



NEVADA LEGISLATURE
SUNSET SUBCOMMITTEE OF THE LEGISLATIVE COMMISSION
(Nevada Revised Statutes [NRS] 232B.210)

SUMMARY MINUTES

The fourth meeting of the Sunset Subcommittee of the Legislative Commission for the 2017–2018 Interim was held on Wednesday, March 21, 2018, at 8:30 a.m. in Room 4412, Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. The meeting was videoconferenced to Room 3137, Legislative Building, 401 South Carson Street, Carson City, Nevada.

The agenda, minutes, meeting materials, and video or audio recording of the meeting are available on the Committee's [meeting page](#). In addition, copies of the audio or video record are available through the Legislative Counsel Bureau's Publications Office (e-mail: publications@lcb.state.nv.us; telephone: 775/684-6835) and may also be available at <http://www.leg.state.nv.us/Granicus/>.

COMMITTEE MEMBERS PRESENT IN LAS VEGAS:

Assemblywoman Irene Bustamante Adams, Chair
Senator Kelvin D. Atkinson, Vice Chair
Senator Moises (Mo) Denis
Assemblywoman Shannon Bilbray-Axelrod
Assemblyman Keith Pickard
Carmen Amen

COMMITTEE MEMBERS PRESENT IN CARSON CITY:

Senator James A. Settlemeyer
Teresa P. Froncek Rankin

COMMITTEE MEMBER ABSENT:

William "Buzz" Harris

LEGISLATIVE COUNSEL BUREAU STAFF PRESENT:

Carol M. Stonefield, Deputy Research Director, Research Division
Jennifer Ruedy, Senior Principal Policy Analyst, Research Division

James W. Penrose, Senior Principal Deputy Legislative Counsel, Legal Division
Jessica F. Dummer, Deputy Legislative Counsel, Legal Division
Rocky Cooper, Legislative Auditor, Audit Division
Janet Coons, Manager of Secretarial Services, Research Division
Jan Brase, Research Secretary, Research Division

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Items taken out of sequence during the meeting have been placed in agenda order.

AGENDA ITEM I—CALL TO ORDER

Chair Bustamante Adams called the fourth meeting of the Sunset Subcommittee of the Legislative Commission to order. She welcomed Subcommittee members, staff, and the public and reviewed meeting protocol.

AGENDA ITEM II—PUBLIC COMMENT

Chair Bustamante Adams called for public comment; however, no testimony was presented.

AGENDA ITEM III—APPROVAL OF MINUTES OF THE MEETING HELD ON FEBRUARY 21, 2018

Assemblyman Pickard requested the minutes be amended to include the full remarks made by James W. Penrose, previously identified, under Agenda Item V A regarding the State Board of Architecture, Interior Design and Residential Design.

Chair Bustamante Adams tabled the minutes and asked the secretary to revise Mr. Penrose's comments under Agenda Item V A; the Subcommittee will vote on the minutes at the next meeting, which is scheduled for April 23, 2018.

AGENDA ITEM IV—REVIEW OF AUDIT REPORTS RECEIVED FROM CERTAIN OCCUPATIONAL AND PROFESSIONAL LICENSING BOARDS

Rocky Cooper, previously identified, reviewed audit reports of certain occupational and professional licensing boards.

A. Board of Medical Examiners (NRS 630.050)

Mr. Cooper reviewed the following points from the audit report for the Board of Medical Examiners (BME) (Agenda Item IV A), which covered Calendar Year 2016:

- The Board reduced its licensing fees, which were offset by an increased number of renewals;
- 942 new licenses were issued;
- The Board has approved a cost of living adjustment (COLA) for its employees since 2013;
- The Board has \$4.3 million available in reserves, which is equivalent to 13 months of operating costs;
- The Board has a net pension liability of approximately \$3.3 million due to Statement No. 68 of the Governmental Accounting Standards Board (GASB);

- The Board may seek recovery from licensees for costs incurred related to investigative and disciplinary actions it takes as prescribed by statute and regulations;
- The Board is authorized to impose administrative fines; any fines collected are remitted to the state;
- The Board had \$82,400 in compliance administration reimbursements, which included \$45,536 in cost recoveries for judgments made by the Board;
- Miscellaneous revenue totaled \$180,700;
- Personnel costs are significant, which include salaries for investigative and legal staff; and
- The Board spent approximately \$500,000 on disciplinary actions.

Assemblyman Pickard asked for confirmation that fines collected by the Board are remitted to the State General Fund rather than the State Permanent School Fund.

Mr. Cooper said that would be a specific question for the Board to answer.

B. Board of Homeopathic Medical Examiners (NRS 630A.100)

Mr. Cooper reviewed the following points from the cover letter and balance sheet for the Board of Homeopathic Medical Examiners (Agenda Item IV B):

- The Board is in discussion with the Office of the Attorney General (AG) regarding payment of its legal fees, which has been an ongoing issue;
- The Board received \$8,000 in donated income for payment to a lobbyist hired for the 2017 Session;
- Cash assets equaled \$12,561;
- Liabilities equaled \$145,086, which is the amount owed to the AG;
- The Board had a deficit fund balance of \$116,889 at the beginning of the year;
- Revenue equaled \$39,800, which included the \$8,000 donation for the lobbyist;
- Expenditures were \$55,435, which included the expense of the lobbyist;
- The Board experienced a loss of about \$15,000, which increased its deficit to \$132,525; and
- The Board is technically insolvent.

Mr. Cooper said he researched previous files from the Audit Division dating back to 2004, and he discovered the following cumulative amounts payable to the AG's office:

- 2004—\$21,000;
- 2005—\$43,000;
- 2006—\$83,000;
- 2008—\$114,000;
- 2009—\$123,000; and
- 2010—\$130,000.

Mr. Cooper said the amount remained constant until 2017 when it jumped to \$145,000. In general, he stated revenues equal expenditures only if legal costs are excluded; once legal costs are incurred, the Board is operating with a deficit.

