

**MINUTES OF THE  
SENATE COMMITTEE ON COMMERCE AND LABOR**

**Eighty-second Session  
May 19, 2023**

The Senate Committee on Commerce and Labor was called to order by Chair Pat Spearman at 9:10 a.m. on Friday, May 19, 2023, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Pat Spearman, Chair  
Senator Roberta Lange, Vice Chair  
Senator Melanie Scheible  
Senator Skip Daly  
Senator Julie Pazina  
Senator Scott Hammond  
Senator Carrie A. Buck  
Senator Jeff Stone

**GUEST LEGISLATORS PRESENT:**

Assemblywoman Lesley E. Cohen, Assembly District No. 29  
Assemblyman David Orentlicher, Assembly District No. 20

**STAFF MEMBERS PRESENT:**

Cesar Melgarejo, Policy Analyst  
Bryan Fernley, Counsel  
Veda Wooley, Counsel  
Kelly K. Clark, Committee Secretary

**OTHERS PRESENT:**

Alison Brasier, Nevada Justice Association  
George Bochanis, Nevada Justice Association  
Jesse A. Wadhams, Vegas Chamber

Senate Committee on Commerce and Labor  
May 19, 2023  
Page 2

Misty Grimmer, Nevada Resort Association  
Tom Clark, Reno + Sparks Chamber of Commerce; Board of Medical Examiners  
Lauren Chapple-Love, M.D.  
Connor Cain, Comprehensive Cancer Center of Nevada  
Susan Fisher, State Board of Osteopathic Medicine  
Robert Masterson, Nevada Academy of Physician Assistants  
John Sande, Nevada Academy of Physician Assistants  
Mari Nakashima Nielsen, Nevada State Medical Association

CHAIR SPEARMAN:

I will open the hearing with Assembly Bill (A.B.) 244.

**ASSEMBLY BILL 244 (1st Reprint)**: Revises provisions relating to certain mental or physical examinations. (BDR 54-819)

ALISON BRASIER (Nevada Justice Association):

Thank you for allowing us to present from Las Vegas. This bill creates substantive rights for individuals who are compelled to undergo examinations with a doctor, not for treatment, but strictly for evaluation purposes. These are situations where there is no doctor-patient relationship.

Examples of these types of compelled examinations are when someone is either applying for disability insurance or trying to get disability benefits that they have already paid for. For example, if you are trying to make a claim against your own insurance company for benefits that you have already paid for, licensing for different types of work or if you are trying to receive workers' compensation benefits because you have been injured on the job.

These are the types of compelled examinations that happen every day in Nevada. What we want to do is create substantive rights for the people who are forced to undergo these examinations. In 2019, you passed A.B. No. 285 of the 80th Session. It eventually became *Nevada Revised Statutes* (NRS) 52.380. It dealt with these types of exams but strictly in the context of civil litigation.

In 2021, the Nevada Supreme Court overturned that statute in a decision called *Lyft, Inc. v. The Eighth Judicial District Court*, 137 Nev. Adv. Op. 86 (2021). The Supreme Court said the provisions that were set forth in the NRS were too much about court procedures and was going into the purview of the court and not creating substantive rights for people, which was the intent of the bill.

The rationale provided was that the previous version only applied to cases that were in litigation. It did not create a separate right of action or penalty if someone violated those rights.

So essentially, the *Lyft* decision gave us a road map for what we should put forth if we want to create substantive rights for people who are forced into these compelled examinations.

That is what A.B. 244 does. It creates substantive rights to protect individuals and to create fairness in situations. We do that by expanding the rights to individuals outside of litigation and creating penalties if those rights are violated.

I will walk you through our proposed amendment ([Exhibit C](#)).

Section 1, subsection 1 describes that these are compelled examinations where no doctor-patient relationship has already been established. This is not for a visit to a doctor you have seen previously. It is not for some type of exam, long-term counseling or treatment.

Then it sets forth your rights if you are in that situation. One thing I want to stress is that these are rights that we are empowering our citizens to use and to have, but it is ultimately their choice. If they feel comfortable with the examination and they do not want to enforce any of these rights, that is up to the individual.

Section 1, subsection 1, paragraph (a) provides that a person compelled to this type of examination will receive notice at least 21 days before the examination. That is purely so that the individuals can schedule, take time off work, get childcare, whatever they may need so they are able to attend.

Section 1, subsection 1, paragraph (b) allows the person to have an observer of their choice present throughout the examination. There are many reasons for that. Many of us want to bring someone along to an important medical exam, for support, comfort or a variety of reasons. At the end of the stressful situation, there is someone to ask, "What actually just happened in there?" The patient can choose the third party who can be there. If there is any dispute about what happened, the third party can give their recollection.

