

**MINUTES OF THE  
SENATE COMMITTEE ON COMMERCE AND LABOR**

**Seventy-third Session  
May 5, 2005**

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 7:36 a.m. on Thursday, May 5, 2005, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4406, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Randolph J. Townsend, Chair  
Senator Warren B. Hardy II, Vice Chair  
Senator Sandra J. Tiffany  
Senator Joe Heck  
Senator Michael Schneider  
Senator Maggie Carlton  
Senator John Lee

**GUEST LEGISLATORS PRESENT:**

Senator Bernice Mathews, Washoe County Senatorial District No. 1  
Assemblywoman Francis Allen, Assembly District No. 4  
Assemblyman Marcus Conklin, Assembly District No. 37  
Assemblyman David R. Parks, Assembly District No. 41

**STAFF MEMBERS PRESENT:**

Kevin Powers, Committee Counsel  
Donna Winter, Committee Secretary  
Scott Young, Committee Policy Analyst  
Jeanine M. Wittenberg, Committee Secretary

**OTHERS PRESENT:**

Nicole Malich, Intern to Assemblywoman Allen

Senate Committee on Commerce and Labor  
May 5, 2005  
Page 2

Peter S. Allen, R.E.H.S., Chairman, Board of Registered Environmental Health Specialists

Daniel J. Maxson, R.E.H.S., Secretary, Board of Registered Environmental Health Specialists

George A. Ross, Nevada Restaurant Association

Barry Gold, American Association of Retired Persons, Nevada

Robert A. Ostrovsky, Employers Insurance Company of Nevada, A Mutual Company

James Jackson, Law Offices of Laura Fitzsimmons; Law Offices of Kermit L. Waters

Ernie Adler, American Massage Therapy Association, Nevada Chapter

Billie J. Shea, American Massage Therapy Association

Lloyd K. Murray

Karen Sartell

Boyd A. Etter, Nevada Physical Therapist Association

Patricia A. Patton, LMT, Reno Board of Massage Examiners

Debra Rilea, Ralston School of Massage

Evert Broderick

Stan Olsen, Las Vegas Metropolitan Police Department; Nevada Sheriffs' and Chiefs' Association

George W. Treat Flint, Nevada Brothel Owners Association

Dan Musgrove, Clark County

Amber Minola, LMT

Vaughn Smith, Nevada Reflexology Organization

Tom Wood, Pharmaceutical Research and Manufacturers of America

James Morgan, Novartis Pharmaceuticals Corporation

Roberta (Bobbie) Gang, Nevada Women's Lobby

John P. Sande, III, Merck & Company, Incorporated

Paul H. Mozen, D.O., State Board of Osteopathic Medicine

Fred L. Hillerby, Nevada State Board of Pharmacy

Liz MacMenamin, Retail Association of Nevada

CHAIR TOWNSEND:

I now open the meeting to Assembly Bill (A.B.) 260.

**ASSEMBLY BILL 260 (2nd Reprint)**: Revises provisions relating to environmental health specialists. (BDR 54-855)

Senate Committee on Commerce and Labor  
May 5, 2005  
Page 3

SENATOR BERNICE MATHEWS (Washoe County Senatorial District No. 1):

This bill was introduced by Assemblywoman Allen and me. We both put in bill draft requests (BDRs) on this. People in the north and south asked us both for the same thing and we decided only one bill should be presented. This bill is a result of the two BDRs. All of the interested parties have been encompassed in the bill.

ASSEMBLYWOMAN FRANCIS ALLEN (Assembly District No. 4):

Nicole Malich will introduce the bill to the Committee. I will be available to answer any questions you may have.

NICOLE MALICH (Intern to Assemblywoman Allen):

I will read from my written testimony ([Exhibit C](#)).

SENATOR TIFFANY:

Who is our department of environmental health specialists?

PETER S. ALLEN, R.E.H.S. (Chairman, Board of Registered Environmental Health Specialists):

Environmental health specialists are primarily employees of government agencies. There are a few of us, like myself, who are currently private consultants. We consult in various fields including food-borne illness prevention, on-site waste disposal, vector control and a long list of things in the current bill. I have provided the Committee with a copy of my written testimony ([Exhibit D](#)).

SENATOR TIFFANY:

Ms. Malich, what was the department you referred to in Arizona?

Ms. MALICH:

The Arizona Department of Health Services.

SENATOR TIFFANY:

Does Nevada have a similar state department?

Ms. MALICH:

Yes.

SENATOR TIFFANY:

What is the name of that department?

Senate Committee on Commerce and Labor  
May 5, 2005  
Page 4

MR. ALLEN:  
The Bureau of Health Protection Services.

SENATOR TIFFANY:  
Do they have a relationship with your Board?

MR. ALLEN:  
Current statute designates the State of Nevada Health Officer as a member of the Board of Registered Environmental Health Specialists. He generally designates someone to represent him on the Board.

SENATOR TIFFANY:  
What is the current division or organization on a city or county level?

MR. ALLEN:  
There are three major health agencies: the state agency itself, the Washoe County District Health Department and the Clark County District Health Department.

SENATOR TIFFANY:  
Have there been problems that triggered this legislation for registration?

MR. ALLEN:  
We have not seen any major problems, but it is a matter of credibility and competency. We have been operating as an optional Board for about ten years.

SENATOR TIFFANY:  
What do you mean by optional?

MR. ALLEN:  
There are people who see fit to improve themselves professionally by demonstrating competency. We currently have approximately 50 registered environmental health specialists statewide.

SENATOR TIFFANY:  
Is there a national test or certification?

MR. ALLEN:  
Yes.

Senate Committee on Commerce and Labor  
May 5, 2005  
Page 5

CHAIR TOWNSEND:

Why do you want the change on page 8, section 19, line 7?

DANIEL J. MAXSON (R.E.H.S., Secretary, Board of Registered Environmental Health Specialists):

As originally submitted, the bill specifically included the American Council on Education (ACE), because that is a national standard. When it went through the Legislative Counsel Bureau (LCB) it was changed to the current language. Originally, we wanted to use the ACE, because it was nationally recognized. The Board's intent would be to use them anyway, regardless of the language.

CHAIR TOWNSEND:

Generally, the LCB does not change things unless the changes are requested. An accredited university or college is different than an institution of higher education approved by the Board.

MR. MAXSON:

I agree. That is why the BDR had language specifically referring to institutions of higher learning that are recognized and accredited by the ACE. I cannot explain why the language changed. The language you see before you is what came from the LCB.

We would be happy to submit an amendment that would put back in the ACE language.

CHAIR TOWNSEND:

On Page 8, line 31 of subsection 2, the language you are requesting is the Board "shall" issue. That is an entirely different standard.

MR. MAXSON:

That language came from an amendment in the Assembly. You have to ultimately go back to other parts of the law to make that interpretation. The language as it was before is fine with us.

CHAIR TOWNSEND:

The difference between may and shall is substantial. You are making a big jump with grandfathering. The difference between what the language used to be, what you are asking it to be, and your new standard is as wide as the Grand Canyon. Why does the language need to be changed?

Senate Committee on Commerce and Labor  
May 5, 2005  
Page 6

MR. MAXSON:

None of the local health agencies, which represent about 85 percent of the registrants, would support the bill without the grandfather clause.

SENATOR CARLTON:

I have concerns about this Board after receiving a briefing on how some matters have been handled and how things are being done by the Board. Please share with the Committee your mission and philosophy as a Board.

MR. ALLEN:

Our primary goal is credibility and competency. That is what the goals have been for the past ten years. The current bill extends registration to people who do not meet current qualifications. We feel people should have a certain degree of education, show competency by passing a national examination and that they should stay current with their profession by gaining continuing-education units.

SENATOR CARLTON:

The ultimate goal of any board is to protect the public in this State. Will you be protecting the public with the credibility and competency of the profession? Have you had difficulty keeping this Board going forward with only 50 licensees in the State?

MR. ALLEN:

Yes. We went through ten years where the Board was actually losing people. In the past three years, we have reenergized the Board, improved our communications with our registrants, the general environmental pool and are now growing.

SENATOR CARLTON:

How many licensees did the Board start with?

MR. ALLEN:

Approximately 40; when we reconstituted the Board three years ago, we were down to 30.

SENATOR CARLTON:

I have some concerns about scope of practice. I need information about section 6, subsection 1, paragraphs (a) through (r). There are also a number of

Senate Committee on Commerce and Labor  
May 5, 2005  
Page 7

issues to be discussed on the grandfathering. A certificate of registration is a new classification. Is this a new classification or an expanded classification?

MR. ALLEN:  
It is expanding the classification.

SENATOR CARLTON:  
Where are the fees listed in the bill?

MR. ALLEN:  
The fees are not specifically listed in the bill. They are in the regulation itself.

SENATOR CARLTON:  
Will fees be changing?

MR. ALLEN:  
We have no plans to change them.

SENATOR CARLTON:  
Then, I am confused about your budget ([Exhibit D](#)). You currently charge a registration fee of \$35 and do not plan to change that. Do you plan on having more people paying a registration fee?

MR. MAXSON:  
Yes. It is strictly a change in the number of registrants that will increase from approximately 50 per year to 250. There is a \$25 initial registration fee in addition to the first-year registration fee of \$35. That is why it is \$60 for a first-year registrant. After that, the registrants pay \$35 per year.

SENATOR CARLTON:  
Do you have a line item for background investigation and Office of the Attorney General fees?

MR. MAXSON:  
It is a tight budget. Our background investigation goes to their employer who has already performed the background check.

SENATOR CARLTON:  
We should take this to subcommittee.