Continuing his review, Mr. Cooper noted the following regarding the profit and loss statement:

- Donation income of \$8,000;
- Professional fees include consultants and proctors for \$8,000, which he suggested is payment for the lobbyist;
- Legal fees in the amount of \$15,775 to the AG's office;
- Support services of \$24,000, which he assumed is payment to the executive director;
- A net loss of \$15,635; and
- The Board is close to even, without including legal fees.

Mr. Cooper pointed out Statement No. 20604, which shows a total of \$145,186.07 owed to the Office of the AG.

Senator Settelmeyer said he would like the Board to explain how long this issue of accounts payable has occurred with the AG's office and why the accounts have not been collected.

Assemblyman Pickard questioned how the Board can carry a negative fund balance and whether this reflects its cash position.

Mr. Cooper explained that the AG's office has not demanded payment or turned it over to the Office of the State Controller. The Board still has a cash balance of \$12,000 in its checking

account, and its revenues and expenditures are fairly even throughout the year. Since the Board has not been required to pay its bills to the AG, it operates in an insolvent position.

C. State Board of Nursing (NRS 632.020)

Mr. Cooper shared the following points from the audit report for the State Board of Nursing (Agenda Item IV C):

- In the prior year, the Board implemented certain requirements for its share of Public Employees' Retirement System (PERS) liabilities. The impact of this implementation is to include certain deferred inflows and outflows of resources and reflect a net pension liability for the PERS retirement program as it relates to the Board. Actual payment of the liability is only applicable if there was change in Nevada law as it relates to PERS and the funding of the program. The Board recognizes the liability under GASB 68 is not something it is going to pay or be billed for.
- The reserves equal about \$5.6 million, which represents 22 months of operating costs;
- The reserves will be used for:
 - Risk management—\$50,000;
 - Disaster recovery and planning—\$250,000;
 - Leasehold improvements—\$75,000;
 - Technology upgrades—\$500,000; and
 - Contingencies—\$4.1 million;
- The Board collected \$38,683 in 2017 for disciplinary fees and \$50,599 in 2016;*
- The Board budgeted \$132,500 for fingerprint processing fees but only spent \$40,165;*
- Actual consultant fees were \$87,338, which significantly exceeded the budgeted amount of \$24,000;* and
- Online fees were budgeted at \$58,000 and the actual costs equaled \$79,228.

*Mr. Cooper noted the dates at the top of the columns on pages 21 and 22 should read 2017 and 2016, respectively.

D. State Board of Osteopathic Medicine (NRS 633.181)

Mr. Cooper shared the following points from the audit report for the State Board of Osteopathic Medicine (Agenda Item IV D):

- The Board increased its financial position by \$33,375, primarily due to an increase in license fees and income from penalties and disciplinary actions;
- The Board has \$1.1 million in reserves, which equals 20 months of operating costs;
- Legal fees receivable indicates it seeks recovery of its legal costs;
- There are three categories of disciplinary fees under income: (1) late fees and settlements, (2) continuing medical education (CME) fines, and (3) other fines; the report does not indicate where these fines are deposited;
- Costs associated with attorneys, investigators, and hearing officers were not specifically identified in the expenditure amounts; these costs may be included under payroll expenses; and
- The expense for waived fees in the amount of \$32,945 was not budgeted.

Ms. Rankin pointed out that expert witness fees were also not included in the budget.

AGENDA ITEM V—PUBLIC HEARING CONCERNING THE TERMINATION, MODIFICATION, CONSOLIDATION, OR CONTINUED OPERATION OF CERTAIN ENTITIES PURSUANT TO NRS 232B.240

A. Board of Medical Examiners (NRS 630.050)

Keith L. Lee, Principal, The Public Affairs Group, representing the BME, introduced Edward O. Cousineau, J.D., Executive Director, BME; Donya Jenkins, Finance Manager, BME; and Lynette L. Daniels, Chief of Licensing, BME.

Responding to questions from the Subcommittee regarding the Board's audit report (Agenda Item IV A) presented earlier by Rocky Cooper, previously identified, Mr. Cousineau and Ms. Jenkins shared the following information:

- In 2015, the Board had reserves equal to one year of operating expenses and agreed to: (1) reduce fees for all its licensure categories by approximately 7 percent; and (2) maintain 12 months of fiscal reserves, based on research of governmental regulatory entities. In 2016, the Board agreed to reduce the fees of new applicants to match the previously agreed upon reductions from 2015 for existing licensees.
- The 12-month reserve policy was based on:
 - A recommendation from a 2010 audit performed by Administrators in Medicine for a 6- to 12-month reserve;
 - An audit from the Federation of State Medical Boards (FSMB) concurring that 12 months was an appropriate reserve; and

- GASB standards for nonprofit and governmental entities.
- The reserve policy is not noted in the Board's financial statements, but the Board will consider including it in the future;
- The Board's policy and procedure manual calls for the Board to consider a COLA each year for staff; the western states' COLA index, the Governor's state COLA, and the budget are presented to the Board for consideration;
- Miscellaneous expenses are comprised of the following income items:
 - Background checks;
 - 2 percent credit card fee collections; and
 - License verifications.
- Pursuant to statute, the Board deposits all fines received with the State General Fund.
- The Board is enrolled in PERS and is fully funded for PERS liability.

Mr. Cousineau explained the amount the Department of Public Safety (DPS) charges for background checks fluctuates from year to year, which determines what the Board charges.

Ms. Rankin brought to the Subcommittee's attention that NRS 630.106 addresses hearing officers that can be hired by the Board and potential conflicts of interest. She also addressed the overlap between the BME and the reporting necessary for medical malpractice issues. She suggested there is some interfacing between insurance and medical malpractice issues.

Referring to the information the Board submitted to the Subcommittee (Agenda Item V A-1) (Agenda Item V A-2), Chair Bustamante Adams asked Mr. Cousineau to explain how the Board acquires the services of a hearing officer.

Mr. Cousineau said that hearing officers are considered independent contractors. According to NRS, hearings can be heard by a full or partial panel of Board members or a hearing officer; this discretion lies with the president of the Board. In almost all matters adjudicated in his 14 years' experience with the Board, Mr. Cousineau said the president has delegated to him the authority to appoint a hearing officer to handle administrative hearings. He stated no qualifications for hearing officers are specified in statute, but at a minimum, they would need to be an attorney licensed to practice in Nevada.

