To: Nevada State Assembly Health and Human Services Committee  
From: Lisa Black, PhD, RN  
Date: February 21, 2009

Madam Chair, thank you for the opportunity to present testimony is support of Assembly Bill 10. I am Martha Drohobycz, President of the Southern Nevada District of the Nevada Nurses Association. I am presenting testimony prepared by Dr. Lisa Black, member of the Nevada Nurses Association Legislative Committee.

As you are aware, the Legislative Committee on Health Care conducted several hearings during the Spring and Summer of 2008 to identify the root causes, as well as the system and human failures that led to a number of Hepatitis C infections resulting from unsafe injection practices in Southern Nevada endoscopy centers. During the course of the investigations that followed, a number of the registered nurses, licensed practical nurses, and certified nurse anesthetists employed by the endoscopy centers in question indicated that they were instructed to reuse Propofol (Diprivan®) vials when administering procedural sedation to patients. Legislative Committee on Health Care Summary Minutes and Action Report, April 21, 2008). Subsequent investigation by the Nevada State Board of Nursing (NSBN) suggested that there was a “general fear of retaliation” in the work settings where these breaches of practice took place (NSBN, personal communication, February 6, 2009).

The Nevada Nurses Association was asked to provide recommendations during the May 6, 2008 meeting of the Legislative Committee on Health Care regarding statutory and/or administrative changes that could help to prevent future such events. The Nevada Nurses Association proposed legislative language on May 6, 2008 intended to strengthen patient advocacy (i.e. “whistleblower”) statutes currently codified in NRS 449.205. These recommendations have been introduced as Assembly Bill 10 for consideration during this 75th regular session of the Nevada Legislature.

**History of Patient Advocacy Legislation**
Patient advocacy laws have become commonly known as “whistleblower protections.” Whistleblowing is the disclosure of information by an employee who alleges willful misconduct carried out by an individual or a group of individuals within an organization. Increased attention

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1 Questions in regard to this testimony or the accompanying Patient Advocacy Activities of Registered Nurses Study Report can be addressed to Lisa Black, PhD, RN via telephone (775.682.7155) or via email (lblack@unr.edu).
has been given to the concept of whistleblowing for healthcare professionals since the release of the Institute of Medicine's (IOM) report, *To Err is Human* (IOM, 1999). This seminal report found that between 44,000 and 98,000 people die in U.S. hospitals every year and many of these errors are not reported. The IOM recommended that health care facilities develop a "culture of safety" such that their workforce and processes are focused on improving the reliability and safety of patient care. The report further states that safety should be an explicit organizational goal that is demonstrated by strong leadership on the part of clinicians, executives, and governing bodies. Among other things, a culture of safety speaks to issues of job design and safe working conditions, as well as standardization of procedures, equipment, supplies, and processing. A culture of safety also is one in which those charged with protecting patients from harm are able to do so in an environment that supports patient advocacy without fear of reprisal.

Legislatively, whistleblowing is not a new concept. The key component to effective whistleblower legislation is to balance the best interests of the individual, the profession, the patient, the community, and the healthcare facility. Legislation must provide mechanisms to report unsafe practices without reprisal, allow for adequate response time internally, allow for an external process when internal processes fail, and deter false claims. Nurses have an ethical and moral obligation to their profession and their patients to report practices that may harm patients, with the intention of having the condition or error corrected. To date, 18 states have passed some form of whistleblower protection, though each of these state laws have different enforcement mechanisms and levels of recourse for employees who have experienced reprisal for reporting unsafe practices.

Current Nevada law (NRS 449.205) states that:

A medical facility shall not retaliate or discriminate unfairly against an employee who in good faith (1) reports to the Board of Medical Examiners information relating to the conduct of a physician that raises a reasonable question regarding the competence of the physician to practice medicine with reasonable skill and safety to patients, (2) reports a sentinel event to the Nevada State Health Division, or (3) participates in an investigation or proceeding conducted by a governmental entity. NRS 449.205 defines retaliation as frequent or undesirable changes in work location, frequent or undesirable transfers or reassignments, issuance of letters of reprimand or admonition, evaluations of poor performance, demotion, reduction in pay, denial of promotion, suspension, dismissal, transfer, or frequent changes in working hours or workdays if such action is taken solely because the employee made a report as previously defined.

