MINUTES OF THE
SENATE COMMITTEE ON COMMERCE, LABOR AND ENERGY

Seventy-ninth Session
April 5, 2017

The Senate Committee on Commerce, Labor and Energy was called to order by Chair Kelvin Atkinson at 8:08 a.m. on Wednesday, April 5, 2017, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Kelvin Atkinson, Chair
Senator Pat Spearman, Vice Chair
Senator Nicole J. Cannizzaro
Senator Yvanna D. Cancela
Senator Joseph P. Hardy
Senator James A. Settelmeyer
Senator Heidi S. Gansert

GUEST LEGISLATORS PRESENT:

Senator David R. Parks, Senatorial District No. 7

STAFF MEMBERS PRESENT:

Marji Paslov Thomas, Policy Analyst
Bryan Fernley, Counsel
Daniel Putney, Committee Secretary

OTHERS PRESENT:

Cari Herington, Executive Director, Nevada Cancer Coalition
Nicholas J. Vogelzang, M.D., Comprehensive Cancer Centers of Nevada
Catherine M. O'Mara, Nevada State Medical Association
Steve Horn, International Cancer Advocacy Network
Chelsea Capurro, Health Services Coalition
Josh Griffin, MGM Resorts International

Keith L. Lee, Nevada Association of Health Plans; Board of Medical Examiners
John Sande, IV, Express Scripts Holding Company
Jim Sullivan, Culinary Workers Union Local No. 226
Paul Young, Pharmaceutical Care Management Association
Peggy Lear Bowen
Michael G. Alonso, Caesars Entertainment
Rocky Finseth, Nevada Physical Therapy Association
Jenelle Lauchman, D.P.T., Nevada Physical Therapy Association
Kathleen Conaboy, Nevada Orthopaedic Society
Lisa O. Cooper, Executive Director, State Board of Physical Therapy Examiners
Mendy Elliott, Chiropractic Physicians' Board of Nevada
Louis Ling, Chiropractic Physicians' Board of Nevada
Jonathan Parham, D.C., Nevada Chiropractic Association
Benjamin Lurie, President, Chiropractic Physicians' Board of Nevada
Jason Jaeger, D.C.
Michele Kane, Nevada Chiropractic Council
James T. Overland, Sr., D.C., President, Nevada Chiropractic Association
Elizabeth MacMenamin, Retail Association of Nevada
Jig Patel, Albertsons Companies, Inc.
J. David Wuest, R.Ph., Deputy Secretary, Nevada State Board of Pharmacy
Adam Porath, Nevada Society of Health-System Pharmacists
Jay Parmer, Sierra Pharmacy
Joan Hall, President, Nevada Rural Hospital Partners
Ryan Beaman, Clark County Firefighters Local No. 1908, International Association of Firefighters

CHAIR ATKINSON:
I will open the hearing on Senate Bill (S.B.) 404.

SENATE BILL 404: Revises provisions relating to health insurance coverage of certain cancer treatment drugs. (BDR 57-467)

SENATOR DAVID R. PARKS (Senatorial District No. 7):
Former President Jimmy Carter announced in August of 2015 that he had an aggressive form of melanoma skin cancer. The tumors had spread from his skin to his liver and brain. President Carter received treatment with surgery, radiation and a new immunotherapy drug. In December of 2015, President Carter revealed that recent tests had shown no sign of the original cancer spots or any

new ones. Every Nevada resident with health insurance should have the same access to cancer drugs that President Carter had.

Senate Bill 404 is narrowly limited to cover only cancer patients with stage IV, or metastatic, cancer. This bill also prohibits health insurers from imposing a step therapy, or a fail-first protocol, on these cancer patients. Step therapy is a protocol established by a health insurer that requires prescription drugs or the sequence of prescription drugs to be used by a patient before a prescription drug ordered by the doctor is covered by the health insurer. The patient must try and fail on another drug before he or she receives the drug the doctor ordered. While I understand health insurers seek to control costs, it is not right or fair to require a late-stage cancer patient to go through step therapy. These patients simply do not have enough time to fail on one drug after another before receiving the drugs their doctors ordered.

After discussions with several stakeholders, I am prepared to offer an amendment (Exhibit C) that would first clarify that a drug used to treat metastatic cancer is consistent with the National Comprehensive Cancer Network's (NCCN) *Drugs & Biologics Compendium*. The amendment would also revise the definition of peer-reviewed medical literature and would exempt, pursuant to *Nevada Revised Statutes* (NRS) 288, local government employers or any employee organization recognized by employers.

CARI HERINGTON (Executive Director, Nevada Cancer Coalition):
I will read from my prepared testimony in support of this bill (Exhibit D).

NICHOLAS J. VOGELZANG, M.D. (Comprehensive Cancer Centers of Nevada):
The ability to give a sequence of drug therapies to cancer patients is, in part, the reason for this bill. Many years ago, perhaps in the 1960s and 1970s, we only had a few cancer drugs. There were not any advanced therapies. We are in a different era now, and sometimes there are ten or more drugs for a given cancer. These drugs have been approved in a time-dependent way, so a cancer drug approved in 2005 has a leg up on a cancer drug approved in 2010. Traditionally, we use the old drug first and then use newer drugs later. The U.S. Food and Drug Administration (FDA) does not specify, except under limited circumstances, which drug sequence should be used. Newer drugs may well be better and less toxic than older drugs, but they are, in many cases, more expensive. A good example includes two drugs approved to treat advanced prostate cancer, the leading type of cancer in men. One is an old off-patent drug

called docetaxel while the other is a new drug still on patent called cabazitaxel. These drugs were compared in a 1,000-patient trial and were shown to be equivalent in terms of benefit. However, docetaxel is not able to be given as long, results in more nerve damage, causes more hair loss, has more low blood count risks and is generally more toxic. When I ask for cabazitaxel first, about 50 percent or more of the time, I am told by the insurance company to use docetaxel first. This is not a medical decision; it is an insurance decision. Senate Bill 404 would allow physicians to make the choice.

We have published and consensual guidelines from the NCCN. The NCCN includes 10 to 20 of the largest cancer centers in the U.S., and they have put together an entire series of guidelines. Some of the guidelines are reasonable, and I agree with all of them, but some of them are somewhat biased. In many cases, there are no guidelines. For example, I have a patient with penis cancer that has spread to his lymph nodes. I was told that because there were no guidelines, no treatments could be approved. Simply because there are no guidelines does not mean I do not have a responsibility to treat the patient. There are small diseases, which we call orphan diseases, that do not fall within the guidelines. In these cases, step therapy is overused; there is no first step, so a second or third step is not approved. Of course, only specific insurance companies do this, and they can be reasonable. At other times, however, they can be quite rigid.

This bill will restore some ability of physicians to step outside of step therapy for individual patients. Senate Bill 404 will probably negatively affect costs because newer drugs are more expensive, but they are less toxic. When I tell a patient there is both a new drug that is more expensive but less toxic and an old drug that is less expensive but more toxic, the patient inevitably asks for the new drug. I will try to give the patient the new drug, but sometimes I am unsuccessful in getting it. This bill will allow me to be more successful more often.

CATHERINE M. O'MARA (Nevada State Medical Association):
We support S.B. 404 and the proposed amendment. This is a bill that will help patients. We understand this bill is limited to preventing step therapy for stage IV cancer patients. We, as a physician community, would like to see this expanded to other types of cancer at other levels, but this bill is a great start.

STEVE HORN (International Cancer Advocacy Network):
The International Cancer Advocacy Network is a Phoenix-based nonprofit that helps stage IV cancer patients in Nevada and throughout the U.S. and the world. We work every day to secure the most effective drugs for the patients we help. We support S.B. 404.

