

**MINUTES OF THE LEGISLATIVE COMMISSION'S SUBCOMMITTEE TO  
REVIEW REGULATIONS**

**OCTOBER 15, 2010**

The meeting of the Legislative Commission's Subcommittee to Review Regulations was called to order by Chair Marcus L. Conklin at 9:24 a.m. on October 15, 2010, at the Grant Sawyer State Office Building, Room 4401, 555 East Washington Avenue, Las Vegas, Nevada, and via simultaneous videoconference at the Legislative Building, Room 3137, 401 South Carson Street, Carson City, Nevada, and at the Great Basin College, Room 124, Greenhaw Technical Arts Building, 1500 College Parkway, Elko, Nevada. The Agenda is included as [Exhibit A](#) and the Attendance Roster is included as [Exhibit B](#). All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMISSION MEMBERS PRESENT (LAS VEGAS):**

Assemblyman Marcus L. Conklin, Chair, Assembly District No. 37  
Senator Maggie Carlton, Clark County Senate District No. 2  
Senator Steven A. Horsford, Clark County Senate District No. 4  
Assemblywoman Marilyn Kirkpatrick, Assembly District No. 1  
Senator Joyce L. Woodhouse, Clark County Senate District No. 5

**COMMISSION MEMBERS PRESENT (CARSON CITY):**

Senator Mike McGinness, Central Nevada Senatorial District  
Senator Maurice E. Washington, Washoe County Senate District No. 2

**COMMISSION MEMBERS PRESENT (ELKO):**

Assemblyman John C. Carpenter, Assembly District No. 33

**STAFF MEMBERS PRESENT:**

Brenda Erdoes, Legislative Counsel  
Risa B. Lang, Chief Deputy Legislative Counsel  
Angela Clark, Deputy Administrator, Legal Division, Legislative Counsel Bureau  
Olivia Lodato, Interim Secretary, Legal Division, Legislative Counsel Bureau

**OTHERS PRESENT:**

Larry L. Pinson, Pharm. D., Executive Secretary, Nevada State Board of  
Pharmacy

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Walter Bruce Robb, Counsel, Nevada State Board of Engineers and  
Professional Surveyors  
Gustavo Nunez, P.E., Manager, State Public Works Board  
Susan Stewart, Deputy Attorney General/Construction Law, State Public  
Works Board  
Carol Sala, Administrator, Aging and Disability Services Division, Nevada  
Department of Health and Human Services  
Keith Lee, Legislative Counsel, Nevada State Board of Medical Examiners  
Edward Cousineau, Deputy Executive Director, Nevada State Board of  
Medical Examiners  
Benjamin Rodriguez, Board Member, Nevada State Board of Medical  
Examiners  
Mark Evans, Supervising Personnel Analyst, Department of Personnel  
Teresa Thienhaus, Director, Department of Personnel  
Paul Shubert, Bureau of Health Care Quality and Compliance  
Wendy Simons, Chief, Bureau of Health Care Quality and Compliance  
Lorayn Walser, Management Analyst II, Nevada State Office of Energy

Chair Conklin opened the meeting and requested Ms. Clark call the roll of members present.

Ms. Clark called the roll and stated all members were present except for Senator Washington, who would arrive soon.

Chair Conklin asked for a motion concerning the minutes from the previous meeting.

MS. KIRKPATRICK MOVED TO APPROVE THE MINUTES FROM THE MEETING OF JUNE 30, 2010.

SENATOR CARLTON SECONDED THE MOTION.

THE MOTION CARRIED.

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Chair Conklin said R128-10, a State Board of Pharmacy regulation, was not adopted and therefore was not on today's agenda.

Senator Carlton asked when the regulation would be ready. She said it was a very important regulation dealing with the flu vaccine coming into the Valley. She hoped they would move quickly on the regulation.

Mr. Larry Pinson, Executive Secretary, Nevada State Board of Pharmacy, said the Pharmacy Board reviewed the regulation yesterday and decided the regulation was not necessary due to existing regulations. The regulation clearly stated that if drugs and vaccines were stocked they needed to be stored in the proper manner. He said the Board would approach the inspections of the facilities aggressively through the inspectors and they would check every refrigerator and freezer in the State.

Senator Carlton said she was confused. The Board apparently thought it was a significant enough issue to pursue the regulations. She said the regulation was good public policy with safeguards built into it.

Mr. Pinson responded that there were several considerations, including one which mandated how pharmacies should comply with freezer and refrigerator requirements. He said it was difficult to specify a specific thermometer when regulations already required storing vaccines and medications according to the manufacturer's specific requirements. The Board felt the regulations already existed.

Senator Carlton asked how many vaccinations were returned to the manufacturer last year because there was an incident where they were not kept properly and could not be given to the public.

Mr. Pinson said he had no idea how many were returned, but he thought it would be a small number if any.

Senator Carlton hoped that was the case because people were standing in line for the vaccination. She said there were shortages previously and there were still going to be shortages.

Senator Horsford said he had similar questions. He said he was unclear whether this was already done or the Board was going to monitor this without a regulatory oversight provision.

Mr. Pinson replied it was already being done. He said there was a regulation requiring the proper storage of drugs and every pharmacy did it.