Responding to additional questions from Chair Bustamante Adams regarding the Sunset review form (Agenda Item V A-1) and supplemental information (Agenda Item V A-2), Mr. Cousineau clarified the following information:

- Sandy Peltyn and April Mastroluca are public members who represent the interests of persons or agencies that provide health care to indigent, uninsured, or low-income patients;
- The members are appointed by the Governor and staggered terms are normal;
- Board members receive training on statutes, the Open Meeting Law (OML), confidentiality, and general responsibilities; they meet with the finance manager and receive adjudication training from the legal staff;
- Two investigative committees (IC), one in the north and one in the south, are comprised of two doctor members and one public member of the Board;
- If the Board receives a formal complaint, the following process is followed:
 - Jurisdiction must be established;
 - An investigation is opened if the complaint is a violation of NRS and grounds for discipline;
 - An allegation letter is sent to the licensee with an opportunity to respond;
 - After the response is received, materials are put before a medical reviewer—a licensed doctor—who offers a professional opinion for the next course of action;
 - A synopsis and relevant documents are advanced to one of the ICs;
 - The IC is charged with determining the legitimacy of the complaint or allegation; and
 - If the IC finds a basis for wrongdoing, it can authorize the filing of a formal administrative complaint.

Chair Bustamante Adams asked for an update on the regulations that create minimum standards for discipline relating to inappropriately prescribing a controlled substance pursuant to Assembly Bill 474 (Chapter 605, *Statutes of Nevada 2017*).

Mr. Cousineau explained that a workshop was held in January 2018 regarding draft language. He said a subcommittee was formed to further consider the language of the regulations; the subcommittee has met three times and will meet again today to make recommendations for the BME and the State Board of Pharmacy. Mr. Cousineau noted that under AB 474, the State Board of Pharmacy is allowed to adopt clarifying regulations while the BME is not. He said it is the subcommittee's desire to present language to the BME for its June meeting. Mr. Cousineau also explained that regulations calling for two hours of continuing education requirements for those who dispense controlled substances will be presented to the Legislative Commission for consideration.

Assemblyman Pickard questioned why Board members are given adjudication training if the hearing officers handle the disciplinary procedures.

Mr. Cousineau responded that hearing officers run the proceedings and make determinations regarding evidentiary objections. Statute allows for either the full Board or a portion thereof to participate in a hearing, and case law requires that when no Board members sit in on the hearing, then the hearing officers make a finding as to the credibility of the witnesses. The hearing officers also have the responsibility to prepare a synopsis, which is a truncated version of the actual transcript. At the conclusion of a hearing, the transcript of the proceedings by a court reporter, the evidence, and the synopsis by the hearing officers are advanced to the adjudicative body, which is comprised of the six Board members who did not sit on the IC that authorized the formal filing of the complaint and were not part of the initial decision-making.

Assemblyman Pickard suggested the practice is different from that of any other Board. He asked Mr. Lee whether this process is unique to the BME.

Mr. Lee confirmed the process is unique to the BME. He could not recall whether the State Contractors' Board used hearing officers when he represented them in the past.

Assemblyman Pickard suggested that having a hearing officer sit as a magistrate to ensure the proceedings are handled properly and make initial recommendations, which are then advanced to the true adjudicator, is unique. He stated he has not seen a process like this before and suggested it is more protective of due process rights, but he wondered whether the Board could save a significant amount of time and money by using a more traditional approach.

Mr. Cousineau clarified a hearing officer's charge is not to make recommendations regarding findings of wrongdoing, but rather prepare a synopsis of the record and make findings regarding the credibility of the witnesses in the absence of an adjudicating Board member. He explained the Board members do adjudicate; they are the initial triers of fact, and their decisions can be appealed if the licensee is aggrieved.

Assemblyman Pickard concluded that the adjudication process seems to be detached from taking testimony since the person observing the witnesses is not the ultimate adjudicator. He repeated this process seems unusual to him and raises questions in his mind.

Referring to the schedule of fees submitted by the Board (Agenda Item A-1), Chair Bustamante Adams stated the initial application fee of \$600 suggests that Nevada charges the highest rate among its neighboring states.

Mr. Cousineau confirmed that Nevada does charge some of the highest fees, with California slightly higher at \$820. He pointed out that unlike the "umbrella" boards of Utah and Idaho, the BME assumes all administrative costs and responsibilities. He noted that all fees charged are less than the statutory maximum allowed, and licenses are renewed on a two-year cycle during every odd year.

B. Board of Homeopathic Medical Examiners (NRS 630A.100)

Nancy Eklof, Executive Director, Board of Homeopathic Medical Examiners (BHME); Diane Kennedy, President, BHME; and Nick Vander Poel, Community and Government Relations, Capitol Partners, Reno, Nevada, representing the BHME, introduced themselves.

Assemblyman Pickard expressed great concern with the Board's negative fund balance. He asked for an explanation as to how it has accumulated \$145,000 in receivables without any real expectation of covering them.

Mr. Vander Poel explained that the Deputy Attorneys General (DAGs) did not insert language to recoup legal fees in a case against a plaintiff. It has escalated from there and has become an ongoing matter for the Board. He mentioned the DAGs failed again to insert language to recoup legal fees in a recent case, at which time Ms. Kennedy notified the AG's office; the DAGs representing the Board have since been removed and replaced.

Assemblyman Pickard asked for confirmation that the AG's office—generally, from time immemorial—has never requested fees as part of its complaints.

Ms. Kennedy verified the AG's office has not requested fees as part of its complaints. She explained that in 2006, a doctor whom the Board refused to license because he had committed Medicare fraud sued the Board, and the AG's office did not try to recoup any of the legal fees. Ms. Kennedy said she alerted the AG's office at the time it happened; she met with Keith Munro, then with the Office of the AG; she said he agreed this was an issue. Ms. Kennedy stated the AG's office made a verbal agreement that as long as the Board stayed current with its expenses, the AG's office would not try to collect the back fees because it recognized its failure to insert language to recoup attorney's fees from the person suing the Board as part of the lawsuit, which the Board won.