Step therapy is the pernicious practice of forcing patients to take other drugs and fail first on them before being allowed to take the drugs their doctors wanted to prescribe in the first place. There are four main reasons why step therapy should be prohibited. First, it is a violation of patient safety. Second, it is a violation of the doctor-patient relationship, the bedrock of our medical system. With step therapy, the insurance company, which does not know the patient, steps into the doctor's office between the patient and the doctor and then forces the patient to use therapies that may be outmoded or that produce significantly worse outcomes than the best treatments available today. Third, step therapy is potentially counterproductive because forcing a patient onto a less optimal regimen could easily produce adverse reactions and additional health care costs. Fourth, it is potentially fatal. Stage IV cancer patients simply do not have the time to try any of the most optimal treatment options. By being forced to spend time on a less optimal treatment regimen, the patient can be weakened by the time he or she is permitted to try the best therapy, thus making the best therapy less effective. For patients dealing with cancer or other chronic diseases, finding the right drug for relief, treatment or cure can be a long struggle. When such a drug is found, the last thing that should happen is to make the drug unavailable by requiring step therapy. To delay the optimal treatment for any patient is wrong. To do so to a stage IV cancer patient is simply cruel beyond belief. Codifying these critical patient protections into State law is the right thing to do. Please let stage IV cancer patients and their doctors fight cancer, not insurance companies.

CHELSEA CAPURRO (Health Services Coalition):
We understand the intent of this bill. I represent the Health Services Coalition, which is a group of self-funded, nonprofit health plans. Every dollar we spend is tight, and every dollar goes to take care of all patients for all sorts of issues. This bill is asking the health plans to take the burden here and is not asking for any responsibility on the side of the pharmaceutical companies where these high drug costs are coming from. Until we can start seeing more transparency and more accountability on the side of the pharmaceutical companies, we cannot support S.B. 404.

JOSH GRIFFIN (MGM Resorts International):
We appreciate Senator Parks' intent here, but we oppose S.B. 404. As the largest provider of health care in Nevada, MGM Resorts International has always provided the appropriate drug for the appropriate diagnosis. This includes edits to make sure the drug requested by a doctor is the appropriate drug for that diagnosis. We have never had a case wherein we denied a drug to a patient that would provide some improvement in his or her disease. We cannot allow drugs to be ordered by doctors without the necessary review or step therapies that ensure the drug is being administered at the appropriate time for the appropriate disease state. The biggest area of cost concerns is related to drug costs. This bill seems targeted to make sure that any drug produced has to be covered and provided. The cost of this could require health plans to reduce coverage for all of its members. Nothing in this bill is addressing quality of life or life expectancy. Rather, this bill requires a health plan to pay for any drugs ordered by a doctor. We take great pride in the level of benefits offered to our employees and the low out-of-pocket costs for these services. Bills like S.B. 404 could have long-term impacts on the costs of health care and could end up costing the majority of members more out-of-pocket expenses or forcing the company to offer reduced benefits.

KEITH L. LEE (Nevada Association of Health Plans):
The Nevada Association of Health Plans opposes S.B. 404 and its amendment. We have discussed our concerns with Senator Parks. We are joined in our opposition by the American Society of Clinical Oncology, which announced yesterday, April 4, 2017, its opposition to both federal and state efforts to adopt right-to-try laws, which this bill is. The American Society of Clinical Oncology opposes these laws because they "lack adequate protections and do not remove any of the major barriers patients face" in accessing experimental drugs outside of clinical trials.

The health plans have an involved process to approve drugs for our formularies and treatment modalities. Most plans have a panel of independent experts who recommend drugs to be considered to be put on our formularies. A panel of company experts then makes the final decision as to which drugs will be placed on a formulary and which particular tiers they should be placed on.

This bill is not introducing a new category of drugs to treat cancer. Currently, health plans have FDA-approved drugs that are clinically efficacious and

cost-effective for the treatment of stage IV, end-of-life cancer. These drugs are now on our formularies, which are approved by the Commissioner of Insurance.

We do a lot to assist those who suffer from the ravages of cancer. We offer outpatient case management programs to help coordinate care for both family members and cancer patients. We offer 24/7 telephone hotlines to talk to nurses and other providers to answer questions. We have field-based case management programs for members transitioning from inpatient settings to their homes or rehabilitation. We offer nutrition services, and we have nurses and pharmacists to assist with therapy initiation, side effect management and compliance programs.

We read this bill to require us to cover the use of experimental drugs. This bill also removes our ability to apply step therapy, which is the prior authorization to prescribe stage IV cancer drugs. As I previously stated, we already have stage IV cancer drugs on our formularies. We use prior authorization and other forms of step therapy in conjunction with physicians to provide the most efficacious, cost-effective treatments. We provide progressive treatment if it is appropriate. Senate Bill 404 requires us to cover a drug, perhaps an experimental drug, which has not gone through the vigorous vetting process of our companies and the various committees they have to vet both drugs and treatments. This bill would require us to cover a drug simply because a drug company has convinced a doctor that he or she should prescribe it, notwithstanding the fact that it is not on our formularies, is not subject to prior authorization and is expensive. This bill is an effort by big pharmaceutical companies to use Nevada law to market unproven drugs without those drugs being subject to the same scrutiny that every drug on our formularies currently goes through. One must ask, "What is so special about these drugs that they should be exempt from the usual processes that health plans employ to ensure efficacious, cost-effective treatment?"

Payers, including patients who have to pay higher premiums, deductibles and copays, should not have to pay for these drugs. This bill is a mandate, and like all mandates, health insurers have two options: increase premiums, deductibles and copays, or leave the marketplace, which reduces competition and puts an upward pressure on costs.

Only 35 percent of all insured Nevadans would be affected by this bill. The great majority of insured Nevadans, such as those on the Employee Retirement

Income Security Act (ERISA) and Taft-Hartley health plans, are exempt from State regulations.

This bill removes our ability to apply step therapy. The adverse effect of this is compounded by big pharmaceutical companies' ability to increase their costs of drugs to health plans at any time during the plan year. We have no option but to absorb these costs, which are reflected in increased premiums in subsequent years for both employers and consumers.

The effective date for this bill is also problematic. This bill would apply to all health plans delivered after July 1, 2017. We are currently finalizing our plans for plan year 2018. These plans must be submitted to the Commissioner of Insurance in mid-June of this year. There is simply no way we could develop a plan that would meet the requirements of this bill if it became law.

A starting point for further discussion on this bill has to be an agreement from big pharmaceutical companies to not increase the wholesale drug price from the time a health plan files its plan with the Commissioner of Insurance for approval to the effective termination date of the plan.

SENATOR SETTELMEYER:
I assume Nevada is not the first state to propose something of this nature. I would like to know the difference in survival ratios before and after the implementation of this proposed policy. We are talking about stage IV cancer, so in most cases, it is about how much more time a patient has. How much more time would this policy be able to give patients? What is the quality of that extra time?

SENATOR SPEARMAN:
One of the testifiers in opposition mentioned that these are new drugs that have not been proven to be effective. However, Dr. Vogelzang said there are times when a stage IV diagnosis may happen in September, but there is a drug being introduced in October. I understand and am sympathetic to the costs with respect to self-funded health plans, but instead of a binary choice, is it possible to look at a third option? It is not only about the costs of drugs increasing or what big pharmaceutical companies should and should not do. It would be great if everyone came to the table and negotiated how we could have a policy like this for patients who have stage IV cancer. We need to have people negotiate

this issue like they were talking about their own family members. It is easy to discuss this only in terms of numbers and percentages.