Senate Committee on Commerce and Labor  
May 5, 2005  
Page 8

CHAIR TOWNSEND:

Mr. Allen, is this your amendment ([Exhibit E](#))? Did you try to incorporate this amendment into the bill with the Assembly?

MR. ALLEN:

Yes, [Exhibit E](#) was distributed to the Committee on my behalf. These were some changes suggested to us by various concerned parties.

CHAIR TOWNSEND:

We will send this to subcommittee. Your written testimony ([Exhibit F](#)) will be put into the record for today.

GEORGE A. ROSS (Nevada Restaurant Association):

The Nevada Restaurant Association supports the concept of this bill.

CHAIR TOWNSEND:

I will open the hearing on [A.B. 66](#).

**[ASSEMBLY BILL 66 \(1st Reprint\)](#)**: Requires reporting of certain gifts and other economic benefits provided by wholesalers or manufacturers of drugs. (BDR 18-562)

ASSEMBLYMAN MARCUS CONKLIN (Assembly District No. 37):

I brought this bill forth on behalf of the American Association of Retired Persons (AARP).

BARRY GOLD (American Association of Retired Persons, Nevada):

I present to the Committee my written testimony ([Exhibit G](#)).

I have provided a letter from Arnold H. Greenhouse, M.D., Director, Nevada Geriatric Education Center ([Exhibit H](#)). He apologizes for some of the typographical errors that occurred while he was hastily trying to get this document to you. I draw your attention to the third and fourth paragraph of [Exhibit H](#).

I am providing you with a letter and information from Earl Lui, Senior Attorney, Consumers Union ([Exhibit I](#)).

Senate Committee on Commerce and Labor  
May 5, 2005  
Page 9

I am providing you with a paper titled, "'Tis Always the Season for Giving" ([Exhibit J](#)) and draw your attention to pages 3, 4 and 6.

I am providing you with a paper titled, "Drug Companies' Secret Reports Outrage Doctors" ([Exhibit K](#)) and draw your attention to pages 1, 2 and 3.

I am providing you with a January 19, 2000, *Journal of American Medical Association* (JAMA) article ([Exhibit L](#)) and draw your attention to the conclusion on the first page and page 378, outcome of interaction.

Finally, I also provide you with a copy of "Health Policy Report" from *The New England Journal of Medicine* ([Exhibit M](#)) and I draw your attention to the first page, and pages 1887 and 1888.

I realize many physicians are immune to this. Some physicians are able to say "I do not want to go to Bermuda." Not all physicians are heavily marketed. One of the previous concerns that I heard from Committee members is the \$25 reporting threshold amount. If the Pharmaceutical Research and Manufacturers of America (PhRMA) guideline is \$50, perhaps we can change the bill to reporting for over \$50 and only things that violate the PhRMA guidelines. I think the PhRMA would welcome that. Another concern was that the names of physicians be included. If they attended a dinner to learn about a cardiac drug and their name was included on something that was valued at \$55, they would not want anyone to think the dinner was influencing them. I can understand that. We could look at increasing the threshold to \$50 and have no names associated until the threshold of perhaps \$100 is met.

Please consider all of the information I have provided. I want to reiterate that more money is spent every year on marketing and advertising than on research and development. Prescription drugs are a national health-care crisis. We need to utilize every tool available to combat that. This bill will not make everything better, but this is a piece of the puzzle that the State of Nevada and other states need to look at. The federal government is looking at the things they can control and this is something we can look at in our State.

SENATOR HARDY:

You cannot sit through a one-half hour television program without seeing advertisements for some prescription drug. To me, that is the real problem because it involves the consumer. Consumers are now demanding medications

Senate Committee on Commerce and Labor  
May 5, 2005  
Page 10

from physicians that may not be in their best interests. What is being done to address that issue, and why is that not in this bill?

ASSEMBLYMAN CONKLIN:

Those are national marketing campaigns broadcast across state lines. I do not think we have jurisdiction over interstate commerce. That may be an issue for the federal government.

I have an enormous respect for my colleagues and anyone who practices medicine in this day and age. Normally consumers are not being given the information about particular drugs, nor could they potentially understand all of the information that is being provided. The physician is being provided information and promoted for sales at the same time. The physician is not necessarily at fault, if there could be fault. The physician is being marketed the same as the consumer every time they step into a store. Spending habits are being watched, likes and dislikes are being characterized and all are being specifically marketed and targeted. In many cases, you may not even know it. That is the activity that we need to shine some light on so people recognize it is happening.

SENATOR HARDY:

I understand what the bill is attempting to do. I would like to know if state law is the appropriate venue for this. We need to explore what we can do as a state.

MR. GOLD:

The federal government is beginning to look at the issues you brought up. I know physicians struggle with people coming to their office demanding a prescription, whether they have the condition in question or not; it is the magic pill that is going to make them better. I read a recent article that stated national drug marketing increased 28 percent last year. Marketing for all other things only increased 12 percent.

We are addressing marketing, health care and safety. Health-care decisions are being made by physicians who are being persuaded and pressured. What is the effect on the consumer because they do not know this is occurring? The consumer gets the prescription, but they are not the ones who have been lobbied by the drug industry.

Senate Committee on Commerce and Labor  
May 5, 2005  
Page 11

SENATOR LEE:

Is there a reason you cannot ask your pharmacist for a generic prescription? Salesmen will come and go, people lie and you cannot legislate ethics. As I read the bill, it seems the responsibility for disclosure should be with the physician.

ASSEMBLYMAN CONKLIN:

Sometimes a physician does not know that this is what is happening. I think if we ask too much of our physicians, in the reporting, we are taking away their opportunity to be physicians and forcing them to be businessmen. Forcing physicians to be businessmen is the worst thing that has happened to the medical industry.

SENATOR LEE:

If a physician hires an employee or leases a building, he is in business. The first order of business is to stay in business. I think physicians are a lot more sophisticated and do understand what they are hearing and doing.

MR. GOLD:

I understand your concern. If physicians had one more piece of paper to complete, I think they would stop practicing medicine and do something different. Their time should be spent with patients. If a drug company sends physicians on a trip to Bermuda, then we want to know that. I think putting the reporting requirement on the physicians is asking them to complete one more piece of paper. I think if physicians realize their name will show up on a list for some of the extravagant abusive things, they might decline the offer. I do not think disclosure should come from the physician.

SENATOR TIFFANY:

I was previously married to a physician. Your testimony has been insulting to the profession. Based on my experiences, when I am told that these trips influence prescribing patterns, I find that insulting. Do you believe that prescribing brand-name drugs drives up health-care costs because the physician is not prescribing generic drugs? Also, due to this marketing behavior, do you think that it then creates a preferred-drug list? Are those the two issues with which you are concerned?

MR. GOLD:

Yes, but not so much the second one. In response to what you said, research and development is enormously expensive. I will repeat that the drug companies

Senate Committee on Commerce and Labor  
May 5, 2005  
Page 12

spend more money on advertising and marketing than they do on research and development.

Prescribing brand-name drugs obviously drives up health-care costs. Physicians need to consider lower-cost drugs.

SENATOR TIFFANY:

Do you believe requiring the pharmaceutical companies to report physician costs will alter the physician's prescribing patterns?

MR. GOLD:

Yes.

SENATOR TIFFANY:

Do you believe that part of the physician's oath says that he has to do something other than what he thinks is the best practice available to save the life of an individual or to turn around his disease or even just give him some palliative measures? Do you believe that in that oath, it says that he should not do anything other than what he thinks is the best thing to do for the health care of the patient?

MR. GOLD:

I believe the physicians oath states unequivocally to do no harm and do the best you can.

If physicians are repeatedly told, "My company's new drug is the best thing since sliced bread, it will do wonders and this is what you will prescribe," without any more information like, "But you know what, it is just as good as the generic alternative."

SENATOR TIFFANY:

Are you saying they are not educated enough to know what is happening when a pharmaceutical representative is marketing to them or to ask technical questions?

MR. GOLD:

I sat in on an instruction for one of the new Alzheimer's drugs and I asked one of those questions. I read the material and asked if the drug was any more effective than other available drugs on the market. The representatives stated

Senate Committee on Commerce and Labor  
May 5, 2005  
Page 13

they have no evidence of that because they are not required to do studies for that comparison.

SENATOR TIFFANY:

You did not answer my question on how a physician interacts with a pharmaceutical representative. I have witnessed the exchange between a highly trained pharmaceutical representative and a physician who has taken an oath to do the best they can.

What happens when the physician is sued for prescribing a generic drug instead of other available drugs that may have been more effective?

ASSEMBLYMAN CONKLIN:

[Exhibit L](#) conclusively shows that marketing strategies have a significant impact. We are trying to shed some light on what their own industry says is a significant problem.

SENATOR TIFFANY:

Do you believe that by requiring this report, it will alter the behavior of a physician?

ASSEMBLYMAN CONKLIN:

Yes.

SENATOR HECK:

I do not think that anyone on this Committee would disagree with the importance of access to affordable pharmaceuticals. We need to do everything possible to ensure that the residents of our State have the ability to access medications they need at reasonable prices. The idea of the family physician being the trusted advocate, almost a family member, is gone because our patients are better educated. Patients do demand certain tests or treatments based on their Internet education. That puts the physician in a difficult situation.

I think there is some merit to this bill. I personally agree that any physician who is going to a tropical-resort destination or cruise-ship educational seminar to be sold on a product by drug representatives is crossing the line ethically. However, the pharmaceutical representatives who come out do serve an educational purpose to busy physicians. Once you leave residency, you are not on the cutting edge of information. You have to rely on education where you

can get it. You do that by going to conferences, seminars and talking to pharmaceutical representatives. Just because a pharmaceutical representative brings you up to date on a new drug does not mean a physician prescribes it.

