

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

**Eightieth Session  
May 20, 2019**

The Committee on Commerce and Labor was called to order by Chair Ellen B. Spiegel at 1:56 p.m. on Monday, May 20, 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](http://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:**

None

**STAFF MEMBERS PRESENT:**

Patrick Ashton, Committee Policy Analyst  
Wil Keane, Committee Counsel  
Karen Easton, Committee Secretary  
Olivia Lloyd, Committee Assistant

Minutes ID: 1179



**OTHERS PRESENT:**

Lucas Foletta, representing Nevada State Board of Optometry  
Caren C. Jenkins, Executive Director, Nevada State Board of Optometry  
Michael Hillerby, representing Nevada Optometric Association

**Chair Spiegel:**

[Roll was taken and Committee rules and protocol were reviewed.] I will open the hearing on Assembly Bill 77 (1st Reprint).

**Assembly Bill 77 (1st Reprint): Makes various changes to provisions governing the practice of optometry. (BDR 54-366)**

**Lucas Foletta, representing Nevada State Board of Optometry:**

With me today is Dr. Mariah Smith, a member of the Nevada State Board of Optometry. We are here to present the proposed amendments to Assembly Bill 77 (1st Reprint) we have worked on with members of the Committee since this bill was previously heard by this Committee. I will quickly go through those changes as a group. These changes are contained in the amendment explainer document ([Exhibit C](#)) on the Nevada Electronic Legislative Information System (NELIS). Also on NELIS is a mock-up of the bill ([Exhibit D](#)), reflecting those changes.

The first change in the bill is in section 4.5 [pages 5 and 6, ([Exhibit D](#))]. We are changing the proposed language to the requirements relating to the issuance of a certificate by endorsement to treat glaucoma, whereas before the bill required, among the standards applicable in that circumstance, the person applying for the certificate not have been held criminally or civilly liable for malpractice in their home state or home jurisdiction. That language was removed based on conversations with a member of the Committee, and new language consistent with similar language in other chapters regarding endorsement is being added that requires no adverse actions have been reported to the National Practitioner Data Bank in the past five years. We are also adding language to that section which says the certificate to treat glaucoma in the home jurisdiction was issued in relation to a standard comparable to our state.

The next change is in section 10 [pages 7 and 8], removing all the proposed changes to that section that had previously been proposed. The effect of that is the existing statutory language will not change, meaning the way lenses are adapted, prescribed, and dispensed is not changing in the state.

The next set of changes is in sections 22 and 23 [pages 12 and 13]—the licensing process the Nevada State Board of Optometry goes through to issue licenses. There are two references to the licensing by enforcement sections—one in section 22 and one in section 23. We had proposed striking those as cleanup, but again in conversations with a member of the Committee, we are inserting the language back in—essentially clarifying that the licensure by endorsement standard, and to the extent it is inconsistent with the general licensure standard, will apply and be operative.

The next change is in section 42 [pages 19 through 21, ([Exhibit D](#))]. One of the requirements the Board had proposed adding to the list of items—the violation of which would be grounds for disciplinary action—is a failure to comply with the requirements of *Nevada Revised Statutes* (NRS) Chapter 89. That chapter contains the requirements for professional corporations. We are proposing to strike that proposed added language, so a failure to comply with the requirements of NRS Chapter 89 will no longer be grounds for disciplinary action.

The next changes are in section 49 [pages 24 and 25] and relate to the practice of optometry under a fictitious name. Again, in conversation with a member of the Committee, we are proposing striking the requirement that the use of the fictitious name be consistent with the requirements of NRS Chapter 602. The effect of that change is that the Board will not be enforcing the requirements of NRS Chapter 602, but the entity in charge of enforcing NRS Chapter 602 will presumably be doing that. In any case, we are proposing striking that proposed language.

The next change is in section 57.5 [page 29], relating to the authority of the Board to seek an injunction against certain members who may be acting inappropriately. The original language had indicated the Board could seek an injunction without proof of actual damage. We are proposing striking that language so as not to affect the evidentiary standard applicable in the case that the Board seeks an injunction.