A constituent called me and said it was not about how long he would live; he only wanted to live long enough to walk his daughter down the aisle. These are the kinds of situations there is no empirical evidence for because they require a level of empathy that is interjected into a business decision that is often foreign to empathy when we accept binary choices.

I do not know if there is a stage V. There is the saying about the drowning man who will grab a stick. I am not being unsympathetic to the costs, but we are framing this issue as either this or that. Senate Bill 404 may not be either this or that; perhaps there is middle ground. If we were talking about my mother, your brother, someone's sister or someone's nephew, it would not be as simple as reading a statement. I do not know if this issue is a matter of raising prices and then people going out of business. We are talking about people who are dying. If there is an opportunity for the man who called me to live long enough to walk his daughter down the aisle, this issue is worth the time it takes to find another solution.

MR. GRIFFIN:
I have been involved with this issue for the last 12 to 13 years. We need to do a better job of explaining how we approach case management, whether that be with coalition members, health plans or large employers. I do not suggest this is the answer, but I do not know if there is necessarily a binary choice. When a case manager is looking at how he or she treats an employee, member or insured patient, there is not a spreadsheet that merely looks at costs. We ought to do a better job of explaining to you, the policymakers, what case management looks like and how the people involved make decisions. As I previously stated, we try to provide the appropriate drug for the appropriate diagnosis. When new drugs come onto the market, we do not say no for no's sake; we want to go through a process to make sure we take patients' quality-of-life issues into consideration. Do we hear you, Senator Spearman? Yes, we do. It is on us to do a better job of explaining what we do.

SENATOR SPEARMAN:
I do not need an explanation for how decisions are made. I have heard from the opposition that big pharmaceutical companies make the prices, and this is part of the issue. It would be great if the health plans got together with the

pharmaceutical companies and figured out how to let something like S.B. 404 happen for stage IV cancer patients. I do not even know the man who called me, but I am sure at some point in time, in all of our lives, we will have a family member who finds out he or she has stage IV cancer. A patient may be at stage IV, but it takes five years for clinical trials to go forward, and the patient only has six months to live. To me, this issue is not about looking at a spreadsheet; it is about saying we have a problem and figuring out how to make this policy work for the health plans and the pharmaceutical companies. None of my family members have stage IV cancer now, but one of them might be diagnosed tomorrow. I want you to come back to the table and figure out how to make this happen. These are people who are dying. I am speaking with a pastor's heart.

SENATOR HARDY:
Trials lead to FDA approval, and the types of drugs indicated in this bill are approved by the FDA. Stage IV will probably lead to a stage III or stage II indication. The people in charge of risk assessment will probably be able to predict what is going to happen in the next year or two years. This issue may be a one-year aspect of the budget, but it will become a part of the budget in year two or year three because the trials are going to expand to more than only stage IV. It would be wise to have the risk assessment team figure everything out. There are going to be medicines developed that will not only prolong life for stage IV cancer patients but will also be curative for stages I, II and III. If a drug is approved by the FDA for stage IV treatment, then a cancer cell is going to be sensitive to that drug at an earlier stage. This bill is an opportunity to save lives and improve the quality of life for patients.

SENATOR SETTELMEYER:
Could you look at the other states that have implemented a policy like this and determine how much it is has increased rates? I am concerned that we are dealing with another bill that only affects 35 percent of insured Nevadans. This is a good concept, but it needs to affect everybody. Some small businesses cannot use federal programs like ERISA. Why would we increase insurance to the point where these businesses can no longer offer benefits to their employees? I am concerned about rate increases. We had a similar discussion a long time ago related to autism. We were able to come to a number and find out what happened in other states. We realized the policy related to autism was worth the costs, although it only helped 35 percent of insured Nevadans.

SENATOR GANSERT:
We are not talking about new drugs. We need to recognize technology and how physicians can more accurately judge how a patient will react to particular medications. The physician is a key person who is able to judge what may be best for a patient. However, there is a process on the insurance side, so there is some work to be done as far as recognizing how technology has improved and how matching the appropriate drug to the patient is critical. We are speaking in broad terms right now. Medications can be much more targeted. There is some teamwork needed to accomplish that, but the physician and his or her knowledge of the patient is key to determine what the best medication would be. I am interested in how insurance companies determine which drug, especially with all of the data out there, is the best or most appropriate for a patient.

MR. LEE:
While we always talk about costs, I specifically mentioned efficacious care. I do not want the Committee to leave today thinking that health plans are only concerned about costs; we are concerned about outcomes, too. We have physicians and other specialists who, through what we call utilization management, review patients' files and try to provide the best possible care for these patients. I hope you are correct, Senator Gansert, that this bill does not cover new or experimental drugs. Perhaps clarification on this matter would be helpful. We are talking about final FDA approval for these drugs. Anything short of final FDA approval is experimental or at least still a drug in trial.

JOHN SANDE, IV (Express Scripts Holding Company):
Express Scripts is a plan benefit management company. I cannot add anything more than what Mr. Lee has said; his testimony was clear and addressed the concerns we have with this bill. Step therapy is an effective method for pharmacy benefit managers to manage costs for all patients. However, step therapy is not as stringent as it seems. There are options for doctors and patients to appeal the step therapy itself to get access to the drugs that doctors determine their patients need. There is some flexibility.

JIM SULLIVAN (Culinary Workers Union Local No. 226):
We oppose S.B. 404 for the same reasons the Health Services Coalition has brought forth. We are afraid this bill is another giveaway to pharmaceutical companies. I agree with Senator Spearman that the solution for this issue is for pharmaceutical companies and health plans to come together and find a way to

help sick patients like the cancer patients we are talking about today. We have been trying to talk to pharmaceutical companies for years, and we have not seen them come to the table to help our patients. Rather, we have seen these companies prioritize maximizing profits over helping our patients. Until pharmaceutical companies come to the table, or until there is more transparency in the pharmaceutical industry, we cannot support S.B. 404.

PAUL YOUNG (Pharmaceutical Care Management Association):
We oppose S.B. 404 for the same reasons the other opponents have brought forth today.

PEGGY LEAR BOWEN:
I am neutral to S.B. 404. I had a concussion almost three years ago. I did not go to the hospital by ambulance. I went to the hospital five days later for magnetic resonance imaging (MRI) because two specialist physicians said I needed an MRI. However, I started experiencing problems the day after I hit my head on the sidewalk. When I got to the hospital for the MRI, I was told I could have as many computed tomography scans as I wanted but not an MRI; MRIs were too expensive.

During the Senate Committee on Commerce, Labor and Energy's meeting last Friday, March 31, 2017, it was mentioned that breast exams, which are supposed to be covered at 100 percent, are only covered at 100 percent when two-dimensional exams are given. If someone wants a three-dimensional breast exam, then that person is responsible for paying a portion of the cost of the exam because the new technology is more expensive. Certain companies say most women do not need this advanced technology, but every woman on my mother's side of my family has passed, and part of the complication of each woman's passing was cancer. It is ridiculous that I cannot have the new breast exam unless I can afford it.

This bill only addresses the tip of the iceberg. Greed is the cancer in health care and in saving lives. I hope the Committee members keep their eyes open as to what the real goal is for every proposed policy. Will we allow greed to continue, or will we rein in this greed so that human lives are the number one goal?

SENATOR PARKS:
Section 2, subsection 2 of this bill states, "A drug used for the treatment of metastatic cancer must be approved by the United States Food and Drug

Administration, ... " We are not talking about right-to-try medications. This bill is narrowly applied. The comments made in opposition to this bill were somewhat disingenuous. We are not talking about experimental drugs. This bill only concerns FDA-approved medications. Senator Gansert was correct when she said we are not talking about new drugs; we are talking about drugs already available to be prescribed to patients that may not be the next step in the progression of treatment. We want stage IV cancer patients to fight their cancers, not their insurance companies. Like Mr. Horn said, it is cruel beyond belief to not afford treatment to a patient that might be able to save his or her life.

