that I did not want her to get into a situation where she was risking her license.

When I say high maintenance, the customer did not want the bag stapled, and they were complaining about the fact that the bag was stapled. Everyone knew not to staple the bag for this particular individual. When I think about the level of detail and conscience that she has to have for each individual that walks through, and then you want them to administer the vaccine; you want them to do a strep test; you want them to do a blood pressure test;

you want them to do all of these things, and it just becomes overwhelming. I am trying to figure out when we draw the line at what may be a good practice but may be overwhelming to the pharmacist. The pharmacy techs are not in the position to help because it is the pharmacist who needs to do it.

Senator Settlemeyer:

I understand your questions and concerns. This bill is not dealing with the concept of flu shots or anything of that nature. I hope you have an opportunity to talk to your sister about whether or not these types of CLIA-waived tests would help out. We are the only state left that does not.

If you look at the bill, we allow licensed dentists to teach people and show them how to do these CLIA tests. If we are willing to allow a licensed dentist to show someone how to take blood for monitoring or something of that nature, the concept of a pharmacist who is more direct to my situation makes sense. My pharmacist is incredibly helpful in relaying information to me that, unfortunately, my doctors, at times, have been a little bit too busy to relay to me. They have caught drug interactions and things of that nature. They have a pretty good feel for my medical history. I understand your concerns, but to me, this bill is only dealing with an aspect of the CLIA-waived tests and has nothing to do with the concept of allowing them to do anything else.

Vice Chair Carlton:

I will need a list of that from someone to understand what we are really talking about.

Assemblywoman Jauregui:

Should we not be expanding on services? There are tons of commercial pharmacies that already have physician assistants that could provide a scope of practices such as a strep throat test that is already attached to a pharmacy. Should we not be expanding on those practices and letting physician assistants and doctors do what they do, and pharmacists do what they do? I know there are many of them in northern Nevada—MinuteClinics inside of CVS or the Take Care clinics inside of Walgreens. I think we should be focusing on expanding that instead of giving the responsibility to the pharmacist. What about liability?

Liz MacMenamin:

These pharmacists have been trained to do this. This is something that is within their scope. They have been trained—they are highly trained. They are much more trained than—at one time I sat before a committee and they were referred to as a "lickum-stickum." These pharmacists are highly-trained health care professionals. Yes, within the clinic setting, they do employ nurse practitioners. Oftentimes, they work in conjunction with a physician. We are talking about areas, perhaps a rural area, where there are no clinics. We are talking about areas in some populous centers where possibly the clinic is not easily accessed by a patient at this time. We are seeing this change in the health care system across the United States, and we are allowing and helping the pharmacist to come to the table. There are pharmacists here today who are willing to talk about what this means to them and their profession and what they have trained to do. I will probably leave it at that.

I would like to have the opportunity talk with you about the professional pharmacists, what this doctor of pharmacy has been trained and educated to provide, and what they can do in our state where we see a low number of providers. When I have a doctor testify that he sees a patient and it will be three months before he can see that patient again, there are times that this can fill that void and allow that pharmacist to be able to do simple tests, such as a cholesterol test. I would much rather go in and purchase a test myself and have the pharmacist take the test. This is not taking the pharmacist away from patient interaction or the counseling they do for the medications. This is just adding to what they are able to do. We are seeing this model work in many other states, and we are looking for the opportunity within the state of Nevada to bring this practice here and to recognize the pharmacist as part of the health care team like a physician assistant and a nurse practitioner.

Vice Chair Carlton:

Are there any other questions from other Committee members? [There were none.] I received a fact sheet on this waiver, and it has some interesting background information on it. So this started back in 2002? I think the Improvement Amendment was in 1988, so I am trying to track the time frames on this. Within this fact sheet, there is some discussion of the waived tests, but it does not give me a list of the tests. I would like a list of the tests. This goes over the compliance and the initial pilot study. Some of the concerns on the pilot study were failing to have current manufacturer's instructions. There were some quality control issues, and some other things. I am going to need more information on what the actual tests are; how long we have been doing this; what is actually going on; and if something goes wrong, what is the recourse. It almost seems like there is an issue. Do they go to the pharmacy board if they end up having an issue with a particular pharmacist? I need a little more information on how this actually plays out.

