

Sunset Subcommittee of the Legislative Commission
(*Nevada Revised Statutes 232B.210*)

WORK SESSION DOCUMENT

(Includes Attachments)



April 23, 2018

Prepared by the Research Division
Legislative Counsel Bureau

Agenda Item VI (SUNSET)
Meeting Date: 04-23-18



WORK SESSION DOCUMENT

Sunset Subcommittee of the Legislative Commission
(*Nevada Revised Statutes* [NRS] 232B.210)

April 23, 2018

The following Work Session Document has been prepared by the chair and staff of the Sunset Subcommittee of the Legislative Commission. It is designed to assist the Subcommittee members to determine whether to recommend that a board or commission be terminated, modified, consolidated with another agency, or continued. The recommendations contained herein do not necessarily have the support or opposition of the Subcommittee. Rather, these possible actions are compiled and organized so the members may review them to decide whether they should be adopted, changed, rejected, or further considered. They are not preferentially ordered.

Each item in this document may be the subject of further discussion, refinement, or action. Any recommendations will be forwarded to the Legislative Commission for its consideration. Some of the recommendations may contain an unknown fiscal impact. Subcommittee members should be advised that Legislative Counsel Bureau (LCB) staff will coordinate with interested parties to obtain detailed fiscal estimates, if appropriate, for inclusion in the Subcommittee's final report.

Finally, please note that specific details of recommendations approved by the Subcommittee may require clarification by Subcommittee staff prior to reporting the recommendations to the Legislative Commission. Supporting documents for some recommendations may be obtained by contacting Carol M. Stonefield, Deputy Research Director, Research Division, LCB, at (775) 684-6825 or cstonefield@lcb.state.nv.us.

RECOMMENDATIONS RELATING TO TERMINATING, CONTINUING, MODIFYING, OR CONSOLIDATING BOARDS AND COMMISSIONS
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1. Board of Homeopathic Medical Examiners (NRS 630A.100)

The Board of Homeopathic Medical Examiners was established in 1983. The Board currently consists of seven members, who are required to regulate the practice of homeopathic medicine in Nevada.

Among its duties, the Board must investigate complaints concerning the practice of homeopathic medicine. It is authorized to employ professional and support staff. The Board is also authorized to retain the Attorney General (AG) to investigate a complaint. The AG is authorized to charge for any services provided to the Board, including for services relating to the investigation of a complaint.

At its meeting on March 21, 2018, the Subcommittee reviewed the Board. The Legislative Auditor reported the cumulative amounts payable to the Office of the AG. Discussion occurred among the Subcommittee members and representatives of the Board concerning the amounts payable.

Before making any recommendations relating to the Board, the Subcommittee may wish to consider a motion to:

- Write a letter to the Office of the AG requesting the following information about the Board's indebtedness to the Office for legal services rendered to the Board:
 - A. A list of all matters in which legal services have been rendered by the Office and for which full payment has not been made by the Board and, for each such matter:
 1. A description of the nature of the matter;
 2. A statement of the number of hours of work performed in the matter by attorneys, paralegals, and investigators on behalf of the Office, with a general description of the work performed by each of those groups;
 3. The amount of any costs incurred in the matter by the Office;
 4. A description of the resolution of the matter;
 5. A description of any efforts made by the Office to recover attorneys' fees and costs from any adverse party and the result of those efforts;
 6. The amount of any payments made by the Board to the Office in connection with the matter; and

7. The amount now owed by the Board to the Office for its services in the matter.
- B. A statement of the position of the Office with respect to the fees disputed by the Board in its letter dated October 28, 2008, to Attorney General Catherine Cortez Masto. (See Attachment A.)
- C. Any other information or recommendation the Office may wish to provide relating to the past, present, or future use of legal services by the Board.

2. Board of Registered Environmental Health Specialists (NRS 625A.030)

The Board of Registered Environmental Health Specialists was created by the Legislature in 1987. The Board includes the Chief Medical Officer and four members appointed by the Governor to represent the general public and the health districts of Washoe County and Clark County.

The Board issues certificates of registration, sets fees, determines continuing education requirements, establishes standards of professional conduct and takes disciplinary actions.

The Sunset Subcommittee reviewed the Board at its meeting on February 21, 2018. Members of the Subcommittee and representatives of the Board discussed the impact of legalized marijuana on the requirements for registration with the Board. Representatives of the Board discussed changes to the practice of environmental health specialists, the Board's disciplinary options, and its lack of authority to impose fines.