CHAIR ATKINSON:
The Committee would like to see this bill's issues addressed. We will give you some time to work on S.B. 404.

I will close the hearing on S.B. 404 and open the hearing on S.B. 185.

SENATE BILL 185: Prohibits contracts for consumer goods or services from including provisions that interfere with a consumer's rights to provide certain information to others. (BDR 52-27)

SENATOR DAVID R. PARKS (Senatorial District No. 7):
Senate Bill 185 deals with a person's right to speak honestly and fairly about the services he or she might receive. Carissa L. Bouwer, on the topic of the Consumer Review Fairness Act of 2016, writes:

> The internet has made it easy for consumers to share their opinions and experiences regarding products and businesses. While easy access to reviews can help consumers make informed purchasing decisions, the anonymity of the internet can be difficult for businesses that believe they have received unfair reviews. In recent years, some businesses have tried to crack down on negative reviews by including language in form contracts that penalize customers for giving negative reviews.

Generally, contracts are mutually agreed to between a seller or lessor and the consumer. However, form contracts like clickwrap agreements do not give customers the opportunity to negotiate for terms that are more favorable. Some of these form contracts may include terms that limit a customer's rights. For

example, the owner of a vacation home rental may include a line in the contract saying that he or she may keep the deposit in the event the renter writes an unflattering review. A broad range of industries, including medical services, online consumer goods and pet-sitting services, are using these form contracts.

In 2016, the federal government established a law voiding provisions in contracts that prohibit customers from writing online reviews. This law, the Consumer Review Fairness Act of 2016, came into effect after I initiated the bill draft request for S.B. 185. This Act voids non-disparagement clauses businesses have in form contracts that these businesses have their customers sign. For example, when someone purchases something online, he or she has to click off boxes containing hard-to-understand information. While businesses can still sue for defamation when a review is false, businesses cannot prohibit customers from writing negative reviews. Senate Bill 185 protects a person's ability to share his or her honest opinion about a business' products, services or conduct in any forum, which includes social media. Contracts that prohibit honest reviews or threaten legal action over them hurt people who rely on reviews when making their purchasing decisions. This bill, like the federal law, will provide guaranteed legal protections when it comes to customers sharing their honest firsthand experiences.

In summary, S.B. 185 makes it illegal for a seller or lessor of consumer goods or services to use a contract provision that limits the consumer's rights or requires the consumer to waive his or her rights to provide a review, comment or other statement concerning the seller or lessor of goods or services. This bill prevents the imposition of a penalty against someone for providing such a review, comment or other statement. Also, this bill makes illegal contract provisions that declare such a review, comment or other statement is a breach of an agreement. Any such provision included in an agreement is unenforceable. Senate Bill 185 provides that any person who violates its provisions is guilty of a misdemeanor and, in addition to any criminal activity, is liable for civil penalties of up to $2,500 for the person's first violation. The penalty for each subsequent violation is $5,000, and an additional penalty of up to $10,000 will be imposed if a court finds the violation to be reckless, willful or wanton. A consumer, an attorney general, a district attorney or a city attorney may bring an action to recover the civil penalty and to retain any money awarded by a court. Finally, a person is not prohibited from removing from a forum any statement or information the person is lawfully entitled to remove.

All of you are probably aware of the service called Yelp, which has been around for about 12 years. People often post reviews of services they have had on Yelp. Most people find Yelp handy when they potentially want to use services or buy products. Yelp allows individuals to check if other people have had poor or outstanding service from companies.

The issue with form contracts came to my attention by way of a case from Utah. A couple in Utah placed an online order worth less than $20. The item never arrived. After repeatedly attempting to contact the company by phone and email, the couple finally reached a customer representative who claimed the company had never been paid for the item. Within a three-year period, the husband received an email demanding the review he had posted sometime previously be deleted within 72 hours, or he would be required to pay $3,500, as he was in violation of the company's non-disparagement clause. However, the clause did not appear on the sales contract, and the couple had never agreed to this clause when they placed their order in 2008. This case ended up in a federal court in Salt Lake City. The judge ruled in favor of the couple and found the company guilty.

Caesars Entertainment has proposed a friendly amendment (Exhibit E).

MICHAEL G. ALONSO (Caesars Entertainment):
We are neutral to S.B. 185. This bill is very similar to the Consumer Review Fairness Act of 2016, which went into effect last month. Our concern, which we addressed with the proposed amendment, relates to the term "agreement." "Agreement" is broad and could lead to unintended consequences. Senator Parks is narrowly focused on transactions, usually Internet transactions, wherein the parties do not get to negotiate non-disparagement clauses. We essentially copied the definition of form contract from the Act and put that definition into the amendment. The word "agreement" has been changed to "form contract." According to page 2 of the amendment, a form contract is an agreement with standardized terms that is used by sellers or lessors in the course of selling or leasing their goods or services. A form contract must also be imposed on an individual without a meaningful opportunity for such individual to negotiate the standardized terms.

We are trying to focus S.B. 185 on what Senator Parks is trying to accomplish. We also added subsection 9, and the language comes from the federal Act. This subsection states, "Nothing in this section shall be construed to affect: (a) any

duty of confidentiality imposed by law; or (b) any civil cause of action for defamation, libel, or slander, or any similar cause of action."

As Senator Parks noted, this is a friendly amendment.

CHAIR ATKINSON:
Because Senator Parks accepts your proposed amendment, you are no longer neutral. Do you support this bill?

MR. ALONSO:
Yes.

SENATOR PARKS:
I appreciate that Caesars Entertainment analyzed this bill and proposed an amendment that fully covers what I originally intended to accomplish with S.B. 185.

CHAIR ATKINSON:
I will close the hearing on S.B. 185 and entertain a motion on this bill.

> SENATOR HARDY MOVED TO AMEND AND DO PASS AS AMENDED S.B. 185.
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> SENATOR SPEARMAN SECONDED THE MOTION.
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> THE MOTION PASSED UNANIMOUSLY.

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CHAIR ATKINSON:
I will open the hearing on S.B. 437.

SENATE BILL 437: Revises provisions relating to physical therapy. (BDR 54-483)

ROCKY FINSETH (Nevada Physical Therapy Association):
The State Board of Physical Therapy Examiners will bring a proposed amendment forward that we consider to be friendly. We are happy to work with the Physical Therapy Board. We will also continue to work with the Nevada

Chiropractic Association, which opposes this bill. We do not consider the Nevada Chiropractic Association's proposed amendment to be friendly.

JENELLE LAUCHMAN, D.P.T. (Nevada Physical Therapy Association):
Our practice act, NRS chapter 640, has not been modernized in over a decade. During this time, many things have evolved in our industry. Senate Bill 437 is our attempt to bring our statute in line with the current standards of the physical therapy industry.

Section 1 replaces the term "registered physical therapist" with "licensed physical therapist."

Section 2 provides that the practice of physical therapy includes "the examination and evaluation of clients with physiological and developmental impairments, functional limitations and disabilities or other health conditions relating to physical movement." This is an important aspect of what modern physical therapists do in their everyday practices to assist their patients in their return to productive activity. Furthermore, this section replaces the outdated term "therapeutic" with the modern term "biophysical." This section recognizes the role our practitioners play in the reduction of the risk to a client of injury, impairment, functional limitation or disability in the promotion and maintenance of the fitness, health and wellness of a client. This section recognizes that modalities are reviewed and approved by the Physical Therapy Board. Also, this section designates the areas a physical therapy license does not cover, such as "engaging in acts of medical diagnosis" and "the performance of a chiropractic adjustment, as defined in NRS 634.014."