I had to learn how to use the blood meter too, and my pharmacist walked me through doing it on myself so I could do it on my husband. He was a chicken and could not do it on himself at first. I am trying to figure out what all these other tests are because my original thought was it was kind of broad, but I want to make sure that we all have the same information. When you have these citations, it makes it hard to really figure out what is actually going to happen.

Liz MacMenamin:

I will be glad to furnish you with what we have seen nationwide for some of the members who are currently doing this practice in other states. I will be glad to get that list to you and work with you on moving forward.

Vice Chair Carlton:

I think there is some discussion about onsite visits to make sure the pharmacies are adequate to do some of these things, so I want to understand where that responsibility would lie. Is it going to be the health district; is it going to be the pharmacy board? How does it work in other states so we make sure it is all taken care of.

Are there any other questions from the members? [There were none.] Is there anyone who wishes to testify in support of S.B. 337?

J. David Wuest, Deputy Secretary, Nevada State Board of Pharmacy:

We support this bill.

Adam D. Porath, representing the Nevada Society of Health-System Pharmacists:

I am a practicing pharmacist in the Reno area. I have a collaborative practice. Because I work in a hospital setting, I am able to do that. I am able to do point-of-care testing because I work under the hospital laboratory. I can say that in our training as pharmacists, we are trained to do point-of-care testing.

Assemblyman Ohrenschall:

My questions are in line with Assemblywoman Neal's questions. There are some pharmacies I go to where it seems like things are not so busy, but when I go home to Las Vegas, I go to a 24-hour pharmacy because by the time I get my kids to bed, it might be my only chance to go fill a prescription. That particular pharmacy is super busy with long waits and very busy personnel. Do you think that if this passes, collecting these specimens will be something that is going to become required or will it be just as you have time to do it, depending on your workload? I am wondering how you see this affecting your work as a pharmacist, and if you think you will have time to do this.

Jason Penrod, Private Citizen, Reno, Nevada:

I am a board member of the Nevada State Board of Pharmacy, but I am primarily testifying as a practicing pharmacist. I am more in the retail setting that you are describing, and I certainly empathize with what the Assemblyman and Assemblywoman have seen in the retail setting. I will tell you what I know that is transpiring behind the scenes at the larger chains and even with some of the smaller chains, and some of the technology aspects that are being moved through the system right now. It is coming to our state; it is already happening in other states where they are working to offload that workflow remotely. As a pharmacist, one of the biggest workload challenges for me is checking your prescription against all your other prescriptions and potentially dealing with those interactions.

You heard Ms. MacMenamin say a lot of the perception of what we are doing is that we are the guys who are just counting the pills, putting the pills in the bottle, and putting the sticker on the bottle, and that is all the pharmacists do anymore. We are more clinically focused and more in line with our hospital counterparts. Getting that out of the pharmacy to someone who is less distracted and is doing it remotely is the direction the industry is heading. What we are seeing more of is the drive to have that pharmacist in the pharmacy who is more clinically focused who can provide that point-of-care service to the patient and spend more time with the patient to give the one-on-one care that you are expecting when you shop up at the pharmacy, not just for your prescription, but also for the value-added service that you may need, such as the case that was an after-hours type of situation.

Assemblyman Ohrenschall:

Down south, there are very busy pharmacies; you think this is not going to be too much to have on their plate? There are very busy pharmacists.

Jason Penrod:

Pharmacists have gotten very good at prioritizing their tasking and knowing when something like this is appropriate and when it is not, depending on the workload of the day. The industry has also become more sensitive to the types of situations that the Assemblywoman pointed out where there are times when workloads are higher and lower, and they have begun to address the staffing needs during that time. Without going into a lot of detail, there is a lot of technology involved in it that forecasts the type of workload. It is certainly being addressed. From my perspective, if I do not have the time to do it, I am not going to do it. I am not going to put your safety or your family members' safety at risk just for the sake of doing the test.