Senator Settelmeyer stated the appropriate language regarding the recoupment of legal fees should be inserted in all future cases. He expressed concern about receiving free attorney services, which he suggested creates unnecessary litigation.

Assemblyman Pickard questioned whether the Board has general counsel that reviews complaints before they are filed.

Ms. Kennedy replied in the affirmative. She said the Board has few complaints, and most of them regard unlicensed practitioners, of which the Board does not have jurisdiction. In those cases, the Board refers the complaints to the local authorities.

Assemblyman Pickard expressed enormous concern that the Board's general counsel who is reviewing the complaints prior to filing is missing the fact that the request for the recovery of fees has not been included. He stressed this should be standard practice in all complaints filed. Assemblyman Pickard repeated his concern that the Board files relatively few complaints, yet it is adding \$20,000 in attorney's fees from the AG's office each year.

Ms. Kennedy clarified that fees are not added every year; the complaint that is currently being handled is the first complaint that has come before the Board as a hearing since 2006.

Assemblyman Pickard referred to the amounts payable to the AG's office identified earlier by Mr. Cooper under Agenda Item IV B. He commended the AG's office for honoring a verbal agreement—that has no force in law—not to collect these fees, but he stressed not including recoupment of attorney's fees is contrary to his experience of standard practice in litigation.

Responding to questions from the Subcommittee regarding Mr. Cooper's earlier presentation of the Board's audit report (Agenda Item IV B), Ms. Eklof, Ms. Kennedy, and Mr. Vander Poel shared the following information:

- The Board hired a lobbyist in 2017 to monitor possible legislation carried over from the 2015 Session and work with other boards and commissions in identifying language for Senate Bill 69 (Chapter 518, *Statutes of Nevada 2017*);
- Support services in the amount of \$24,000 cover the expenses of the executive director's position, which averages 25 hours per week; and
- The executive director is considered an independent contractor, has full liability insurance, and does not represent any other boards.

Chair Bustamante Adams suggested there would be more discussions regarding the debt owed to the AG's office.

Responding to questions from Subcommittee members regarding the Sunset review form (Agenda Item V B-1) and supplemental information (Agenda Item B A-2) submitted by the Board, Ms. Eklof, Ms. Kennedy, and Mr. Vander Poel clarified the following information:

- Growth in Nevada, the introduction of licensees coming from the West, and the state of the opioid epidemic have indicated a growing trend in homeopathic medicine in the state;
- 5 licenses are pending;
- 6 licensees were removed in the third quarter of 2017 due to retirement and nonrenewals;
- Board members are appointed by the Governor, and the few that apply are well-versed in homeopathic medicine;
- New Board members receive a copy of the policy and bylaws manual and Chapter 630A ("Homeopathic Physicians, Advanced Practitioners of Homeopathy and Homeopathic Assistants") of NRS; they meet with the president and the secretary/treasurer; and they can attend OML seminars offered by the AG;
- Nevada and Arizona are the only states that license homeopathic physicians;

- 80 percent of the patients in Nevada come from out of state for an average of two weeks, which adds a great deal of tourism dollars to the state and the various practices;
- Online renewal will be ready by the end of the fiscal year;
- The Board licenses homeopathic medical doctors, advanced practitioners, and homeopathic assistants, which totals approximately 70 persons;
- The Board licenses physicians out of state who meet the requirements, which totals approximately 15 percent of the Board's licensees;
- Initial licenses are \$500 for homeopathic medical doctors, \$400 for advanced practitioners, and \$200 for homeopathic assistants; each licensee must also pay \$50 for a fingerprint check;
- The annual renewal fee of \$600 is due on December 31, per statute;
- The Board has no general counsel of its own; it uses the services of a DAG; and
- Most complaints pertain to whether a doctor practicing alternative medicine is licensed by the Board.

C. State Board of Nursing (NRS 632.020)

Cathy Dinauer, M.S.N., R.N., Executive Director, State Board of Nursing (SBN), introduced Vickey Alvarez, Senior Accountant, SBN, and Fred Olmstead, Esq., General Counsel for Accounting, SBN. She acknowledged the following Board members in the audience: Deena McKenzie, President; Susan S. VanBeuge, Vice President; and Jacob Watts, Secretary.

Responding to questions from the Subcommittee regarding the Board's audit report (Agenda Item IV C) presented earlier by Mr. Cooper, Ms. Alvarez, Ms. Dinauer, Mr. Olmstead, and Kimberly A. Arguello, Esq., General Counsel for Information Technology, SBN, shared the following information:

- The Board has a two-year operating reserve policy, which is based on the confirmed renewal cycle;
- \$50,000 is budgeted for risk management, which includes cost recovery for events such as burglary, disgruntled employee maliciousness, insurance deductibles, noninsured events, robbery, and vandalism;
- \$250,000 is budgeted for disaster recovery and the cost of returning to minimal operations in the event of a natural disaster or act of terrorism;
- \$75,000 is budgeted for leasehold improvements, which include office renovations to accommodate reorganization or improved customer service;

- \$500,000 is budgeted for technology upgrades, which include the purchase of a new database system, software, and hardware as well as upgrades to the current system and hardware;
- The Board's contingency fund is approximately a year's worth of expenses, and the \$4.1 million in reserves is \$1 million over one year's expenses;
- The amount collected for fingerprint processing decreased because the FBI lowered its fee from \$51.25 to \$40, the computers that captured fingerprints were down for a few months, and nursing applicants can use services other than the Board for fingerprints;
- Discipline fees are comprised of fines collected, which go to the State General Fund, and fees for nurses on probation, which have been discontinued;
- The Board has two attorneys, two nurse investigators, a director of nursing practice, a part-time advanced practice registered nurse (APRN), and several nurses and support staff involved in the discipline side of the Board's business; and
- All discipline cases go before the Board; the Board does not use a hearing officer even though it has such authorization; if a Board member makes a motion to find a nurse in violation of the Nurse Practice Act (NPA) and the motion is seconded and passed, the Board may impose discipline; costs may be imposed under NRS 622.400; and if costs are imposed, the Board collects them;
- The Board employed a consultant to provide a top-to-bottom assessment of its hardware and software; consultants were also hired to help implement the new technology upgrades, including a new online nurse portal for initial application and renewal, which is scheduled to go live in two weeks;
- The Board planned on the technology upgrades but it did not have the appropriate account in its budget for the upgrades; the budget now includes appropriate categories; and
- Online fees are almost all credit card processing fees.