Section 3 applies these provisions to all providers of health care, not just occupational therapists and athletic trainers, to protect the term "physical therapist" in advertising.

Section 4 protects the term "physical therapist," a concept we recognize as term protection, and allows us to use the professional designation when representing ourselves to the general public. This section allows us to use the letters L.P.T., R.P.T. and P.T. in our engagement with the public. Furthermore, this section gives the Physical Therapy Board the authority to pursue and prosecute any violators of this section of NRS.

Section 5 carries over protection to the physical therapist's assistant, or P.T.A.

Section 6 provides the authority of the Physical Therapy Board to obtain injunctions or restraining orders against individuals violating or wrongly engaging in our scope of practice.

We are trying to bring our practice act up to current standards. In certain areas, the statute has been in place since 1989. In other areas, the statute has been in place since 1993. Our statute has not been updated in a long time.

The Physical Therapy Board will propose a friendly amendment.

SENATOR GANSERT:
I have a nephew who is a doctor of physical therapy (DPT). He uses the DPT designation. The University of Nevada, Las Vegas, offers a doctoral program in physical therapy. Does this bill not include DPTs?

DR. LAUCHMAN:
We originally looked at adding DPT to the bill, but we have pulled such language. We are still looking at this issue and may bring forth the DPT designation at a later time.

SENATOR GANSERT:
Many physical therapists go through extensive doctoral programs. The doctors who receive their degrees from these programs probably want to use the DPT designation.

MR. FINSETH:
We do not disagree with you on the DPT designation.

SENATOR HARDY:
Is it accurate that some of the techniques used by a physical therapist, a chiropractor and an osteopathic physician overlap?

DR. LAUCHMAN:
As with any profession, physical therapists use techniques that other medical practitioners use.

SENATOR HARDY:
Is this bill trying to punish physical therapists for using such techniques?

DR. LAUCHMAN:
No.

SENATOR HARDY:
Is this bill trying to get at the system of governance of the Physical Therapy Board?

DR. LAUCHMAN:
Yes. We are simply trying to modernize our practice to bring it up to date with current educational levels.

SENATOR SETTELMEYER:
We have received many emails from chiropractors across the State. A few years ago, there was a bill about chiropractic assistants the Legislature voted yes on, but the Governor vetoed it, saying the bill would not be in line with the scope of practice. He also said he would not be comfortable without having a physician or someone in that field present for the types of chiropractic adjustments or manipulations indicated in the bill. Could you speak to that?

DR. LAUCHMAN:
Currently, our educational system teaches us how to use these techniques on patients. I could provide you with data showing that physical therapists have never injured a patient while performing manipulations.

KATHLEEN CONABOY (Nevada Orthopaedic Society):
We support S.B. 437.

Our physicians reviewed this bill and found that section 2, subsection 1 reflects current practice, as orthopedic surgeons and physical therapists work together as a team to care for patients. When our physicians write orders to a physical therapist, they write orders that say, "Please evaluate and test." The use of the word evaluation in this subsection is highly appropriate.

I was concerned about the language "engaging in acts of medical diagnosis" in section 2, subsection 2, paragraph (a). However, our physicians reviewed this language and suggested that as long as physical therapists are not putting the International Classification of Diseases tenth edition codes on their orders, such language is appropriate.

LISA O. COOPER (Executive Director, State Board of Physical Therapy Examiners):
We support S.B. 437. This bill was designed to be in line with the Model Practice Act from the Federation of State Boards of Physical Therapy, which is considered to be a national standard.

MS. BOWEN:
I am in favor of making sure people have designations to put on their business cards and to use to demonstrate they are physical therapists. However, a licensed physical therapist should be able to add other designations after his or her name. I do not want us to wait on this matter. If DPTs have spent hundreds of thousands of dollars to get their doctorate degrees, I want to know that my physical therapist has gone the extra mile to receive additional training and education so that he or she can treat me in a more thorough fashion. This bill should include the DPT designation. All of the designations a physical therapist uses tells me more about the kinds of services I can expect from him or her.

MS. COOPER:
I forgot to introduce the Physical Therapy Board's proposed amendment (Exhibit F). We have another bill, S.B. 142, that we are addressing language changes and regulations in.

SENATE BILL 142: Revises provisions governing physical therapy. (BDR 54-511)

We want to align S.B. 437 with S.B. 142. We are changing the word "curriculum" to "program," and we are changing the word "education" to "competence."

MENDY ELLIOTT (Chiropractic Physicians' Board of Nevada):
We oppose S.B. 437. We proposed an amendment to this bill (Exhibit G). We will continue to work with the Nevada Physical Therapy Association to work through our issues.

LOUIS LING (Chiropractic Physicians' Board of Nevada):
I am going to provide context for our opposition. This matter has been a point of friction among the chiropractic community, the physical therapy community and the two boards that represent these communities. This issue goes back to at least 2012. The Legislature has made it clear in the physical therapists' practice act that physical therapists are not to perform chiropractic work. Section 2, subsection 1, paragraph (d) removes the existing language "therapeutic exercise

without adjustment." This language has always been a prohibition for physical therapists. Additionally, NRS 640.190 prohibits physical therapists from practicing medicine, osteopathic medicine, homeopathic medicine, chiropractic or any other form or method of healing. In 2012, it came to the attention of the Chiropractic Physicians' Board of Nevada that there were continuing education classes being taught by chiropractors to physical therapists. Physical therapists were learning chiropractic techniques in these classes.

We first tried to reach out to the Physical Therapy Board to resolve this issue. The Committee has been provided with Physical Therapy Board minutes from 2013 and 2014 (Exhibit H). These minutes demonstrate that we discussed this issue with the Physical Therapy Board.

The second step we took was to seek the opinion of the Attorney General to determine if our interpretation of our practice act was correct. The Attorney General's opinion was released on February 7, 2013. In the opinion, the scope of practice definition for physical therapists was compared to the scope of practice definition for chiropractors. The Attorney General concluded:

> The law is clear that a licensed physical therapist is not authorized to practice medicine, osteopathic medicine, homeopathic medicine, chiropractic or any other form or method of healing. In addition, the practice of physical therapy specifically prohibits chiropractic adjustment. Finally, because manipulation and adjustment of the human body require licensure by the Chiropractic Physicians' Board in the State of Nevada, a physical therapist may not lawfully perform any manipulation or adjustment of the spine or any other articulation of the human body that involves chiropractic thrust manipulations and adjustments. Thrust manipulations and/or adjustments are recognized chiropractic techniques and beyond the scope of authorized activity for a physical therapist.

The Physical Therapy Board asked the Office of the Attorney General for clarification; the Physical Therapy Board was concerned about the released opinion. In May 2013, in a letter to the Physical Therapy Board, the Office of the Attorney General wrote back that it stood by its opinion as originally written.

However, physical therapists were still learning chiropractic techniques and incorporating them into their practices, so we decided to pass a regulation, Legislative Counsel Bureau File No. R072-15, interpreting the Chiropractic Board's practice act. In this regulation, we defined the term "precisely controlled force," which is the hallmark of chiropractors' work. We defined the term as "one or more thrusts involving both amplitude and velocity, including, without limitation, one or more thrusts involving any combination of high or low amplitude and high or low velocity." In other words, thrust manipulation, as the Attorney General had already recognized, is uniquely chiropractic in nature.

We have been trying to work out this issue for five years. We have been trying to enforce the law as the Legislature gave it to us. We have avoided litigation, and we intend to continue avoiding litigation.