Vice Chair Carlton:

Are there any questions from the Committee members? [There were none.] Is there anyone else in support of the bill?

Jay Parmer, representing Sierra Pharmacy, Reno, Nevada:

I am here today on behalf of Sierra Pharmacy, which is a small chain of independent pharmacies located in northern Nevada. We are here in support of S.B. 337. We want you to know that independent pharmacies are located throughout the communities in Nevada. There are independent pharmacies in the Las Vegas metropolitan area, Reno-Sparks area, Carson City, Winnemucca, Elko, Fernley, Fallon, Ely, Yerington, and Dayton. In the case of the independent pharmacies that we represent, the pharmacists that I represent see a need for the ability to provide some support to their customers in terms of these CLIA-waiver tests. The CLIA-waiver tests are typically simple and accurate enough that the likelihood of erroneous results are de minimis and pose no harm to the patient if performed correctly, in fact, even if performed incorrectly. Many of these tests are cleared by the Food and Drug Administration (FDA) for home use. We believe legislation such as S.B. 337 would allow pharmacists to provide access to safe and accurate tests in a more economical manner for patients. For these reasons, we urge your support of S.B. 337.

Assemblyman Daly:

You have said some of these tests are approved for home use. Explain to me what happens when a person comes in to have some tests. Is this a test that they buy over the counter? Does it have to be prescribed? Is it something they just buy and ask how to do it? What kind of tests are we talking about? Pregnancy tests? Blood tests? Are these the types of tests that a person can do themselves if they read the instructions and did it at home?

Jay Parmer:

I will defer to Mr. Wuest because that is a technical question involving the scope of practice of pharmacists.

J. David Wuest:

The vast majority are available for home tests. They are intended for the patients to be able to do it themselves, and they do not require prescriptions. The pharmacies are selling many of them. They come from the doctor or online; they come from many different places, but the vast majority are available at pharmacies without a prescription.

Assemblyman Daly:

What is the process? Is this going to be a situation where the pharmacist is providing a courtesy service? Is there a charge for it? Are you selling the kit. Are the instructions included, and are they available for home use. Can they do this themselves? Or, is there going to be a vendor station for people? I am trying to figure out where we are going and what the deal is. There are other tests that dentists and other people can do, but they are doing them in the course of treatment to make sure individuals do not have an infection or some other condition. They will do a quick test as part of their service then they bill for it. I am wondering how this is different from when I am at the pharmacy and I buy something over the counter and then ask for help.

J. David Wuest:

Senator Settlemeyer said it perfectly. You can buy the test at the pharmacy. You can go to the pharmacist and they can talk to you about the test. They can show you the tests, but under current law, they cannot touch you to help you administer the test for the first time. As far as charges go, it is not necessarily in my purview, but historically, there has been no charge for the pharmacist to do that. They are filling the prescription. If you want to get a glucometer to test your sugar, they provide that service for free, but they are selling the glucometer. To correct myself a little bit, a prescription may be used to provide them. It is not that a prescription is necessarily needed to get the test, but insurance may cover it, and in that case, there may be a prescription. I just wanted to clarify that a little bit. It does not mean that there will not be a prescription, but it is not required by Nevada law to have a prescription for it. The FDA controls that.

Vice Chair Carlton:

Are there any questions from other Committee members at this time? [There were none.] Is there anyone else in support of S.B. 337? [There was no one.] Is there anyone in opposition of S.B. 337? [There was no one.] Is there anyone in neutral to S.B. 337? [There was no one.] Senator, did you have any closing remarks?

Senator Settlemeyer:

Thank you for your time today; I appreciate it.

Vice Chair Carlton:

I will close the hearing on S.B. 337.

[Assemblywoman Bustamante Adams reassumed the Chair.]

Chair Bustamante Adams:

I will open the hearing on Senate Bill 171 (1st Reprint).

