

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

**Eightieth Session
April 29, 2019**

The Committee on Commerce and Labor was called to order by Chair Ellen B. Spiegel at 1:35 p.m. on Monday, April 29, 2019, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/80th2019.

COMMITTEE MEMBERS PRESENT:

Assemblywoman Ellen B. Spiegel, Chair
Assemblyman Jason Frierson, Vice Chair
Assemblyman Skip Daly
Assemblyman Chris Edwards
Assemblywoman Melissa Hardy
Assemblywoman Sandra Jauregui
Assemblyman Al Kramer
Assemblywoman Susie Martinez
Assemblyman William McCurdy II
Assemblywoman Dina Neal
Assemblywoman Jill Tolles
Assemblyman Steve Yeager

COMMITTEE MEMBERS ABSENT:

Assemblywoman Maggie Carlton (excused)

GUEST LEGISLATORS PRESENT:

Senator James A. Settelmeyer, Senate District No. 17
Senator Joseph (Joe) P. Hardy, Senate District No. 12
Senator Moises (Mo) Denis, Senate District No 2

STAFF MEMBERS PRESENT:

Kelly Richard, Committee Policy Analyst
Wil Keane, Committee Counsel

Karen Easton, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Jake Wiskerchen, President, Board of Examiners for Marriage and Family Therapists and Clinical Professional Counselors
Helen Foley, representing American Association for Marriage and Family Therapy-Nevada
Sarah Adler, representing New Frontier; Vitality Unlimited; and National Alliance on Mental Illness Nevada
Joelle Gutman, Government Affairs Liaison, Washoe County Health District
Erik Schoen, Private Citizen, Reno, Nevada
Sherry Rodriguez, Office Manager, Board of Examiners for Marriage and Family Therapists and Clinical Professional Counselors
Catherine O'Mara, Executive Director, Nevada State Medical Association
Lea Cartright, representing Nevada Psychiatric Association
Sarah Scott, representing Las Vegas Convention and Visitors Authority
Leon Ravin, Statewide Psychiatric Medical Director, Division of Public and Behavioral Health, Department of Health and Human Services
Tiffany Banks, General Counsel, Nevada Realtors
Kevin Sigstad, Legislative Committee Chair, Nevada Realtors
Sharath Chandra Administer, Real Estate Division, Department of Business and Industry

Chair Spiegel:

[Roll was taken. Committee rules were explained.] We will open the hearing on Senate Bill 37 (1st Reprint).

Senate Bill 37 (1st Reprint): Revises provisions relating to the regulation of marriage and family therapists and clinical professional counselors. (BDR 54-250)

Jake Wiskerchen, President, Board of Examiners for Marriage and Family Therapists and Clinical Professional Counselors:

I am the current chair of the state's counseling licensing board which regulates both marriage and family therapists (MFT) and clinical professional counselors (CPC)—each is a distinct license unto itself. I have with me today my two boys, Elijah and Ethan, representing the sixth generation of Nevadans in my family.

I think you are all aware of Nevada's dreadful behavioral health ranking nationally. For those who are not, according to Mental Health America, we are 51st, behind all states and the District of Columbia, which is where we have been for two consecutive years. The reasons for our abysmal ranking are manifold, but several are addressed through Senate Bill 37 (1st Reprint), which has already passed through the Senate unanimously. I will highlight the important reasons here.

Sections 1 and 2 expand the scope of practice in two areas. First, both MFTs and CPCs will be allowed to diagnose and treat psychotic disorders—Nevada is presently the only state in the country that prohibits these two licenses from doing so. The second is to expand the scope of practice to allow CPCs to treat couples and families. Nevada is one of only two states in the country that prohibits professional counselors from doing that work.

Nevada has been struggling with an extreme provider shortage for several years. For nearly three years I have been on this licensing board hearing the constant drumbeat of complaints from employers and potential applicants. The former cannot hire because they do not know who can do what, and the latter is deterred from working by the inability to practice up to their full scope of training, education, and experience.

In short, nobody wants to move here to do a partial job; those who do, because of a spouse's transplant, struggle with the artificial handcuff on their limits. Expanding the practice scope will solve at least those issues, and perhaps remove Nevada from being the professional punchline in academic circles.

Section 14 solves the other major area of concern, which is to raise licensing fees. The increases may seem startling, but that is only because we have not raised fees since 1989. The \$150 that we pay for our annual renewal, which constitutes a vast majority of the board's revenue, retains the spending power of about \$72 in 2019 dollars when adjusted for inflation. We simply cannot keep up; our office is completely overwhelmed. I mentioned in the Senate Commerce and Labor hearing that we are held together with duct tape and baling wire, and I can assure you over the last two months since then, the situation has worsened. Fee increases must happen or our board will fail.

The remaining sections refer to things that are largely of interest only to licensees, such as moving to a biennial renewal as shown in section 6; and in sections 12 and 13, they are eliminating contradictory language about when internships terminate. The rest is either conforming language or cleanup language.

For a couple of generations, behavioral health, and frankly health care broadly, has been given the leftover scraps of whatever political will remained after all the other sacred cows had been safely protected. We are now seeing the comeuppance of that in the form of very unhealthy citizenry in our own state. While I think I understand politics, I am pretty revolted that politics should even exist within a humanitarian profession.

The collaboration among counselors, psychologists, social workers, addiction professionals, even primary care physicians, in the cross-promotion of bills this session, and in the 79th Session, has warmed my heart. It inspires me to believe, as Nevada has always taught me, that good policy can indeed trump political ideology and professional turf for the sake of all citizens. While I do not propose this bill is a cure-all for what ails Nevada, the passage would certainly demonstrate an affirmative step toward not sucking. The broad support from all corners indicates that future endeavors will also likely succeed.