We want to empower people to have an observer come with them. Many times in workers' compensation or personal injury situations, people want to bring a licensed nurse practitioner because they want someone there who knows what is going on. At the end of the day, if there is a dispute, there is an outside record of what happened.

Section 1, subsection 1, paragraph (c) allows a person to have an interpreter present if that would be necessary to facilitate the examination. That can be an interpreter provided by the doctor's office if the doctor feels more comfortable with that, or it can be someone that the examinee brings with them.

Section 1, subsection 1, paragraph (d) allows the observer to take notes or the actual examinee to take notes.

Section 1, subsection 1, paragraph (e) allows for audio, video or stenographic recordings of what happened. This is so there is a clear and objective recording of what happened during the compelled examination. Often a doctor and examinee disagree about what happened during an examination. When you have that kind of power imbalance, the doctor usually wins. What we want is an objective recording of what happened. We can level the playing field for everyone involved, including the doctor. If there is a dispute, we can go to the record.

Section 1, subsection 2 allows the examiner to suspend the examination if the observer becomes disruptive or tries to participate.

Section 1, subsection 3 sets forth that anything that happens is not privileged, which is already the case because of the context of these examinations.

Section 1, subsection 4 goes through the penalties if any of the rights of the compelled person are violated. That is what the *Lyft* decision from the Supreme Court told us was necessary—to create a substantive right, there have to be some penalties if the right is violated.

If a person feels like a right has been violated, the person can attempt to seek these penalties. We added a provision that the person must give the examiner at least seven days written notice to ask the examiner to comply. We wanted to create fairness all around. We do not want a situation where someone inadvertently violates one of the rights and does not even know it.

Section 1, subsections 5 and 6 provide some exceptions, all dealing with public safety and welfare. They cover examinations that happen in the criminal justice context, in the child welfare context, with guardianship and civil commitment. These exceptions were included as a result of discussions with law enforcement and other stakeholders to ensure that if there is a situation where rights need to be temporarily suspended due to public safety and welfare concerns, that could happen.

I want to reiterate that these are substantive rights that we are creating, that a person can choose to enforce if they so desire. Mr. Bochanis is going to talk about where these rights are already being allowed. Specifically, in the workers' compensation context, they are already being allowed and have been for decades in all the states around us.

GEORGE BOCHANIS (Nevada Justice Association):

I am here representing myself, and also on behalf of the Nevada Justice Association in support of A.B. 244.

I opened my firm in downtown Las Vegas in 1985. Since then, I have been practicing in workers' compensation cases of all kinds regarding all types of physical and psychological conditions.

I think it is important you know that in the context of workers' compensation cases in Nevada, attorneys have been allowed to attend those exams since I began practicing. I know that was the case for the 10 to 20 years before I started practicing.

We have had no problems for these five to six decades. We have had no incidents; we have had zero pushback whatsoever in the workers' compensation context.

The question that presents itself: if this is not causing a problem in workers' compensation cases for 50 to 60 years, why would it cause a problem in these different venues?

What we are seeking here is to create this substantive right to allow patients the opportunity to have an observer of their choice, if they want one, and to have to have an observer at these compelled examinations and to have them recorded.

In the *Lyft* decision, the Nevada Supreme Court defined what a substantive right was. It is pretty straightforward. It is a standard that creates rights, duties and obligations.

That is what A.B. 244 would do. Not only has Nevada allowed observers and compelled examinations in workers' compensation cases for some 50 to 60 years, every surrounding state has also allowed both observers and recordings of these compelled examinations.

We have presented you a state survey of compelled examinations ([Exhibit D](#)) by statute, rule and by case law from the different states that already allow this in all of these types of examinations.

In Arizona, it is allowed by statute to have a representative present and you can audio record or video record the examination. California by their civil code allows the attorney or the attorney's representative for the examinee to be there and allows people to record it stenographically.

Idaho allows the patient to have a representative of his or her choice present during these examinations. Illinois allows the right to have an attorney or person that the plaintiff requests. Michigan allows the attorney or any other person to be present. Oklahoma is the same.

In fact, there is a Supreme Court case in Oklahoma that says that these exams can be videoed, and a videographer can accurately record the physical aspects of the examination. The rationale for it, which I think really applies to what we are seeking today, is that the examination is a discovery examination, not one in which the plaintiff is being treated.