Senate Bill 171 (1st Reprint): Requires certain pharmacies to post or provide written instructions for the safe disposal of unused drugs. (BDR 54-634)

Senator Heidi S. Gansert, Senate District No. 15:

Senate Bill 171 (1st Reprint) is about posting written instructions or providing written instructions to individuals on how to safely dispose of unused medication. I would imagine, like me, most of you have been affected by individuals who have had opioid addictions or other addictions. This bill came to mind because I had a friend who lost a son at 22 years of age—about a year and a half ago. I want to go through some of the statistics and information around opioid and prescription drug abuse, and then tell you the reasons for this bill ([Exhibit D](#)).

Drug overdose is the leading cause of accidental death in the United States, with over 52,000 lethal drug overdoses in 2015. Opioid addiction is driving this epidemic with over 20,000 overdose deaths related to prescription pain relievers in 2015. Four in five new heroin users started out by misusing prescription painkillers. In 2015, an estimated 21,000 adolescents used heroin in the past year, and an estimated 5,000 were current heroin users. People often share their used pain relievers, unaware of the dangers of nonmedical opioid use. Most adolescents who misuse prescription pain relievers are given them for free by a friend or relative. Forty-eight thousand women died of prescription pain reliever overdoses between 1999 and 2010.

In addition to adults misusing prescription pain relievers and becoming addicted to them, we also have children. Every year, more than 34,000 U.S. children go to the emergency room for accidentally ingesting prescription drugs. Seventy-five percent of these are children under the age of two. Most of these drugs were pharmaceuticals. There are also environmental concerns with disposal. How do you properly dispose of them? Right now, improper disposal lands them in our sewage systems and our trash, which can negatively affect the environment, especially water.

The purpose of S.B. 171 (R1) is to protect families, children, and the environment. It is to inform consumers of the proper disposal methods to reduce the availability of unused medications that can be abused and accidentally ingested, and also to protect the environment.

Right now, you can dispose of prescription medications at local law enforcement agencies, and once or twice a year in Nevada, there are drug disposal drop-off events. I think we will be having one in northern Nevada this month. I think Clark County has two per year. People want to be able to dispose of their medications in an easy manner, so this bill requires pharmacies to either post in a conspicuous place how you can dispose of medications, or provide information and written instructions.

I go to a local pharmacy that is in one of the local grocery stores, and they can put it in something as simple as this—the bags that you get your medications in could have written instructions on them. There are also some nonprescription products that will help dispose of prescription medications. These are not readily available. It seems like right now in Nevada they are becoming more and more available, but basically this is a bag of charcoal [Senator Gansert held up a medication disposal pouch]. If you were to put prescription medications in this and add water, it would negate all of the medical effects and neutralize the medication.

It is a simple bill. There are so many people who do not know how to dispose of their medications. This is for awareness.

Chair Bustamante Adams:

Are there any questions from the Committee? [There were none.] I have a question for the Retail Association. The bag that the Senator held up, when you go to a pharmacy, you get that kind of bag. How does the Retail Association work with the pharmacy? If we were to alter that language to provide awareness, how complicated is it?

Liz MacMenamin, Vice President of Government Affairs, Retail Association of Nevada:

Right now, each individual company has their own vendor they utilize for the bags. We hoped to keep this language broad enough so it could be up to the choice of the companies themselves how they do it.

Let me go back a little bit and talk about how we have been involved with this process since 2008. The retail industry came forward and offered spots to host "take back" programs. In northern and southern Nevada, it is twice a year, and the Drug Enforcement Administration helps to sponsor it. One of the things we do at those events is we try to educate those people who come in. We tell them how to safely dispose of their drugs. When Senator Gansert approached me and we discussed this, one of the things we wanted to do was broaden how we educate the public. Maybe the pharmacy was another way of reaching out to these people. Through Join Together Northern Nevada in northern Nevada and an organization in southern Nevada that participates in these "take back" programs, we reached out to the community. This was just one other way.

I think trying to mandate or looking at us putting it on the bag in the pharmacy, some of them will make the choice to do it; some of them will post in their pharmacy; and when asked, a pharmacist will always gladly provide that information. It is one of the things they do. Even the technicians. The professionals and employees in the pharmacy have an idea of what is the safest disposal for these drugs. This is another way of reaching the public, and I commend Senator Gansert on this.