Responding to questions from Subcommittee members regarding the Sunset review form (Agenda Item V C-1) and supplemental information (Agenda Item V C-2) submitted by the Board, Ms. Dinauer and Mr. Olmstead clarified the following information:

- Deena McKenzie of Renown Health is the member who represents indigent populations;
- The Board has one consumer member, Richelle O'Driscoll, who is new to the SBN;
- New Board members receive training from the AG's office regarding the OML and training regarding evidence and parliamentary procedure from the legal staff; they attend national conferences; and Board meetings are held every other month, with one meeting devoted entirely to Board education;

- A file is kept on every Board member's training and education received;
- The Board does not use the services of a hearing officer;
- The Board generally uses continuing education in disciplinary matters rather than assessing fines; but if fines are used, they normally fall in the range of \$200 to \$1,500;
- During the 2019 Session, the Board plans to pursue the Nurse Licensure Compact, which gives nurses the ability to carry one license in their home state and also practice in those states that are members of the Compact;
- Two customer service representatives staff an office in Reno and two others staff a second office in Las Vegas; and
- The initial application fee and renewal fee are each \$50 per year, and the fees have not changed in over 20 years.

Assemblyman Pickard requested Mr. Olmstead to further explain the disciplinary process.

Mr. Olmstead stated the director of nursing practice receives all complaints, and if the allegations, as written, constitute a violation of the NPA, the director opens a complaint and assigns a staff investigator. The investigator subpoenas medical records and any other necessary evidence, which are reviewed by the investigator, a staff attorney, and several nurses. If the case rises to the level of discipline, a settlement is offered to the nurse. If the nurse rejects the settlement, then the executive director, the APRN, and several other nurses review the case. If they determine the evidence shows violation that constitutes grounds for discipline, an administrative complaint is filed, and one of the staff attorneys will prosecute the case. The case will go before the entire Board during a Board meeting, and a DAG is present for purposes of evidence and procedural issues. If the Board finds there was a preponderance of the evidence, which is the standard of proof, at the end of the presentation of evidence, then a member makes a motion. If there is a second and the motion passes and a violation found, the case then moves to discipline. According to NRS, the Board may impose discipline ranging from a fine to probation, reprimand, or revocation.

Assemblyman Pickard asked whether the staff attorneys discuss with the Board, prior to determination, whether the case should move forward with discipline.

Mr. Olmstead stressed that Board members are not part of the investigation or the resolution of any matter until they see a written complaint in the Board's packet at a meeting. This provides for a clear separation of powers between the Board and the prosecuting attorneys.

Carol M. Stonefield, previously identified, explained that the AG's office is required to offer training on the OML. The AG's office schedules training twice a year, but there is no uniform statute that requires all board members to attend.

Chair Bustamante Adams asked Mr. Olmstead to follow up with information regarding the imposition of fines pursuant to NRS 632.349.

Michael D. Hillerby, Director of Legislative Affairs, Kaempfer Crowell, representing the SBN, explained that Assembly Bill 235 (Chapter 307, *Statutes of Nevada 1993*) established the provision regarding fines not exceeding \$5,000 in NRS 632.349.

Chair Bustamante Adams commented there appears to be an average of 2,300 nursing licenses approved every quarter, which indicates a growing number of Nevadans interested in the nursing field and verifies that the health care industry is one of the state's assets.

D. Advisory Committee on Nursing Assistants and Medication Aides (NRS 632.072)

Chair Bustamante Adams reported the Advisory Committee does not have a budget, and it operates under the direction of the SBN.

Ms. Dinauer and Mr. Olmstead clarified the following information based on the review form the Advisory Committee submitted to the Subcommittee (Agenda Item V D):

- The Advisory Committee was created in statute when the federal government established a nursing assistant program that gives money to the states to operate a registry of certified nursing assistants (CNA);
- The SBN established a certificate for individuals to qualify as a CNA and surveys schools for the education of CNAs;
- An independent contractor tests applicants for competency; certificates are renewed if CNAs practice safely; if not, they are subject to discipline;
- The membership of the Advisory Committee is fully intact and members serve for two years;
- Members currently are not offered the training by the AG's office, but they do receive an orientation by the SBN;
- Members are volunteers; they do not receive a per diem but are eligible for travel expenses;
- Meetings are chaired by a member of the SBN with one staff attorney present; they are recorded, minutes are kept, and the OML is adhered to;
- Last year, the Advisory Committee reviewed the CNA scope of practice, skills list, and pass/fail rates and made several recommendations to the SBN for policy changes;
- The Advisory Committee would be a good avenue to make recommendations for removing barriers for licensure; and

- The positions of the representatives from the Aging and Disability Services Division, the Division of Health Care Financing and Policy, and the Division of Public and Behavioral Health, all from the Department of Health and Human Services, are indefinite; the members change but the positions are ongoing.

Chair Bustamante Adams asked whether the SBN would want to have the Advisory Committee removed from NRS.

Mr. Olmstead requested time to research whether the Advisory Committee must be established in statute in order to comply with the federal government.

E. State Board of Osteopathic Medicine (NRS 633.181)

Susan Fisher, Lobbyist, McDonald Carano, LLP, representing the State Board of Osteopathic Medicine (SBOM), introduced Sandy Reed, Executive Director, SBOM, and Louis Ling, Board Counsel, SBOM.