SENATOR HECK:

There is an educational value associated with a pharmaceutical representative visiting a physician's office. I personally have received a bag of pens and notepads with logos on them that probably cost \$25 on average. That does not mean that I will prescribe that drug because the pen I am using has that logo on it. Physicians are in business to do the right thing for their patients. I have attended educational seminars where lunch or dinner has been served. Pharmaceutical companies bring in experts to talk about diseases and not even necessarily to talk about the drug they are marketing. That is a valuable educational process. Everything that decreases time with the patient, like filling out one more form, takes away from the ability to provide better care and drives up patient cost.

Mr. Gold, you mentioned in your testimony that if a physician was to speak at a conference and his expenses were paid, that would not be covered as a disclosure. That is not what is in this bill. I personally have received honorariums from drug companies for speaking on an area of my expertise. I do not necessarily think that is wrong. That is the same as being paid to do any job. If my sole source of income was to go around and discuss a specific drug, I would agree with you.

I believe the legislation has merit, but there is still work that needs to be done on this bill. This proposed legislation puts the physician in a bad light. Just because someone came in and gave me a pen with their logo does not mean that ink only writes that brand name and nothing else.

SENATOR HECK:

As for the studies, it is always nice to read medical studies, but unless you read medical studies for a living, you cannot get by with reading the conclusion and thinking the study is valid, no matter where the study is published. The study in JAMA, [Exhibit L](#), is a retrospective MEDLINE database search. If you look at any medical study, or any group that evaluates studies, they will tell you that the most invalid study is a retrospective study that is based on a review of previous literature. Basically, the flaws of every study are reproduced into one. Unless

Senate Committee on Commerce and Labor  
May 5, 2005  
Page 15

you know how to go through the study and pick it apart, just like everything else, you cannot trust everything you read.

ASSEMBLYMAN CONKLIN:

I would be happy to work with Senator Heck if he thinks the bill has merit but needs some work.

CHAIR TOWNSEND:

We will suspend the hearing on A.B. 66 and work on A.B. 254.

[ASSEMBLY BILL 254 \(1st Reprint\)](#): Revises provisions governing industrial insurance. (BDR 53-1080)

There are two points on this bill that need to be articulated before we take this bill further. If you look on page 3, subsection 2 of section 2, it talks specifically to the issue of "... if the Administrator determines that an insurer, organization for managed care, health care provider, third-party administrator or employer has ..." then go to line 4, "Intentionally failed to comply with any provision of, or regulation adopted pursuant to, this chapter ... ." We previously discussed the problem with this as you increase the fines. The necessity to increase the fines is two-fold. Obviously, inflation changes things and because the benefit penalty is unique to this country, we want to make sure we are out front on this in case there is any type of challenge to a unique bill. It sends a message to the court that we as a body stay on top of these violations. If we accept the recommendation in the bill, which is to increase fines to the levels in the bill, how do we deal with the term intentionally? Do we remove paragraph (h) of subsection 1, section 2?

ROBERT A. OSTROVSKY (Employers Insurance Company of Nevada):

The statute is constructed to deal with minor and major violations. Major violations are those that would be subject to higher penalties than the minor violations. The bill, as it came from the Assembly, proposes including those intentional violations of a regulation. Those intentional violations have been minor and are now proposed to be major. Major or minor violations can result in a show-cause hearing to remove someone's certificate to provide services whether they are a third-party administrator, insurance company, a physician or anyone else who falls under the provisions of the *Nevada Revised Statutes* (NRS). The question revolves around whom the guilty parties are and what the penalties should be.

Senate Committee on Commerce and Labor  
May 5, 2005  
Page 16

CHAIR TOWNSEND:

What if we remove the word "or" on page 3, line 3, and remove paragraph (h), subsection 1, section 2 and leave the penalty amounts as proposed in the bill. Does that solve the problem of having every minor violation moved to a major violation?

MR. OSTROVSKY:

Yes. The inclusion of paragraph (h), subsection 1 of section 2 as a major violation is going to result in a lot more issues for the Division of Industrial Relations (DIR), Department of Business and Industry. In discussions with the DIR, their definition of intentional is very broad. There was a bill previously processed in this Committee that will provide new reporting that will perhaps help us target this section of the law better than broad-based targeting as proposed in paragraph (h), subsection 1 of section 2. Litigation is a concern with inclusion of that language.

SENATOR HARDY:

My concern was that "intentionally" was not enough of a standard.

CHAIR TOWNSEND:

We will request representatives from the DIR and the Division of Insurance, Department of Business and Industry, to work with us on this issue next week.

We will now work on [A.B. 341](#). I believe there was some discussion on taking page 2, line 6 and give it a tighter framework. What is the feeling of the Committee?

[ASSEMBLY BILL 341](#): Exempts persons who assess property in connection with eminent domain proceeding from provisions governing real estate appraisers. (BDR 54-1261)

SENATOR HECK:

To me, it seemed from the testimony that the concern was once the case actually got into the courtroom. ... That is where they wanted the ability to have the experts, non-licensed appraisers, come in and be able to attest to the assessed value of the land. ... I think whatever language would make sure that was the intent ... would make me much more comfortable with the bill. I think ... during the initial proceedings, when you have one side and the

other side, that both appraisals should probably be done by licensed appraisers. ... Just as with any other expert witness, the bona fides is decided upon by the judge. It should be the judge's ability to decide whether or not he is going to allow that testimony. ... I do not think this language is tight enough to only make it apply ... once it is in the courtroom.

SENATOR CARLTON:

... A couple of weeks ago, one of my freshman colleagues on my side shared with me how conservative he thought I was ... when it comes to boards. I explained to him that the reason why that is one of the areas in my life that I am ultimately conservative, is because they are there to protect the public. ... To me that is the ultimate goal. When I read this language, I believe this will protect the public and give them the opportunity to have the best person available to voice their concerns in the judicial setting. ... We never know if something is going to go to court. You always hope you will settle it before you get there because the only people who win in court sometimes are the lawyers. ... I believe, in my conservative opinion, that this language addresses the problems that were brought before us. ... The testimony of Senator Amodei was very convincing. When I first heard this bill, I wasn't quite convinced. I knew it had some merit, but Senator Amodei's testimony and then Ms. Fitzsimmons testimony ... convinced me that I think this is something that is necessary for us to do. I do not believe it is going to be a huge impact. It is a small group of people who seem to be having a significant problem.

... When it comes to someone's value of their home, I believe they should be allowed to get the best person out there to make sure they are protected from the beginning of the process all the way to the end of the process. I believe this language does that. ... I am in support of the bill.

SENATOR SCHNEIDER:

... I too agree with that. I do not think we are trampling on appraisers, they still need to be licensed and we still want to hold them to a very high standard. ... This would be a unique situation. ... I think the idea ... of a Donald Trump or a Steve Wynn coming

in and giving their opinion of value of ... [Las Vegas] Strip property, ... if the State were taking a piece of [Las Vegas] Strip property for a road or something like that they could be called in to give their opinion to what the value is on a property. ... That doesn't mean they are smarter than appraisers ... the judge has to make that decision if they are qualified. ... Steve Wynn ... sure wouldn't give an opinion of a value of a shopping strip mall in Summerlin ... . I too agree, Mr. Chairman, that ... we still hold the appraisers and their board at a high level. Under these extreme exceptions, leave it up to a judge.

SENATOR TIFFANY MOVED TO AMEND AND DO PASS A.B. 341.

CHAIR TOWNSEND:

Senator Heck, could you provide an explanation for Senator Lee?

SENATOR HECK:

... I would defer to Mr. Powers to help with what the language would be. ... The intent would be to confine the use of a non-licensed appraiser to a courtroom proceeding. ... I think proceeding is too broad. ... We are saying to the judicial proceeding or ... I would leave that up to Mr. Powers.

KEVIN POWERS (Committee Counsel):

... If I understand Senator Heck's intention, the amendment would essentially require that the governing body seeking eminent domain actually have filed a complaint, or a petition, with a court seeking the eminent domain or condemnation of the property. Then, the non-licensed person would be able to provide their assessment of the value of the land ... in any element of that proceeding after the commencement of the action. That would include pretrial discovery, depositions and also testimony in the actual condemnation proceeding if it gets to that stage and actually goes to trial. ... I would understand Senator Heck's motion would include pretrial discovery.

CHAIR TOWNSEND:

Maybe [Assemblyman Parks] can help us out ... . There is a motion ... I am not sure I have a second because we were trying to define

the motion. ... It has to do with line 6 [page 2] and putting in something that defines ... that they could participate in this based on your definition ... if it was an administrative, regulatory or judicial proceeding, which ... then requires an action to be filed in court. Mr. Powers is saying, "does that include discovery ... ." Some of the Committee is saying it should remain as broad as it is, others are saying it should be narrowed. ... We would love to have your insight. It is your bill.

ASSEMBLYMAN DAVID R. PARKS (Assembly District No. 41):

"... My thinking in the original bill was that the term proceedings would have fairly narrowly defined how the proceeding would go. ... Could I ask my legal counsel?"

JAMES JACKSON (Law Offices of Laura Fitzsimmons; Law Offices of Kermit L. Waters):

... The term proceeding necessarily contemplates that a complaint for eminent domain had been filed. The reason for keeping it at that level ... is that would encompass the ability for pretrial discovery, depositions .... All that stuff that goes into pretrial matters would be necessarily included in that term of proceeding. ... Of course it would be, up to and including, testimony in trial. If we try to keep it only for testimony in trial, you're going to necessarily exclude some important steps which is ... pretrial discovery where these things can be vetted ... and perhaps even challenges to the qualification of an expert being done in advance of any of that occurring rather than waiting for an actual trial to be under way. I hope that cleared that up for you.