While this language added to NRS 449 during the 17th special session of the Nevada State Legislature (2002) was an important first step, existing Nevada law is lacking in several ways that limit the ability of nurses to advocate for the safety of patients treated in Nevada's healthcare facilities. Specifically, existing statute addresses only reports to the Board of Medical Examiners, reporting of sentinel events, and cooperation with governmental investigations. Many situations exist in which a nurse or health care worker may need to report unsafe practices that are not addressed in existing law. During the May 6, 2008 meeting of the Legislative Committee on Health Care, the Nevada Nurses Association proposed changes to existing law that would provide statutory protections for nurses who:
• Report concerns about patient(s) being exposed to substantial risk of harm due to failure of a facility or practitioner to conform to minimum professional standards or regulatory/accreditation standards.
• Are requested to engage in conduct that would violate the nurse’s duty to protect patients from actual or potential harm as defined by the Nevada Revised Statutes (NRS) and the Nevada Administrative Code (NAC) Chapters 632.
• Refuse to engage in conduct that would violate Chapters 632 of NRS/NAC or that would make the nurse reportable to Nevada State Board of Nursing.
• Report the actions of another nurse who engages in conduct subject to mandatory reporting to the Nevada State Board of Nursing as defined by NRS/NAC 632.
• Report staffing concerns or situations that reasonably could contribute to patient harm.

The Patient Advocacy Activities of Registered Nurses Study was conducted at the request of the Legislative Committee on Health Care in response to concerns among policy makers about the lack of information relating to registered nurses’ patient advocacy activities. The project was financially supported by the Nevada Nurses Association, the Nevada State Board of Nursing, and the Arthur L. Davis Publishing Agency. The primary contributor was Lisa Black, PhD, RN of the University of Nevada, Reno. During the summer of 2008, a two-page questionnaire was developed by Dr. Black with input from the Nevada Nurses Association Legislative Committee and the Nevada Nurses Association Board of Directors. The questionnaire (which appears as Appendix A of the report included with written testimony) was designed to elicit information about patient advocacy activities of registered nurses in Nevada.

Study objectives included the collection of data on work setting, reporting activities related to potentially unsafe patient care conditions, experiences with prior reporting activities, attitudes toward reporting patient safety concerns, and levels of satisfaction with the nurse’s primary nursing position and with nursing as a career.

Selected Results from the Study

Reporting Activities of Study Respondents. A total of 564 registered nurses were included in the final study sample. 93.8% (N = 529) of respondents reported that they worked in a position that required a license to practice as a registered nurse, and 61.9% (N = 349) worked in an acute care facility. Nearly all respondents stated that they knew how to report an unsafe patient care situation (90.1%; N = 508). Participants reported being involved in a variety of reporting activities. More than half of participants reporting having been involved in the reporting of a staff nurse (62%; N = 352) or a physician (64%; N = 362) to a nursing supervisor. Approximately one quarter of nurses had made reports to higher levels of nursing (27.1%; N = 153) and/or medical (27.3%; N = 154) management. Fewer participants reported having made reports to regulatory agencies.

While 73% (N = 412) of respondents stated that they had previously reported an unsafe patient care situation to people that he or she felt would be able to correct the situation, 34.4% (N = 194)
responded that they were aware of a situation that could cause harm to a patient that was not reported. Whether a participant had been aware of a patient care situation that was not reported differed by work setting (Chi2 = 62.3; p < .001). Specifically, 38.4% of nurses working in acute care settings and 28.6% of nurses working in non-acute care settings responded that they were aware of an unsafe patient care situation that was not reported.

Relatively few participants reported having directly experienced workplace retaliation after reporting the actions of nurse (17.8%; N = 88) or a physician (15.3%; N = 76) and 60.6% (N = 342) reported that they could report a patient safety concern without experiencing workplace retaliation. However, approximately 40% (N = 230) of respondents reported that they knew or knew of a nurse who had experienced workplace retaliation after reporting the actions of another staff nurse. Nearly one-third of respondents knew or knew of a nurse who had experienced workplace retaliation for reporting the actions of a nursing supervisor (30.1%; N = 170) or a physician (29.6%; N = 167).