There are other methods of disposal within the pharmacy that you can purchase. These Deterra bags [held up a plastic bag] were donated by a pharmaceutical company that actually makes the opiates. We will have more in northern Nevada and more in southern Nevada to

be given away for free. They are not being given away in southern Nevada within a pharmacy, but they are being given away at the pharmacy school, and they are going out into the public again. We are trying to reach out and educate on this issue.

Chair Bustamante Adams:

On page 2, line 1, it says, ". . . upon the request of any person, written instructions concerning the safe disposal" If my constituents go in and ask for written instructions, there will not be a cost for the pharmacy to provide that? How would that work?

Senator Gansert:

They would have to provide a slip with written instructions. The bill does not tell the pharmacies how to provide that information. The reason I brought the bag is because it is the one I had. They could have it preprinted, but it does not require them to. That is a simple way of doing it, or they could put a poster at the pharmacy. That would also take care of it as far as the written instructions. Again, it is increasing awareness.

Assemblywoman Neal:

What happens if it is not posted in what is proposed to be a conspicuous place? You walk into a Walgreens, go to the pharmacy, maybe there are many other things that need to be posted, and this is another item. There is not that much wall space. What is conspicuous? What is the responsibility of the pharmacist who is managing it, who may or may not see where they could put it. Is it supposed to be on the counter where the person does the transaction? If a person comes through the drive-through, where should they see it?

Senator Gansert:

There are different things that are posted in pharmacies. This is an "or," not an "and." A pharmacist can provide information, such as a written document, or they can post something. Again, it is about increasing awareness, and this is just one step towards that end.

Assemblywoman Carlton:

Is there a penalty involved, or is this totally a voluntary program?

Senator Gansert:

There is not a penalty involved at this point in time.

Assemblywoman Carlton:

Is it mandatory?

Senator Gansert:

The language says "requires," but we do not have a penalty.

Assemblywoman Carlton:

Typically, if there is a requirement and they are regulated by someone, if they do not do it, there has to be some type of hammer. I am not sure if that would fall under the general purview of the regulations that we just say they did not comply with all laws, so this would be the penalty. I would go back and look at that one to see if that is appropriate. It could be stricter than what you would want. If it is not the level of penalty you would want and you would not want a pharmacist to be disciplined for trying to do the right thing, I think we need to look at those general penalties that they are allowed to do, and just make sure we are protecting people on that level.

Senator Gansert:

This bill is about the pharmacy and not the pharmacist. We will have to look at that.

Assemblywoman Carlton:

I believe the pharmacy is also regulated in some way.

Liz MacMenamin:

I want to thank you for pointing that out to me. I had not thought about the penalties, but I do believe the penalty would be on the pharmacy and possibly the pharmacy board. I will be having discussions with a gentleman in the audience when we leave.

Assemblywoman Carlton:

I just want to make sure we know what our intent is, and we know what your intent is. I would love to amend the black box on the top of the bottle onto this bill, but I will not. I do not want to see someone inadvertently get fined or get dinged for something through no fault of their own when it is just a public information tool.

Assemblywoman Neal:

Based on that discussion, how does that work? I am going to use my Walgreens example. You have a store manager; you have a pharmacy manager; and then you have a pharmacist. The store manager is over what is happening in the store. The pharmacy manager—who is on the hook? If you are saying that the pharmacy is on the hook, in a retail environment, they are kind of one in the same. If something happens—there is a hierarchy. Say that the pharmacy manager goes to the store manager and says that something happened. Who is on the hook?

Liz MacMenamin:

There are two licenses. The pharmacy is licensed by the State Board of Pharmacy. The way I read this language, and the intent at this point in time, the pharmacy company would be responsible for posting this. I would think that the pharmacist would have the oversight of making sure it is posted, but bottom line, I think the way this is written, it would be the pharmacy that would be responsible for this. I would have to ask David Wuest what his thoughts were on it and how the Pharmacy Board would approach it.