The Board recommended revisions to provisions of Chapter 625A ("Environmental Health Specialists") of NRS to authorize the Board to:

- Issue licenses rather than certificates; and
- Impose civil penalties as a means of disciplinary action.

The Board recommended that it be given the option to delegate to a hearing officer its authority to take disciplinary action.

The Board had no recommendations for consolidation with another board or commission.

Should the Board of Registered Environmental Health Specialists be terminated or continued?

If the Subcommittee recommends terminating the Board, should it be consolidated with another entity or have its duties transferred to another entity?

If the Subcommittee recommends that the Board should continue:

- ***Does the Subcommittee want to recommend any changes concerning the Board?***
- ***Does the Subcommittee want to recommend any changes to the duties of the Board?***

3. State Board of Nursing (NRS 632.020)

The State Board of Nursing was established by the Legislature in 1923. The Board consists of seven members, including three registered nurses; one practical nurse; one nursing assistant; one representative of the interests of indigent, uninsured, or low-income individuals; and one representative of the public. The Board is responsible for determining qualifications, administering examinations, and issuing licenses. The Board may discipline licensees.

At its meeting on March 21, 2018, the Sunset Subcommittee reviewed the Board. The Legislative Auditor reported the amount of reserves maintained by the Board is \$5.6 million, which is equal to 22 months of operating expenses, and highlighted certain budget items. The Board stated that it has a two-year reserve policy.

Representatives of the Board indicated that it does not rely on hearing officers to consider complaints against licensees, although it has the authority to do so. The Board does collect costs associated with investigating complaints, but it deposits fines in the State General Fund.

Members of the Subcommittee discussed the composition of the Board. Representatives indicated Board members receive training, which is recorded in each individual Board member's file. Discussion occurred regarding which Board members represent the categories of appointment.

The Board had no recommendations for consolidation with another entity. It indicated that it intends to pursue the Enhanced Nurse Licensure Compact in the 2019 Session of the Legislature.

Should the State Board of Nursing be terminated or continued?

If the Subcommittee recommends terminating the Board, should it be consolidated with another entity or have its duties transferred to another entity?

If the Subcommittee recommends that the Board should continue:

- ***Does the Subcommittee want to recommend any changes concerning the Board?***
- ***Does the Subcommittee want to recommend any changes to the duties of the Board?***

If the Subcommittee wishes to recommend continuation, the Subcommittee may wish to recommend one or more of the following:

A. Revise NRS 632.030, relating to the appointment of a Board member:

1. One member **who represents the interests of patients** who are indigent, uninsured, or unable to afford health care. This member may be licensed under the provisions of this chapter.

OR

2. One member **who represents the interests of the persons or agencies that provide health care primarily to patients** who are indigent, uninsured, or unable to afford health care. This member may be licensed under the provisions of this chapter.

B. Send a letter to the Board directing it to report to the Sunset Subcommittee during the 2019–2020 Interim on its reserves, including its plans to provide value to its licensees in the form of professional development, continuing education, and other increased services.

Current NRS 632.030 Members: Qualifications; appointment; terms; vacancies:

Subsection 1, paragraph (d);

(d) One member **who represents the interests of persons or agencies that regularly provide health care to patients** who are indigent, uninsured or unable to afford health care. This member may be licensed under the provisions of this chapter.

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

The Advisory Committee on Nursing Assistants and Medication Aides was established by the Legislature in 1989. As part of a budget reconciliation act, the federal government developed procedures for approving nurse assistant training programs. In 2011, the Legislature added the certification of medication aides.

The Advisory Committee consists of 11 members, as provided in statute, including representatives of certain types of agencies or organizations, certain divisions of the Department of Health and Human Services, and various levels of nursing licensure. The Advisory Committee must advise the State Board of Nursing on matters relating to nursing assistants and medication aides-certified.

In 1995, the Legislature authorized the Board of Nursing to create other advisory committees as it deemed appropriate.

The Sunset Subcommittee reviewed the Advisory Committee at its meeting on March 21, 2018. Subcommittee members asked whether the Board might prefer more flexibility by establishing the Advisory Committee through regulation rather than statute. Members also inquired about the pass/fail rates of educational and training programs.

The Advisory Committee had no recommendations for consolidation with another entity or statutory revisions.

Subsequent to the meeting, the executive director of the State Board of Nursing reported that the Board has not experienced any problems or limitations because the Advisory Committee is established in statute. Further, the Board can see no advantage to moving the Advisory Committee from statute to regulation. (See Attachment B.)