Responding to questions from the Subcommittee regarding the Board's audit report (Agenda Item IV D) presented earlier by Mr. Cooper, Mr. Ling and Ms. Reed shared the following information:

- An increase in applicants generated the increase in revenue; the cost of fees did not increase;
- Penalties are assessed for deficiencies in continuing education units;
- Fines for disciplinary action are rare; the Board only charges administrative and legal costs;
- Fines collected go back into the Board's bank account, per NRS 633.261(2);
- The Board does not have a written reserve policy, but one will be created in the coming months;
- The Board anticipates using its reserves for unexpected expenses, such as prosecuting a case and attorney's fees;
- The Board plans to review its fees and consider necessary adjustments;
- The Board always seeks fees and costs, which include attorney fees, in every disciplinary case pursued; the receivables mentioned in the budget are from a license renewal case that went before three courts; the Board won every case and is in the process of collecting fees and costs;
- CME stands for continuing medical education credits; each osteopathic physician must complete 35 credits per year and attest completion; the Board assesses a \$50 fee for each deficient credit; fines imposed are deposited back into the Board's account;

- In 2016, the Board brought in an outside physician to provide an expert opinion on two separate complaints;
- Fees for active or retired military and licensees who apply after July 1 are reduced by 50 percent, from \$600 to \$300; waived fees constitute the reduction in fees not received;
- The Board will follow up with the Subcommittee regarding what constitutes “other fines”;
- Board counsel was a part-time employee at the time of the audit and his expenses were covered under payroll; as of September 1, the attorney is now contracted counsel, which will be listed separately in the next audit;
- The Board received a \$5,000 grant for training from the Interstate Medical Licensure Compact, but the money had not been spent at the time of the audit; currently, the Board has spent \$1,200, which it has reported to the FSMB; the remainder of the money will continue to be used for training and will be reported in the next audit;

Assemblyman Pickard asked Mr. Ling to explain the Board’s disciplinary procedure, whether a DAG is present at the proceedings, and Mr. Ling’s interaction with the discipline process.

Mr. Ling stated the Board’s process is similar to that of the BME’s except in scale. The Board receives complaints and if jurisdiction is determined, the case is assigned to an investigating Board member who runs the case from beginning to end. A letter is sent to the physician notifying him or her of the allegations. The board has a fulltime investigator. When all the necessary evidence has been collected and compiled, staff makes a decision in conjunction with the investigating Board member to determine how the matter should proceed. Most cases are dismissed at this level, of which Mr. Ling said he is not involved. He is only involved when the matter goes to hearing or is a complex case. If a determination is made that a case needs to go to discipline, he is then consulted about available options. Most cases can be resolved with the doctor in advance of filing a formal complaint. Cases where a settlement agreement has been reached are presented at a regular Board meeting for review and ratification; in some cases, the Board may request renegotiation.

For the few cases that go to hearing, Mr. Ling said he prepares the charging document and schedules the hearing. The Board uses a hearing officer—an attorney with experience in administrative law and medical boards—to try the case. He explained the hearing officer does not make any disciplinary recommendations but will prepare findings of fact and conclusions of law. If the hearing officer concludes there were violations of the law, the findings of fact and conclusion of law go before the Board, and the Board imposes the appropriate discipline. The Board makes its decision based on the findings of fact, the conclusions of law written by the hearing officer, and the full evidence and transcript of the hearing. The case attorneys, if they so choose, can make an argument to the Board regarding their opinion of appropriate discipline. Mr. Ling noted the Board does not use a full hearing very often.

Assemblyman Pickard asked Mr. Ling whether he talks to the Board regarding legal questions during deliberations.

Mr. Ling replied that when the Board hears a case, a DAG sits next to the president; this is also true when presenting settlement agreements. He said he does not represent the Board during deliberations; at that point, his job is to present the position of the investigating Board member.

Responding to questions from Subcommittee members regarding the Sunset review form (Agenda Item V E-1) and supplemental information (Agenda Item V E-2) submitted by the Board, Mr. Ling and Ms. Reed clarified the following information:

- The hearing officer for the Board was selected for her extensive experience in running administrative hearings and her expertise in medical cases; she has also served as a hearing officer for the BME;
- Statutes do not identify minimum qualifications for hearing officers;
- New members meet with the executive director for training on Board policies and procedures; Board counsel provides training on the OML, public records law, the Administrative Procedure Act, ethics and government law, and parliamentary procedure;
- \$374,000 in payroll expenses covers four fulltime employees; during the audit process, the outgoing executive director provided training to the new executive director for a month;
- Current average payroll expenses per month are approximately \$8,000;
- All employees have employer-paid PERS;
- The Board uses the DPS for its fingerprinting process, and it will submit accurate information regarding the fees;
- All renewals are due on December 31 of each year, per statute;
- Resident licensees pay a lower fee and they renew one year from the day they were approved for licensure;
- Nevada's fees are near the top of neighboring states at \$600 per year;
- *Locum tenens* refers to out-of-state physicians licensed for a short period of time.

AGENDA ITEM VI—WORK SESSION—DISCUSSION AND POSSIBLE ACTIONS ON RECOMMENDATIONS RELATING TO:

A. Revising Statutory Provisions to Require or Authorize the Electronic Transfer of Funds for Boards and Commissions Under Title 54 (“Professions, Occupations and Businesses”) of NRS

Carol M. Stonefield, previously identified, reminded the Subcommittee that at its meeting on February 21, 2018, the State Board of Landscape Architecture (SBLA) stated its forms were

available online but it could not accept payment of fees and obligation online. She noted that NRS 623A.240 requires the Board to accept payments in the form of personal checks, cashier's checks, or money orders. The question before the Subcommittee is whether the SBLA and all other licensing boards should be able to use the Internet to accept payment for fees and other obligations. Ms. Stonefield said the options before the Subcommittee, as noted in the Work Session Document (WSD) (Agenda Item VI), are:

- A. Require each Title 54 board or commission, in the same manner as provided by existing law for other State agencies, to enter into a contract for the acceptance of credit cards and other electronic transfers of money, or to participate in such a contract entered into by the director of the Office of Finance.

or

- B. Explicitly authorize, but do not require, each such board or commission to enter into or participate in such a contract.