It is important to point out that this is not the typical doctor-patient examination where the patient is going to have some type of condition addressed. Instead, it is an examination where no such doctor-patient relationship exists, and the patient, who is really an examinee, is being forced or compelled to attend the examination.

Other states also allow what we are seeking here today. Pennsylvania allows a person to have counsel or other representative present and have it recorded in stenographic or audio recording. Utah allows recorded examinations. The state

of Washington allows a representative to be present who may not interfere or obstruct the examination.

We address this as well in A.B. 244. Any person observing cannot obstruct or interfere with the examination. We are not interested in that happening.

By case law, Alaska, Colorado, Connecticut, Delaware and Florida all allow observers and these exams to be recorded. In fact, the state of Florida in a Florida Supreme Court case, says that the concerns of the examiner—the doctor performing the examination—cannot outweigh the examinee's rights. We think that kind of sums up what we are trying to do here.

There is another Florida case that says it is the privacy interests of the examinee that are involved, not the privacy interests of the examiner or the doctor. Again, this is something we think is an important basis of this bill.

By case law, other states also allow an observer and exams to be recorded, including Indiana, Kentucky, Massachusetts, Montana, New Jersey, New York and West Virginia.

There is a Kentucky case that says that the potential disturbance of the exam being recorded is minimal. An exam being recorded has the advantage of creating an exact record of the examination and that is what we are seeking here. You could really call this the Patient Fairness Act. We are trying to protect the person who is being put into a situation that does not involve the patient-doctor relationship.

This bill gives fairness and transparency to both people who are involved in the compelled examination. It protects both as to what happens during these examinations. It gives us a clear record of what occurs. There is not going to be a dispute.

We have had disputes about what happens during these examinations. We have had reports come back where certain things are said. We will ask our client, is this is something you said to the doctor? Our client denies ever saying something like that. We have one person's word against another. This bill actually is a commonsense, reasonable approach to creating openness and fairness to both individuals involved in these examinations.

So why hide what happens during these examinations? This is something that should be an open, transparent process. The bottom line is that this bill uses a fair approach.

MS. BRASIER:

I want to address the main opposition to this bill from neuropsychologists. We did try to work with them to come up with an amendment, but unfortunately, we are unable to get an amendment resolved to everyone's satisfaction.

I want to point out that no other group, medical or specialty, has submitted any opposition. We have not heard opposition from chiropractors, orthopedic doctors, pain managers or neurosurgeons. That is who does the bulk of these examinations. We have not heard any opposition from them.

I want to address a few of the general concerns that have been raised. Observation by third parties and audio and video recording has been taking place in states all around the Country and in all of our neighboring states in some form or fashion. It continues to happen. People have not lost their license. There have not been doctors unwilling to do examinations. They have continued on, like they do in the workers' compensation context that is already in effect here in Nevada.

Another concern is that these tests are proprietary and must be kept secret. You can buy most of these tests that are given by psychologists on eBay or somewhere else online; millions of people have already taken them. The secrecy or privacy concerns really can be negated by a quick Google search.

Finally, in 2018, when we discussed this issue before the Nevada Supreme Court, Lewis Etcoff, a board-certified neuropsychologist in Las Vegas, submitted a letter ([Exhibit E](#)). By my account, he probably does most of these neuropsychological exams in Nevada.

In the letter, he said:

...I allow a noninvolved third party observer audiotaping and videotaping of my examinee interviews. I do so to accommodate the legitimate concerns of personal injury attorneys... I recognize that attorneys need to feel comfortable, for example, that an IME doctor refrain from asking their client any causation-related



questions, or that the IME doctor, whether purposely or unconsciously, biased the interview questions toward the side that retained the professional.

Usually, that is the insurance company that retained the doctor. He goes on to say:

In the past several years, I have allowed audiotaping and videotaping of my interviews with plaintiffs so as to accommodate the attorney and the discovery commissioner and to aid the Trier of Fact. On occasion, I have allowed an employee from the examiner's attorney's office to sit in on the interview.

He continues, "...I do so because I am confident that my interview questions are case appropriate and demonstrate the thoroughness I demand of myself as an expert."

SENATOR DALY:

In section 1, subsection 1, paragraph (a) where it says, "unless otherwise specified," I have a suggestion. You should add that when you do the 21-day notice, it needs to include that these people have these rights, and list them, otherwise they may not know. Sometimes they will be working with lawyers. But since you have to provide that notice, you should include the rest of the information about all of their rights.