SENATOR TIFFANY:

"... Then the motion that we were talking about would be too narrowly defined or, from what I understand, it would include what you are talking about if I understood what our legal staff said. I am a little bit confused."

MR. POWERS:

... Mr. Jackson is testifying to the original language that is before the Committee in A.B. 341 that came from the Assembly. ... That language uses the word proceeding. It is Mr. Jackson's interpretation that the use of the word proceeding in the existing

language in the bill would ... require that an actual proceeding have been commenced, a complaint for eminent domain filed by the local government, and once that occurs, then the non-licensed person can provide the appraisal, the value of the land throughout ... every stage of that proceeding, pretrial stages and including testimony at the trial. The motion before the Committee ... is to clarify the language in the bill that it, in fact, is limited to ... both pretrial proceedings and the actual testimony before trial. I don't believe that Senator Heck was intending to limit it just to testimony during trial.

SENATOR TIFFANY:

"... I see. The clarification is actually the same thing as what you are saying but it makes it definite ... at that point."

MR. JACKSON:

... I don't think I can disagree with you [Senator Tiffany]. Mr. Powers and I are saying the same thing. Just as he said, from the original language in the bill and what the intent was ... I suppose [that] makes things a little bit more comfortable ... it has to be a judicial proceeding ... .

SENATOR TIFFANY:

"It sure would make it clearer."

CHAIR TOWNSEND:

"You are the one asking for the bill and we are trying to learn about it. We are not saying we disagree with what the bill says, we just offered some clarification. If you think it is fine and you want to deal with it that way, we can try it that way ... .

MR. JACKSON:

... I appreciate that. My greatest concern is that the Committee is comfortable with the language and ... they are certain that it is accomplishing what you want to accomplish. I think it does under the current language, but if judicial proceeding more clearly defines it, fine.

Senate Committee on Commerce and Labor  
May 5, 2005  
Page 21

CHAIR TOWNSEND:

"It doesn't bother me to go either way ... I could certainly leave it. ... It's not like we are not meeting again in the next couple of years and see how it worked."

"My guess is the eminent domain proceedings over the next couple of years are likely to be held in Clark County, not in the north ... ."

SENATOR HECK:

... If the language stays as is, or is amended to try to clarify exactly what the proceeding is, does that mean that in no point in time is a licensed appraiser required to render an opinion on that property? If you are going to use this unlicensed expert to come in and attest to the best usable value of the land, does that mean that at no other time is a licensed appraiser going to be involved in that process on both sides? I assume that the government is going to have their licensed appraiser ... the person that owns the property then would not have a licensed appraiser?

MR. JACKSON:

... If I understand your question Senator, if there has not been a proceeding filed and if there is going to be an appraisal done, it is going to have to be done by a licensed appraiser. All the other rules will then apply. This will only kick in when a proceeding is initiated. In other words, a complaint for eminent domain has been filed.

SENATOR TIFFANY:

"I am comfortable with the motion that I made, which is amend and do pass, because I think it ... makes it very clear."

SENATOR CARLTON:

"Adding [the word] judicial?"

SENATOR TIFFANY:

"Yes."

CHAIR TOWNSEND:

"... Mr. Jackson, in your opinion it doesn't muddle the issue ... ?"

Senate Committee on Commerce and Labor  
May 5, 2005  
Page 22

MR. JACKSON:

"I don't think it does any violence to the bill."

CHAIR TOWNSEND:

We have a motion and a second to add the term judicial in front of proceeding.

SENATOR LEE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR TOWNSEND:

I now open the meeting to A.B. 250.

**ASSEMBLY BILL 250 (1st Reprint)**: Provides for licensing and regulation of  
massage therapists. (BDR 54-733)

ERNIE ADLER (American Massage Therapy Association, Nevada Chapter):

The main reason for this bill is that we have multiple layers of bureaucracy within certain counties dealing with massage therapy. In Clark County, it is possible that you would have to have three \$300 background checks plus pay three \$275 licensing fees and pay a business-license fee. In addition, the regulation from city to city is conflicting. In the northern part of the State, there was reciprocity between Carson City, Douglas County, the City of Reno and Washoe County; that is no longer the case. Therefore, there are multiple fees and multiple conflicting licensing regulations throughout the State of Nevada. The regulations are completely contradictory in many instances and it is becoming extremely expensive to become a massage therapist in multiple counties. It is a highly inefficient way to regulate a profession. There are currently 36 states that require statewide licensing of massage therapy. We are one of the last states to not license this industry.

The bill before you sets a high standard in background checks and professionalism. The background checks were placed into the bill through an amendment by the Las Vegas Metropolitan Police Department (Metro). They are satisfied this bill represents the best effort to control those who enter the profession and to control prostitution-type activities that may victimize tourists. This bill received a unanimous vote from the Assembly Committee on

Senate Committee on Commerce and Labor  
May 5, 2005  
Page 23

Commerce and Labor and all members of the Assembly. I have provided the Committee with a proposed amendment ([Exhibit N](#)).

Some people have asked if they will have to continue to pay the local licensing to the counties and cities. There is a clear provision which preempts all local ordinances dealing specifically with massage therapy. They still would be subject to local business licensing. Massage therapists will not have to have their specific testing and licensing with the local entities. The board will have all the standard regulatory authority. The schools of massage therapy will have to be certified by postsecondary education or alternatively they could use a state sponsored community-college course recognized by the board.

The people who make application must have national certification of therapeutic massage and bodywork or an equivalent test. We used that language so if the board decides that test is no longer appropriate, they can change to something more appropriate. Current massage therapists will be grandfathered even if they do not meet the strict requirements for becoming a new massage therapist. They will have to prove licensure in a city or county previous to July 1, 2007. The only caveat is that they still will have to show they have been subjected to a strict criminal background check. The reason for that is there have been people arrested for criminal activity in Clark County who have moved into the rural counties that do not require licensure or background checks.

SENATOR CARLTON:

Did I understand you to say there would be a grandfather clause?

MR. ADLER:

Yes.

SENATOR CARLTON:

Would the grandfathered people be required to become nationally certified?

MR. ADLER:

No.

SENATOR CARLTON:

Are we grandfathering people for whom we do not know their educational background?

Senate Committee on Commerce and Labor  
May 5, 2005  
Page 24

MR. ADLER:

Yes. Most of the cities and counties that certify massage therapists have some requirement for a test. Most of them require the national test. Currently, everyone licensed in Clark County is required to pass that test.

SENATOR CARLTON:

Perhaps, I misunderstood the bill. I thought it would require some basic evaluation or coming up to standard on educational requirements.

MR. ADLER:

Some of the testing and certification was not there for some of the people who came into the profession 20 years ago. It would not be fair to tell someone they have to go out and get 500 hours of education.

SENATOR CARLTON:

I understand that. A board has a totally different venue than a business license. Here we are discussing business licenses, not the acceptance of a profession at that level. They are two different issues. One is saying yes, you can do business in our State. The other is saying this is a learned profession, you have educational requirements, continuing education and we are going to hold you to these standards.

MR. ADLER:

You are correct, but in order to transition from where we are now to the future, we need to grandfather these people.

SENATOR CARLTON:

We need to be consistent and fair across-the-board for all licensing boards.

MR. ADLER:

The bill does require them not to be criminals and to act ethically. It does not necessarily require that they went to a school that did not exist at the time they entered the profession.

MR. POWERS:

... the bill ... allows the city, county or town license to act as the qualification to get the state license. ... Everyone must have the state license by July 1, 2007. ... Even the individuals who are grandfathered in become subject to the state licensing board. ...

They have a state license, it is just that their initial local license gives them the qualifications to get the state license.

SENATOR CARLTON:

That is my concern. Just because a city or county has given them a license does not mean that they are at the necessary level of the profession.

MR. ADLER:

The current Clark County ordinance tracks this statute pretty well. If you looked at the educational requirements to practice in Clark County, Las Vegas, North Las Vegas and Henderson, it is very close to the language of this bill.

SENATOR CARLTON:

I have received a lot of e-mails in support of and in opposition to this bill. Some people feel they will have to pay for board certification and in addition, business license fees. They see this as two steps instead of one.

MR. ADLER:

I would disagree with that interpretation. Essentially, the business license they have to pay for is one that any person who practices business in that county is required to have. This is essentially the same fee they would pay to their local county or city. They will not have to pay the multiple fees like they currently do. The current system for most people, for instance, if you had a City of Reno license means you cannot practice in Lake Tahoe. If you wanted to work a weekend in South Lake Tahoe, you cannot do that. You have to obtain a new series of licenses. If you want to live in Las Vegas in the winter and want to practice at Lake Tahoe in the summer, you will have to have at least three licenses because you would have different county governments. The system is inefficient and we need to raise the level of the profession so these people have respect for being the professionals that they are. There is a lot of training and hours of education and I think they are entitled to regulate their own profession.

SENATOR TIFFANY:

Last year, I proposed a massage-therapy bill that a significant amount of time was put into it. How many therapists in the State of Nevada have a business license?

Senate Committee on Commerce and Labor  
May 5, 2005  
Page 26

MR. ADLER:  
2,500.

SENATOR TIFFANY:  
That is not a small community.

MR. ADLER:  
No.

SENATOR TIFFANY:  
2,500 could support a board.