Fairly regularly I share that my vision for my retirement is that I can install drywall for a living, because people will be so healthy that they would not need counseling. I do not want to see couples fighting in the grocery store. I do not want to see any more road rage. I am tired of nasty comments at the bottom of *Nevada Independent* articles. I do not want my boys getting into fights on the playground and being teased at the discus ring like I was, just because other kids' families are so unhealthy that their children become bullies.

My sincere expectation is this body will not only vote S.B. 37 (R1) through for full Assembly consideration, but that each member of this Committee will help rally around your own caucuses for another unanimous vote out of this chamber and on to the Governor's desk. Nevada has been in the dark ages for too long. Let us start making some strides. Your constituents are hurting and it is high time we help them gain access to services that will help them heal.

Assemblywoman Jauregui:

In section 14, the fee increases are substantial. What is your current annual operating budget? How much do you receive for your current annual fees? How much will the expected increase bring in?

Jake Wiskerchen:

Our current operating budget is a little challenging to ascertain, but we managed to put a budget together for the first time about two years ago. We range somewhere between \$180,000 and \$200,000. The bottom line is, we cannot afford to pay a competitive wage to our office staff or to our executive director who currently works part-time—20 hours per week. The executive director's job is a full-time job. We had no executive director for seven to eight months, so I wore that hat while I was balancing the chair and office duties. After we get the increases, the budget is hard to ascertain. We are not sure what our fee increases will constitute, because we will have to go through the regulatory process. I imagine stepped increases over a long period, so we do not have to revisit this for some time to come. Our rough numbers indicate that even a \$50 increase on the licensing fee, which is what we advertised for licensees, would be enough for not only a full-time executive director, whose salary would be commensurate with the other executive directors and still below the state threshold quite a bit; it would also fully fund the staff. We would still be able to have some money left over to allocate to things like complaint investigations, which we have not done robustly for about four years. We currently have approximately 35 complaints still outstanding that date back to 2015.

Assemblywoman Jauregui:

What are you expecting to bring in? You are not just increasing some fees \$50, you are also adding six fees that did not exist before. How did you arrive at these numbers? If it is only \$50 that would bring you up to what other boards are charging, that would allow you to be fully staffed and pay your executive director what other executive directors in similar positions make.

Jake Wiskerchen:

We basically check what has been in existence now and what is projected for the future. Where we ought to be now, if we had kept pace with inflation, would be about \$300 in annual license renewal fees. The other fees are mostly ancillary—they deal with applications for supervisors, applications for continuing education providers, those sorts of things. Those are almost infinitesimal in the overall budget. Please keep in mind these are just caps that we would be asking for in the *Nevada Revised Statutes* (NRS). The fees themselves are actually determined by the *Nevada Administrative Code* (NAC). We do not have the authority until we go through NAC, unless we want to reach for the ceiling and then charge the full amount that is allowed by NRS. We would not do that because we would be run out of town.

Assemblywoman Neal:

Can you explain the rationale on page 3, the new provisions at lines 24 through 27, where we are going between the neurodevelopmental, cognitive, neurocognitive intelligence? This is marital and family therapy services. There were a lot of strikeouts. Can you break down what you are seeking to achieve with the expanded scope of practice?

Jake Wiskerchen:

That is actually a thou shall not. It is preserved so that psychologists can continue to do their practice. Right now MFTs and CPCs by education, experience, and training, are not equipped to do what is called psychometric testing, which is a battery of exams administered to an individual to ascertain the things that are listed. We do a biopsychosocial interview; we talk to the people and figure out what is going on in their family systems. We find out their history, their childhood, their upbringing, the occupational histories that bring them to the point of mental distress such that it might warrant professional counseling. What that is doing is disallowing us from treading into a psychologist's terrain, where they actually make their living. It protects the public in such a way that we do not have a bunch of MFTs and CPCs out there administering tests like the Wechsler Intelligence Scale for Children (WISC), the Woodcock-Johnson Tests of Cognitive Abilities, or any other tests that we are simply not trained to do. Some of us have one-off experiences in doing that kind of thing, but it is not enough to put into statute that we should be allowed to, unless we invite some bad actors in to perpetrate some harm.

Assemblywoman Neal:

What did you mean when you said you think it is inappropriate for political influence on the board?

Jake Wiskerchen:

The politics of our profession are such that various professional stripes have fought over the years. The historical context of this was there was some sort of flap among the psychologists, social workers, and the MFTs about 20 years ago when it was just the MFT board. The MFTs stood to lose their ability to treat and diagnose altogether—what was left on the table was psychotic disorder treatment. Since 1999, none of us, including the additions of the CPCs in 2007, have been able to treat and diagnose psychotic disorders. It has created a deleterious effect on treatment across the entire state, because places like the

Northern Nevada Adult Mental Health and Southern Nevada Adult Mental Health services cannot even hire us, because they deal largely with the population that struggles with psychotic disorders, such as schizophrenia. They are left having to hire only clinical social workers or psychologists, which are already dearth in their capacity and their ability to treat as many people as they can. They are overworked and undernumbered. Adding that to our scope of practice would leave it to a competence interpretation as to whether or not an individual believes that he or she can treat those adequately; in the other 49 states it is not even an issue. That is the politics which I was alluding to, where the professions fight to maintain some sort of ego-defined turf in their own professional capacity.

Assemblyman Yeager:

I remember hearing that there were issues getting renewals sent out that caused a lot of havoc and confusion with providers. Would passage of this bill help solve that problem? If so, could you give me an idea of how it would help solve the problem?

Jake Wiskerchen:

We pulled out of savings to fund a new website that will automate and provide a lot of good things that we should have been doing for several years. With that automated website, people will be able to renew online and print out their licenses. All of our professional associations retain that ability, and they will send a hard copy in the mail with a seal on it. The other thing that will come with the website is a database by which insurers and insurance panels can simply look up a name and see if someone is licensed, active, inactive, suspended, or if they have any sanctions levied against them. Right now we do not have that ability. What happens is, every one of those people has to call the board office—this ties up phone lines and bogs down the office. That is why we cannot get the licenses verified, renewals are taking forever, and our own databases were not talking to one another. We had three of them and discovered when we entered something into the database it did not save—a nightmare does not even begin to do justice to the description of the last two years.