Next, in section 1, subsection 1, paragraph (e) about giving notice and making the recording, you said this happens on the workers' compensation claims. Can they just show up and give them a one-minute notice? Or is there a procedure and then you have to provide them notice? How long does the notice have to be? Do they have any right to say no, whoever the other person may be? My read on this is that they cannot say no.

MR. BOCHANIS:

Typically, the way this works in providing notice is that at the time the examination is set, there would be a provision included to tell them it is being audio or video recorded. As far as the ability to say no to the recording, that is part of A.B. 244. Recordings of these compelled or forced examinations are now a requirement and must be submitted to during the examination.

The notice provision is not specified in section 1, subsection 1, paragraph (e). The way it typically works in practice, is that when the actual examination is set, that type of parameter is usually noticed, that it is going to be recorded either by video- or audio-recording methods.

SENATOR DALY:

I understand that. They would not really be able to say no without violating the provisions. But it was not clear when that notice about recording had to be given. Again, if the notice is going to be made at the appointment and has not been an issue, it is not a big deal.

My final question is in section 1, your new subsection 3, which says the testimony and reports of the person who conducts the examination are not privileged. Many times, the examiner is hired by someone else to do the examination. Somebody else is requesting that this be done.

I have received certified public accountant reports and other documents, and right up at the top, it says this report is intended only for the person who requested it. Is your goal here to say that they cannot hide the ball and force you to go through a discovery process? Since it is not privileged, do they have to provide it at the same time they provide the report to whomever commissioned the examination?

MS. BRASIER:

Yes. The non-privileged communication part of it goes both ways. That means the doctor could release the report to an outside person, which is different from you going to your doctor for treatment, where HIPAA would protect the doctor from disseminating the records.

The non-privileged portion allows the doctor to give the report to whomever has paid him or her to do the compelled examination, and then vice versa, back to the examinee or their representative, if the person authorizes that.

SENATOR SCHEIBLE:

Regarding the privilege, obviously, the exams cannot be privileged if they are going to be shared with the court or with the person retaining the examining doctor. My question is, are there other guidelines or laws in place that would protect that information from being shared with clients on the other side, with court staff, or with the media?

MS. BRASIER:

Yes, there are guidelines or standards that are already followed. Most regularly in practice, the doctor will have the examinees sign something that says this will be shared among the parties.

But as far as being part of the court record or shared with outside sources, there are ethical guidelines and court guidelines that do not allow the attorneys to file anything as public record that has an individual's personal identifying information.

While there is the opportunity for that to happen, my experience has been that when it does happen, either the judge or the discovery commissioner will take note and will ask it to be removed from the public filing. Usually, the attorney gets some type of sanction for doing that.

I have not had any experience in my practice of these reports being distributed inappropriately, other than the inadvertent filing with the court. If that happens, there is a remedy and usually the attorney gets sanctioned and hopefully does not do it again.

SENATOR SCHEIBLE:

That does help address my concerns. I appreciate that these exams have been observed for the four years. I still struggle with understanding the purpose of this.

If you are going to have another person in the room who was chosen by the examinee, then I would assume that person would do one of two things: Either they would get to jump up and interrupt the exam and make sure that nothing goes wrong, which they are not allowed to do—they cannot disrupt the exam—or they would be there to provide testimony at a later date to corroborate or refute what the examiner is saying. But if it is the person's lawyer, or mom, or an employee of the lawyer's office, that person would be a terrible witness. So, what is the purpose?

MS. BRASIER:

The purpose of this bill is to level the playing field so that people feel comfortable and safer in those types of situations. It can also provide clarity of what happened.

Most times, these individuals are compelled to go to a doctor not of their choosing to either be physically examined by a doctor with whom they have no patient relationship, or to be interviewed by a psychologist where, again, they are being asked personal, sensitive questions that they probably do not want to talk to anybody about. They are being forced to talk with a doctor with whom they do not have a relationship.

The clarity is for the sake of the individual being examined, but also for the doctor. They usually have at least one member of their staff in the room with them too. The vast majority of these are professionally paid doctors who do these examinations multiple times a week, making millions of dollars a year doing the examination.

There is another person in the room as an observer so that if something comes up, you have a level playing field. That is also why it is important to have the audio and video recording. It is not just if there is a dispute. You have the tiebreaker being the observer with the video and audio recording; you have an objective record of what happened.

We already do this in workers' compensation cases. It is allowed in all our neighboring states. Arizona, California, Idaho, Utah and Washington all allow observers for similar purposes and without issue.

MR. BOCHANIS:

We have had workers' compensation examinations covered by attorneys for over 50 years in Nevada and this has never created a problem in any way, whatsoever. We feel that this bill really opens this compelled examination process and creates transparency, which is just what we are looking for here. It protects the patient or the examinee from disputes, as to what is said and done.

