

# Nevada State Medical Association

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Lawrence P. Matheis, Executive Director

January 14, 2008

Judith Wright, Chief  
Bureau of Family Health Services  
Division of Health  
3427 Goni Road, Suite 108  
Carson City, NV 89706

Dear Ms. Wright:

Thank you again for the opportunity to participate on behalf of the Nevada State Medical Association in the meeting regarding J-Visa Waiver issues. You and your staff have clearly done considerable work in developing a more comprehensive oversight approach for future program participants in Nevada. The purpose of this letter is to restate several comments that I made at the meeting and to make some suggestions for your consideration.

The proposed revised "Guidelines" do seem to incorporate responses to the various allegations in the recent Las Vegas SUN articles. They also appear to update the rules to conform to the federal rules.

1. As I indicated at the meeting, "Guidelines" do not have the force of law, although they may be used in civil litigation. Oversight of the appropriate implementation of physician primary care services under J-1 Visa waivers is a joint Federal and State responsibility, and, within the State, includes the State Health Division and various professional licensing boards. State regulations provide clearer directions to State agencies than guidelines in the event of alleged violations. The State Board of Health has considerable general authority to protect the public health under NRS 439 to adopt regulations and the State Health Division has authority to implement such laws. I recommend that any guidelines should be adopted by State regulation.
2. I recommend that the J-1 Visa Waiver Advisory Committee be expanded to include all stakeholders and interested parties and recommend that all meetings should be public. It may prove desirable in the longer term to seek legislative designation of the advisory committee, including public reporting requirements.
3. The proposed guidelines specifically address the federal requirement that contracts cannot contain "non-compete" clauses. I asked at the meeting whether any current contracts that contain such clauses can have force of law and suggested that the Division should require

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EXHIBIT I Health Care

Document consists of 2 pages.

Entire document provided.

Due to size limitations, pages \_\_\_ provided. A copy of the complete document is available through the Research Library (775/684-6827) or e-mail [library@lcb.state.nv.us](mailto:library@lcb.state.nv.us).

Meeting Date 2/12/08

all current contracts to be revised to conform to the federal rules.

8. While the Nevada State Medical Association applauds the creation of the State Health Division web site, which is an excellent resource for the public and physicians interested in the program, reporting complaints is always limited if the complainant has reasonable (or unreasonable) expectations of retaliation. The Las Vegas SUN newspaper stories, the testimony at the Legislative Committee on Health Care meeting on October 31, 2007, and some comments made at the Division's December meeting all indicated that some physicians participating in the program As you know, in the 2002 Legislative Special Session, the Legislature passed some protections against retaliation for reporting various matters. These protections are included in NRS 449 and NRS630. It may be that these statutory provisions are not inclusive enough to protect physicians, their families or others who report alleged violations of the program rules or other laws. I recommend that the Division seek legal interpretation of the statute regarding its application for reporting alleged abuses in this program. It may be appropriate to seek clarifying legislation in 2009.

Thank you and the State Health Division staff for your hard work on this complex issue. As NSMA President Edwin C. Kingsley, M.D. and Clark County Medical Society President Eldon E. Havins, M.D., J.D. wrote in their October 19, 2007 letter to Governor Jim Gibbons: "Until we have sufficient physician workforce to meet Nevada needs... foreign physicians who come to the State under this program to serve at least 3 years in medically underserved communities provide essential professional services in areas that otherwise are without them. We are deeply concerned that the allegations in the Las Vegas SUN series could shake public confidence in this program and that physicians in this program may have been mistreated." If you need more information, or if I can be of additional assistance, don't hesitate to call me.

Sincerely,

Lawrence P. Matheis  
Executive Director

CC: Governor Jim Gibbons  
Catherine Cortez Masto, Attorney General  
Drennan A. Clark, Executive Secretary/Special Counsel-Board of Medical  
Examiners  
NSMA Council