Assemblyman Daly:

When discussing section 14, you used an acronym, can you tell us what it means? In the fees you listed "Not less than" and "Not more than" so you are in that range. I understand you are going from a one year to a two year so some of them double, but not all of them. Am I reading it correctly?

Jake Wiskerchen:

The board would set those fees through the regulatory process in NAC. The first homework after this session would be to go into a workshop, and a hearing, to set our new fee structure in NAC Chapter 641A. Yes, you are right. We would hope to go another 20 years before another increase, but hopefully not 30. I do not anticipate hitting that cap anytime soon.

Assemblywoman Tolles:

Are we changing the fees from annual to biennial? Is that part of the reason for the increase?

Jake Wiskerchen:

This would not be a doubling of the annual fees, it would be a biennial fee with an increase. Our licensees can expect to pay \$400 every two years, which would give us an operating revenue for the biennium.

Assemblyman McCurdy:

In section 9 there is some new language that adds what happens when you fail to pay the fee. What was the thinking behind adding the ten business days after the expiration of the license? What was happening to cause you to include this in the bill?

Jake Wiskerchen:

We did not have that before. We ended up getting into debates with licensees about when the actual deadline to reapply was—or whether they would be allowed a grace period with a late fee. Midnight on December 31 was the drop-dead date. After that, anybody who was late incurred a fee—we saw fit to incorporate a grace period. Therefore, the license would still be active so the people would not fall out of network with their insurance companies, and we were concerned with continuity of care for clients. We had issues where people did not get their renewal in on time because of the mail. We would hit them with a late fee, they would say "our postmark said this," so we found out that, yes, it was adequately postmarked and we would have to refund the fee. We simply built in a lag time for a grace period.

Helen Foley, representing American Association of Marriage and Family Therapy-Nevada:

I have been representing the MFTs in Nevada for 20 years. This is the first time that fees have been raised. It has been a very difficult challenge in order to survive. The marriage and family therapists strongly support this increase in fees. I know you do not hear that very often from people, but we need to have a very strong board. This will enable them to have the executive staff they need to do the job. We have problems with not even being able to investigate or have hearings—there is no money available to do that. For the protection of the general public it is extremely important. I have to compliment the Board of Psychological Examiners and their psychological association for working carefully with us to reach a consensus.

Specifically, in section 1, page 3, line 25, and then again the identical language at the top of page 4, where it deals with the marriage and family therapists. Not to be able to diagnose psychotic disorders was a real problem. When a psychotic disorder is diagnosed, quite often that person will be referred to a psychologist or psychiatrist directly from the MFT. The issue has to be diagnosed for them to make that referral. When they are meeting with a family and they see there is a problem with one of the family members, the diagnosis needs to be made. We really appreciate the other mental health professions coming together, joining with us, and deciding this was a good approach. We think this will help all mental health therapists and provide greater services to everyone in Nevada. We thank the board for their work on this, and I especially thank everyone else that was involved. I think it is a very good bill now.

Sarah Adler, representing New Frontier; Vitality Unlimited; and National Alliance on Mental Illness Nevada:

Collectively we are in strong support of S.B. 37 (R1). The opportunity for providers to be able to hire either a CPC or MFT, depending upon that individual's training, is absolutely critical for our rural mental health providers where we have such a challenge of access. We think this bill is a big step forward for rural Nevada. We also support increasing the capacity of the MFT and CPC board, which has to happen through the fee increases. There is a real challenge in the efficiency of operations right now because that organization lacks capacity. They do not lack vigor at the board level; I have attended their meetings and they are very attentive to the quality of the work that they do and are responsible for.

Joelle Gutman, Government Affairs Liaison, Washoe County Health District:

We are here in support of S.B. 37 (R1). Many of the items in the bill support Washoe County Health District's vision, strategic direction, and align with the district's 2018-2020 Community Health Improvement Plan. In the spring of 2018, we heavily engaged the community in identifying our top health needs to include in our Community Health Improvement Plan—behavioral health was selected as one of the top three priorities. Nevada continues to struggle to identify adequate resources to appropriately respond to our behavioral health needs, and northern Nevada has been especially challenged. The Washoe County Health District believes the efforts being made in S.B. 37 (R1) will enhance the quality of life for members of our community and all residents of Nevada by increasing the workforce, thereby increasing access to service for those who need it.

Erik Schoen, Private Citizen, Reno, Nevada:

I have been a licensed mental health counselor for approximately 25 years. I am currently the executive director of a rural nonprofit in Virginia City, Nevada, and I have been a board member on the Board of Examiners for Marriage and Family Therapists and Clinical Professional Counselors for the past 10 years. I think a lot of what has been discussed has been presented very well. I thought I might provide some context that would also be helpful. I am not speaking for the board; I am just representing myself.

Part of the reason for moving to a biennial renewal was to realize the efficiencies in labor. There were many changes the board discussed, but we were trying to find ways that we could increase capacity through raising fees, and also be more efficient. With an annual renewal, there is about a two-month period where a significant portion of staff time was taken up by simply handling renewals. If we could move that to every other year, we would realize a labor savings, and that would help us be more efficient. In terms of all of these fees, this has been a three-year conversation we have been having with our licensees. We did not want them to be surprised. We know it takes a while for people to adjust to an idea, but we wanted to be able to address any concerns they might have early. That is why you see such a big show of support for this bill. We just do not have the capacity—and people are interested, especially our licensees and our partners—to fully accomplish what we would like to. Our staff consists of one and one-half full-time equivalents; we have a half-time executive director, we have a full-time helper. We cannot afford an investigator. Our investigations

have been done by a volunteer board member who happens to be a lawyer, and he has been kind enough to help us along. These are the things that we would like to be in front of.