Senator Horsford asked what the regulation was and where was it located.

Mr. Pinson said the language in the proposed regulation was in 639.469, section 2, number 5 and it stated the temperature of the pharmacy must be maintained within a range compatible with the proper storage of drugs. The temperature of the refrigerator must be maintained within a range compatible with the proper storage of drugs requiring refrigeration. He said it was already present in regulation and every pharmacy had policies and procedures to address the question also. He was confident the vaccines were correctly stored.

Chair Conklin asked where exactly the language was in the regulation. He said this was an amendment to the current regulation, but there was appropriate and necessary authority without a new regulation.

Mr. Pinson said that was correct.

Senator Horsford said there was a difference between a range and saying in the proposed regulation between 36 degrees Fahrenheit and 46 degrees Fahrenheit. He said it was an important distinction based on certain products that were being dispensed. In his professional capacity with food, if they did not prepare and deliver and keep stored at a certain temperature, food could become contaminated. He did not understand how they could guarantee the refrigerator temperatures would be maintained based on some range that was not clearly defined in the current regulation. He asked why the Board chose to suddenly not process that regulation if the current regulation was so broad and not defined.

Mr. Pinson said there was language that said a refrigerator equipped with a thermometer to insure proper control of temperature was required. There was testimony from the retail association, and pharmacy owners who objected to a certain type of thermometer being required. He said the Pharmacy Board had inspectors checking all pharmacies and if they did not comply they were required to discard the product.

Senator Horsford said the inspectors could not be everywhere every day, every place, every time. He said if they do not give clear guidelines and someone was not following the guidelines the public's health was put at risk. He did not understand how the regulations were removed because there were concerns raised by the industry and the Board decided not to move

forward with a public health policy. He asked Mr. Pinson what the vote from the Board was on the regulation.

Mr. Pinson replied the vote was unanimous because the Board believed the language already existed and was strong enough.

Senator Horsford said he respectfully disagreed with that:

"...clearly the language is not clear enough. There is a difference between a range, a difference between a refrigerator that is equipped with a thermometer to insure proper control of temperature versus the language proposed in Section 1 and Section 2 of the regulation. I guess there is nothing we can do about this because the Board did not take action. I want it to be clear and on the record, that I think the public's health is not being fully protected because this regulation was not adopted by the Board because of some concerns raised by the industry that may or may not be in the public's best interest."

Chair Conklin said because the regulation was not adopted by the Pharmacy Board the subcommittee had no jurisdiction over it. However, the Legislature could consider a bill to rectify the situation.

Mr. Pinson said he would take Senator Horsford's concerns back to the Board for further discussion.

Senator Horsford thanked Mr. Pinson for listening to his concerns.

Chair Conklin opened discussion on Agenda Item III. He said they would vote on all the uncontested regulations. The regulations not held for further discussion were: R137-08, R175-08, R202-08, R203-8, R073-09, R074-09, R075-09, R076-09, R077-09, R079-09, R095-09, R095-09, R097-09, R099-09, R099-09, R110-09, R206-09, R207-09, R209-09, R044-10, R046-10, R048-10, R049-10, R050-10, R054-10, R057-10, R059-10, R066-10, R070-10, R071-10, R089-10, R092-10, R095-10, R107-10, R033-09A, R10909, R154-09A, and R064-10.

Chair Conklin listed the regulations held for further discussion: R078-09, R096-09, R098-09, R129-09, R152-09, R167-09, R037-10, R052-10, R058-10, R060-10, R065-10 and R085-10. He asked for a consent motion for the remaining regulations.

SENATOR HORSFORD MOVED TO ACCEPT BY CONSENT THE REGULATIONS NOT HELD FOR FURTHER DISCUSSION.

SENATOR WOODHOUSE SECONDED THE MOTION.

THE MOTION CARRIED.

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Chair Conklin opened discussion on R078-09 and R152-09, State Board of Professional Engineers and Land Surveyors.

Walter Bruce Robb, Counsel, Nevada State Board of Professional Engineers and Land Surveyors, said the Executive Director of the Board and the Vice Chair of the Board were also present. He said the Chairman of the Board and the newest members of the Board were present in Las Vegas.

Mr. Carpenter asked why R078-09 was necessary. He said it was going to cost an additional \$20,000 to register the firms over and above the fee being charged. He asked where the extra money would come from and if they had problems with firms when all the individuals in the profession were already registered.

Mr. Robb replied that the regulation was patterned off an existing statute, NRS 625.179, adopted by the Legislature in 1997. The statute anticipated the day would come when Nevada grew enough to require firms practicing either professional engineering or land surveying be registered so the Board could identify the professionals operating the firms who had come to Nevada. He said the shortfall of money was estimated and not a firm number. There was an adequate contingency fund to address the \$20,000 shortfall.

Mr. Carpenter still questioned why it was needed and asked what kind of problems had occurred without the firms being registered.

Mr. Robb replied that the Board was concerned a firm could come to Nevada, offer professional services to the public and they would not be able to adequately identify who the professional was operating that office. He said by requiring the information in the regulation they could quickly identify which professional was operating the branch office.

Mr. Carpenter said each of the professionals had to be registered. He asked if they listed the firms where they worked. He did not understand why the extra \$50 was needed by the Board.