When you think about it, it also protects the doctor who was hired by the insurance company to conduct these types of compelled exams as to what he does during these examinations.

This bill limits disputes as to what occurs during these examinations. As a result of that, it is going to save time later for all the parties in our court system. This bill puts all that out in the open where it should be, and it creates that type of fairness for these people that are compelled to go to these examinations and even for the doctors who conduct them.

We feel it is it is a balanced bill that provides protections and openness. It is going to save everybody a lot of time at the end. It is a process that has already occurred in Nevada for decades without any type of problem.

SENATOR STONE:

Of course, it is the patient who is going to be inviting the observer to come in with a video or an audio device. Let us say I am a physician doing an examination and I am talking about the medical issues of a patient while being recorded by video or audio. Is there any indemnification for the doctor in the event that the person that is taking the video posts it to Facebook or something?

Here you have a doctor discussing the health parameters of a patient. I am in favor of having somebody there doing the videos and the audios but is there any indemnification of the physician in the event that information gets circulated?

MS. BRASIER:

The way that it works is that the videographer or interpreter normally signs some type of confidentiality agreement as part of the terms of being hired. While the bill does not provide indemnity for the examiner, if the person doing the videography was hired by the individual, then the responsibility for what the videographer does falls onto the individual who hired them to ensure it is used correctly.

MR. BOCHANIS:

What normally happens is a confidentiality provision in the retainer for those services. When we are video recording some of these examinations, we have had confidentiality agreements signed by the videographer so that the videos cannot be disseminated. There are penalties if the videographer does not. We have not had one problem with this type of documentation during these examinations.

I would also add that a small number of examinations are video recorded. They are typically audio recorded because the examinee actually would have to agree to video recording. We find that most of the examinees do not want to be video recorded.

The audios do not carry the same type of issues, but the privacy interests apply. That is what this is really about—the privacy interests of the examinee are

protected by that type of exam with those types of documents and confidentiality.

SENATOR STONE:

You make me feel more comfortable about that issue. I also appreciate you addressing my concerns about litigation when there seems to be some missing information or somebody not following the provisions of this bill. I appreciate the seven days' notice. I assume that notice would require proof by registered mail?

MS. BRASIER:

Yes. Similar to disputes in small claims court, you have to give people notice and you have to have a valid method of proof that they received it. The intent was to follow the Supreme Court guidance in the *Lyft* decision on how to create the substantive rights by adding in the penalties. It was not intended to create additional litigation about violations. The suggestion to add the notice period was well received.

JESSE A. WADHAMS (Vegas Chamber):

We have enjoyed our spirited and robust conversations with the Nevada Justice Association. We are probably quite close, but right now, we are opposed to the bill as written. We think the issue is properly addressed by Rule 35 of the *Nevada Rules of Civil Procedure*, which governs mental and physical examinations.

In that, the Court has struck a pretty good balance by allowing most of the provisions of the bill, on a good cause showing. We also have some concerns about the private right of action, particularly in a compelled examination situation in which it already seems like there would be a remedy available by the "trier of fact." We will continue to have conversations and look forward to working on the bill.

MISTY GRIMMER (Nevada Resort Association):

We do not believe that the bill is really about providing necessary moral support for the person. If that is what the bill was limited to, I do not think we would have a problem with that. If it was limited to that type of a scenario, or even somebody to record the circumstances, I do not think we would have as much of an issue with it.

As currently drafted, A.B. 244 would allow the plaintiff's attorney and plaintiff's medical experts to attend the examination. We think that, in practice, this will not go well with those types of additional observers. Even though the bill says that they are not allowed to disrupt the proceedings, we think that is unrealistic.

We are concerned that this also will dissuade physicians from wanting to participate in this process because it does add the private right of action. At the very least, there should be some indemnity or requirement of a nondisclosure agreement, so that physicians are not dissuaded from wanting to participate in this process.

I am not an attorney, but I have been working on workers' compensation issues for a long time in this building. I do not feel the comparison to workers' compensation is an apples-to-apples comparison.

Workers' compensation is highly regulated by the State. Every single portion of workers' compensation is governed in NRS 616 and NRS 617. But more importantly, workers' compensation is a no-fault system. Whereas what we are talking about here, in these circumstances, is absolutely applying fault and liability to one side or the other. Furthermore, there is also no private right of action against a physician in workers' compensation. I know many comparisons have been made to workers' compensation in this scenario. They are not the same.