MR. ADLER:  
Yes. We believe there are another 2,500 who are not licensed. The current rate of licensure in Las Vegas is 500 a month.

SENATOR TIFFANY:  
Has a large percentage of that number attended a massage-therapy school?

MR. ADLER:  
A vast majority have attended some school. The standard is 500 hours.

SENATOR TIFFANY:  
Do the counties require the 500 hours of schooling?

MR. ADLER:  
Yes.

SENATOR TIFFANY:  
Is it all counties, or certain counties?

MR. ADLER:  
Currently it is Clark County, Washoe County, Douglas County and Carson City.

SENATOR TIFFANY:  
Are the 500 hours already required where the majority of the massage therapists would be?

Senate Committee on Commerce and Labor  
May 5, 2005  
Page 27

MR. ADLER:  
Yes.

SENATOR TIFFANY:  
Who currently has jurisdiction if there is a problem with a license? What is the adjudication process?

MR. ADLER:  
I think, in Clark County, the commission would revoke the license.

SENATOR TIFFANY:  
Would it probably go through the Metro first, and then the business-license division?

MR. ADLER:  
Yes.

SENATOR TIFFANY:  
How would that change if a board was created?

MR. ADLER:  
The board would handle the civil portion of the violation. The Metro would pursue the criminal act. Those are two separate actions.

SENATOR TIFFANY:  
In your opinion, what is the reason that has kept us from creating a board?

MR. ADLER:  
A lot of it had to do with law enforcement not wanting standards weakened by having a state board. We have addressed that in this bill and the standards are as vigorous as the counties. There was also a problem with people feeling a state board would be regulating legal prostitution. Page 2, line 40 makes it clear that there is no attempt to regulate legal prostitution.

SENATOR TIFFANY:  
Have you addressed the issue of law-enforcement standards not being reduced or diluted?

Senate Committee on Commerce and Labor  
May 5, 2005  
Page 28

MR. ADLER:

In some ways, they have been toughened.

SENATOR TIFFANY:

Did you see any conflict between county licenses or the local boards? If so, has that been resolved?

MR. ADLER:

That has largely been resolved. I spoke with Carson City officials and they would love to have the State do the licensing. It is a lot of work for a small entity.

SENATOR TIFFANY:

What about Washoe County?

MR. ADLER:

There was conflict with Washoe County, because it was easier to obtain a license from that county than from the City of Reno. They are currently trying to resolve the issues.

SENATOR TIFFANY:

Was it more of a county/city issue than a north or south issue?

MR. ADLER:

That is correct.

CHAIR TOWNSEND:

Why did you choose six board members? Why not an odd number? What happens with a tie vote?

MR. ADLER:

That number could be changed. The Metro requested that number because that is the way it is currently done.

CHAIR TOWNSEND:

On Page 5, section 15, why do these people not get paid the \$80 that we pay other board members?

Senate Committee on Commerce and Labor  
May 5, 2005  
Page 29

KEVIN POWERS:

"... This provides for the per-diem expenses for travel but does not provide for the \$80-a-day salary that is typically included in the board chapters."

MR. ADLER:

We would be amenable to that amendment.

CHAIR TOWNSEND:

Some time needs to be spent speaking with Title 54 subcommittee members on the grandfather provision.

In section 29, what necessitates that definition?

MR. ADLER:

It is a specific release from the board for a medical condition that requires a massage. It is not what it appears to be to other people.

CHAIR TOWNSEND:

I just want to make sure we are not allowing something that could be related to a brothel. Have you submitted a budget to the members of the Title 54 subcommittee?

MR. ADLER:

No.

CHAIR TOWNSEND:

That would be advisable.

SENATOR LEE:

In regard to page 3, subsection 2 of section 10, lines 42 and 43, is four years standard for an appointment to a board?

SENATOR CARLTON:

I think four years is reasonable. You want consistency and historical perspective, especially with a new board.

I refer to page 14, subsection 6 of section 29; I am not sure if a board can decide whether someone is guilty of gross negligence. Could Mr. Powers speak to that?

MR. POWERS:

... Your question is directed at the use of the term gross negligence and the finding by the board that the practitioner committed gross negligence. This is not unusual, especially in some of the medical-practice acts. This is not a legal finding as far as civil liability. It is just for the administrative procedure of determining whether or not the license should be issued, revoked or disciplinary action. ... The administrative filing of the board may be considered by a court in a civil action. ... The jury or the judge in that civil action would still have to make the finding of gross negligence if there were some sort of malpractice action against the massage therapist.

SENATOR CARLTON:

I just want to make sure we have consistent language. That is one of the things that Mr. Young, Mr. Powers and I have been working on. Over the interim, we are going to try to start cleaning up some of the language with the different boards so we have the same terminology and intent.

BILLIE J. SHEA (American Massage Therapy Association):

I am a licensed massage therapist in Carson City and also the president of the Nevada Chapter of the American Massage Therapy Association. In Nevada, we have just approximately 300 members, predominantly in Las Vegas and the southern counties where most of the massage therapists are in this State.

I spent two years promoting state licensure for Nevada. Until this year, I have been licensed in Carson City and did not have a problem with reciprocity with the City of Reno or Douglas County. I hold a license with the City of Reno and Carson City. Now, I find that the counties in the north do not allow reciprocity. What our southern members are saying is that it can take up to nine months to become licensed for the normal process after you have completed schooling. There are many students in southern Nevada who cannot work because of the length of the process. That is something that needs to be addressed with a state board. If we can streamline the process statewide, make it more consistent, help to bring the community together in a more professional manner and raise the standards of education, I think we allow for a stronger community of massage therapists. This provides for protection of the community and public. The board would establish a group of like-minded people who want to raise the bar on massage therapy.

Senate Committee on Commerce and Labor  
May 5, 2005  
Page 31

SENATOR CARLTON:

There was a long discussion in subcommittee on how we could allow students to apply for the background check prior to graduation to minimize delays in the process. I am sure that could still be accomplished, whether at the state, county or city level.

LLOYD K. MURRAY:

I am a nationally certified, licensed massage therapist with 1,000 hours of education. I contacted state board members and massage-therapy schools of several surrounding states. According to them, there is not a single licensed massage therapist in the State of Nevada who is qualified to work on the citizens of their states. We could get that recognition if we had a state license and a state board with regulations. That means if I want to transfer to the state of Washington, I would spend \$25,000 to retake the classes I have already taken in Nevada. If we have state licensing, we could at least have reciprocity on the testing, schooling and education. That is important for massage therapists. This bill has some of the toughest requirements of other surrounding states. State licensing protects the citizens of this State.

KAREN SARTELL:

I am an independent massage therapist licensed in both the City of Las Vegas and Clark County. I strongly support passage of this bill.

BOYD A. ETTER (Nevada Physical Therapist Association):

The Nevada Physical Therapist Association would like an amendment to include the word mobilization in subsection 2 of section 7 ([Exhibit O](#)).

PATRICIA A. PATTON, LMT (Reno Board of Massage Examiners):

I am neutral on this bill and think with some work it could be a good bill. State licensure does not guarantee reciprocity. I think the figure of 2,500 massage therapists in the State provided earlier is excessive, because there are a number of massage therapists in the State who hold multiple licenses. I think licensure is inevitable in this State.

SENATOR CARLTON:

We will give this bill fair hearing time and will schedule a subcommittee meeting on this next week.

Senate Committee on Commerce and Labor  
May 5, 2005  
Page 32

DEBRA RILEA (Ralston School of Massage):

I am in opposition to this bill. Senator Carlton herself said as the expert on boards on this Committee that the "ultimate goal of any board in this State is to protect the public." There is ample evidence that massage therapy poses no threat to the public and I refer you to ([Exhibit P](#)). Previous testimony spoke to the need of a board for the convenience of licensing, not for the protection of the public. I have not heard anyone testify to the need of the protection of the public. I agree that we should be entitled to regulate our profession and that state licensure would remove our ability to self-regulate at a local level. While I acknowledge that our local licensing is not perfect, it is working. The fees that are suggested to support this state board would be excessive and would eventually exceed what is currently paid in Clark County, which is where a lot of the complaints are coming from. If the bill were to move forward, I would like to see it rewritten.

SENATOR TIFFANY:

Have you ever spoken to a massage therapist in Clark County?

Ms. RILEA:

Yes.

SENATOR TIFFANY:

Are you aware of the problems in Clark County?

Ms. RILEA:

Yes.

SENATOR TIFFANY:

Do you think it is okay, just because what you are doing works for you in northern Nevada, that we should not look at a statewide resolution to some of the problems that we have in southern Nevada?

Ms. RILEA:

I do not believe the bill does the public any good and it does not help the massage therapists if it creates excessive fees.

SENATOR TIFFANY:

To which fees are you referring?

Senate Committee on Commerce and Labor  
May 5, 2005  
Page 33

MS. RILEA:

The proposed amended fees distributed earlier.

SENATOR TIFFANY:

Licensing fees or penalty fees?

MS. RILEA:

The licensing fees in [Exhibit N](#). If you add them up, it can be as much as what Mr. Adler stated that they are currently paying.

SENATOR TIFFANY:

If you were licensed in Clark County and wanted to get a license in Henderson, North Las Vegas, the city of Las Vegas, Mesquite, Boulder City and Laughlin, do you realize what that cost would be?

MS. RILEA:

I could not tell you the cost exactly.

SENATOR TIFFANY:

In Clark County, there is a problem with that.

MS. RILEA:

How many people actually pursue seven or eight licenses?

SENATOR TIFFANY:

If they travel to someone's home to practice, they do.

MS. RILEA:

Is it a large percentage?