Mr. Robb said the \$50 was as minimal an amount as they could possibly charge in these difficult economic times. He said it was an amount set by the Legislature in 1997 and the Board had not increased the fee.

Chair Conklin asked if there were further questions concerning R078-09. He said the next regulation for discussion was R152-09.

Mr. Carpenter said if someone went into an office to talk to a surveyor or engineer, they would have to enter into a written contract with each client specifying the scope of the work. He said it was not necessary each time you went to an office to have a contract executed and that was extra work the clients would be charged for and it was unneeded. He said contracts for specific jobs made sense.

Mr. Robb said as long as the people being dealt with were honest there was no requirement for a written contract for the discussion. He said if the professional was going to do a project, it was helpful for the client to know what the professional was going to do, how much it would cost, and when would the work be completed. A written contract meant less ambiguity, less cause for friction, and both sides were clear on the scope of the work.

Mr. Carpenter said the way the regulation was written, a contract was needed to talk to the professional. He said the regulation should have been clear that a contract was not required for every discussion. Once major work was agreed upon, the contract was needed.

Chair Conklin asked Mr. Robb if a person could talk to the professional, but a contract was needed before work was performed.

Mr. Robb replied Chair Conklin was correct.

SENATOR HORSFORD MOVED TO APPROVE R078-09 AND R152-09.

SENATOR CARLTON SECONDED THE MOTION.

THE MOTION CARRIED. (MR. CARPENTER VOTED NO ON R078-09.)

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Chair Conklin opened discussion on R096-09 and R098-09. He asked representatives from the State Public Works Board to testify.

Ms. Kirkpatrick had questions concerning R096-09. She said the regulation did not address the issue that was before the Government Affairs Committee during Session. She said the point was to solve the problem before it went on for too long. The regulation did not seem like mediation. She heard testimony that expressed a wish to expedite the process for time savings for both parties as well as financial savings.

Gustavo Nunez, Manager, State Public Works Board, said Susan Stewart was also present today. The regulation was a result of the 2009 Legislation deleting mandatory binding arbitration from the law. It provided that the actual contract specify the methodology for dispute resolution of construction contracts. He said the formal process did not start until there was an actual claim. When there was a disagreement between the owner's side and the contractor's side on an issue, the decisions were discussed and most of the time resolved at that level. If no resolution occurred in the field with the parties involved, it moved up to the Deputy Manager for Professional Services to try to resolve the issues. If resolution still was not obtained it moved up to the manager and the owner of the contract and became a formal process. He said it became a claim if it reached an impasse in the field.

Susan Stewart, Deputy Attorney General/Construction Law, State Public Works Board, said the regulation heard no disagreement to the process during the workshops held by industry representatives. The main focus of the process was to resolve the issue, any dispute, internally before it went to a formal mediation process outside of State Public Works. She said the staff tried to resolve the issue directly with the contractor. If that failed, within 30 days, staff or the contractor had to file a claim for review. The claim went to the Board and within 45 days of receipt of the claim, the Board had to have a hearing. The State Public Works Board was trying to resolve the issue internally before it went outside for mediation. She said the parties could agree that the hearings before the Board were binding or non-binding.

Ms. Stewart reiterated that the primary focus was to resolve the issue internally before it went outside to a formal mediator. In the internal process

each party was responsible for their own costs so there was an incentive to keep the cost down and move the process forward informally.

Ms. Kirkpatrick said it still did not answer her questions. She wanted to hold the regulation because it was not the mediation the Committee discussed or the problems they had talked about during the Session.

Mr. Carpenter agreed to a motion to not go forward with the regulation.

MS. KIRKPATRICK MOVED TO HOLD R096-09 FOR FURTHER REVIEW AND DISCUSSION.

MR. CARPENTER SECONDED THE MOTION.

THE MOTION CARRIED.

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Chair Conklin opened discussion on R098-09.

Mr. Carpenter asked why a Fax was not acceptable for use with the State Public Works Board.

Mr. Nunez responded that the regulation allowed for the use of Fax and photocopied applications to be received by the State Public Works Board. He said currently they were not able to receive Faxed applications. They notified all applicants the results of their qualifications by certified mail and the proposed regulation was if it was a "pass" they were notified by regular mail and if it was a "denial" then they notified by certified mail. He said it would be a cost savings for the department to use the regular mail because they do not charge for prequalifying bidders.

Mr. Carpenter said he had read the regulation incorrectly.

MR. CARPENTER MOVED TO ADOPT REGULATION R098-09.

Chair Conklin asked Mr. Nunez why other forms of media such as emails were not acceptable.

Mr. Nunez said an email or a PDF application was acceptable if it had an original signature.

SENATOR HORSFORD SECONDED THE MOTION.

THE MOTION CARRIED.

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Chair Conklin opened the discussion on R129-09, the Board of Examiners for Long-Term Care Administrators.

Mr. Carpenter said it was difficult to read the regulation and understand what the Board was trying to accomplish. He asked why the regulation had to be so long.

Ms. Kirkpatrick said Mr. Carpenter was absolutely right. She said in one portion of the regulation it stated fines of \$250, but in another area it said \$500. She said it appeared there was no idea how much the examination cost. It was confusing to the public and it was unclear to her what the regulation meant.