TOM CLARK (Reno + Sparks Chamber of Commerce; Board of Medical Examiners):  
We are in opposition to this bill. The Board of Medical Examiners (BME) feels that the third person in the room could hinder the investigation of a psychological or psychiatric evaluation. The examiner, whether it is a physician or a physician assistant or someone else that the BME licenses, would be hindered by this additional person in the room. For those reasons, both the Reno + Sparks Chamber and the BME oppose this bill.

LAUREN CHAPPLE-LOVE, M.D.:

I am a licensed psychologist practicing in Las Vegas. I am here in two capacities: as the past president of the Nevada Psychological Association and as a psychologist who conducts these evaluations in Nevada.

The Nevada Psychological Association has already provided written testimony ([Exhibit F](#)) with references that highlight how these types of calls are being done

in other states. I am not going to repeat that sentiment regarding the patient-doctor relationship.

Even if I meet an individual for the first time, I am ethically bound to provide them the best and most effective care I can. The absence of some type of excellent doctor-patient relationship does not supersede the short-term evaluative relationship that exists. To be clear, the examinees' rights are the far more important issue here.

I believe that the broad nature of this legislation is likely to place a real barrier to Nevadans getting the examinations they so desperately need. The word "compelled" in this case is far too broad. It is not just neuro exams. This is likely to impact bariatric evaluations, gender-affirming evaluations, personal injury, autism spectrum and veterans benefit evaluations, to name a few. All of these are likely to fall under this umbrella. Even though it is well-intentioned, it is unethical for psychologists to knowingly conduct an evaluation that would likely produce invalid results.

My major worry is that many doctors will simply choose not to participate. As you already know, Nevadans already have too few doctors. This is an impractical solution. Even if a doctor is allowed to be the person with the video and the audio, how long should the doctor have it? Who could it be given to? What happens if the videographer is unwilling to sign some type of confidentiality document?

We appreciate the working relationship with the Nevada Justice Association and continue to value our working relationship with Assemblywoman Selena Torres. We hope to work on more effective legislation to protect patient rights in the future.

MR. BOCHANIS:

The workers' compensation example is close to these types of examinations. I have practiced law in the workers' compensation area in Nevada since 1985. I have represented thousands of workers' compensation claimants. We have had our law firm's representatives and attorneys attend these compelled permanent partial disability examinations in the workers' compensation setting for decades without any problems.



I think you should also be aware that attorneys or their representatives attending these workers' compensation examinations are not provided for in any statute. This is not part of the Nevada regulatory or statutory scheme. This is a practice that has occurred in Nevada for decades and has existed and continues to exist without any type of incident whatsoever.

These other states that we cited to you all involve psychological exams being observed and recorded. The states have continued to allow this type of practice to occur. It is occurring without any types of problems. We know that because these statutes and these cases exist. The survey includes a few cases from different states that specifically talk about psychological examinations being attended by an observer and being recorded.

Several of these states specifically mentioned that these psychological and psychiatric examinations can be recorded and can be observed and there have been no incidents or problems that have been reported. These states all continue to allow all types of medical and psychological examinations that are compelled to have an observer attend and for them to be recorded.

There is a Delaware case that says the patient may have their own healthcare practitioner present as a witness at a psychological examination and may record the psychological examination. We cited two unpublished opinions from Massachusetts that psychiatric examinations can be videotaped, and the plaintiff's attorney can be allowed to attend.

This is a process that has been happening in Nevada for decades and that other states have been participating in and allowing for equally long periods of time. We feel that since it is occurring in all these states without incident, and if it has already occurred in Nevada for decades, it should be allowed in these types of compelled examinations.

MS. BRASIER:

In closing, to address one of the comments that this is better left to the courts and *Nevada Rules of Civil Procedure*, Rule 35, on physical and mental examination. The reason it expands beyond litigation is because these rights should be available to all Nevadans, whether they file a lawsuit or not.

Many of these examinations take place outside of the context of litigation for disability benefits, when you are making a claim against your own insurance

Senate Committee on Commerce and Labor  
May 19, 2023  
Page 18

company. In these contexts, when you are not in litigation is when many people do not have attorneys and do not know their legal rights. We want to level the playing field by giving everyone rights when they are compelled to these examinations.

VICE CHAIR LANGE:

With that, we will close the hearing on A.B. 244.

CHAIR SPEARMAN:

I will open our work session with A.B. 120.

**ASSEMBLY BILL 120 (1st Reprint)**: Revises certain provisions governing voluntary health care service. (BDR 54-177)

CESAR MELGAREJO (Policy Analyst):

I have a work session document (Exhibit G) that describes the bill and its history. There are no amendments.