I would like to discuss two things that will inform our opposition. First, section 2, subsection 1, paragraph (d) mentions the term "mobilization of joints." That is what physical therapists do. However, there are five grades of mobilization. Grades I through IV do not concern the Chiropractic Board, but Grade V mobilization is thrust manipulation. When physical therapists exert the force necessary for Grade V mobilization, they are doing chiropractic work. Physical therapists get the pop in the back like chiropractors do, which is the intent of Grade V mobilization. There is no discussion of Grade V mobilization by name in the Physical Therapy Board minutes I referenced earlier. When physical therapists use the word mobilization, they are talking about chiropractic techniques.

Second, in the amendment discussed by Ms. Elliott, we are asking that section 2, subsection 1, paragraph (f) be stricken. Over the years, we have been trying to tell the Physical Therapy Board that it cannot let physical therapists perform Grade V mobilizations. The Physical Therapy Board continues to allow physical therapists to take classes taught by chiropractors teaching chiropractic techniques. No board has the authority to expand its scope of practice by approving classes its licensees take. A board needs to ask the Legislature to expand its scope of practice.

JONATHAN PARHAM, D.C. (Nevada Chiropractic Association):
I am a recent graduate of chiropractic school. I was required to complete 25 credit hours in technique, to deliver 250 adjustments supervised by a licensed doctor of chiropractic (DC) and to demonstrate to an examiner that I

could perform chiropractic techniques. To safely deliver a manipulation or a Grade V mobilization, a DC degree is required. A chiropractor's main tool is adjustment.

Section 2, subsection 1, paragraph (f) would allow any physical therapist to take a weekend course in adjustment or mobilization and then deliver that adjustment, thereby circumventing current laws. Dry needling, which is an acupuncture technique, is another technique that could be delivered without the proper education. This is purely a matter of public safety. The Legislature has determined, based on evidence and testimony, that the requirements for a chiropractor to deliver a manipulation or adjustment are as stated previously. Physical therapists are not meeting these requirements. If physical therapists want to deliver this type of treatment, they need to demonstrate that they have changed their core curriculum. Every physical therapist who did not go through the current core curriculum, if it were to change, needs to meet minimum educational standards to deliver this type of treatment.

SENATOR SPEARMAN:
Mr. Ling, you spent a lot of time discussing thrust manipulation and the differences between what chiropractors do and what physical therapists do. Can you explain the difference between thrust manipulation and joint mobilization?

MR. LING:
Benjamin Lurie of the Chiropractic Board could better answer that question.

SENATOR SPEARMAN:
I thought you were making a statement based on your professional opinion, but you are making a statement based on your legal opinion.

MR. LING:
In my non-expert opinion, when I have viewed Grade V mobilizations, they are functionally identical to chiropractic manipulations; there is no difference. It is the same tool but with a different label. Chiropractic manipulation cannot be relabeled as Grade V mobilization.

SENATOR SPEARMAN:
In past sessions, there has been a different opinion given. Could our legal counsel provide an opinion regarding what that means for succeeding sessions?

BRYAN FERNLEY (Counsel):
The Legislature cannot bind a future Legislature. Anything done in the past by the Legislature can be changed by a future Legislature. That is a standard rule of construction—a past Legislature does not bind a future Legislature.

DR. PARHAM:
Grade V mobilization and adjustment are used interchangeably depending on profession. Grades I through IV would be moving a joint through its natural range of motion without a thrust force. The adjustment, or Grade V mobilization, would include a thrust with the intent of creating a pop, or cavitation.

SENATOR SPEARMAN:
I am hearing you say the difference is not in the act itself but in the resistance or intensity of the act. The act would be the same, the intensity would be different and such intensity would be different to achieve a different objective. Am I correct?

DR. PARHAM:
In a Grade V mobilization, the intent is to create a pop that would further bring a joint into mobilization or proper movement. The intent of Grades I through IV is the same in the sense of trying to create further motion; however, the intensity is vastly different, as there is no thrust. The safety issue this poses is why we oppose S.B. 437.

BENJAMIN LURIE (President, Chiropractic Physicians' Board of Nevada):
There are currently 18 Council on Chiropractic Education colleges across the Nation that are recognized by the U.S. Department of Education. The Chiropractic Board requires of its licensees a four-year undergraduate degree, a high school diploma, entrance into a chiropractic college and 4,000 hours of study, which includes embryology, physiology, gross anatomy, biochemistry, neurophysiology, spinal anatomy and other subjects. Chiropractors have completed over 2,000 hours of technique, adjusting and manipulation that are taught in core curricula in all of the chiropractic colleges across the U.S. Part of chiropractors' training also includes over 400 hours of radiology, which includes the physics behind radiology, taking X-rays, interpreting X-rays and interpreting MRIs and computed tomography scans. This issue is about public safety. Within our 2,000 hours of coursework, we are trained on craniofacial, cervical, cervicothoracic, thoracic, thoracolumbar, lumbar, lumbopelvic, pelvic and

extremity adjusting. Core public safety principles are taught, and instruction relating to indications and contraindications is given. Classroom hours are used for instruction of hands-on techniques, including proper setup, proper hand placement, body safety, position and thrust. Thrust creates the movement and joint articulation for the correction of a spine or an extremity joint. Thrust involves the knowledge and application of a force that is applied by a chiropractic physician with a certain velocity and amplitude.

Post-graduate study includes seminars and continuing education on chiropractic techniques to increase the skills of chiropractic physicians. There are numerous examinations in chiropractic school, including an examination to get into the school and exit clinical examinations. All chiropractic schools use examinations administered by the National Board of Chiropractic Examiners.

The Chiropractic Board has seen an increased number of consumer complaints involving patients who were allegedly injured by physical therapists. We have tried to work with the Physical Therapy Board over the past seven years, but the Physical Therapy Board would not investigate its licensees. We have had to use our money and investigatory powers to try to determine whether physical therapists were performing chiropractic manipulations or not.

I have submitted to the Committee a misleading physical therapy advertisement (Exhibit I) that the Chiropractic Board received a complaint about. The Physical Therapy Board only gave the licensee a citation for advertisement violation. Also, there are two physical therapy education Websites that teach chiropractic techniques. I tried to attend a seminar offered by one of the Websites, but I did not receive a call back regarding enrollment. It is important to strike section 2, subsection 1, paragraph (f) from this bill for public safety reasons.

After taking a four-week course on how to adjust and manipulate the cervical and thoracic spine, the lower back, and the pelvis, an individual is awarded a diploma that says he or she is an "osteopractic doctor." We took this information to the Physical Therapy Board. In the minutes referenced earlier by Mr. Ling, the Physical Therapy Board said that a physical therapist could not call himself or herself an osteopractic doctor. Even more disturbing is that someone can take a 54-hour course and have the ability to do dry needling. Nowhere is it mentioned in NRS 640 the ability of a physical therapist to insert a needle and break the skin for dry needling, but a regulation from the Physical Therapy Board

says that physical therapists can perform this service if they pass a course. The dry needling issue is similar to the manipulation issue.

We want physical therapists to describe to the Legislature what they mean by mobilization and to ask for permission to perform such a service.

JASON JAEGER, D.C.:
I am a licensed DC, and I have a lot of experience in the chiropractic field. I oppose S.B. 437.

Grade V mobilization is used as a synonym for adjustment and manipulation at the university level. To perform a Grade V mobilization, thrust is required. Thrust, manipulation and adjustment all belong to chiropractic physicians. Many hours are required to learn the art of adjustment and thrust. We would not want this art to be taught in a weekend course.