Carol Sala, Administrator, Aging and Disability Services Division, Nevada Department of Health and Human Services, said there were several things the Board was trying to accomplish through the regulations. She said a mentor program was created for people applying for group home licenses. However, there were no regulations in place to govern the program. She said R129-09 defined who could be a mentor. The language was lengthy, but oversight was needed for the program. Ms. Sala said statute was changed last Session to give the Board subpoena powers. She said there were more complaints before the Board and now they could subpoena someone to appear before them.

Ms. Sala said the licensing fees were increased for facility administrators of nursing homes and also for group homes. She said the cost of running the Board necessitated increasing the fees. She added the renewal fees were also increased. They attempted to define in statute the fines that previously were vague. The Board tried to define the amount or range of fines for the various activities before the disciplinary board.

Ms. Sala did not know why the fees were \$250 in one area of the regulation and \$500 in another. She said they were also trying to capture oversight of those people who were hanging their licenses in multiple group homes. They

can hang their license in up to five group homes by regulation. She said the Board was finding "bait and switch" licensing occurring and they needed regulations to enable the Board to fine them for such activity. She said it was a long process forming the regulations.

Ms. Kirkpatrick said significant improvements had occurred since the 2005 Session. She wanted clarity for the record on some of the issues. She thanked Ms. Sala for her testimony.

Mr. Carpenter wondered if there was a reason to raise the renewal fee for the administrator of a facility from \$250 to \$350.

Ms. Sala responded that the members of the Board were community volunteers with the exception of herself and the executive secretary. The cost of doing business was supported by fees collected through the licensure process. She said the fees did not cover the cost of the Board. When a person came before the Board for disciplinary action, the fines were returned to the Board's budget. They were also charged for the cost of the investigation and the Attorney General's office billed the Board for their work. They had difficulty collecting fees from people who appeared before the Board and surrendered their license. She said raising the fee from \$250 to \$350 was discussed in public workshops and hearings. She said members of the industry attended and agreed to the increase as it was the only way that supported the Board.

Mr. Carpenter asked if the long-term care facilities were being operated in a more negligent manner than they use to be.

Ms. Sala replied the majority of the disciplinary actions coming before the Board were residential facilities for group administrators, the small group home operators. She said the nursing facilities were not coming before the Board with issues, it was the small group homes popping up in southern Nevada causing the issues.

Ms. Kirkpatrick said the industry wanted to eliminate the bad homes. She said a lot of time was spent pursuing non-licensed homes that were creating a problem and she understood the industry was in support of the fees.

Mr. Carpenter said the group homes, if they are run correctly, do a great service. He said in the Elko area they were fine. They served a real need in his community.

Chair Conklin said he would accept a motion on R129-09.

SENATOR HORSFORD MOVED TO ADOPT REGULATION R129-09.

SENATOR WOODHOUSE SECONDED THE MOTION.

THE MOTION CARRIED.

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Chair Conklin opened discussion on R167-09, and R052-10, Board of Medical Examiners.

Senator Carlton said it was a complicated issue concerning medical assistants. She needed to know what problem the regulation was solving. Her concern was that medical assistants who were not licensed by the State were performing functions within the scope of practice of a licensed person. The State should be licensing or registering medical assistants. She understood giving a basic shot was something most people could be trained to do but she had concerns about the scope of practice in the non-licensure issues.

Keith Lee, Legislative Counsel, Nevada State Board of Medical Examiners, said Ed Cousineau and Dr. Benjamin Rodriguez were also present. He said under current regulations medical assistants were recognized and permitted to do a number of things. A licensed physician was responsible for the training necessary for the medical assistant and there was a provision for discipline against a licensed physician who did not adequately and properly supervise a medical assistant. He said there were a number of BDRs already in place and they anticipated much discussion concerning the licensing, registration, supervision, training, and qualifications of medical assistants in the next legislative session. The regulation was attempting to provide safe guards to clarify certain definitions, to include new definitions, and to provide that the medical assistant had an employment relationship with either the supervising physician or the supervising physician's assistant. He said the regulation was a stop-gap measure until the new legislation was in place. The goal was to provide additional safe guards to the public for the use of a medical assistant that was already permitted under regulation by a licensed physician.

Edward Cousineau, Deputy Executive Director, Nevada State Board of Medical Examiners, stressed that the Board was advancing the regulation in an effort to clarify the current existing supervisory requirements of its licensees as it related to medical assistants. The language incorporated in the regulation had definitions that did not exist in the earlier regulations. He said proximate supervision and rural supervision were terms that would further clarify and assist the licensees based on their circumstances and the appropriateness of using medical assistants. He said the Board recognized there was potential for many changes in the current regulations as they exist now and the Board believed the regulation served a purpose in the interim and would give the medical community time to allow for the Legislature to make determinations as it related to training, certification, and scope of practice as it related to medical assistants. He said medical assistants and non-licensed personnel were ubiquitous in this State. They hoped the regulation would give definition to how medical assistants operated in the future.

Senator Carlton said her concerns were whether the patients knew who was actually treating them. She said she did not have a problem with the term physician extenders. She knew doctor's licenses were on the line by allowing medical assistants to do some procedures. She was concerned there was no real jurisdiction if something went wrong.