Sherry Rodriguez, Office Manager, Board of Examiners for Marriage and Family Therapists and Clinical Professional Counselors:

I am in support of S.B. 37 (R1). I am the only full-time employee and I have been there for four years. In that four years, I have seen triple the work from when I started. It is very hard to make sure we are keeping our licensees working and taking care of their clients. We are not automated and there are thousands of pieces of paper that come through our office. The only thing online are our renewals and our application processing; but we have to print those out to process them, so that does not negate any paperwork. We try hard to get everybody out, and our primary concern is the public. If we do not have enough staff to get our licensees licensed, then their continuation of care for their clients does not happen.

There are people out there with very serious mental needs. The whole business we are in is the mental health field. If we do not have enough staff to adequately take care of the people in Nevada, then we are not doing our job. I have seen the increase of reciprocity because we have made it so much easier for people to come from other states to practice. But it does not matter if we make it easy if we are so far behind. I have worked 16- to 18-hour days and have not been able to be with my own family. We do not have enough people; we have not had enough money to pay for an accurate website. We just found out that if we enter something into our database, when everyone else is on the database, the first person to open it is the only person's information that will save. We have had the technicians out on a regular basis, generating multiple invoices, and it still is not fixed. Without the proper tools, we cannot do our job.

Two years ago we had a horrible situation with the renewals. The new executive director thought she could change the whole process, without knowing the process, and it was a mess. The licensees could not work because their licenses could not be processed, therefore, the patients were suffering.

We cannot function as an office if we do not have staff. We do not have a compliance department; we cannot afford one. We are issuing licenses, but no one is following up. I am asking you to please consider the fee increases, not just so we can pay staff, but because that is what we need.

[([Exhibit C](#)) is a packet of letters in support of Senate Bill 37 (1st Reprint).]

Chair Spiegel:

Is there anyone to testify in opposition to Senate Bill 37 (1st Reprint)? Seeing no one, is there anyone who wishes to testify in neutral? [There was no one.]

[([Exhibit D](#)) is a packet of letters in opposition to Senate Bill 37 (1st Reprint).]

Jake Wiskerchen:

Thank you for your audience and thank you to everyone who spoke in support.

Chair Spiegel:

We will now close the hearing on Senate Bill 37 (1st Reprint), and we will open the hearing on Senate Bill 219 (1st Reprint).

**Senate Bill 219 (1st Reprint): Revises provisions relating to certain regulatory bodies.
(BDR 54-646)**

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

Senate Bill 219 (1st Reprint) comes from the Legislative Commission's Sunset Subcommittee, who found out there were a few boards that do not have the ability to accept credit cards. Rather than have the Sunset Subcommittee go through session by session and run across these particular boards haphazardly, it seemed wiser to just bring forth one bill saying that all boards can accept credit cards. It does not mandate that they have to, but it says they can. It gives them authorization, in case there are other boards that we have not gotten to yet on the Sunset Subcommittee.

It was also felt that we should have some type of a check process, so when money is distributed from a board, at least two people have some knowledge as to where the funds are going. There were a number of boards that we ran across that said, "There is nothing to change on the board. Our board is fine." We asked them how much money they have and they would say, "I do not know." What do you spend the money on? "I do not know." Those types of answers seem to be problematic, and these are actual board members. We are not talking about individuals who think their board is doing a good job, we are actually talking about board members who have no idea what is going on with the board. They are just on autopilot. Maybe they are doing a great job, maybe they are not. A little more transparency just seemed logical.

Chair Spiegel:

It seems as if it is written broadly enough that it would cover emerging technologies, such as PayPal. Is that your intent?

Senator Settlemeyer:

The desire is to leave it broad enough for them to be able to accept alternate payment types. There was some desire to give them flexibility, if they did not want to jump into the Bitcoin realm or the cryptocurrencies; by using the word "may," they would not necessarily be forced to. There was someone at the federal level who accepted a donation by Bitcoin that created all types of problems. You have to figure the actual value when it was received, not when it was reported, and you have to go back in time to figure that out—it creates a little bit of an issue. So if there is an agency out there that does not want to jump into the next century, all I am trying to do is bring them into this one by giving them the ability to accept credit cards or other electronic payments.

Chair Spiegel:

Are there any other questions from the Committee members? [There were none.] Is there anyone who wishes to testify in support of Senate Bill 219 (1st Reprint)? [There was no one.] Is there anyone who wishes to testify in opposition to Senate Bill 219 (1st Reprint)? [There was no one.] Is there anyone to testify in neutral? [There was no one.] We will close the hearing on Senate Bill 219 (1st Reprint). We will now open the hearing on Senate Bill 170 (1st Reprint).

Senate Bill 170 (1st Reprint): Revises provisions relating to health care. (BDR 54-523)

Senator Joseph (Joe) P. Hardy, Senate District No. 12:

I will start with the history of Senate Bill 170 (1st Reprint). I had this brilliant idea that only qualified people, in qualified places, should give botulinum toxin. As the sponsor of the bill, I put into statute that it could only be done in medical facilities. Everything went well, until everybody realized that it is one of the most toxic drugs you can have in your body. We do not put honey on baby pacifiers anymore because of the botulinum toxin.

After the 79th Session was over, we found out there are continuing medical education opportunities in Las Vegas where thousands of physician-types come to learn how to do fillers and botulinum toxin injections, otherwise known as Botox. They said it is now illegal to do those in Las Vegas. Two years later, we allow those opportunities for continuing medical education to happen and to bring those people to Las Vegas. Just last week, someone called my office and asked if it was okay to do botulinum toxin injection instructions in Las Vegas now that you have passed this through the Senate. I said no, it has to actually pass not just one house, it has to pass two houses, and then be signed into law by the Governor. That was the genesis of the bill.