James W. Penrose, previously identified, explained that under existing law, most state agencies are required to either enter into a contract with the issuer of credit and debit cards or participate in such a contract entered into by the director of the Office of Finance, Office of the Governor. Under existing law, those provisions are not applicable to Title 54 boards. Therefore, the Subcommittee can either mandate that Title 54 boards be subject to those provisions in the same way as state agencies generally are or authorize them to enter into or participate in a contract of this nature. Mr. Penrose said that, under either scenario, the section currently restricting the forms of payment the SBLA can accept, and other similar existing provisions, would have to be amended or repealed to eliminate the conflict.

MOTION: Senator Settlemeyer moved to approve Option B. The motion was seconded by Assemblywoman Bilbray-Axelrod.

Assemblyman Pickard agreed that some of the smaller boards may not be in a position to accept payment online. He asked whether the Subcommittee wants to direct those boards that can accept payment online that they must do so.

Senator Settlemeyer said he prefers to leave this decision up to the board.

The previous motion by Senator Settlemeyer and seconded by Assemblywoman Bilbray-Axelrod passed. Senator Atkinson was absent for the vote.

B. Terminating, Continuing, Modifying, or Consolidating the State Board of Landscape Architecture (NRS 623A.080)

Referring to the WSD, Ms. Stonefield provided background and general information regarding the SBLA (Agenda Item VI). She stated if the Subcommittee recommends continuation of the Board, members may wish to recommend one or more of the following:

- A. Amend NRS 623A.305 to provide that the executive director, rather than the president of the Board or any designated Board member, consider a complaint that is filed with the Board to determine whether further proceedings are warranted.
- B. Send a letter to the Board:
- Encouraging the Board to develop a continuing education policy; and
 - Requesting to be informed when the Board's continuing education policy is implemented.
- C. Remove the provisions of NRS 623A.240 that require fees to be paid to the State Board of Landscape Architecture in the form of checks or money orders.

Ms. Stonefield noted that Option A was requested by the SBLA, which would enable all Board members to participate in later hearings if necessary.

Referring to Option B, Ms. Stonefield also noted that on February 27, 2018, the SBLA submitted a proposed permanent regulation to the Legal Division. At this point, she suggested the idea of encouraging the SBLA to develop a continuing education policy is moot, but if the Subcommittee wants to send a letter to the Board, it might be to request to be informed when the continuing education policy is implemented.

Ms. Stonefield explained that because of the action taken in item A of the WSD, Option C no longer needs to be considered.

Assemblyman Pickard stated the SBLA is not handling disciplinary funds according to the *Nevada Constitution*; therefore, he questioned whether the Subcommittee should include a directive for the Board to make appropriate changes regarding how it handles these funds.

Mr. Penrose said he would have to review the Board's statutes; they may already comply with what he considers to be best practice. He added this may be part of a larger issue, which is whether it is appropriate to propose a bill relating to all Title 54 boards to make their provisions consistent. Mr. Penrose pointed out that the provisions of the boards reviewed today are inconsistent with one another in terms of what they provide.

Assemblyman Pickard understood the Board was keeping the collected fines; whereas, Mr. Penrose's explanation of the constitutional provisions at the February meeting required noncriminal collections and fines to be directed to the State General Fund. Assemblyman Pickard wondered whether this requires a statutory change.

Mr. Penrose said the preference would be to have a statutory change.

Ellis L. Antuñez, F.A.S.L.A., Executive Director, SBLA, clarified that fines collected by the Board are deposited to the State General Fund. He suggested it might have been the

State Contractors' Board or the State Board of Architecture, Interior Design and Residential Design that reported keeping their fines at the February meeting.

Assemblyman Pickard confirmed that it was the State Board of Architecture, Interior Design and Residential Design to which he was referring.

Senator Settlemeyer requested to have the proposal of bringing consistency to all Title 54 boards addressed in a future work session, to which Chair Bustamante Adams agreed.

MOTION: Senator Settlemeyer moved to approve continuation of the SBLA with Option A and to request the Board send a letter notifying the Subcommittee when its continuing education regulation has been approved. Assemblyman Pickard seconded the motion.

Senator Denis questioned whether the letter would contain both bullet points from Option B.

Ms. Stonefield said an e-mail dated March 14, 2018, from the SBLA reported that on February 27, 2018, the Board proposed a permanent regulation for inclusion in Chapter 623A ("Landscape Architects") of *Nevada Administrative Code*, which has gone to the Legal Division. She assumed this regulation will follow the normal regulatory approval procedure.

Chair Bustamante Adams said the Subcommittee's request would be to be notified when the process is completed.

The previous motion by Senator Settlemeyer and seconded by Assemblyman Pickard passed. Senator Atkinson was absent for the vote.

C. Terminating, Continuing, Modifying, or Consolidating the Board of Registered Environmental Health Specialists (NRS 625A.030)

Chair Bustamante Adams stated the Board of Registered Environmental Health Specialists would not be addressed today; it will be rescheduled for a future work session.

AGENDA ITEM VII—INFORMATIONAL ITEMS PROVIDED IN RESPONSE TO QUESTIONS RAISED AT PRIOR MEETINGS OF THE SUNSET SUBCOMMITTEE OF THE LEGISLATIVE COMMISSION

A. Information From the Private Investigator's Licensing Board Regarding the Comparison of Fees in Nevada and Certain Other States, January 22, 2018, Meeting

(This agenda item was taken out of order.)

Carol M. Stonefield, previously identified, drew the Subcommittee's attention to information provided by Kevin L. Ingram, Executive Director, Private Investigator's (PI) Licensing Board, in response to questions raised at the Subcommittee's January meeting. She said a letter explains the various services provided by the Board and the associated fees for private investigators (PI),

private patrol officers, and companies, and a table compares Nevada's licensing fees to those in certain surrounding states as well as other selected states (Agenda Item VII A).

Mr. Ingram explained the initial licensing fee of \$500 a year, prorated at \$41.67 per month, was established at the Board's conception. He acknowledged that Nevada's fees are some of the highest in the country due to the Board being self-funded and not having the high number of licensees found in other states, such as California. Mr. Ingram reported that many states across the country are considering increasing their fees.

Chair Bustamante Adams requested a continued dialogue with the Board to see whether fees can be reduced so that Nevada does not charge the highest in the country.