Mr. Cousineau did not dispute what Senator Carlton said. He said if there was an instance where a medical assistant's conduct resulted in harm to a patient, the Board was not lacking in ability to prosecute that shortcoming. He said it would not be prosecuted to the non-licensee, but rather as it related to the licensee.

Senator Carlton said she would be more comfortable if she knew a medical assistant who was allowed to give an injection had been trained in the 1-1-1 theory. She said anytime something invasive occurred more training was required. She reiterated she had serious concerns.

Mr. Cousineau said the language in the regulation, approximate supervision, addressed her concern. The language included immediate proximity and included a heightened requirement for oversight.

Senator Carlton said she still had concerns. She said it was important that people receive their immunizations and vaccinations. She said it was more of a legislative public policy decision rather than a regulatory decision.

Mr. Lee responded saying if the regulation did not go forward, they would continue under the present regulation which was much broader than the proposed regulation. There was no prohibition for medical assistants to perform work delegated to them by licensed physicians. He concurred it was an important issue that needed addressing at a policy level through the legislative process. He suggested the proposed regulation tightened what was presently in regulation and added additional responsibility and provided a better definition of proximate supervision. He said it also provided a definition of rural supervision.

Senator Horsford asked Mr. Lee for a clarifying point. He said the current regulation that was adopted was still in place regardless of whether the new regulation was adopted today.

Mr. Lee responded that the emergency regulation adopted on or about September 18, 2009, was the subject of a temporary restraining order in the 8th Judicial District Court brought on behalf of some physicians down there. It resulted in the withdrawing of the emergency regulation which then had the legal effect of reinstating the old regulation. He said the regulation had been in effect for a number of years. It was NAC 630.230. The regulation the Board was dealing with now with respect to medical assistants was NAC 630.230, the old regulation, not the emergency regulation.

Senator Horsford said:

"...right, but that there is a regulation in place that allows, with the direction of the physician, for medical assistants to perform certain functions. So, I just wanted to make sure that was clear on the record. Secondly, to Senator Carlton's point, there is a policy discussion, and you agree with it Mr. Lee, that really has to be set by the Legislature. We are 90 days out from the next legislative session and so my concern about moving forward with this regulation is that it's premature. I think there is something like four bill drafts on this very subject for the next legislative session, one of which came from the interim committee on health care which is a bipartisan committee made up of both houses, that I clearly identified this as an issue that needs to be addressed. So, my question to you Mr. Lee or to the Board is why can't we wait to have this policy discussion because that policy needs to be set by the entire legislature and the next governor, not through regulation by the Board."

Mr. Lee said they concurred it was a policy discussion that will occur in the Legislature. However, when a bill was passed the earliest effective date would probably be July 1, 2011, or even January of 2012 before it was implemented. He said the Board suggested the proposed regulation was a stop gap measure that strengthened the current regulation. It provided additional assurances and safeguards and provided comfort to the public that there was proper oversight by the physician of the medical assistant. He said clearly any regulation approved would wipe out this legislation and the Board would start over again with whatever public policies were adopted next session. He suggested the regulation was needed to strengthen the current regulation.

Senator Horsford said:

"I appreciate the time issue that's involved here. But the precedence being set is to allow the Board to make policy in advance of the Legislature. I'm going to make my concerns, my concerns are more about that, the process and the precedent of the Board setting policy in advance of being authorized to do so by the Legislature. That is not something we want done at any point. By having a regulation that's already in place that allows medical assistants upon the direction of a physician to perform certain function is what the current regulation is that is in place. I don't disagree that this strengthens it. But, that's a policy decision that has to come from the Legislature. So, I have a question for legal. First, the timing issue which I don't disagree with. We can pass a bill by, upon passage and approval, secondly the fact that this Board has conducted some public hearings, doesn't that get factored in any future regulation that ultimately could come back before. If we don't process this regulation, the fact that they've already initiated some public hearings and say the provisions of this regulation are in line with some of the policy set by the next Legislature, doesn't that allow that regulation then to be brought forward in a more timely way than what would traditionally be done?"

Ms. Erdoes replied yes. She believed Senator Horsford was saying the agency had already done the workshop, given the notice, and had hearings on the regulation. They could resume working on the regulation and process it more quickly than if they were just beginning after the next Session.

Senator Horsford said if the Legislature so chooses, they can pass a provision upon approval that went into effect on a certain date.

Ms. Erdoes replied they could do that starting the second day of Session and becoming effective immediately.

Senator Horsford hoped he articulated some of his concerns. He said the regulation was premature. He said it needed to come by direction of the Legislature and could be accomplished when the next legislature and next governor were allowed to set the policy.

Senator McGinness agreed with Mr. Lee that it was a stopgap measure. He said his concern was for rural Nevada. If the regulation was not passed, someone in need of a service in rural Nevada might not receive it because it put a damper on the ability of the physicians to utilize medical assistants. His initial concern was in section 7, no. 5 of the regulation that had a definition of a rural area which included everything but Carson City, Elko, Henderson, Reno, Sparks, Las Vegas and North Las Vegas. He said he did not recall a definition of rural Nevada ever being called out in statutes. He asked if this was something new and where it came from.