In Senate Bill 170 (1st Reprint), the concept of chemical restraints came from the Statewide Psychiatric Medical Director. That particular section revises the provisions relating to chemical restraints to clarify that the term does not include the administration of drugs on a regular basis. We all know there are people who get court-ordered monthly injections in order to keep them out of emergency rooms and hospitalizations—this does not affect those people.

Assemblyman Daly:

The example of where this would be done is at trade shows and conventions. Is that where the problem is coming from?

Senator Hardy:

You are exactly correct.

Chair Spiegel:

I did not see any requirements that the physician or physician's assistant would be required to have malpractice insurance.

Senator Hardy:

One of the things it says is "licensed in any state of the United States," et cetera. I do not know any state that does not require malpractice insurance.

Chair Spiegel:

Not knowing how this works entirely, I just did not know if their insurance would be valid in another state. If you are licensed to practice in another state and come to Nevada, would you be covered by your insurance?

Senator Hardy:

You ask a good question, but I would refer you to the Chairman of the Assembly Judiciary Committee to answer that.

Assemblyman Yeager:

[He indicated in the affirmative.]

Chair Spiegel:

We would have to check the policies, but I know that is something that I would be concerned about—that their malpractice insurance covered them while they were here.

Senator Hardy:

I would be happy to have that clarified as well. It is obviously a very short bill, but if you wanted to make it longer, you certainly could.

Chair Spiegel:

Is there any testimony in support of Senate Bill 170 (1st Reprint)?

Catherine O'Mara, Executive Director, Nevada State Medical Association:

We are in strong support of S.B. 170 (R1) and appreciate Senator Hardy's bringing it forward. As he mentioned, Senate Bill 101 of the 79th Session was passed which created some protections for Nevada patients to ensure that people who are administering Botox and dermal fillers were licensed and correctly trained. These things were not happening at the spa parties, backrooms, hotel rooms, or other areas that were not medical facilities. We did not intend to limit the educational opportunities for physicians in the state and for physicians who might be coming to Nevada to take advantage of our convention climate. We would appreciate this Committee's support in fixing this mistake.

I just wanted to put a couple of those conferences on the record, so you can understand the scope of what we are talking about. There were at least six conferences from the time the bill passed in January of that year. These include: the Cosmetic Surgery Forum, American Society of Plastic Surgeons Aesthetica Super Symposium, The Aesthetic Show, American Academy of Cosmetic Surgery, and other conferences put on by board-certified plastic surgeons, facial plastic surgeons, eye physicians, or dermatologists. There is a letter on the Nevada Electronic Legislative Information System (NELIS) from Dr. Michael Edwards who also supports this bill ([Exhibit E](#)).

Lea Cartright, representing Nevada Psychiatric Association:

[Read from written testimony of Lesley Dickson, Nevada Psychiatric Association, ([Exhibit F](#)).]

We are here in support of S.B. 170 (R1). Section 16 updates the definition of chemical restraint by allowing for the administration of psychiatric medications, on an as-needed or one-time basis, for treatment of symptoms of mental illness, without that action being mischaracterized as chemical restraint. The language change, which removes "on a regular basis," brings the statute into line with the national standards of care.

Assemblywoman Neal:

What was going on with chemical restraint that you needed to make this clarification?

Lea Cartright:

I will have to get back to you on exactly what was happening. A doctor mentioned that this was becoming an issue where chemical restraint was being used on a regular basis. I will get more information and get it to you right away.

Sarah Scott, representing Las Vegas Convention and Visitors Authority:

We worked with the Nevada State Medical Association on this bill, and we are in support of section 1. We appreciate the sponsor for bringing the bill forward.

[[\(Exhibit G\)](#) is a packet of letters in support of Senate Bill 170 (1st Reprint).]

Chair Spiegel:

Is there anyone who wishes to testify in opposition to Senate Bill 170 (1st Reprint)? [There was no one.] Is there anyone who wishes to testify in neutral?

Leon Ravin, Statewide Psychiatric Medical Director, Division of Public and Behavioral Health, Department of Health and Human Services:

The Division of Public and Behavioral Health is neutral on this bill. However, I would like to speak specifically to section 16, which describes redefining a chemical restraint. Hopefully, I will be able to address all of the questions of the Committee. When patients finally make it to a psychiatric facility, their symptoms are most prominent, and that puts patients at risk of harming themselves and others. It is important to promptly administer medications designed to treat those psychiatric symptoms, directly target those symptoms, and mitigate the risk of harm—to themselves, other patients, or nursing and medical staff who are caring for those patients. In recent years, the Food and Drug Administration (FDA) approved a number of medications to be used for that very purpose.

Senate Bill 170 (1st Reprint) would update the current definition that we have in Nevada. Under current Nevada state law, if you administer medications on a regular basis to treat psychiatric symptoms, it would not be considered a chemical restraint. However, using the medication for the same purpose, but writing in the physician order "as needed," would potentially constitute chemical restraint. Changing NRS 433.5456 would recognize

administration of FDA-approved medications, according to prescribing guidelines, as treatment intervention, rather than mischaracterizing the very same medication administration as a chemical restraint. By eliminating the language on a regular restraint basis, as proposed under section 2, the hospitals and physicians practicing in the state of Nevada would be able to offer their patients FDA-approved treatment, which is consistent with the standards of care, without fear that their actions would be wrongfully interpreted as chemically restraining their patients.

Assemblywoman Neal:

Using it on an as-needed basis helps it to keep the purpose of chemical restraint legal. Did the way you were using it before make it a nonchemical restraint activity?

