

Nevada State Medical Association

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Memorandum

To: Senator Valerie Wiener, Chair, Legislative Committee on Health Care
Assemblywoman Peggy Pierce, Vice Chair, Legislative Committee on
Health Care

From: Larry Matheis

Subject: Department of Professions

Date: October 15, 2009

In 2008, at the request of the Legislative Committee on Health Care, the Nevada State Medical Association (NSMA) made several suggestions addressing a number of concerns regarding the State's professional and occupational licensing boards. NSMA reviewed the functions of the State's professional and occupational licensing boards and made recommendations for fundamental reform that would maintain the important specific professional knowledge for decision-making by the boards, while consolidating the common administrative activities of all professional and occupational licensing boards. The Committee and most commentators agreed with the direction of the proposal.

The obvious priority for the 75th Legislative Session was to pass a State budget. On health care issues, the priority was to pass a series of bills addressing the system issues identified as a result of the Las Vegas hepatitis C outbreak. NSMA supported this priority and worked with the Legislature and the State agencies to achieve a comprehensive response to the outbreak. The statutory and regulatory response by Nevada to the outbreak is nationally recognized as the most comprehensive and has become the standard for providing oversight, education and response capacity regarding injection and other infection control practices. The statutory complexity of restructuring the administrative functions of the health related professional and occupational licensing boards made it difficult to adopt legislation as recommended by the NSMA. A version of this approach limited to the three (3) physician licensing boards was introduced in A.B. 525

(<http://www.leg.state.nv.us/75th2009/Bills/AB/AB525.pdf>). Recent or recurring problems at several of the health professional licensing boards has renewed interest in taking a comprehensive look at the way Nevada licenses and monitors health professionals. This memorandum summarizes the proposal.

Generally, professional and occupational licensing and oversight have been performed by freestanding boards appointed by the Governor. (There are some exceptions like emergency responders and laboratory personnel who are licensed through Boards of Health or other institutions. Lawyers and teachers are licensed and monitored by completely separate institutions and are not discussed in this proposal.) For the most part, the Boards are

EXHIBIT Q - HEALTH CARE

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Document consists of 5 pages.

Entire Exhibit provided.

composed of professionals licensed in the categories they oversee, but this varies and all boards have some public members who are not licensees of the boards. There are at least 37 (<http://www.leg.state.nv.us/lcb/research/Publications/LegManual/2009/StateOrgChart.pdf>) Nevada professional or occupational licensing boards (at least 24 health professional licensing boards that currently grant over 60 health license or registration categories are underlined) listed below with the authorizing statute:

PROFESSIONAL AND OCCUPATIONAL LICENSING BOARDS

1. Nevada State Board of Accountancy (NRS 628.035)
2. Board of Examiners for Alcohol, Drug and Gambling Counselors (NRS 641C.150)
3. State Board of Architecture, Interior Design and Residential Design (NRS 623.050)
4. State Board of Athletic Trainers (NRS 640B.170)
5. Board of Examiners for Audiology and Speech Pathology (NRS 637B.100)
6. State Barbers' Health and Sanitation Board (NRS 643.020)
7. Chiropractic Physicians' Board of Nevada (NRS 634.020)
8. State Contractors' Board (NRS 624.040)
9. Commission on Construction Education (NRS 624.570)
10. State Board of Cosmetology (NRS 644.030)
11. Certified Court Reporters' Board of Nevada (NRS 656.040)
12. Board of Dental Examiners of Nevada (NRS 631.120)
13. State Board of Professional Engineers and Land Surveyors (NRS 625.100)
14. Nevada State Funeral Board (NRS 642.020)
15. Board of Hearing Aid Specialists (NRS 637A.030)
16. Board of Homeopathic Medical Examiners (NRS 630A.100)
17. State Board of Landscape Architecture (NRS 623A.080)
18. Board for the Regulation of Liquefied Petroleum Gas (NRS 590.485)
19. Board of Examiners for Marriage and Family Therapists and Clinical Professional Counselors (NRS 641A.090)
20. Board of Massage Therapists (NRS 640C.150)
21. Board of Medical Examiners (NRS 630.030)
22. State Board of Nursing (NRS 632.020)
23. Advisory Committee on Nursing Assistants (NRS 632.072)
24. Board of Occupational Therapy (NRS 640A.080)
25. Board of Dispensing Opticians (NRS 637.030)
26. Nevada State Board of Optometry (NRS 636.030)
27. State Board of Oriental Medicine (NRS 634A.030)
28. State Board of Osteopathic Medicine (NRS 633.181)
29. Peace Officers' Standards and Training Commission (NRS 289.500)
30. State Board of Pharmacy (NRS 639.020)
31. State Board of Physical Therapy Examiners (NRS 640.030)
32. State Board of Podiatry (NRS 635.020)
33. Board of Psychological Examiners (NRS 641.030)
34. Board of Registered Environmental Health Specialists (NRS 625A. 030)
35. Board of Examiners for Social Workers (NRS 641B.100)
36. Nevada State Board of Veterinary Medical Examiners (NRS 638.020)