Mr. Cousineau said the language was enunciated in statute. He said they worked with the Legislative Counsel Bureau and they came to an accord as to the appropriate designations between urban and rural settings.

Ms. Erdoes replied that the definition of rural Nevada was in section 9 of the regulation which amended NAC 630.230, 1H and 1I.

Senator McGinness said his other concern was the proximate supervision being between floors in a building. He said in rural Nevada the proximate supervision could be between Las Vegas and East Ely or McGill. He added that relying on the chance of a bill passing was not always something which happened.

Mr. Carpenter said he had never seen a definition of rural areas before. He wondered what the practical effects of the regulation were in regard to what occurred when the City of Elko was defined as a non-rural area.

Mr. Lee said the way the regulation was written, it was presumed within the city limits of Elko the physician who may be employing a medical assistant came under proximate supervision whereas any other area in Elko County

was considered a rural area and therefore under section 6, rural supervision. He said the limitation in the City of Elko was that proximate supervision would apply in any situation where a physician, a patient, and a medical assistant were combining to have medical services rendered to the patient.

Mr. Carpenter asked what would happen if the physician was in Elko and the patient and the medical assistant were in Carlin.

Mr. Lee replied it would be rural supervision since the patient and the medical assistant were in the rural area. He said it did not matter where the physician was located in that circumstance.

Mr. Carpenter said a physician from Elko was concerned the medical board was not notifying the doctors of the regulations and the exact wording of them. He said the doctor had received a newsletter from the Board, but it was infrequent and the exact wording of the regulations was not in the newsletter.

Mr. Cousineau said it was a quarterly newsletter and they made an effort to apprise the licensee populace as to regulations in process or adopted. He said they also followed the regular requirements under the Administrative Procedures Act as to noticing licensees of the Board's intent to proceed on the adoption of regulations. They also had a website with regulations that were being considered or adopted. He said the licensees could call the Board and speak legal counsel.

Mr. Carpenter asked if the actual wording of the proposed regulation was put in the newsletter and if there were changes, what they would be when they were submitted to the Legislative Commission or this committee.

Mr. Cousineau said when the regulations were adjudicated at the Board level, they were subsequently tendered to the Legislative Counsel Bureau with any changes recommended by the Board. Immediately after the Board received the language from the Legislative Counsel Bureau it was placed on the website. He added if there was more concern to call him or other Board members for the status of the regulations.

Mr. Carpenter asked Mr. Cousineau to call Dr. Louis Bergeron in Elko and send him exactly what the Board was doing.

SENATOR HORSFORD MOVED TO HOLD REGULATION R167-09 FOR FURTHER DISCUSSION.

SENATOR CARLTON SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR MCGINNESS VOTED NO.)

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Chair Conklin said there was a Legislative Commission meeting on December 16, 2010, and he suggested Mr. Lee meet with the Majority Leader of the Senate and any additional members who had questions about the regulation. Chair Conklin opened discussion on R052-10.

Mr. Carpenter said Dr. Bergeron wanted to speak to the regulation. His concern was that there was a substance being used for problems of obesity that he believed should continue to be used. Mr. Carpenter said Dr. Bergeron said the drug had been banned in Maine.

Mr. Lee said he understood the problem was the regulation prohibiting the use of HCG for the treatment of obesity. Mr. Lee said the regulation proposed permitting physicians to exercise their training, skills, and discretion in the administering of drugs such as HCG and others that were being deleted from the prohibition. He said the effect of the regulation was to allow physicians to more broadly exercise their skills in how to treat diseases.

Mr. Carpenter said they needed to get the word out to the doctors in a timely manner and needed clearer language in the regulations.

Chair Conklin asked Mr. Lee why Item G in the regulation outlawed the drug in the first place and what was the new information that made it acceptable.

Mr. Cousineau said the paragraph he referenced was first established in 1979 and ultimately additions were made. He said the Board received a petition last year to consider modification of the current existing regulation. The petitioner believed the current language was dated and vague. He said the Board said the regulation should be stricken in its entirety. The consensus of the Board was it should not delineate which drugs or medications were acceptable for an individual circumstance.

Chair Conklin asked if the substances were banned in other states.

Mr. Cousineau said Nevada and Maine were the only states who banned the use of HGC for the control of weight. He said it was not an illegal drug, but its uses were limited pursuant to regulation.

Benjamin Rodriguez, Board Member, Nevada State Board of Medical Examiners, said Nevada was one of the few states that prohibited HGC for weight control. He said it was shown to be safe and had been used for many decades. He added it was an archaic prohibition in Nevada.

SENATOR CARLTON MOVED TO ADOPT REGULATION R052-10.

MR. CARPENTER SECONDED THE MOTION.

THE MOTION CARRIED.

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Chair Conklin opened discussion on R037-10, State Board of Pharmacy.

Mr. Carpenter thanked the Pharmacy Board for adopting the regulation. He said it was part of a bill he introduced last Session. The regulations would help the pharmacists, the doctors, and the patients in rural Nevada.

MR. CARPENTER MOVED TO ADOPT REGULATION R037-10.

MS. KIRKPATRICK SECONDED THE MOTION.