SENATOR TIFFANY:

I am not expert to that. I know that when I was involved with a similar bill last Session, part of the problem in Clark County was that there were multiple licensing jurisdictions. There was no regulatory body other than the police for adjudication and appeals. The county licensing division was actually using the license to manipulate and enforce certain behavior of the business-license board. The business-license board was becoming the judge and jury. That is a problem as opposed to a board. There were a lot of unscrupulous therapists and parlors which made it difficult for the Metro to enforce ordinances. A board would have

Senate Committee on Commerce and Labor  
May 5, 2005  
Page 34

more immediate authority. There are issues in Clark County, other than what you are proposing this bill to be, to which you may not be sensitive.

MR. RILEA:

If there are problems in Clark County, is it sensitive to subject the entire State to statewide licensing to address the issues experienced in Clark County?

SENATOR TIFFANY:

I think the benefit of a statewide license impacts everyone or we would not be looking at it. We look at issues for all 17 counties, not just one. If it does not hurt you, you may want to open your perspective.

MS. RILEA:

I appreciate your comment.

EVERT BRODERICK:

I have been a licensed massage therapist for the past 17 years. When I arrived today, I was strongly opposed to the bill. However, with some of the changes that have been made, I am ambivalent at this point. I believe there are strong benefits in favor of a state-licensure process and there are also deficits.

There are two specific items that I would like to address as part of my ambivalence. Referring to page 2, section 8, subsection 1, paragraph (a), I feel strong licensure does make an unequivocal distinction between the practice of massage therapy and prostitution. Yellow Page advertising erroneously links massage therapists and brothels.

CHAIR TOWNSEND:

I understand your concern and state licensure would no longer allow that advertising.

MR. BRODERICK:

I feel that is the strongest benefit of this bill to massage therapists and the public. It has the potential to prevent the prostitution industry from advertising as massage providers. The wording could be changed to make it more difficult to advertise for a brothel or prostitution.

CHAIR TOWNSEND:

Are you saying there should be a separation in the areas of marketing?

Senate Committee on Commerce and Labor  
May 5, 2005  
Page 35

MR. BRODERICK:

Yes, a distinct separation.

I feel there is an absolute need for some sort of grandfather clause in this legislation. There may be a way to do that to easily categorize massage therapists. There is one, or maybe two states, that have state licensure processes that separate their licensing procedures. For those who have a certain number of educational hours, they can legally call themselves a licensed massage therapist. Those who have fewer hours may call themselves licensed massage technicians or practitioners. It does not prohibit them from getting a state license; it just gives them a different category of licensure.

STAN OLSEN (Las Vegas Metropolitan Police Department; Nevada Sheriffs' and Chiefs' Association):

We worked with Mr. Adler on this bill and support his proposed amendment in [Exhibit N](#). It is not unheard of that prostitution is a problem within the massage industry, especially in the urban areas. A lot of those whom we arrest move to the rural areas and set up business where there is little or no regulation. In past Legislative Sessions, we have not been able to come to agreement on a particular bill. This time I think what is drafted in the first reprint is good. We are in support of that. There are those in the industry who deserve to have their name and profession kept in good stead.

GEORGE W. TREAT FLINT (Nevada Brothel Owners Association):

I was here in 1983 when this profession first came forth with a bill similar to the one you are looking at today. I hope this Committee will pass into law something that will give these people, after more than 20 years, a licensing and regulatory board. They deserve the opportunity to prove that what they have asked for is a good thing. Senator Tiffany asked why this bill did not become law sooner. Candidly, I say to you that the Nevada Brothel Owners Association (NBOA) was never supportive of a bill for many years because they thought it would be a control board over their legal business. This is the second Legislative Session that the NBOA has been exempted from a bill on this matter. We do not, and have never, purported to be massage therapists. The word is used by one operator in this State in advertising. That embarrasses us.

I say this with much caution, and sometimes less is better than more. I want this Committee to know that we understand why a hearing like this never happens without the NBOA being mentioned. A lot of touching, feeling,

Senate Committee on Commerce and Labor  
May 5, 2005  
Page 36

shoulder rubs and back massages take place in a brothel. Sometimes, that is a bigger part of the activity than the more dramatic thing that comes to mind with a brothel. Without exempting us out of this bill, we will be in a position where we not only cannot give back rubs; we cannot touch our clients without the possibility of this board sanctioning us. That is why we have not shown great support over the years until last Session when the industry was willing to exempt us out. I hope this Committee will keep us out of the bill and give the massage industry the opportunity to have a governing board.

SENATOR CARLTON:

I want to make sure that the Metro is okay with the grandfather clause.

MR. OLSEN:

Yes, we are.

SENATOR CARLTON:

Do you realize that you will be relinquishing oversight to the State on this profession? The standards that have been met in the past at the local level are going into this bill. No legislative body ties the hands of a future legislative body. What you see before you today you may agree with, but in the future it may not be the same.

MR. OLSEN:

I cannot answer for the future; next year someone may come along with something we oppose. In the next two years, we may find that this does not work, in which case we will be back.

SENATOR CARLTON:

The board would be accountable to the Legislature, not county commissions. I want to make sure that is on the record.

MR. OLSEN:

I understand that, but speaking for law enforcement, if it gets out of control and does not work or illegal prostitution increases, we will be back to oppose any changes that we feel are detrimental.

We are on the record in support of the first reprint and on the record in support of the amendment of Mr. Adler, [Exhibit N](#).

CHAIR TOWNSEND:

This Committee has traditionally honored the historical perspective that the licensing of brothels is a county decision, not a state decision. We would continue to honor that and not get into your profession. I do not want anyone to misunderstand what our role would be. Perhaps, you could encourage those in the profession, if they are going to advertise, that it might be a good idea if they kept it in a specific area. It only raises red flags and causes people to become involved where they should not.

MR. FLINT:

During the 18 months that I am not here in this building, I spend most of my time dealing with those concerns and issues. It is an ongoing effort we have never given up on because we know if we are going to continue as an industry in this State legally, regulated by the counties, we have to work hard at what we are attempting to do. We appreciate the fact that the State has given us as much freedom as it has. We do try to keep our place in the area that the State is most comfortable with our existence.

DAN MUSGROVE (Clark County):

I appreciate the questions and comments of the members of this Committee and of Mr. Olsen. Our fear has always been how you make sure the good people are doing what they should be doing? Making sure their names and reputations stay reputable and that the bad apples go do things in counties where it is legal, not in illegal counties such as Clark County. We control the resort corridor and our business-license personnel have a great deal of concern about whether or not we are losing our ability to make sure that the tourists and residents of Clark County have a good environment. For years we have tried to make sure that things are put into statute to ensure a clean industry for those who want to legitimately practice.

If the State is willing to take on that responsibility and do it with this first reprint, we will give them that opportunity. I appreciate the fact that Senator Carlton stated we should revisit this in two years and make sure things are going forward. We will be back here if it becomes a problem. I feel comfortable in the job this Committee does in regulating boards. We support, with caution and reservation, this bill moving forward. We think it will be tough to do. The framework is there and we will be supportive of that. We hope that the Metro continues to do their excellent job in ensuring that no one becomes illegal practitioners of massage therapy.

Senate Committee on Commerce and Labor  
May 5, 2005  
Page 38

CHAIR TOWNSEND:

I can assure you there are six members of this Committee from Clark County who will be monitoring this closely during the interim. If the bill is processed, there should be some way a mechanism can be set up for those six members to act as liaisons to ensure that the Metro's and the counties' concerns are continually monitored and addressed. That is extremely important.

AMBER MINOLA, LMT:

I am a licensed massage therapist in Reno and Sparks. I would like to address the language on page 14, line 15. Is the language speaking to purchases, sales of gift certificates and no-show fees? I cannot imagine what that language applies to other than those things.

CHAIR TOWNSEND:

The technical things will go to subcommittee. There are two things that I want the subcommittee to look at if they decide to process this bill and bring it back to the full Committee. It is only fair to look at, address and deal with no additional costs to the people currently licensed. They also need to look at the ability of a massage therapist to sell products and gift cards.

Ms. MINOLA:

The budget is of a big concern to me. I want to be assured that I will not be paying more than I currently do to retain my licenses. A great deal more research needs to be done on the budget so the people currently practicing do not end up paying more.

CHAIR TOWNSEND:

The subcommittee has vast knowledge of budgets. Your point is well taken.

MR. ADLER:

I would like to point out that the effective date of licensure in the bill is July 1, 2007. That will give the Committee time to recognize if there are problems with the budget.

I believe the average fees for licensure will go down, although we currently have some people who do not pay any fees.

Senate Committee on Commerce and Labor  
May 5, 2005  
Page 39

VAUGHN SMITH (Nevada Reflexology Organization):

Some of us have seen similar bills over the years and it seems every time one comes up, it is longer and more technical. The one thing that never changes is that the massage therapists want to include all healing modalities in the definition of massage. These modalities are listed on page 2, section 7, under definitions of massage therapy.

CHAIR TOWNSEND:

Is your point to see if you can be exempted?

MR. SMITH:

Yes. Line 23 of page 2 is ambiguous. I am a reflexologist and have provided information on reflexology ([Exhibit Q](#)). The main difference between massage therapy and reflexology is that massage therapists work on muscles and soft tissue. I work with pressure points on nerve reflexes. It is an entirely different modality and should not be considered massage. I do not want to incur the expense it would take to comply with the massage requirement language in this bill.

CHAIR TOWNSEND:

I will now close the hearing on A.B. 250 and reopen the hearing on A.B. 66.