Assemblywoman Bilbray-Axelrod pointed out that Nevada's license is only valid for one year while most of the other states' licenses were valid for two years. She asked Mr. Ingram to explain the difference between a PI license and a registered work card.

Mr. Ingram explained that either an individual or a corporation can apply for a license, and a registered work card must be obtained, according to the provisions of NRS 648.1493, by individuals who want to work for a licensee. He reported the state has over 1,000 licensees and over 67,000 work card holders. Mr. Ingram stated the Board runs an in-depth federal background check on every registered employee, noting that Nevada is the only state to do so. He acknowledged that Nevada charges the highest fees for an initial license but charges lower fees for registered work cards. The Board has discussed possibly raising its work card fees to \$200 to be in line with other states. He said there is no difference between armed and unarmed fees for registered work card holders, but there is an initial qualification fee of \$25 for training to be qualified as armed and a \$5 fee to requalify twice a year.

Assemblyman Pickard questioned charging corporations the same fees for a license as individuals. He suggested these fees are the antithesis of the state's trajectory of trying to be business-friendly. Assemblyman Pickard wondered whether bringing Nevada's fees in line with the national average would harm the Board's operation and whether the intense background check is necessary.

Mr. Ingram said he is part of an international association of PI and security regulators, and the members have expressed a desire to model their laws to complete the advanced background check that Nevada performs. He stressed the importance of these background checks due to the state of the world today and the threat of terrorism. Mr. Ingram suggested that if Nevada were to cut several hundred dollars from the initial cost to the applicant and perform a lesser background check, the state would just be rubber-stamping licenses.

Assemblyman Pickard suggested the Board consider more reasonable fees so the majority of people who want to get into this business in Nevada can afford to do so without sacrificing public safety.

Chair Bustamante Adams stated the Subcommittee would have further conversations when it addresses the Board in a future work session.

B. Information From the Nevada State Board of Accountancy Regarding the Board's Financial Reserves, January 22, 2018, Meeting

Ms. Stonefield said a follow-up letter submitted by the Nevada State Board of Accountancy addresses the efforts made by the Board to improve its financial position, its plan regarding its reserve balance, and a list of fees dating back to 1955 (Agenda Item VII B). She mentioned the Board was having its own meeting today, and one of the agenda items is to discuss a reserve policy. Ms. Stonefield said the Board would report the progress of its reserve policy at a future meeting.

C. Information From the State Contractors' Board Regarding Fines, Penalties, and the Recovery of Costs, February 21, 2018, Meeting

Ms. Stonefield addressed a document submitted by the State Contractors' Board regarding fines and penalties and their corresponding NRS, as well as investigative and legal costs recovered (Agenda Item VI C). She said the Board also submitted extensive information regarding grants under the Commission on Construction Education, which will be consolidated and resubmitted in a format more suitable for analysis by the Subcommittee.

AGENDA ITEM VIII—PUBLIC COMMENT

Chair Bustamante Adams called for public comment.

The following document was submitted for the record:

- A letter from Laura B. Miller, President, Nevada Chapter of the American Society of Landscape Architects, regarding the landscape architect profession (Agenda Item VIII).

Subcommittee members discussed a request to change the June 18, 2018, meeting to either June 13 or June 25. The committee secretary will poll the members.

AGENDA ITEM IX—ADJOURNMENT

There being no further business to come before the Subcommittee, the meeting was adjourned at 12:24 p.m.

Respectfully submitted,

Janet Coons
Manager of Secretarial Services

Carol M. Stonefield
Deputy Research Director

APPROVED BY:

Assemblywoman Irene Bustamante Adams, Chair

Date: _____

MEETING MATERIALS

AGENDA ITEM	WITNESS/ENTITY	DESCRIPTION
Agenda Item IV A	Rocky Cooper, Legislative Auditor, Audit Division, Legislative Counsel Bureau (LCB)	Audit report for the Board of Medical Examiners (BME)
Agenda Item IV B	Rocky Cooper, Legislative Auditor, Audit Division, LCB	Audit report for the Board of Homeopathic Medical Examiners (BHME)
Agenda Item IV C	Rocky Cooper, Legislative Auditor, Audit Division, LCB	Audit report for the State Board of Nursing (SBN)
Agenda Item IV D	Rocky Cooper, Legislative Auditor, Audit Division, LCB	Audit report for the State Board of Osteopathic Medicine (SBOM)
Agenda Item V A-1	Carol M. Stonefield, Deputy Research Director, Research Division, LCB	General information for the BME
Agenda Item V A-2	Edward O. Cousineau, J.D., Executive Director, BME	Supporting information for the BME
Agenda Item V B-1	Carol M. Stonefield, Deputy Research Director, Research Division, LCB	General information for the BHME
Agenda Item V B-2	Nancy Eklof, Executive Director, BHME	Supporting information for the BHME
Agenda Item V C-1	Carol M. Stonefield, Deputy Research Director, Research Division, LCB	General information for the SBN
Agenda Item V C-2	Cathy Dinauer, M.S.N., R.N., Executive Director, SBN	Supporting information for the SBN
Agenda Item V D	Carol M. Stonefield, Deputy Research Director, Research Division, LCB, and Cathy Dinauer, M.S.N., R.N., Executive Director, SBN	General and supporting information for the Advisory Committee on Nursing Assistants and Medication Aides
Agenda Item V E-1	Carol M. Stonefield, Deputy Research Director, Research Division, LCB	General information for the SBOM
Agenda Item V E-2	Sandy Reed, Executive Director, SBOM	Supporting information for the SBOM
Agenda Item VI	Carol M. Stonefield, Deputy Research Director, Research Division, LCB	Work Session Document
Agenda Item VII A	Kevin L. Ingram, Executive Director, Private Investigator's Licensing Board	Letter and table

Agenda Item VII B	Viki A. Winfeldt, Executive Director, Nevada State Board of Accountancy	Letter and tables
Agenda Item VII C	Margi A. Grein, Executive Director, State Contractors' Board	Information regarding penalties and fines
Agenda Item VIII	Laura B. Miller, President, Nevada Chapter of the American Society of Landscape Architects	Letter

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