THE MOTION CARRIED.

\* \* \* \* \*

Senator Carlton disclosed she worked for an organization that represented the federally qualified health centers in the State.

Mr. Pinson stated on behalf of the Board of Pharmacy it was a pleasure working with Assemblyman Carpenter.

Chair Conklin stated the next regulation for discussion was R058-10.

Mr. Carpenter said administrative leave was there for a purpose. He said if somebody appeared to have done something wrong so they were placed on administrative leave with pay. Usually there was something wrong and he did not believe they should be brought back to work until they were cleared. He said the process needed to be greatly speeded up.

Mark Evans, Supervising Personnel Analyst, Department of Personnel, said the regulation change clarified a common practice most agencies used when they put an employee out on administrative leave. He said the employee was told they were subject to recall in case they needed to be brought in for questioning or if the investigation was completed and there was no wrong doing, it allowed the employee to return immediately. He said it was common practice in many of the agencies and clarified for the employees what was expected of them when they were on administrative leave. They needed to be available to answer questions based on the investigation. He said once the investigation was completed, discipline would then go forward.

Mr. Carpenter thanked Mr. Evans for the information.

Senator Horsford said the regulation stated the employee must be available to report to a work site or another location as directed by the supervisor of the employee during regular business hours. He asked if there was a time period whereby they were notified. He had heard of instances where people were told on Friday to start something on Monday in a different city within State government. He asked if someone on administrative leave was told to show up at a work site in another location, was there a period of time in which they must comply or was it just "do it."

Mr. Evans said typically they reported during regular business hours that were established as 8:00 a.m. to 5:00 p.m. He said if they worked a late shift or early shift, for the purposes of investigation and while they were on administrative leave, it was normally during regular business hours. Usually the reason for another location was if it were a sexual harassment investigation or something to do with potential workplace violence issues. He said if someone were told to report to an investigation from Reno in Las Vegas, the agency would be responsible for travel costs. The intent of administrative leave was the employee needed to be ready to return to work. He said the agency needed to give the employee a reasonable amount of time to appear.

Senator Horsford said the reasonableness issue was not in the regulation and that was his concern.

Teresa Thienhaus, Director, Nevada Department of Personnel, said in the workshop there was discussion about putting a time limitation in the regulation. The problem was that in Nevada it was difficult to determine a reasonable amount of time to get to a work site. She said what was reasonable in Las Vegas might not be reasonable in Elko County. There was an understanding that there would be a reasonable amount of time. She recognized Senator Horsford was not pleased, but the whole state and the distances people were from their work site needed to be a consideration.

Senator Horsford said the regulation only applied to administrative leave. He asked what the purpose was for reporting to a work site on another location as directed by the supervisor. He said he had constituents who told him they worked somewhere on Friday and were reassigned to a different location with reporting there on Monday. He did not understand why employees were treated like that. He said the language in the regulation was too broad.

Ms. Thienhaus responded that the situation Senator Horsford referred to was not one that involved someone on administrative leave. She said it was an issue of assigning work to a person and she was unable to address that issue in this regulation. The topic could be brought up with staff and they could research the issue and see if there was a regulation that applied. She said some people had a worksite that was not at the main office of the agency. People worked in many areas far from the main office.

Chair Conklin said the committee had spoken to one side of the equation concerning their expectations of the worker, but had not addressed the expectation of the employer. He said the employee had the entire obligation and the employer did not have an obligation to be reasonable. He said because it was not addressed, somebody would try to use a loophole to circumvent the task.

Senator Horsford said for the record:

"... in the spirit of trying to move this along, Ms. Thienhaus, what I would ask maybe is I would feel comfortable if, I would feel comfortable approving this, with the condition, and on the record, that you will work with me and other members of the committee to address the standard issue in some other manner that would fall for all employees in every situation whether

they're on administrative leave or not. So, if you're agreeable to that approach..."

Ms. Thienhaus replied yes, they could do that.

SENATOR HORSFORD MOVED TO APPROVE REGULATION R058-10.

SENATOR CARLTON SECONDED THE MOTION.

THE MOTION CARRIED. (MR. CARPENTER VOTED NO.)

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Chair Conklin opened discussion on R060-10, State Board of Health.

Ms. Kirkpatrick said her concern was the increases in the fees. She said the regulations were scheduled to take place today. She understood the increase for the surgical center, but the program of hospice care going from \$2,000 to \$7,000 was too much. The fees for a detoxification facility went from \$782 to almost \$10,000. She said it was too high a cost of doing business for her to understand. Mental health facilities costs went down from \$1,200 to \$946, which she also did not understand. Ms. Kirkpatrick said the cost of the bed was \$109 a day for a federal inmate. She asked for further explanation of the regulation.

Paul Shubert, Bureau of Health Care Quality and Compliance, said his agency would collect the fees. The increase was due to the increase in work activity that was required by the 2009 Legislature. He said many of the facilities went from a six year period to an 18 month period for inspection cycles. Some facilities went from a six year to a one year cycle. He said they were also required to regulate some other facilities and implement policy in the way they were doing inspections. The fees were generated based upon the actual workload associated with each facility type. The methodology they used was based on the amount of time they spent in each facility type.