While the various boards may undertake other activities from time to time, each of these Boards have the following statutory responsibilities: (1) Assure that applicants for licenses have the proper training, credentials and background to meet State law; (2) Evaluate complaints against licensees who may not meet the standards of the various license acts and

determine appropriate discipline; and, (3) Assure that the practice act meets current national standards of education and practice.

Every Board requires similar administrative support functions, including: (1) the review and investigation of initial licensing of applicants (including the development, updating and maintenance of application forms and applications); (2) review of license renewal applications; (3) collection of license fees and fines; (4) maintain current names and addresses of all licensees; (5) investigation of complaints against licensees; (6) drafting of regulations and revisions of practice acts; and, (7) providing information about licensees to the public.

Since the Boards are quasi-independent State agencies, they create and administer their budgets without direct accountability to the State Legislature and are not reported in the State Executive Budget. They may set (within limits approved by the Legislature) license fees at levels to meet their budgets. (Nevada has generally some of the highest professional license fees nationally for health professionals.) Not all Boards have sufficient funds from licensing fees to retain staff but some have retained significant numbers of staff. While all staff positions are employees of the State of Nevada, they do not come under the provisions of the State personnel system regarding compensation and benefits. All Professional and Occupational Licensing Boards have legal support by the Office of the Attorney General, but some Boards are able to afford the retention of staff counsel. Some Boards are able to afford to retain contract lobbyists. Some Boards are able to afford to contract for public relations. Some Boards are able to afford travel of staff and/or members.

There are reasons to question this model. The model requires each board to become an independent agency with unclear lines of accountability and uncertain administrative support for required functions. An approach for consideration is to separate the board and administrative functions as at least 26 States do currently.

STATES WITH DEPARTMENTS OR SIMILAR STRUCTURES

1. Alaska (Division of Corporations, Business, and Professional Licensing
<http://www.dced.state.ak.us/occ/home.htm>)
2. California (Department of Consumer Affairs-
[http://www2.dca.ca.gov/pls/wllpub/wllquery\\$.startup](http://www2.dca.ca.gov/pls/wllpub/wllquery$.startup))
3. Colorado (Department of Regulatory Agencies
(<http://www.dora.state.co.us/index.htm>))
4. Connecticut (Department of Public Health- <http://www.ct.gov/dph/site/default.asp>)
5. Delaware (Division of Professional Regulation- <http://www.dpr.delaware.gov/>)
6. District of Columbia (Department of Health-
<http://dchealth.dc.gov/doh/site/default.asp?dohNav=1>)
7. Florida (Department of Health- <http://www.doh.state.fl.us/>)
8. Hawai'i (Department of Commerce and Consumer Affairs-
<http://hawaii.gov/dcca/areas/pvl>)
9. Illinois (Department of Financial and Professional Regulation-
<http://www.ildfpr.com/>)
10. Indiana (Professional Licensing Agency- <http://www.in.gov/pla/>)
11. Maryland (Department of Health and Mental Hygiene-
<http://www.dhmh.state.md.us/>)
12. Michigan (Department of Community Health- <http://www.michigan.gov/mdch>)
13. Missouri (Division of Professional Registration-
<http://www.pr.mo.gov/healingarts.asp>)
14. Montana (Department of Labor and Industry-
http://mt.gov/dli/bsd/license/bsd_boards/med_board/board_page.asp)