Leon Ravin:

In recent years, we have been able to get medications on the market that could be used as a one-time option for patients to treat psychiatric symptoms. It is my understanding, when the current definition of the NRS was written, we did not have those medication options. The fear was that using other medications, not on a regular basis, would be an attempt to chemically restrain patients. Now we have those therapeutic treatment options, and a physician could use them. According to standard guidelines and the Joint Commission recommendations, I could write for the patient to receive a single dose of a medication to control psychiatric symptoms in case of emergency. However, while I am doing that, in accordance with prescribing guidelines, the state of Nevada law may mischaracterize that administration of medication as me trying to restrain the patient. We are hoping to see this bill bring the definition of chemical restraint into modern times, of modern medicine.

Senator Hardy:

I would appreciate it if you would pass this bill so the economic disadvantage that I put the state in could be corrected.

Chair Spiegel:

We will now close the hearing on Senate Bill 170 (1st Reprint). We will open the hearing on Senate Bill 230 (1st Reprint).

Senate Bill 230 (1st Reprint): Revises provisions relating to certain real estate professions. (BDR 54-311)

Senator Moises (Mo) Denis, Senate District No. 2:

I will be introducing Senate Bill 230 (1st Reprint) which authorizes licensees to advertise under a nickname, as well as revises provisions related to continuing education for real estate professionals.

In 2008, the Real Estate Division of the Department of Business and Industry established regulations prohibiting a licensee from advertising or otherwise conducting business under a name other than the name under which he or she is licensed, including a nickname. It is my understanding that the regulations were not enforced until a few years ago, and it affected

licensees when they renewed their real estate broker or salesperson license. This becomes a problem when the licensee is so well established in the community. It is confusing for their clientele, and damaging in their efforts to promote their business. Senate Bill 230 (R1) seeks to resolve these problems.

The industry approached me on this issue, and we want to be better as we interface with the consumers. Consumers are making the largest investment of their lifetime, and with this bill we are raising the bar for those who want to become licensed, those who are licensed, and those who supervise those who are licensed. As a licensed Realtor myself, I understand the importance of education for myself and for my colleagues. We want to thank the Real Estate Division, especially Sharath Chandra, for working with us to remove the fiscal note and to come to an agreement on changes that will be manageable for the Real Estate Division without an undue burden.

Section 1 requires a person who is licensed by the Real Estate Division to include his or her license number on any advertisement, and authorizes the licensee to advertise under a nickname, which is set forth on his or her license. Section 2 of the bill requires an applicant who intends to use his or her nickname in the course of business, to include it on the application, which is prepared or furnished by the Real Estate Division. Section 3 requires the licensee to include the nickname provided in the application. Currently a real estate broker or owner-developer must prominently display all the licenses of the real estate brokers—salespersons or real estate salespersons who are associated with the broker, or employed by the owner-developer, in his or her place of business. Section 4 removes this requirement and instead requires the licenses to be kept in a secure manner and be made available upon request by the public and the Real Estate Division during usual business hours. Section 5 requires the Real Estate Commission to adopt regulations which set forth certain subject matter in continuing education, which must be completed by a licensee before a license may be renewed or reinstated by the Real Estate Division.

The last part of the bill states that an individual who is 70 years of age or older, who has been licensed for 30 years or longer, may apply for an exemption from completing some of the required continuing education. The Commission may also adopt any regulations to require a person to complete the postlicensing curriculum before a licensee may list or write a contract for the sale of a parcel of real estate. There were some amendments made by the Nevada Realtors which were uploaded to NELIS ([Exhibit H](#)).

Assemblywoman Tolles:

The prelicensing requirement today is 90 hours. This bill is proposing 120 hours, plus an additional 15 hours for contract, and an additional 15 hours for agency, or is that included in the 120?

Senator Denis:

That is included in the 120 hours.

Assemblywoman Tolles:

So it is moving the hours from 90 to 120 hours. In section 5, it refers to 36 hours of continuing education. What is the current requirement for continuing education? Is that on an annual basis?

Senator Denis:

Currently it is 24 hours. The bill as it currently reads says 36; however, I think there will be an amendment to allow the Real Estate Division to work on that issue rather than saying 36 hours. Am I correct on that?

Tiffany Banks, General Counsel, Nevada Realtors:

No. This would require a minimum of 36 hours every two years, and the Commission would actually set forth how many hours it would be.

Assemblywoman Tolles:

I just heard you say it is 36 hours every two years and the Commission would decide how many hours. Is it 36 hours?

Tiffany Banks:

It is a minimum of 36 hours. Then, once passed, it goes to regulation and the Commission adopts how many hours it would be.

Assemblywoman Tolles:

It is just a minimum of 36? Right now the current requirement every two years is 24 hours.

Tiffany Banks:

Yes. The intent is to work with the Commission on the understanding that we would like to keep it around the 36.

Chair Spiegel:

In section 5, subsection 2, paragraph (a), it looks like the 36 hours does not specify biennially. Should it say biennially?

Senator Denis:

The way it currently works is you do the hours in the period of time before you renew your license. Currently it is every two years in which you have to do the continuing education.

Assemblywoman Tolles:

I had that same confusion. In section 5, subsection 3, paragraph (b), subparagraph (1), it says, "postlicensing curriculum must be completed including, without limitation, a period of less than 1 year." As I read it, it means that in less than a year they have to complete 36 hours of continuing education. Is that correct?

Kevin Sigstad, Legislative Committee Chair, Nevada Realtors:

There are two different types of postlicensing education. The first type is during the first year after you get a license, you have to complete so many hours of education—that is to get them ramped up into the industry. From that point on, you have the continuing education requirements every two years, which is currently 24 hours, but will be switched to no less than 36 hours. What the Division calls postlicensing is the one year immediately after you receive your license.