Ms. Kirkpatrick asked how they could justify such a large increase in fees. She said a rural hospital would go from \$1,000 since 2003, to, suddenly, \$10,000. She was concerned about the cost increase.

Wendy Simons, Chief, Bureau of Health Care Quality and Compliance, said the process and analysis was very comprehensive, thorough and sensitive. It was constructed to actuate the real cost or the actual time and effort to survey each of the licensed provider types. She said the last time fee increases were proposed or activated was seven or eight years ago. She said the Bureau was not recovering the actual costs of the survey. She said meeting the requirements from the federal survey along with the state mandated periodicity of every 18 months for all provider types was a large increase from every three to seven years. Another item was the increased complaint load of the Bureau. She said in recent times the increase of complaints and investigations had resulted in non-compensated, or budgeted survey time. She said it included the actual survey and responding to customer and consumer concerns and complaints. The Bureau planned to review the entities on an annual basis and adjust the fees as necessary. The fees would also be reevaluated on an annual basis.

Senator Horsford appreciated the effort put into the analysis. He said the regulation was over-reaching at this time. He served on the committee on health care that sponsored the legislation creating the annual inspections for the ambulatory surgical centers and the other key facilities. He said it was a separate piece of legislation. The directive was coupled with all the other things in the regulation. He said the amounts and entities were too much and too many all at once. He said his issue, separate from the policy, and as the co-chair of Finance, was that he wanted to see the \$5.4 million budget. He wanted to review all the issues in the budget and he would work with the Bureau to meet the policy intent. He said it was approved by both the Legislature and the Governor last session to move to annual inspections for the facilities. It was a public health issue.

SENATOR HORSFORD MOVED TO REJECT REGULATION R060-10.

MR. CARPENTER SECONDED THE MOTION.

Mr. Carpenter did not understand putting the burden on rural hospitals. He said Nevada needed the rural hospitals. The fees were too and he was concerned about the detox charge going from \$782 to \$9,000.

Senator Carlton supported the motion. She said they needed to remember there was no panacea in a fee-based agency. Someone had to pay the bill for oversight and regulation, whether the dollars came from the general fund or from individual licensing, or inspection fees. She said many agencies were

being converted from being supported by general fund dollars to becoming fee-based agencies. She congratulated the Bureau on all the work they did because it was very fairly written. She said because of the costs involved it would take time for people to accept the path of fee-based agencies. She supported the motion.

Chair Conklin asked for a vote on the existing motion.

THE MOTION CARRIED

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Chair Conklin said the motion carried and the regulation was not adopted. He opened discussion on R065-10, Director of the Office of Energy.

Ms. Kirkpatrick said she had concerns about the regulation. She asked why they needed to change the regulation. She said in 2007 the State faced a \$944 million deficit based on the 2005 legislation that was passed. Hundreds of hours went into making the statute clear and she did not know of any problems with the statute.

Lorayn Walser, Management Analyst II, Nevada State Office of Energy, said due to the changing economy within the State they received applications for abatements from applicants who had things happen that were beyond their control. The applicants were having difficulty meeting the 120 day deadline to file their applications. The Office of Energy thought it would be prudent to allow the Director discretion, as far as things happening beyond an applicants control, to waive the 120 day requirement.

Ms. Kirkpatrick said the 120 day deadline was established for a reason. She said she would move for a rejection of the regulation because the existing regulation worked.

MS. KIRKPATRICK MOVED TO REJECT REGULATIONS R065-10.

SENATOR HORSFORD SECONDED THE MOTION.

THE MOTION CARRIED.

\* \* \* \* \*

Chair Conklin opened discussion on Regulation R085-10, Peace Officers Standards and Training Commission.

Mr. Carpenter said he did not believe lie detectors were a good tool to use. He had heard much testimony about lie detectors and they were not reliable. There was no place for them in testing people training for law enforcement jobs.

SENATOR CARLTON MOVED TO REJECT REGULATION R085-10.

MR. CARPENTER SECONDED THE MOTION.

THE MOTION CARRIED.

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Chair Conklin opened the last item on the Agenda, Public Comment. There was no public from Carson City, Elko, or Las Vegas. He closed Public Comment.

Senator Carlton thanked Mr. Carpenter for all the work he had done.

Mr. Carpenter said he would miss the Legislature and he thanked all the people he had worked with during his tenure.

Chair Conklin said he was a better legislator due to the time he served with Mr. Carpenter. He appreciated his willingness to talk less about party issues and more about what was right for the State.

Ms. Kirkpatrick said Mr. Carpenter was truly a statesman and she hoped to use him as a role model for the 40 new legislators coming to the sessions in the next couple of years.

Chair Conklin said there was no further business. He adjourned the meeting at 12:08 p.m.

Submitted by:

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Olivia Lodato, Secretary

APPROVED:

NAME: \_\_\_\_\_

Assemblyman Marcus L. Conklin, Chair

DATE: October 15, 2010

**EXHIBITS**

**Committee Name: Legislative Commission's Subcommittee**

**To Review Regulations**

**Date: October 15, 2010**

**Time of Meeting: 9:20 a.m.**

	Exhibit	Witness/Agency	Description
	A		Agenda
	B		Attendance Roster
	C		

	D		