MICHELE KANE (Nevada Chiropractic Council):
We specifically oppose section 2, subsection 1, paragraph (d). We ask that this paragraph be amended to read something like "the administering of treatment through the use of therapeutic exercise, mechanical devices and biophysical agents that employ the properties of air, water, electricity, sound and radiant energy." We also oppose section 2, subsection 1, paragraph (f). This paragraph creates a dangerous precedent by delegating the determination of scope of practice to an individual licensee rather than to the Legislature. This paragraph should be stricken.

JAMES T. OVERLAND, SR., D.C. (President, Nevada Chiropractic Association):
We oppose S.B. 437 because of public safety. A lot of our concern is with the language in section 2, subsection 1, paragraph (d). This paragraph mentions joints; which joints is the bill referring to? This paragraph also mentions the utilization of mechanical devices. What types of devices are going to be used by physical therapists? Chiropractors use many approved devices to assist with the administration of an adjustment.

Our biggest concern, however, is with section 2, subsection 1, paragraph (f), which includes weekend seminars. A physical therapist could incorporate the content of these seminars into his or her practice. Other professions are encroaching on chiropractors' scope of practice. We are also concerned that

athletic trainers and massage therapists are taking these types of courses. This issue is getting out of hand.

I would suggest that the Committee consider striking section 2, subsection 1, paragraph (f). Additionally, there needs to be clarification regarding section 2, subsection 1, paragraph (d).

Ms. Bowen:
My earlier testimony should have been given as neutral rather than in support of this bill. I would like my testimony to be considered neutral.

Ms. Cooper:
The Physical Therapy Board has made drastic changes to elevate our agency to ensure that all changes are in line with the Model Practice Act from the Federation of State Boards of Physical Therapy, which is a national standard. We are simply trying to modernize our practice act. Grade V mobilization is taught in core curriculum, and it has been accepted for over 30 years in physical therapy school.

Chair Atkinson:
I will allow the parties to work out their differences. I will close the hearing on S.B. 437 and open the hearing on S.B. 337.

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

Senator James A. Settelmeyer (Senatorial District No. 17):
This bill deals with the concept of manipulation for collecting specimens. During the Interim, I was getting a flu shot at a local Walgreens, and I saw a customer trying to receive instruction regarding how to correctly collect diabetic samples. The pharmacist said he could not legally help the customer learn how to collect these samples. This exchange seemed odd to me, so I decided to bring forth S.B. 337.

Elizabeth MacMenamin (Retail Association of Nevada):
Today's pharmacies offer a variety of health care screenings and programs for a wide range of ailments and illnesses so that patients may maintain healthy lifestyles. Pharmacists can obtain information to help patients with asthma and

diabetes. Pharmacists can also screen for blood pressure, cholesterol levels and osteoporosis.

The federal Clinical Laboratory Improvement Amendments (CLIA) were passed in 1988 and finalized in 1992 to ensure the accuracy, quality and reliability of laboratory test results. The Clinical Laboratory Improvement Amendments require laboratories to meet standard certification parameters to perform tests on human specimens. However, if a laboratory test could be performed with a minimal level of complexity and a low risk of erroneous results, an exception could be granted to perform these tests in non-laboratory settings, such as a pharmacy or a clinic. These excepted tests are known as CLIA-waived tests. Before initiating point-of-care services, pharmacists and pharmacies must obtain a CLIA certificate of waiver through their state offices for the Centers for Medicare and Medicaid Services. Pharmacies are working diligently to develop sound, structured plans providing for CLIA-waived tests. Point-of-care testing may become a standard practice within pharmacies as we move forward. Under federal law, pharmacists are permitted to perform point-of-care tests, but current Nevada law prohibits pharmacists from doing so. Senate Bill 337 mentions the health care professionals that could perform these tests, and one happens to be an optometrist. We are talking about tests that are very simple and very easy to administer.

Pharmacists are trained in school to perform these tests. They come out of school ready, willing and able to perform these tests and to help within their communities. With S.B. 337, the patient has an opportunity to receive timely access to care for minor and acute illnesses. This is important in our State. Other states do not have a problem with pharmacists performing these tests. According to a Gallup poll, the pharmacist is the second most trusted profession within the health care team. I personally use my pharmacist a lot for information. Senate Bill 337 is modernizing our State and bringing Nevada up to standards other states already have.

I have not heard of any concerns regarding this bill until this morning. Dan Heller, a pharmacist from Las Vegas, submitted testimony in support of this bill (Exhibit J). Jaime Montuoro, a pharmacist from Salt Lake City, Utah, also submitted testimony in support of this bill (Exhibit K).

JIG PATEL (Albertsons Companies, Inc.):
I am a registered pharmacist in Nevada and California. I serve as a Division Pharmacy Manager for Albertsons Companies, Inc. We are one of the largest food and drug retailers in the U.S. Nationally, we operate food and drug stores across 35 states and the District of Columbia. Here in Nevada, we operate 48 stores, 34 of which have in-store pharmacies. As Ms. MacMenamin mentioned, CLIA-waived tests are easy-to-use medical tests that provide rapid results and pose little risk of erroneous results. These tests are so simple to use that many of our patients can carry out these tests at their homes. It makes sense to allow well-educated pharmacists, many with doctoral pharmacy degrees, to perform these tests in our community. Granting pharmacists the authority to perform these tests may seem new in Nevada, but our company has a long and successful history of performing these tests in 31 of the 35 states we operate in. Providing these services in the areas where they are allowed has helped to provide a quick and convenient way to keep our patients healthy while ensuring that they stay connected with their health care teams. It has also saved the health care system money.

One of our pharmacists in Washington performed a simple blood glucose test for a patient who was required to go to a pharmacy for the test. The patient's results indicated that his blood glucose levels were higher than normal. The pharmacist notified the patient's primary care physician and the patient himself. The patient visited a doctor a couple of days after the test was performed by the pharmacist and was diagnosed with type 2 diabetes. These sorts of tests can make a significant impact in the life of somebody who might never have considered getting tested or might not have any symptoms or knowledge of symptoms of a condition like diabetes.

In another example, one of our pharmacists encountered a patient with a total cholesterol level and a low-density lipoprotein level that were slightly elevated. The patient was open to making changes to bring these numbers down. The pharmacist, after reviewing the patient's results, went over some of the basic dietary guidelines to help with the patient's condition. Additionally, certain health insurance companies have incentives for their employees lowering these numbers. With the guidance given by the pharmacist, the patient took it upon himself to get from borderline high cholesterol to a healthy level. The patient was able to lose 20 pounds. By the end of the year, his cholesterol level was in the normal range.

I look forward to the possibility of offering these valuable tests to Nevadans.

J. DAVID WUEST, R.PH. (Deputy Secretary, Nevada State Board of Pharmacy):
We support S.B. 337. The majority of CLIA-waived tests are approved by the FDA for home use. The pharmacy is one of the primary suppliers of these tests to patients. Pharmacists receive the education and training to help patients with these tests. If this bill were to pass, it would not allow pharmacists to diagnose patients, and they could not modify treatment outside of the hospital setting.

ADAM PORATH (Nevada Society of Health-System Pharmacists):
We support S.B. 337. I am a practicing pharmacist in northern Nevada. I have the luxury of working in facilities where I am allowed to perform point-of-care tests. I was not aware this was even an issue.

SENATOR CANCELA:
It is different to perform these tests in a hospital setting versus a stand-alone pharmacy. Is that accurate? Could you describe the equipment or facilities necessary for these tests?

MR. PORATH:
All of the facilities I work at have laboratory licenses. I have a separate license to work in a laboratory in a hospital. However, CLIA-waived tests do not require a laboratory.