Assemblyman Kramer:

Years ago I had my license and I am reading now that there are around 50,000 licensees in the state of Nevada. Is this bill designed to reduce the number of people that have a real estate license? I know you have an enforcement division. Have we had a rush of people that have had their license pulled because they have been doing things wrong?

Kevin Sigstad:

I think there might be 25,000 or 30,000 licensees in the state currently. There is a feeling in the industry that it is easy to get into real estate; it is easy to go out and get a client to sign up. But you are handling what is probably the largest financial transaction in a family's life. For someone to have 90 hours of education and then hang their license, we did not feel they were prepared to be able to advise someone on a half-million-dollar transaction—currently the median price in Reno is \$400,000. Initially we said we want them to at least have training in contracts so when they go out there the day after they get licensed, they know how to write a contract. Currently the law says you have to complete your postlicensing within a year after you get your license, which includes how to write a contract. Most agents, myself included, wait until 11 months and 15 days to do their postlicensing. They were typically going through the entire term without having had instruction on how to draft a contract. At least we want to have contracts in the precensing end and some training of agents so they understand who they represent and what their responsibilities are. The 24 hours has been a bare minimum of continuing education since I got licensed more than 40 years ago; likewise the effort is to increase the professionalism in the industry—to increase the knowledge they have. The industry changes on an ongoing basis. Someone who has been in the industry 40 years but has not practiced in the last 12 months does not know the industry because it has changed. The intent is to continue to have everyone up to date and professional in their business so they can conduct the business.

Assemblyman Kramer:

You talk about new agents and, yes, new agents are out there, but they work for a broker. I cannot imagine a broker not reviewing a contract before it gets submitted. It is part of the process, what they get paid for, and why there is a broker that has to look over the agents. How many times have licenses been revoked because people have done the wrong contracts?

Kevin Sigstad:

The problem is not necessarily that every broker is not supervising their agents. The industry has changed. There are a lot of brokerages that have five, six, or even a thousand agents. It is almost impossible for the broker to review every transaction. We did consider how to

make the brokers more responsible for oversight of their agents; however, there are already penalties, requirements, and laws that say to the broker, It is your responsibility to oversee the agents. We came to the conclusion that it makes more sense to have the agents be more informed and more educated so they have the knowledge that they need in order to conduct their business.

Senator Denis:

Having gone through the 90 hours, I realized the things that were being learned in that postlicensing was really what you needed day to day. In the 90 hours, you learned all the laws, both national and state. Then I took my first contract class. I understood what to expect in the future because there is a lot of paperwork when you sell a house. I think requiring some additional training right away will relieve a lot of stress for someone when first starting out.

Assemblyman Kramer:

Can you get back to me on how many licenses have been revoked?

Kevin Sigstad:

I do not have those numbers, but will be happy to try and find them and get back to you.

Sharath Chandra Administer, Real Estate Division, Department of Business and Industry:

We provide the Commission with a report, but nothing specifically for contracts. We used the top three or four cases, based on the workload that we see. Property management has always been an issue because of trust account reconciliation. Contracts would be one of those, but we do not keep it to that granular level. I will look into it and provide you the answer.

Assemblywoman Neal:

Why are we giving a person 70 years of age an exemption from continuing their education?

Senator Denis:

This is not saying that they do not have to take any continuing education, it is just to take less. Some of the classes are repetitive, but others are changing constantly. They are still required to take that continuing education. This is just saying they have been doing this a long time, it is important to know some new things, but there are some things that perhaps have been done many times so they do not need to do that again.

Assemblywoman Neal:

Why put an age on it? Why not put years of experience?

Kevin Sigstad:

We talked with the Division about this and looked at what other states are doing. There are a number of other states that have similar provisions, so we drafted this to mirror the provisions that seem to work in other states. The Division added that you had to also be in

good standing. If someone started when they were 20 and have been doing it for 30 years, we felt it was reasonable. We tried to look to what other states were doing for some guidance.

Assemblywoman Neal:

Hopefully, it is something to be considered but it just seems odd. I know there was an amendment that put the licensing of the person back in. Are we accepting that? I did not hear a discussion on it.

Tiffany Banks:

I am here to present the amendment ([Exhibit H](#)). I am general counsel for the Nevada Realtors. The proposed amendment would delete section 5, subsection 3, paragraph (b), subparagraph (1). We reached an agreement with the Real Estate Division in order to get the fiscal note removed, but did not catch the error on the other side. We are here today to present this amendment which reflects our agreement with the Division.

Assemblywoman Tolles:

Can you tell me how many licensees we have?

Kevin Sigstad:

My understanding is between 25,000 and 30,000.

Sharath Chandra:

That is close. If you look at salespersons, broker-salespersons, and brokers, it is around 26,000; when we say 40,000 licensees with the Division, we also include timeshare agents, timeshare representatives, appraisers, energy auditors, inspectors of structures, and community managers. The split is about 20 to 80, north and south.

Assemblywoman Tolles:

My question has to do with capacity, in terms of meeting the demand of the effective date. As I calculate it out, 26,000 times an additional 12 hours, is 312,000 hours of additional continuing education. Do we have the capacity to meet the demand by the effective date? I think there is only one school in the north that is a real estate school.

Kevin Sigstad:

The licenses renew during the course of a 24-month period. You will have 1/24 approximately in August of 2019, and so forth. The continuing education is taught in a number of different areas—title companies, local associations. There are some private enterprises that also do continuing education. There are quite a few providers, and I am sure they would welcome the opportunity to sell more classes. In terms of there being enough classes, there are a lot of providers that do provide these classes.

Chair Spiegel:

A number of years ago I took a real estate class; I opted not to take the exam and become a salesperson. At the time, I asked how long my certificate was good for and was told it was

evergreen—good until I took the test and became a licensed salesperson. With a July 1 start date, it would seem that anyone who is in a similar position would not be able to use their certificate of completion, or anyone enrolled in the class now and fails the exam would not be able to retake it before the additional education requirement. Could you discuss that and the fairness to the people taking the class right now?