Should the Advisory Committee on Nursing Assistants and Medication Aides be terminated or continued?

If the Subcommittee recommends terminating the Advisory Committee, should it be consolidated with another entity or have its duties transferred to another entity?

If the Subcommittee recommends that the Advisory Committee should continue:

- ***Does the Subcommittee want to recommend any changes concerning the Advisory Committee?***
- ***Does the Subcommittee want to recommend any changes to the duties of the Advisory Committee?***

Jim Gibbons, Governor
F. Fuller Royal, *President*
Bruce Fong, *Secretary-Treasurer*



Diane Kennedy, Member
Daniel Royal, Member
Cyrus Pourzan, Member
Leticia Gardea, Member

**STATE OF NEVADA
BOARD OF HOMEOPATHIC MEDICAL EXAMINERS**

435 Court Street
Reno, NV 89501, Phone 775.324.3353, Fax 775.324.3353
Email nvhomeopathicboard@sbcglobal.net

October 28, 2008

Attorney General Catherine Cortez Masto
Office of the Attorney General
100 N. Carson Street
Carson City, NV 89701

Dear Attorney General Masto:

The State Board of Homeopathic Medical Examiners ("Board") met with the Legislative Audit Subcommittee September 24, 2008 at 9:30 a.m. Diane Kennedy, Finance Committee Chairman and Board Member, Finance Committee Member Mylan Hawkins and Nancy Eklof, Executive Director of the Board was in attendance. The Board agreed to fulfill and complete the nine (9) recommendations of the Legislative Counsel Bureau auditors in 2006. A report was due as to how and when the Board would complete recommendation nine, the satisfaction of the Board's indebtedness to the Office of the Attorney General for legal services accumulated since 2004.

The purpose of the September 24, 2008 meeting was to a follow up report of an earlier audit of the Board's finances. The subcommittee requested what the Board was planning to do to reduce the debt owed to the Attorney General's office. We explained there were many charges we wish to dispute with your office based on our own extensive review along with the review of the LCB auditor Dennis Klenczar.

The Board's inability to complete its agreement to satisfy recommendation nine involves legal fees being disputed by the Board. The Board requested a meeting with the Attorney General to review the fees of your billings and work out a solution following an extensive review of the legal fees by the Board and the LCB audit division in November 2007. We were denied that meeting. Once again the Board is requesting a meeting with you as we wish to seek your help in resolving the billing issues. Deputy Attorney General Robert

Bryant has been very helpful in assisting the Board with what the Board believes will be a viable resolution of the Board's indebtedness to the Office of Attorney General.

The following are examples of some of the legal fees in dispute:

Fees charged for services after the replacement of Senior Deputy Attorney General Edward T. Reed that Assistant Attorney General, Mr. Randal R. Munn, assured the Board's President that the Board would not be billed for the time necessary to bring his replacement, Ms. Savage, up to speed. Ms. Savage billed for her time researching the Board's complex problems. We respectfully request that you reduce the Board's bill by this amount.

The Office of the Attorney General successfully defended the Board in regards to a frivolous lawsuit filed by Mr. Harvey Bigelson. We respectfully request the Office of Attorney General review the file to determine why attorney fees and legal costs were not recovered from Mr. Bigelson. The Board won the lawsuit, protected the public from possible harm and fulfilled its legislative mandate. Thus, it is unclear to the Board why your office did not recover its fees from Mr. Bigelson. The Board requests a cancellation of the legal fees charged in this case, or a significant reduction of this debt. Perhaps the Attorney General can and will assist the Board in requesting cancellation of this debt through the State Board of Examiners.

The 2005 Legislature mandated the Board to assist and supervise the NIRB (Nevada Institutional Review Board). The legislation that was enacted obligated the NIRB to reimburse the Board by the Legislature, but the NIRB has refused, or is unable, to do so. The Board was not provided any funds to carry out this mandate. This unfunded mandate cost the Board numerous legal expenses. We respectfully request the Office of Attorney General remove this indebtedness or assist us in pursuing cancellation of this debt through the State Board of Examiners.

Complaints have been filed against licensees, against Board members and against the Board that were frivolous. The Board in good faith fulfilled its legislative mandate to protect the public but, in doing so, incurred fees charged by your office. We would ask that the Board's obligation related to these charges be eliminated or reversed.

Board Member, Dr. Daniel Royal, sued the President of the Board, Dr. David Edwards and the Board's legal counsel, Mr. Reed. The Board has reason to believe the Board was billed for the legal fees incurred in defending Deputy Attorney General Edward T Reed. If this is the case the Board respectfully requests the Office of Attorney General to remove these charges and to take action against Dr. Daniel Royal to recover its fees related to this matter.