JAY PARMER (Sierra Pharmacy):
Sierra Pharmacy is a small group of independent community pharmacies located throughout Nevada. There are independent pharmacies in Las Vegas, Reno, Sparks, Carson City, Winnemucca, Elko, Fernley, Fallon, Ely, Yerington and Dayton. We believe legislation such as S.B. 337 would allow pharmacists to provide access to safe, accurate tests in a more economical manner for patients. We urge the Committee to support S.B. 337.

JOAN HALL (President, Nevada Rural Hospital Partners):
We support S.B. 337. Often when patients from our rural hospitals go to pharmacies to pick up their glucometers, the patients receive glucometers or testing strips that are different than what they are used to. Having a pharmacist be able to help patients manipulate these new modalities would be important.

MS. O'MARA:
The Nevada State Medical Association is neutral to S.B. 337. We have some concerns, but I would like to thank Mr. Wuest and Ms. MacMenamin for working through most of these concerns a few hours before this hearing. Most of our concerns relate to how this bill connects with the collaborative practice legislation this Session, S.B. 260.

SENATE BILL 260: Establishes requirements for engaging in the collaborative practice of pharmacy. (BDR 54-973)

We have found that most of concerns are actually with S.B. 260 rather than S.B. 337. We appreciate Mr. Wuest clarifying that pharmacists would not be able to diagnose patients. One particular CLIA-waived test involves fecal occult blood, which could be a signifier for colon cancer. We want to ensure pharmacists are helping patients like they should be doing, but the test results need to be turned over to the patient's physician or to the patient to consult his or her physician later.

We would oppose any expansion beyond CLIA-waived tests. We look forward to clarifying the parameters of these CLIA-waived tests with the Nevada State Board of Pharmacy.

RYAN BEAMAN (Clark County Firefighters Local No. 1908, International Association of Firefighters):
We are neutral to S.B. 337. We do not have contracts with pharmacists. If CLIA-waived tests were to be performed by pharmacists, how would the contracts be set up? Would we contract directly with the pharmacist or with the organization the pharmacist works for?

SENATOR SETTELMEYER:
This bill does not deal with contracts. Senate Bill 337 allows pharmacists to help an individual use a device, which is approved by the FDA for home use, so that he or she feels more comfortable using such a device. Pharmacists are allowed to do this in over 30 states; I am simply seeking the same for Nevada.

CHAIR ATKINSON:
I will close the hearing on S.B. 337 and open the hearing on S.B. 372.

SENATE BILL 372: Revises provisions relating to health care. (BDR 54-963)

SENATOR JOSEPH P. HARDY (Senatorial District No. 12):
We have problems with access to health care. I realized we have the potential for graduating medical students who are not matched to residency programs to do work in areas where they are needed. There are over 100 professional health shortage areas in Nevada. In every county, we need help from medical professionals.

When a medical student is ready to go into residency, he or she enters into what is a called a match. The student interviews with residency programs to determine if he or she should be matched with that program. A computer program then selects the residency program for which each student is best suited. However, some students are not matched to a residency program. The American Medical Association has data showing that about 254 doctors were not matched to residency programs in 2015. Nevada requires three years of residency to practice in the State. To work in family practice, three years of residency are required. To work as a heart surgeon, seven to eight years of residency and fellowship are required.

There are a few options for graduating medical students who are not matched. One option is for the student to go outside of the match and have his or her school determine where the student can work for the next year or so. I brought forth S.B. 372 so that these non-matched graduating medical students could use their skills to help communities in Nevada.

Missouri passed legislation similar to S.B. 372 in 2014, and the regulations for this legislation were finalized in January 2017. Missouri's policy allows non-matched graduating medical students to do something similar to what I am proposing with S.B. 372.

Mr. Lee has proposed a friendly amendment to this bill (Exhibit L).

KEITH L. LEE (Board of Medical Examiners):
The Board of Medical Examiners had some concerns regarding costs and licensing issues when this bill was initially introduced. We would also like to limit these students to graduation from an accredited or otherwise recognized medical school.

In Nevada, where can we put students who fit into this non-matched category? What can we do to be of service to our State's medical schools?

As a technical matter, the Medical Board has not had a chance to review the proposed amendment, so I am testifying today in neutral. However, the amendment addresses some of the Medical Board's primary concerns with this bill.

Looking at the latest match statistics from the University of Nevada School of Medicine (UNSOM), we are talking about a limited number of individuals who would qualify under this bill. Senate Bill 372 is workable. There might be some other things the Medical Board needs to work on with Senator Hardy to ensure there are no unintended consequences.

MS. HALL:
Depending on the study, Nevada ranks forty-fifth or fiftieth in providers per 100,000 people. In the past, Nevada has had other bills recognizing underserved areas. When our State moved to a three-year residency training requirement, there was an exception for rural areas if a position in one of those areas had a one-year or two-year residency available. We know that nurse practitioners and physician assistants do a great job of extending care to rural areas.

Senate Bill 372 could be further amended to match the Missouri law Senator Hardy mentioned earlier. In looking at Missouri's law, the state mandates that this particular category of non-matched students must work in conjunction with the medical school. The individual can only work in primary care, not hospitals or emergency rooms. Patients must be informed of this provider type, and the provider must work under strict protocols or standing orders.

This bill offers great exposure of this particular type of provider to rural health. We should explore these options further.

MS. O'MARA:
The Nevada State Medical Association opposes S.B. 372. We have not reviewed the amendment, which we will do later. We have recently received UNSOM's match results, and 61 of 62 students were matched this year. This is a 98 percent match rate, which is above the national match average of 94 percent. The one student who did not match is seeking a master's degree in public health and is working toward a match in psychiatry. Touro University has some concerns regarding how a policy like S.B. 372 is being implemented in

other states. We remain opposed to this bill, but we are happy to work with Senator Hardy on the proposed amendment and any other amendments he is willing to consider.

SENATOR HARDY:
Senate Bill 372 deals with what would be called a collaborative physician, which would be different than a physician assistant but would do similar kinds of things. I am amenable to considering ideas that would help our State get better access to care in areas that need it. I welcome the opposition's input.

CHAIR ATKINSON:
I will close the hearing on S.B. 372.

Remainder of page intentionally left blank; signature page to follow.

CHAIR ATKINSON:
I adjourn the meeting at 11:01 a.m.

RESPECTFULLY SUBMITTED:

Daniel Putney,
Committee Secretary

APPROVED BY:

Senator Kelvin Atkinson, Chair

DATE:

EXHIBIT SUMMARY				
Bill	**Exhibit / # of pages**		**Witness / Entity**	**Description**
	A	1		Agenda
	B	6		Attendance Roster
S.B. 404	C	13	Senator David R. Parks	Proposed Amendment No. 3456
S.B. 404	D	1	Cari Herington / Nevada Cancer Coalition	Written Testimony
S.B. 185	E	2	Senator David R. Parks	Proposed Amendment by Caesars Entertainment
S.B. 437	F	1	Lisa O. Cooper / State Board of Physical Therapy Examiners	Proposed Amendment
S.B. 437	G	1	Mendy Elliott / Chiropractic Physicians' Board of Nevada	Proposed Amendment
S.B. 437	H	74	Louis Ling / Chiropractic Physicians' Board of Nevada	Document: Physical Therapy Board Minutes
S.B. 437	I	2	Benjamin Lurie / Chiropractic Physicians' Board of Nevada	Document: Physical Therapy Advertisement
S.B. 337	J	1	Elizabeth MacMenamin / Retail Association of Nevada	Written Testimony of Dan Heller
S.B. 337	K	1	Elizabeth MacMenamin / Retail Association of Nevada	Written Testimony of Jaime Montuoro
S.B. 372	L	1	Senator Joseph P. Hardy	Proposed Conceptual Amendment