15. Nebraska (Department of Health and Human Services- <http://www.hhs.state.ne.us/>)
16. New Jersey (Division of Consumer Affairs- <http://www.state.nj.us/lps/ca/boards.htm>)
17. New York (for licensure-Office of The Professions- <http://www.op.nysed.gov/> and for discipline-Department of Health- <http://www.health.state.ny.us/nysdoh/opmc/main.htm>)
18. Pennsylvania (Bureau of Professional and Occupational Affairs- <http://www.dos.state.pa.us/bpoa/site/default.asp>)
19. Rhode Island (Department of Health- <http://www.health.ri.gov/hsr/bmld/>)
20. South Carolina (Department of Labor, Licensing and Regulation- <http://www.llr.state.sc.us/pol/medical/>)
21. Tennessee (Department of Health- <http://health.state.tn.us/>)
22. Utah (Division of Occupational and Professional Licensing- <http://www.dopl.utah.gov/>)
23. Vermont (Department of Health- <http://www.healthvermont.gov/>)
24. Virginia (Department of Health Professions- <http://www.dhp.virginia.gov/>)
25. Washington (Department of Health- <http://www.doh.wa.gov/>)
26. Wisconsin (Department of Regulation and Licensing- <http://drl.wi.gov/index.htm>)

Alaska is typical in dividing the administrative and professional board functions. (“The State Medical Board is staffed by the Division of Corporations, Business and Professional Licensing.” and *e.g. regarding the board of medicine*–“The board adopts regulations to carry out the laws governing the practice of Medicine in Alaska. It makes final licensing decisions and takes disciplinary action against people who violate the licensing laws.”) Utah explains the administrative and professional board functions in similar functional language. (“The Division of Occupational and Professional Licensing, also known as DOPL, is one of seven agencies within the Utah Department of Commerce. DOPL is legislatively charged to administer and enforce specific laws related to the licensing and regulation of certain occupations and professions. Currently, DOPL issues licenses in approximately 60 categories of licensure. Additionally, the majority of these license categories include several individual license classifications...To fulfill its responsibilities, DOPL's efforts are organized into two primary functions: licensing and investigations. DOPL also houses several independent programs related to its licensing and investigative functions.” and for the boards–“DOPL is assisted in fulfilling its responsibilities by approximately 60 professional boards and commissions. Each board or commission is comprised of licensees from the respective profession(s) and usually includes at least one member of the general public appointed to represent the viewpoint and concerns of Utah's consumers.”)

As a working concept, a Nevada “Department of Professions” could consolidate the current staffs and current boards into a single administrative unit of the State Executive Branch. In many ways, this is not dissimilar to the current structure of the State Board of Health. The Board is appointed by the Governor and is staffed by the State Health Division. The State Board of Health regulates a number of health professionals and health care facilities and is the oldest of the State health regulatory agencies. There could be concerns about conflicts of interest as well as public accountability if the State Health Division staff were employed by the State Board of Health. Since the administrative tasks needed to consider licenses or the results of investigations are conducted independent of the Board of Health, it is able to make determinations free from potential conflicts and public perception of conflicts.

Significant cost savings, efficiency and effectiveness can be gained by consolidating the staff administrative functions of: form development; application reviews; background

checks; complaint processing; investigations; fee and fine collection; legal counsel; regulatory and legislative drafting and processing; public information, including web access through a single portal to all information about all State licensed professionals. The boards could then focus on the basic and important functions of reviewing licenses and conducting hearings as needed on complaints. For these reasons, a State Department of Professions (or, at least, Health Professions) should be considered.

attachments

cc: Members, Legislative Committee on Health Care
NSMA Council