SENATOR SCHEIBLE MOVED TO DO PASS A.B. 120.

SENATOR HAMMOND SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

\* \* \* \* \*

CHAIR SPEARMAN:

I will open the work session on A.B. 198.

**ASSEMBLY BILL 198 (1st Reprint)**: Revises provisions governing health care. (BDR 54-446)

MR. MELGAREJO:

I have a work session document (Exhibit H) that describes the bill and its history. There are two amendments proposed for this bill. The first one, from the Nevada Association of Nurse Anesthetists, is included within the work session document.

The second amendment was proposed by Assemblyman David Orentlicher. It came in last night and has been provided to you. It would amend NRS 629.515 and would add a new subsection to allow a provider who is licensed to practice medicine in this State and who has an established provider-patient relationship with the patient to utilize telehealth to consult with the provider of health care who is licensed in this State or another state in the form of a specialty assessment, diagnosis or recommendation for treatment in order to reduce the need for out-of-state specialty referral for services or treatment.

CHAIR SPEARMAN:

Assemblyman Orentlicher, am I to understand that you want to take the telehealth portion out?

ASSEMBLYMAN DAVID ORENTLICHER (Assembly District No. 20):

In the Assembly, all of the telehealth provisions came out and there were concerns. But this particular proposal in the amendment is a small use of telehealth. It has strong support.

I know this is important to the physicians at the Comprehensive Cancer Centers of Nevada and how they their care for their patients. Connor Cain is here; he can speak to that. Their doctors feel it is important for their care. I know the Nevada State Medical Association is comfortable with this language. I have not spoken to anybody who is opposed to this narrow slice of telehealth. There were concerns about other parts.

CONNOR CAIN (Comprehensive Cancer Centers of Nevada):

If a patient needs a second opinion or to consult with a specialist, this specific narrow provision is particularly helpful. This would be in the context of a person who is already a cancer patient and their doctor saying we would like to get a second opinion. We might not have a specialist here in the State who we can get that second opinion from. If we can utilize telehealth, we can get that second opinion more quickly, which is typically better for the patient.

CHAIR SPEARMAN:

Do I hear a motion including both amendments? Hearing no motion, the bill will be retired.

SENATOR SCHEIBLE:

Can we just move this bill to the end of the work session?

Senate Committee on Commerce and Labor  
May 19, 2023  
Page 20

CHAIR SPEARMAN:

Yes, we can do that. I was not aware of the information provided regarding Comprehensive Cancer Centers of Nevada. We will revisit this bill later in the work session.

ASSEMBLYMAN ORENTLICHER:

Thank you, I appreciate that. If you are not comfortable with that, I hope we can still do the other amendment and move the bill forward.

CHAIR SPEARMAN:

I will open the work session on A.B. 218.

**ASSEMBLY BILL 218 (1st Reprint)**: Revises provisions governing landlords and tenants. (BDR 10-136)

MR. MELGAREJO:

I have a work session document ([Exhibit I](#)) that describes the bill and its history. There are two amendments.

SENATOR PAZINA MOVED TO AMEND AND DO PASS AS AMENDED  
A.B. 218.

SENATOR DALY SECONDED THE MOTION.

SENATOR STONE:

I will be voting no. This is going to affect a lot of small mom-and-pop landlords, including a lot of seniors, who do not have financial resources. This could cause financial failure for them. There should at least be some warning provisions before we start filing rights of action against them.

SENATOR HAMMOND:

I support this bill and will be voting yes, but I reserve the right to change my vote on the Senate Floor.

SENATOR BUCK:

I will be voting no.

Senate Committee on Commerce and Labor  
May 19, 2023  
Page 21

THE MOTION PASSED. (SENATORS BUCK AND STONE VOTED NO.)

\* \* \* \* \*

CHAIR SPEARMAN:

I will open the work session on A.B. 250.

[ASSEMBLY BILL 250 \(1st Reprint\)](#): Establishes provisions governing prescription drugs. (BDR 40-782)

MR. MELGAREJO:

I have a work session document ([Exhibit J](#)) that describes the bill and its history. Assemblywoman Venicia Considine has submitted two amendments.

SENATOR DALY:

Hopefully, we can still work on this bill before further action is taken on the Floor. I will be voting yes. Having the State weigh in on this will send the right message to the pharmaceutical people when they are negotiating with Medicare. I do not think it upsets the apple cart at all.