J. David Wuest, Deputy Secretary, Nevada State Board of Pharmacy:

The way the Legislative Counsel Bureau (LCB) has done this is that they have not exactly told me where they are going to place it. Other things like this—first, we take complaints from the public. If the public called us, we would go out and look at the pharmacy and see if it was conspicuous. Conspicuous, in this manner, I think is where the public can see it. It does not do any good if it is in the back corner of the pharmacy. Our inspectors are in every pharmacy at least once every year, and they do a self-assessment. We come in and review it with them and do our own inspection. I think it has to be placed where the public can see it—in a bag or something like that—and I think it is wise to let the pharmacies decide, depending on their footprint, what is best for them. A pharmacy that does not have any signage space may go with a flier or a bag.

To go back to the question of who is held accountable, the store manager is not a licensee, so he is out of the picture. It is the pharmacy that is licensed. The individual pharmacist is licensed, and we have a pharmacy manager. I think this would fall—depending on exactly where LCB places it, it would be professional conduct. I do not think we would have an issue with a lot of pharmacies not doing it. They generally comply with the law. They are highly regulated and have a tendency to comply with the law. If you pass this law, the Board staff would ensure the signage is where it can be seen. *Nevada Revised Statutes* require the pharmacy to be responsible for the actions of the pharmacist. It would potentially be joint responsibility. As it sits now, it would be up to the Board to decide the penalty.

Assemblywoman Carlton:

On the penalty provision, I know there are general provisions that if you do not comply with the laws, it is a certain unprofessional conduct, and then you go down that road. I just want to make sure we are all on the same page on what the hammer would be if someone looked you in the eye and said, We are not doing that. What is the hammer?

J. David Wuest:

The hammer would be unprofessional conduct, and the fine for that in our law is up to \$10,000 per occurrence.

Assemblywoman Carlton:

You found the hammer; we are good.

J. David Wuest:

I do not think this would be a \$10,000 fine for the Board. We rarely do this.

Assemblywoman Carlton:

I just want to make sure it is on the record so everyone understands what we are doing.

J. David Wuest:

I think we would handle it during the inspection process, and those are mostly educational, unless there is some huge issue found during this. We operate off of complaints from the public.

Assemblywoman Carlton:

I understand that. We have had other posting bills in the past, not with this particular segment of the business, but with other businesses when you ask for things to be posted, and we did not have the hammer, so we had to come back the next session to make sure we had one because they just flat out refused to comply with our request. I just want to make sure that is addressed.

J. David Wuest:

If you pass this, we will make sure it is complied with. That would be under our purview.

Assemblywoman Neal:

I do not know what the lowest range on professional conduct is, but to me this should be nominal. I am not saying that this issue is not serious, but there are other real things that the pharmacists do that they should be dinged for and not a flier or poster or a bag. It needs to be nominal.

J. David Wuest:

It is not my job to define what the fees are. That is what our Board does. In a case like this, from a Board staff's perspective, the fact that they would come in compliance and maybe do some education about how important it is that they do this for the public, would be a typical situation. The Board does not have to fine someone just because there is an accusation against someone. I would agree with you; from the Board staffs' perspective, out of the many things that they could do, this is not the most heinous thing, but if the law says it should be posted, then they should be posting it. They will post it, I think.

Chair Bustamante Adams:

Are there any other questions? [There were none.] Is there anyone else in support of S.B. 171 (R1)? [There was no one.] Is there anyone in opposition to S.B. 171 (R1)? [There was no one.] Is there anyone in the neutral position? [There was no one.] I know we have some follow-up to do, but I think we understand the intent. I will close the hearing on S.B. 171 (R1). The meeting is adjourned [at 3:51 p.m.].

RESPECTFULLY SUBMITTED:

Kathryn Keever
Recording Secretary

Linda Whimple
Transcribing Secretary

APPROVED BY:

Assemblywoman Irene Bustamante Adams, Chair

DATE: _____

EXHIBITS

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.

[Exhibit C](#) is a booklet titled "Performance Audit: Nevada State Board of Dental Examiners 2016," presented by Shannon Ryan, Audit Supervisor, Audit Division, Legislative Counsel Bureau.

[Exhibit D](#) is a copy of a PowerPoint presentation on Senate Bill 171 (1st Reprint), presented by Senator Heidi S. Gansert, Senate District No. 15.