Knowing a nurse who had experienced workplace retaliation after reporting a patient safety concern was strongly associated with not reporting a patient safety concern about which the nurse was aware. 62% (N = 142) of respondents who knew or knew of a nurse who had experienced retaliation for reporting the activities of another nurse responded that they were aware of a patient safety concern that was not reported. Comparatively, only 14.7% (N = 48) of respondents who did not know of a nurse who had experienced workplace retaliation stated that they were aware of a patient safety concern that was not reported. Similar results were seen in regard to nurses who knew or knew of another nurse who had experienced retaliation after having reported the actions of a physician, with nurses who were aware of retaliatory activities nearly twice as likely to not report a patient safety concern than those who had not been exposed to previous retaliatory activity.

Reasons unsafe patient care situations were not reported. Respondents who had been aware of an unsafe patient care situation that they did not report were asked to indicate the most important reason that the concern was not reported. Of those who were aware of a patient safety concern that was not reported, 43.6% (N = 79) responded that they were concerned about experiencing retaliation for having made a report, and 37.6% (N = 68) reported that they did not feel anything would come of the report if one were made. Other respondents reported not knowing how or to whom to report the situation, not having enough time to report, or that the situation was “none of their concern.”

Nearly half of the respondents in this study disagreed or strongly disagreed with statements querying whether the nurse could report the actions of their nursing supervisor without experiencing workplace retaliation (44.3%; N = 250). One third responded that they could not report the actions of a physician to the medical director of their facility (33.4%; N = 188) or to the Nevada State Board of Medical Examiners (37.8%; N = 213) without experiencing workplace retaliation. Nearly half (41.8%; N = 236) of nurses who responded to the survey
disagreed or strongly disagreed with a statement querying whether they could report a staffing concern in their facility without experiencing retaliation.

Finally, respondents were asked to respond to a statement about the nurse's level of satisfaction with their current nursing position, and with nursing as a career. Nearly three quarters of nurses who responded to the survey were satisfied with their current nursing position (70.6%; N = 398) and with nursing as a career (75%; N = 423).

While the majority of nurses surveyed were satisfied both with their current nursing position, and with nursing as a career, there was a very strong relationship between levels of satisfaction with the nurse's primary nursing position and the likelihood that a nurse did not report a patient safety concern about which he or she was aware (F = 128.4; p < .001). 71.8% (N = 28) of respondents who were strongly dissatisfied with their current nursing position reported being aware of patient safety concern that he or she did not report, compared to 15% (N = 25) who were strongly satisfied with their primary nursing position.

**Policy Implications of the Study**
Enhanced legislative language is needed to create a workplace atmosphere where nurses are encouraged to openly report situations that may pose a threat to patient safety without fear of reprisal or workplace sanctions. That more than one-third of registered nurses who responded to this survey indicated that they were aware of a patient safety concern that was not reported is of concern. It is important that Nevada's healthcare leaders and this legislative body act in the spirit of the 1999 Institute of Medicine report and take steps to make the environments in which nurses work ones that encourage nurse to report, rather than bury situations that may cause harm to patients.

Assembly Bill 10 bridges the gaps in existing statutory language codified in NRS 449.205 to provide legislative protections for nurses who engage in a wider variety of reporting activities that are not addressed in current law. Specifically, Assembly Bill 10 provides workplace protections for nurses who (a) report concerns about patient(s) being exposed to substantial risk of harm, (b) are requested to engage in conduct that would violate the nurse's duty to protect patients from actual or potential harm, (c) refuse to engage in conduct that would violate Chapters 632 of NRS/NAC or that would make the nurse reportable to Nevada State Board of Nursing, (d) report the actions of another nurse who engages in conduct subject to mandatory reporting to the Nevada State Board of Nursing as defined by NRS/NAC 632, and (e) report staffing concerns or situations that reasonably could contribute to patient harm.

We urge your support of this important patient safety legislation, and I would be glad to address any questions of the committee.