The final change is in section 58 [page 30]. The Board had originally proposed striking the last sentence of section 58, which said that the penalty associated with a violation of the Board's chapter would be the greater of whatever the violation is under NRS Chapter 200 or a misdemeanor. *Nevada Revised Statutes* Chapter 200 is essentially crimes against the person. We had originally proposed striking that language, but I can see how it would create confusion in terms of whether the requirements of NRS Chapter 200 would apply in a circumstance where someone was committing the crime and also violating the requirements of NRS Chapter 636, so we are removing the proposed striking of that language so we do not inadvertently create a conflict between the two chapters. That concludes the summary of the changes.

**Chair Spiegel:**

Does the Committee have any questions regarding the changes?

**Assemblyman Kramer:**

There was a portion in this before on having opticians making lenses. I did not look at the part you just went over. Can you tell me how that ended up?

**Lucas Foletta:**

The bill originally proposed requiring a valid prescription be presented when an optician was dispensing or replicating a lens. That is no longer a requirement of the bill. That language was removed before the second hearing.

**Assemblyman Yeager:**

Section 15 [page 10, ([Exhibit D](#))] talks about investigations that are conducted by the Board in determining whether to initiate disciplinary action. This section indicates the documents are confidential unless the person asks they be made public records. If there is a determination by the Board that someone committed malpractice or was out of the scope of his or her practice—if something goes to litigation—would a court be able to render those documents discoverable in the underlying litigation? Can you give me a sense of how often the Board is doing these types of investigations? I am trying to get a sense of how big an issue we are talking about.

**Lucas Foletta:**

I do not know definitively whether a court could make those documents available to the litigants in a contested court case. It is my understanding that this language was proposed by the Office of the Attorney General to make it consistent with how other boards handle investigatory files. I will defer to Ms. Jenkins, the Board's Executive Director, to see if she has other information.

**Caren C. Jenkins, Executive Director, Nevada State Board of Optometry:**

The reason for the confidentiality is that each complaint that comes into the Board is sent to a meeting of the Board—a public hearing. For any complaint that comes in, the licensee is kept confidential until the Board determines that based on the alleged and investigated facts, without knowing who the respondent is, there is just and sufficient cause to go forward to a full hearing. If there is not sufficient cause to go forward, the complaint is dismissed because the complainant did not provide enough substantial information. That preliminary investigatory information is kept confidential and the name of the licensee is kept confidential because the case is dismissed. If there is sufficient cause, it goes forward and is no longer confidential. We receive about 30 complaints per year, with approximately 8 to 10 going forward.

**Assemblyman Yeager:**

I obviously did not read the next subsection, which indicates if there is something filed, the documents then are considered public. That does alleviate my concern.

**Chair Spiegel:**

I do not see any further questions from the Committee. I will move to testimony in support of A.B. 77 (R1).

**Michael Hillerby, representing Nevada Optometric Association:**

We support the bill and thank you and the Committee's indulgence for hearing this bill on so many occasions.

**Chair Spiegel:**

Is there anyone else to testify in support of A.B. 77 (R1)? [There was no one.] Is there anyone who wishes to testify in opposition to A.B. 77 (R1)? [There was no one.] Is there anyone to testify as neutral on A.B. 77 (R1)? [There was no one.] There are no closing remarks.

[([Exhibit E](#)) was submitted but not discussed and is included as an exhibit for the hearing.]

We will close the hearing on A.B. 77 (R1). Is there anyone in Las Vegas or Carson City who wishes to make public comment? [There was no one.] The meeting is adjourned at [2:10 p.m.].

RESPECTFULLY SUBMITTED:

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Karen Easton  
Recording Secretary

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Gina Hall  
Transcribing Secretary

APPROVED BY:

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Assemblywoman Ellen B. Spiegel, Chair

DATE: \_\_\_\_\_

## EXHIBITS

[Exhibit A](#) is the Agenda.

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

[Exhibit C](#) is a document titled "AB 77 Amendment Explainer," presented by Lucas Foletta, representing Nevada State Board of Optometry.

[Exhibit D](#) is a mock-up of [Assembly Bill 77 \(1st Reprint\)](#), presented by Lucas Foletta, representing Nevada State Board of Optometry.

[Exhibit E](#) is a written letter dated May 16, 2019, to Chair Ellen B. Spiegel and Vice Chair Jason Frierson, in support of [Assembly Bill 77 \(1st Reprint\)](#), authored by Alan Matarasso, President, American Society of Plastic Surgeons.