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Attorney General Catherine Masto

Attorney General Masto, this Board has had its struggles both internally and externally and is striving to stabilize a Board that is financially challenged and has had its share of disputes. The Board's goal is to continue to serve the public first and to provide a professional and accountable Board office to serve our licensees and certificate holders. With exception of the ninth recommendation, the Board has completed the recommendations of the Audit Division of the Legislative Counsel Bureau. The audit gave the Board the opportunity to be educated on many aspects of a Board's operations and responsibility. The Board is grateful for the knowledge gained during the audit. We will provide a follow up report to the Audit Subcommittee December 11, 2008. Therefore, we, Diane Kennedy, Mylan Hawkins and Executive Director, Nancy Eklof are requesting a meeting, at your earliest convenience, with yourself and any of your staff that you feel is relevant. The support of your office would be greatly appreciated.

Sincerely,

Diane Kennedy, Chairman Finance Committee
State of Nevada Board of Homeopathic Medical Examiners

cc: Paul Townsend, LCB Auditor
Legislative Counsel Audit Subcommittee Members
Senator Randolph Townsend
Josh Hicks, Chief of Staff, Governor's Office
Bob Bryant, DAG
Gina Sessions, CDAG

ATTACHMENT B

From: Cathy Dinauer [<mailto:cdinauer@nsbn.state.nv.us>]
Sent: Tuesday, April 03, 2018 4:51 PM
To: Stonefield, Carol
Cc: Sharon A. Vincello
Subject: Response to Sunset Committee questions

Ms. Stonefield,

At the March 21, 2018 meeting of the Legislative Commission's Sunset Subcommittee, the question was asked if the Advisory Committee on Nursing Assistants and Medication Aides, found at NRS 632.072 should be moved to NAC 632.211.

The Nevada State Board of Nursing has not experienced any problems or limitations based upon the statutory origins of the Advisory Committee. The Nevada State Board of Nursing can see no discernable advantage to moving the Advisory Committee from NRS 632.072 to NAC 632.211.

Also, a question was asked about CNA exam pass/fail rates. Attached, please find the CNA pass/fail rates for 2017 and the first quarter of 2018.

Please contact my office should you have any additional questions or require any further information.

Regards,

Cathy Dinauer, MSN RN
Executive Director
Nevada State Board of Nursing

Client Report

Retake Summary: Jan 01, 2017 to Dec 31, 2017

Facility	#ID#	+-----Written-----+						+-----Skills-----+					
		Att1	%%	Att2	%%	Att+	%%	Att1	%%	Att2	%%	Att+	%%
ACADEMY OF HEALTHCARE PREP	3900	9	89					9	33	3	33	1	0
BATTLE MOUNTAIN HIGH SCHOOL	1800	4	25	2	50			4	50	2	100		
COLLEGE OF SOUTHERN NEVADA	3000	308	82	51	61	8	75	306	76	71	75	10	90
DAYTON HIGH SCHOOL	2300	7	86					7	86				
DESERT ROSE HIGH SCHOOL	2900	35	54	14	43	2	100	35	66	10	80	1	100
EAST CAREER & TECH ACADEMY	2500	6	100					6	0	4	75	1	100
FERNLEY HIGH SCHOOL	2200	10	90					10	100				
FUNDAMENTALS OF NURSING	9992	52	77	13	38	4	100	54	48	24	67	2	100
GREAT BASIN COLLEGE	1000	93	88	16	75	4	75	91	92	12	75	2	50
MAJEN, LLC	1500	18	78	6	0	4	75	18	83	3	100		
MOUNT GRANT GENERAL HOSPITAL	1600	4	50	2	50			4	25	3	100		
ORMSBY POST ACUTE REHAB	3800	34	85	3	33	4	50	34	76	5	60	1	100
OUT OF STATE TRAINING	9990	20	60	7	43	3	0	21	38	11	64	2	50
REACTIVATION BY EXAM	9993	43	67	4	50	1	100	42	55	9	78	1	0
SAINT THERESE LEARNING INSTITUTE	3300	81	73	22	23	14	29	79	67	21	67	5	40
SIERRA NV JOB CORPS	1400	35	97	1	100			35	91	1	100		
SOUTH LYON MEDICAL CENTER	1700	3	67	1	100			3	67				
SOUTHEAST CAREER & TECH ACADEMY	2600	14	93	1	0			14	50	8	75	1	0
SOUTHWEST CAREER & TECHNICAL ACADEMY	2700	13	85	2	100			13	85	1	100		
STANDARDS OF EXCELLENCE (SoE)	3200	50	70	13	54	4	50	49	67	15	73	3	67
THE MILAN INSTITUTE, LAS VEGAS	3100	161	61	48	29	26	42	161	57	51	69	7	86
THE MILAN INSTITUTE, SPARKS	1300	78	74	14	29	7	57	78	72	12	92		
THE PERRY FOUNDATION ACADEMY OF HEALTH	4300	29	69	7	29	1	0	28	71	5	40		
TRUCKEE MEADOW COMMUNITY COLLEGE	1100	174	91	18	44	6	17	174	90	14	100		
WEST CAREER & TECH ACADEMY	2800	19	84	3	100			19	68	4	50	1	0
WESTERN HIGH SCHOOL	2400	6	67					6	33	3	67	1	0
WESTERN NEVADA COLLEGE	1200	116	81	14	50	3	33	115	93	4	75		
WHITE PINE HIGH SCHOOL	1900	1	100					1	100				
Totals		1423	78	262	44	91	48	1416	74	296	73	39	67