TOM WOOD (Pharmaceutical Research and Manufacturers of America):

I am the elected chairman of the Nevada Task Force of PhRMA. We are in agreement with Assemblyman Conklin and Mr. Gold on only one issue. We want every citizen in Nevada to have access to prescription drugs.

JAMES MORGAN (Novartis Pharmaceuticals Corporation):

I am the vice chair of the Nevada Task Force of PhRMA. In April 2002, the PhRMA and the American Medical Association jointly developed guidelines to govern the interactions between manufacturers and health-care professionals. This was a direct result of negative publicity from a number of instances in which we saw some extravagances bestowed upon the medical industry by some pharmaceutical manufacturers. In April 2003, the federal Office of the Inspector General (OIG), relying on federal investigations into those instances, the federal Department of Justice and the state Medicaid fraud units established behavioral guidelines, which, while not law, identified federal penalties for violations. Those penalties tied back to the federal Anti-Kickback Act, the federal False Claims Act as amended in 1986 and the federal Prescription Drug

Marketing Act of 1987. Violations carry fines up to \$25,000. There are felonies with penalties of up to five years in prison and elimination from qualifying to do business with the federal government. The language contained in A.B. 66 is not new language and has been floating around the country for a number of years. I think reference was made to the state of Vermont where they have passed similar legislation. An assertion was made that in 2004, \$2.4 million was spent in marketing to only 2,500 physicians who took care of 660,000 citizens. If you read Vermont law, you will see that marketing reporting also covers any marketing to anyone who is authorized to purchase a prescription. That means the general public. We would like to clear up the assertion that there is more money spent on marketing than on research and development. For the record, in 2003, the PhRMA companies spent \$33 billion on research and development and \$25.3 billion on promotional activities. Of that promotional activity money, \$16.2 billion was the retail value of prescription samples given to physicians. The language in this bill has been before this Legislature in the past. This language was introduced as part of S.B. No. 387 of the 72nd Session. In my handout titled "Office of Inspector General, Compliance Program Guidance for Pharmaceutical Manufacturers," April 2003 ([Exhibit R](#)), you will see that S.B. No. 387 of the 72nd Session, which was chaptered into law, now contains the compromise language that requires the State to set up through the Board of Medical Examiners and the State Board of Pharmacy (SBOP) access to the OIG Web site and the mechanism by which anyone who sees a violation of these guidelines can report them to the OIG. We at the PhRMA feel there is no further need for legislation on this.

SENATOR CARLTON:

The best way to do business is to open the doors, let the light shine in and let people know what is going on. It seems to me the industry is opposed to that and I would like the PhRMA representatives to explain to the citizens of Nevada why they are so opposed to disclosure.

ROBERTA (BOBBIE) GANG (Nevada Women's Lobby):

We support this bill. In Nevada, we have the fastest-growing senior population in the nation. We also have 557,000 people without prescription-drug coverage. This creates a significant problem that we think the Legislature can solve by passing this legislation. I also have some facts from a publication that I will submit to the Committee.

Senate Committee on Commerce and Labor  
May 5, 2005  
Page 41

CHAIR TOWNSEND:

We will recess until the end of the Senate floor session or 12:45 p.m., whichever is later. Senator Carlton's question to the PhRMA representatives can be answered at that time.

CHAIR TOWNSEND:

The Committee will now reconvene at 12:49 p.m.

JOHN P. SANDE, III (Merck & Company, Incorporated):

Our position is that this is a federal issue and Merck & Company, Incorporated (Merck) already complies with federal marketing guidelines issued by the OIG. They also comply with the voluntary guidelines of the PhRMA. Merck has specifically banned all physician entertainment, trips, gifts and the like. All they currently do now is medical-education symposiums. In listening to the testimony, I see this as a federal issue. This bill only provides for one more unique report that has to be filed or someone will be subjected to fines and legal costs. From Merck's perspective, other than having to file a report, they are not going to change the way they do business. This bill would hurt physicians and others, rather than changing any behavior of pharmaceutical companies, especially Merck which already complies with federal guidelines.

PAUL H. MOZEN D.O. (State Board of Osteopathic Medicine):

I am a physician who has been practicing internal medicine in Washoe County for the past 20 years. I am opposed to this bill. I can assure you that there are no huge kickbacks or graft occurring in the interactions between physicians and pharmaceutical companies in Washoe County. However, I have received some nice pens and paper pads from pharmaceutical representatives. I hardly consider receiving those things reason for legislation. There are already federal statutes governing gifts and grants from pharmaceutical companies. In fact, the pharmaceutical industry has done a decent job in trying to police their behavior. I speak to you today as a physician who has been in the trenches and this is not one of the major problems facing health care in our State. We do have serious problems relating to access to medical care, cost of medical care and cost of prescription medications. I would hope that our Legislature would devote their precious time to tackling the more serious problems. I may have a reputation as a free-spending Democrat, but in this situation, I really do believe that good government is less government.

Senate Committee on Commerce and Labor  
May 5, 2005  
Page 42

SENATOR HARDY:

My concern is the scenario when the physician has the option for the drug they have been influenced to prescribe, a competitor drug or a generic drug.

SENATOR HECK:

As a physician who writes prescriptions, let me tell you what it is like being in the trenches and what influences your prescription. You write the prescription for the drug you think is most appropriate. Then you get a phone call that says one of two things. Either that drug is not on the patient's formulary or your patient cannot afford the prescription, is there something else that can be prescribed? That is what dictates prescriptions. You start with the drug you feel is most appropriate. If the drug you initially prescribe is either not on the patient formulary or they cannot afford it, you change the prescription. The other thing of importance to note, which I believe is already in the law, is unless the physician indicates on the prescription that no substitution is allowed, the pharmacist has the ability to give the generic drug, regardless of what the physician writes. There are many more variables that impact what happens from the time a physician writes a prescription to the time the patient actually gets the drug than which pharmaceutical representative saw me last. It is important to keep in mind there are already provisions within the law that are meant to drive down the costs.

SENATOR HARDY:

I am significantly troubled by the characterization that this is not important and we should be on to more important issues. This is extremely important. I am willing to be convinced that the things in this bill are already done on a federal level. If I am not convinced of that, it is my inclination to support this bill.

DR. MOZEN:

My position is not that it is unimportant. I believe there are better avenues for policing this than another law.

SENATOR CARLTON:

Different bills have different levels of importance. I keep hearing that this is done at the federal level. It is my understanding that what is done at the federal level only impacts federal plans, Medicare, federal buying power and things like that. That really does not reach into our State and deal with disclosure within states. I would like to understand what these federal programs do and who they

impact. I do not believe they reach as far into this disclosure issue as this bill does.

MR. WOOD:

I am very aware of the seriousness of this issue. We are not trying to dismiss it on the basis that it is not important. I do not think there is any sort of prescribing these days that does not touch in some form Medicaid, Medicare or veteran's benefits or something. All of that touches federal actions, including government contracts. That is all covered under this bill. Right now, 23 percent of all prescriptions in the United States have federal implications. As of January 2006, 54 percent of all prescriptions in the United States, because of the implementation of Medicare Part D, will have a federal aspect. This law does not impact those programs. I would say almost every physician at some time has to write a prescription that is covered by a federal program.

MR. MORGAN:

On page 4 of [Exhibit R](#), there is a reference to compliance and providing a mechanism that addresses the public and private sector's mutual goals of reducing fraud and abuse, enhancing health-care provider operational functions, improving the quality of health-care services and reducing the cost of health care.

SENATOR CARLTON:

If I understood you correctly, we are talking about the federal aspect of this touching about 54 percent of the prescriptions. Is that nationwide?

MR. WOOD:

Yes.

SENATOR CARLTON:

We have numerous large health and welfare trust funds in southern Nevada. My underlying concern in this is that every time I go back to negotiations with my employer's health care, this is a huge issue. Prescription costs a few years ago sent our union into a tailspin. We actually opened a free pharmacy to give away generic medications to our members so they would be comfortable using generics. We saved a lot of money doing this. As a consumer and advocate for the people for whom I work, I would like to know what the relationship is with the physicians on our plan and you. The same way the people outside this building want to know the relationship that occurs between you and me. It is

the same type of inquiry. That is what this bill is trying to address. We just want information and disclosure and are not going to lay blame. Getting information from the federal government is not as easy as some people think.

MR. WOOD:

There are several issues involved here. The AARP is concerned with undue influence on physicians and prescribing. That is the premise being laid here. I would like to put some of that to rest. There is no industry more regulated than the pharmaceutical industry. We are also very competitive. When you talk about disclosure, obviously, you do not lay out everything so the competition can take advantage of it. All of us introduce drugs in a certain therapeutic category and we try to talk to physicians and provide samples. That material going into the physician's office is approved by the federal Food and Drug Administration (FDA). Every single marketing piece that we have must be approved by the FDA. Anything detailed outside of that is subject to the False Claims Act as amended in 1986.

I will provide the Committee with the Wyeth Pharmaceuticals (Wyeth) company policy manual. I have been in this business for 29 years. I started as a pharmaceutical sales representative when things were looser. With the 2003 compliance guidelines, the sales representatives' every action is subject to disclosure and accountability. If you have an educational symposium, you better not make it about your own single drug, it better be fair, balanced and about that therapeutic category. That is how the system works right now. Most of the claims I heard earlier were previous to 2003. We are not afraid of complaints, but if one of the Wyeth people go outside standard operating procedures and that includes taking physicians to dinner and anything else along those lines, they are fired, as simple as that.

Previous testimony suggests there is a problem and I am telling you there is not. If you add another state layer of regulation for reporting, that will raise operating costs, thereby raising the cost of prescription medications.