Kevin Sigstad:

The intent is to have people have the knowledge today. The fact is that they may have to wait another month in order to take their exam. We think it is good if they know contracts when they start, rather than saying, Hurry up and get your license before July 1. Our position is that we would rather have them know more and take the extra classes so they understand what they are doing when they are out there on the street.

Chair Spiegel:

Is it your intent that they take the whole class all over again and start from the beginning? Is there somewhere they would have an opportunity to take the additional course work? It seems like they have started their education under one premise, and it is changing mid-stream, and they have no way of making up the difference without starting from scratch.

Kevin Sigstad:

If someone is taking the class currently, it is 90 hours of instruction; they can easily complete the class. They generally take the test immediately after they have completed their class. Once this bill is adopted, the schools will have time to ramp up for the additional hours. My understanding is the Division will come up with the requirements—but the requirements are 15 hours of contracts and 15 hours of agency, on top of what is already being taught. It is not that they would have to retake the classes, they would have to expand that knowledge base through the contract module and the agency module to achieve the 120 hours.

Assemblyman Kramer:

Have you talked to any of the schools that teach the bulk of the real estate agents? Are they ready to add additional course hours? You have a point, but if I were trying to segregate myself as a real estate broker I would use my advertising and say, Our agents have twice the number of hours in contract preparation as anyone else. Then you would train your own agents and make sure that your brokers actually look over every contract to make sure they are perfect. It seems like you are making the state licensing do something that your individual broker should be doing.

Kevin Sigstad:

Both the Greater Las Vegas Association of Realtors and the Reno/Sparks Association of Realtors teach these classes so, yes, we have spoken to both of those. We have not yet reached out to the private side. A lot of the postlicensing is done by private entities and title companies. It is a way for them to advertise their services, but we have not spoken to them.

Chair Spiegel:

Is there anyone to testify in support of S.B. 230 (R1)? [There was no one.] Is there anyone to testify in opposition? [There was no one.] Is there anyone to testify in the neutral position?

Sharath Chandra:

I just want to say thanks to Senator Denis for reaching out to the Division and trying to understand our position. There was definitely a question in the industry on the nickname issue; I think this legislation helps that issue. There are some elements that are really good and clarify a lot of things. We want to be supportive, we want to engage everyone, and we are here to answer any questions.

Assemblyman Kramer:

My question has to do with the nicknames. This seems logical that someone should be able to use their trade name, and not their born name. I thought that used to be the case, but now it is changed by regulation. If it was changed by regulation, why cannot the regulations change it back to where you are allowed to use a nickname or professional name?

Sharath Chandra:

I believe it was historically handled this way. Licensed nicknames would show up on the license under a parenthesis—that practice was not vetted properly. At some point, the Division said the name that appears on your license has to be the same as your driver's license but, of course, there were open-ended issues with people having made a living with a certain nickname or advertising. People would sign legal documents with their nickname, so there were a lot of issues that were coming up. There are some people legitimately advertising with nicknames that this would impact. We looked to the other states, and a lot of them allow this, as long as a license number is listed on the advertising. That was the biggest piece for the Division—how to identify somebody that is performing real estate services with a nickname. This piece of legislation really helps—you can use a nickname to advertise, as long as your license number is listed. The Commission will decide the parameters of that nickname—we do not want anything completely outrageous or ridiculous; we figured the Commission should have the authority to do that. That would at least put this in the books and give everyone a path forward.

Chair Spiegel:

Do we have any additional questions? Seeing none, Senator, do you have any closing remarks?

Senator Denis:

We have heard a lot of different questions. I can speak a little bit to the broker issue. When I think of the brokers and the different things they do, this bill brings consistency across all of the industry and to make sure that agents are doing certain things. Do brokers need to do all that other stuff? They do. I think it just makes for more consistency throughout. I think it will make for better agents, especially new agents. The hardest time is when people are just getting started out in the business. To make sure they are educated properly will help to have

them perhaps stay longer in the business and be able to function. Some of the little things may not seem significant, but when you are dealing with these issues, it is important.

One of the things I have learned in this process is that every time you are doing a deal, there is so much in the law that you have to follow. They do a great job in that education process. I think giving some additional training on the contracts before will help alleviate some of that for new agents. The classes that I have personally been to are great classes. There is a core set that you have to take and then there are optional ones to get the additional hours you need. They even give you the ability to do some online and some in person. This just makes it a little better for all agents and for the profession as a whole. I hope you can find a way to support it.

Chair Spiegel:

We will now close the hearing on Senate Bill 230 (1st Reprint). Is there any public comment? [There was none.]

The meeting is adjourned [at 3:18 p.m.].

RESPECTFULLY SUBMITTED:

Karen Easton
Committee Secretary

APPROVED BY:

Assemblywoman Ellen B. Spiegel, Chair

DATE: _____

EXHIBITS

[Exhibit A](#) is the Agenda.

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

[Exhibit C](#) is a packet of letters in support of Senate Bill 37 (1st Reprint).

[Exhibit D](#) is a packet of letters in opposition to Senate Bill 37 (1st Reprint).

[Exhibit E](#) is a letter dated April 26, 2019, in support of Senate Bill 170 (1st Reprint), to Chair Spiegel and members of the Assembly Committee on Commerce and Labor, authored by Michael C. Edwards.

[Exhibit F](#) is a letter dated April 27, 2019, in support of Senate Bill 170 (1st Reprint), authored by Lesley Dickson, Nevada Psychiatric Association, and presented by Lea Cartwright, representing Nevada Psychiatric Association.

[Exhibit G](#) is a packet of letters in support of Senate Bill 170 (1st Reprint).

[Exhibit H](#) is a proposed amendment to Senate Bill 230 (1st Reprint), submitted by Nevada Realtors.