- #ID#: Training Program ID.
- Att1: Number of candidates that attempted the respective exam for the first time during this time frame.
- %%%: The first attempt pass rate.
- Att2: Number of candidates that attempted the respective exam for the second time during this time frame.
- %%%: The second attempt pass rate.
- Att+: Number of candidates that attempted the respective exam for the third or more times during this time frame.
- %%%: The pass rate beyond the second attempt.

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Client Report

Retake Summary: Jan 01, 2018 to Mar 31, 2018

Facility	#ID#	+-----Written-----+						+-----Skills-----+					
		Att1	%%	Att2	%%	Att+	%%	Att1	%%	Att2	%%	Att+	%%
ACADEMY OF HEALTHCARE PREP	3900	1	0	2	50			1	0	3	67		
COLLEGE OF SOUTHERN NEVADA	3000	104	88	14	50	5	60	104	74	24	96	1	0
DESERT ROSE HIGH SCHOOL	2900					1	0					1	0
EAST CAREER & TECH ACADEMY	2500	1	0					1	0	1	0		
FUNDAMENTALS OF NURSING	9992	15	93					15	53	1	100		
GREAT BASIN COLLEGE	1000	14	79	2	100			14	93	1	100		
MAJEN, LLC	1500	5	80	1	100			5	40				
MOUNT GRANT GENERAL HOSPITAL	1600	5	80					5	80				
ORMSBY POST ACUTE REHAB	3800	7	57					7	57			1	0
OUT OF STATE TRAINING	9990	8	88	1	0	1	100	7	43	5	60		
PERRY FOUNDATION ACADEMY OF HEALTH	4300	8	75					8	75	3	33	2	50
REACTIVATION BY EXAM	9993	7	86	1	100	1	0	7	14	2	50	1	100
SAINT THERESE LEARNING INSTITUTE	3300	12	83	4	75	1	100	12	92	4	75	1	100
SNVJC - HARDY, SHIRLEY	1402	10	100					10	20	4	75		
SOUTHEAST CAREER & TECH ACADEMY	2600	2	100					2	100	1	100		
STANDARDS OF EXCELLENCE (SoE)	3200	12	92	1	0			12	92	1	100		
THE MILAN INSTITUTE, LAS VEGAS	3100	44	70	10	50	5	80	42	79	10	70	1	100
THE MILAN INSTITUTE, SPARKS	1300	7	71	1	100	1	100	6	83	6	83	1	100
TRUCKEE MEADOW COMMUNITY COLLEGE	1100	33	70	7	86			33	76	8	75		
WEST CAREER & TECH ACADEMY	2800									1	100		
WESTERN HIGH SCHOOL	2400			1	0								
WESTERN NEVADA COLLEGE	1200	15	60	3	33	1	0	14	93	1	100		
Totals		310	80	48	58	16	63	305	72	76	79	9	56

- #ID#: Training Program ID.
- Att1: Number of candidates that attempted the respective exam for the first time during this time frame.
- %%%: The first attempt pass rate.
- Att2: Number of candidates that attempted the respective exam for the second time during this time frame.
- %%%: The second attempt pass rate.
- Att+: Number of candidates that attempted the respective exam for the third or more times during this time frame.
- %%%: The pass rate beyond the second attempt.

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