CHAIR TOWNSEND:

I am trying to get to the heart of the matter. We had a presentation showing we have high drug prices and this bill is one of many things that could lead to lower costs. I am wrestling with that because it is like various bills we have seen for industries that are federally regulated. I respect trying to address and fix things, but that may be naïve.

Senate Committee on Commerce and Labor  
May 5, 2005  
Page 45

There are accusations in two of the handouts of the proponents of this bill that I need to question. Both of them have to do with pharmaceuticals companies acquiring data in order to shift marketing techniques. Does the SBOP sell data, and if so, what is the data that is sold?

FRED L. HILLERBY (Nevada State Board of Pharmacy):

I personally do not know the answer to that question. I do know that our licensees are public record. As I understand this bill, it is aimed towards practitioners who would be prescribing, as opposed to pharmacists who would be dispensing.

CHAIR TOWNSEND:

There is contention that surrounds this. Sometimes, people make accusations that do not get to the bill. One of the accusations is that part of the problem of prescription marketing is that it is targeted to a specific group of physicians based on dispensing patterns. I am trying to find out if one of the ways to acquire dispensing-pattern data is through the SBOP.

MR. HILLERBY:

Thank you for clarifying the question. As you know, Nevada has a model controlled-substance tracking system. That is confidential information and is not sold to anyone. As far as monitoring physician prescribing habits, the SBOP does not do or sell that. That is not a function of the SBOP.

CHAIR TOWNSEND:

I suggest that Committee members observe the operation and controlled-substance tracking system of the SBOP. I want to make certain that our SBOP would not be selling data that would somehow allow a data-collection person to look at prescription patterns.

MR. HILLERBY:

I am confident in my answer but will verify it for the Committee with the SBOP.

CHAIR TOWNSEND:

Do you believe you have the authority, if there is a complaint about a licensee regarding the behaviors that have been purported as a result of this bill coming forth, that you can appropriately discipline them by either revoking or suspending their license?

Senate Committee on Commerce and Labor  
May 5, 2005  
Page 46

MR. HILLERBY:

I want to make sure that I understand the concern voiced by this bill is that perhaps pharmacists or pharmacies are selling that information about prescribing patterns?

CHAIR TOWNSEND:

Do you think there is any retail pharmacy selling that information? Are any of your licensees not meeting standards in this bill? Are they going on trips to Cancun or Bermuda? Do you have the disciplinary authority to deal with those problems because that is inappropriate behavior under your practice act?

MR. HILLERBY:

I do not know if going to a continuing education or promotional conference violates their practice act. It seems to me there are Health Insurance Portability and Accountability Act of 1996 (HIPAA) issues here because you are talking about personal-health information.

CHAIR TOWNSEND:

Please discuss this with the chairman, executive director and deputy attorney general of the SBOP to see what they think is the authority. I believe there is language in your statute on inappropriate behavior. Is there a software program or person who identifies dispensing patterns?

MR. HILLERBY:

Other than the controlled-substance tracking system, I do not believe we do any other type of tracking of dispensing practices.

MR. MORGAN:

The State's Medicaid program does have a tracking system called Drug Utilization Review. It is a retrospective look at prescribing practices. The intent is to monitor and, if necessary, provide education to the provider and or the pharmacist on changing prescribing and dispensing behaviors.

CHAIR TOWNSEND:

The purpose of my questions is simple, because this Committee sees a lot of pointed bills. It is our job to look at trends as opposed to anecdotes. Since we have jurisdiction over Title 54, we look at the authority the various licensing bodies have to deal with these issues. If a patient were to complain to the SBOP or the State Board of Osteopathic Medicine (SBOM) that Dr. Heck keeps putting

Senate Committee on Commerce and Labor  
May 5, 2005  
Page 47

Ms. Jones on one medication and she really wants another, I am sure there are ways to investigate that type of complaint. Am I correct?

MR. HILLERBY:  
Yes.

CHAIR TOWNSEND:  
I am trying to identify what is available currently for handling complaints.

DR. MOZEN:  
These issues do come up for the SBOM. The problem is, in order to initiate disciplinary action against a physician for possibly violating a statute, we have to be able to prove that he is prescribing one drug more than others and that he is doing it because of an enticement. It is a difficult thing to prove, and we have had these situations come up before.

CHAIR TOWNSEND:  
Mr. Gold, I have been trying to follow your thinking with regard to the data. That is very important to us and we have been very proprietary of our data. I am reading from [Exhibit J](#), page 3, "The process begins when drug companies buy, often without the knowledge or prior consent of doctors, the prescribing histories of individual physicians. Purchased from retail pharmacies and then aggregated by data processing companies, this information gives detailers precise information about which classes, forms and dosages of drugs each physician prescribes." Can you help us with that process?

MR. GOLD:  
I recently received that and was surprised by that information. I received some follow-up information which is in [Exhibit K](#), on page 4. The top paragraph says they charge for the data. I do not know who IMS Health is, but on the third paragraph on page 3 it says: "Since the mid-1990s, drug companies have hired outside firms that purchase data on physicians from pharmacies and used the information in marketing. It's legal in the United States as long as patients are not identified. However, the Canadian province of British Columbia outlawed the practice in 1996." The author of this article is Liz Kowalczyk at *The Boston Globe*. I have not spoken to her and assume as a journalist that she checked her facts before she put the article in a publication such as *The Boston Globe*. This is the data that I had that is frankly startling to me that this goes hand in hand

Senate Committee on Commerce and Labor  
May 5, 2005  
Page 48

with the dollars being spent. It is not just dollars being spent; it is also how they are looking at data.

CHAIR TOWNSEND:

We will not be accusatory against the industry. We are trying to find out the problem. The point is that now we have a discussion out of this paper and it reads: "Verispan, IMS, and other companies also now buy data not just on individual doctors, but on individual patients and the medications they're taking. Executives at CVS and Walgreens, as well as Dendrite's Barnes, said pharmacies remove patient names and identifying details from the data and assign each person a non-traceable number. But the data includes information such as the patient's insurance provider, all the drugs a patient takes, and the doses." Do you have any insight into that?

LIZ MACMENAMIN (Retail Association of Nevada):

I am not aware of this practice. However, CVS and Walgreens are both members of the Retail Association of Nevada. I will contact them and get the information back to you.

CHAIR TOWNSEND:

Please do that and also have someone who represents them come and provide the history and background to this. If that is the case, you cannot fault the marketing division of a pharmaceutical company for coming up with the idea. I am not sure that information is appropriately distributed to other people.

MS. MACMENAMIN:

I will speak with executives from those companies. To my knowledge, this is not information that could be shared outside of the company.

CHAIR TOWNSEND:

I am not saying Mr. Gold's assertion is or is not correct. I am not saying this bill does or does not solve the problem. Physicians have been in an incredibly tight vice over the last few years between contracted rates, managed-care panels, paperwork, federal government requirements and all the other things. Medicine is not what it used to be. These poor folks taking care of all of us have a tough time. I believe that the vast majority of physicians are not only honorable but do the right thing for the patient. The right thing may be expensive. The entire HIPAA privacy issue is in question here.

Senate Committee on Commerce and Labor  
May 5, 2005  
Page 49

SENATOR HECK:

The HIPAA deals with personal-health information and if the information was manipulated to where it was a tracer number with nothing that could be tied to the patient, then it would not be an issue under the HIPAA.

CHAIR TOWNSEND:

There are two portions of this bill. I disagree with some people here and have a higher regard for the medical community than worrying about whether they went to Cancun. What I do not like that I have seen so far is that if we are allowing people to acquire data, whether a name is attached or not. I cannot fault them for doing it because I think it is genius, but is it good public policy? All we can do here is something for Nevadans and this may be a national problem.

MR. HILLERBY:

I contacted the SBOP and the only thing we sell is a public list of who is licensed. There is a fee for that. We do not track how prescriptions are filled other than the controlled-substance tracking system. Under the NRS 639.238, subsection 1, it states: "Prescriptions filled and on file in a pharmacy are not a public record. A pharmacist shall not divulge the contents of any prescription or provide a copy of any prescription, except to: (a) The patient ... . (c) A practitioner who is then treating the patient; (d) A member ... of the Board or an inspector of the Food and Drug Administration or ... (e) An agency of state government charged with the responsibility for providing medical care for the patient; (f) An insurance carrier with a release from the patient ... . (h) Any member, inspector or investigator of a professional licensing board" ... that is investigating a complaint, and "(i) Other registered pharmacists for the limited purpose of, and to the extent necessary, for the exchange of information relating to a person who are suspected of ... ." Under our general authority, that would be a specific violation of our law if they were revealing, in whatever form, information they had on a prescription. In the NRS 639.210, subsection 4, "Is guilty of unprofessional conduct or conduct contrary to the public interest." So there are a lot of other grounds to not issue, revoke or take disciplinary action on a license. The board does have a lot of authority in this area and it seems to me that in the context of this discussion that is not public information except under limited circumstances.

Senate Committee on Commerce and Labor  
May 5, 2005  
Page 50

CHAIR TOWNSEND:

The information printed in the articles may be national issues. Maybe, because of our practice act, they are prohibited from doing that in our State. There also may be extrapolation of national statistics. We would like to hear from some of the executives of the pharmaceutical retail companies named earlier.

MS. MACMENAMIN:

I will make arrangements for them to come before this Committee.

CHAIR TOWNSEND:

The meeting of the Senate Committee on Commerce and Labor is now adjourned at 1:47 p.m.

RESPECTFULLY SUBMITTED:

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Jeanine M. Wittenberg,  
Committee Secretary

APPROVED BY:

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Senator Randolph J. Townsend, Chair

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