SENATOR PAZINA:

I want to thank the stakeholders for working with me on section 1, subsection 3, when we noticed there might be a little a conflict with another bill.

SENATOR LANGE:

I will be voting yes. While we might be ahead of our time, I heard from so many constituents in my district about how important this was to them. We have so many people who cannot afford their medicines and are having to make choices about how to pay for them. This is really important.

SENATOR STONE:

There is not one person here who would vote no to getting lower cost drugs for our constituents. The problem is this bill targets the wrong entity. It targets pharmacies and wholesalers, not the drug companies that are responsible for lowering these prices. I know this is a piece of feel-good legislation, but the State has no standing to negotiate drug prices because the federal government occupies that space. Although we all might feel good about voting yes on this, I can tell you it is not going to happen.

If you really want to control drug costs for consumers, then you might want to talk about pharmacy benefit managers. They are multi-billion dollar companies that are siphoning a lot of money away that could be used to benefit patients. That is where the real impact could happen.

This feel-good legislation will go nowhere no matter how unanimous we are here in the State. Go after the manufacturers if you want to make an action and a point. Do not penalize a pharmacist, causing him to have to deal with an attorney just because the drug he is selling is on that list. A pharmacist will have to say go to another pharmacy. For that reason, I urge you to vote no.

SENATOR BUCK:  
I will be voting no today.

CHAIR SPEARMAN:  
This may not be perfect legislation, but I too have received many calls from people. We have been working on this incrementally since 2017 and making progress. Senator Stone, you have given a forceful oratory on what needs to happen. You might want to consider a bill draft request.

SENATOR DALY MOVED TO AMEND AND DO PASS AS AMENDED  
A.B. 250.

SENATOR LANGE SECONDED THE MOTION.

THE MOTION PASSED. (SENATORS BUCK, HAMMOND AND STONE  
VOTED NO.)

\* \* \* \* \*

CHAIR SPEARMAN:  
I will open the work session on A.B. 342.

[ASSEMBLY BILL 342 \(1st Reprint\)](#): Requires a cannabis establishment agent to take certain actions to verify the age of a consumer before selling cannabis or a cannabis product. (BDR 56-1024)

Senate Committee on Commerce and Labor  
May 19, 2023  
Page 23

MR. MELGAREJO:

I have a work session document ([Exhibit K](#)) that describes the bill and its history. There are no amendments.

SENATOR LANGE MOVED TO DO PASS A.B. 342.

SENATOR BUCK SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

\* \* \* \* \*

CHAIR SPEARMAN:

I will open the work session on A.B. 343.

**ASSEMBLY BILL 343 (1st Reprint)**: Revises provisions relating to occupational therapy. (BDR 54-737)

MR. MELGAREJO:

I have a work session document ([Exhibit L](#)) that describes the bill and its history. There are no amendments.

SENATOR PAZINA MOVED TO DO PASS A.B. 343.

SENATOR SCHEIBLE SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

\* \* \* \* \*

CHAIR SPEARMAN:

I will open the work session on A.B. 364.

**ASSEMBLY BILL 364 (1st Reprint)**: Revises provisions governing physician assistants. (BDR 54-148)

MR. MELGAREJO:

I have a work session document ([Exhibit M](#)) that describes the bill and its history including the original amendment.

There is a second proposed conceptual amendment ([Exhibit N](#)) that John Sande provided this morning. It amends the original amendment. It includes changes that are highlighted and stricken. It would strike language in sections 10 and 26. These provisions would remove an employer as a choice for collaboration requirements. The amendment deletes sections 17 and 32 which would have authorized an unlicensed person who meets the requirements for licensure as a physician assistant to refer to himself or herself as an inactive physician assistant.

CHAIR SPEARMAN:

This is a bill that has been worked and reworked. I am hoping that both sides have had an opportunity to come together on this.

ASSEMBLYWOMAN LESLEY E. COHEN (Assembly District No. 29):

That is a friendly amendment that we had discussed in consultation with the Chair and others. Because the medical boards had not met, they could not say they agreed. We have been trying to respond to the concerns of Committee members, medical providers and other organizations.

CHAIR SPEARMAN:

Ms. Fisher, could you come to the table? I think you said you were going to check with your folks. Someone yesterday said there was another medical board that needed to sign on.

SUSAN FISHER (State Board of Osteopathic Medicine):

I am here representing the State Board of Osteopathic Medicine. They operate under Nevada's Open Meeting Law. The earliest they would be able to meet to discuss this amendment would be May 24, 2023. Therefore, they do not have a position on this amendment.

SENATOR SCHEIBLE:

I am still a little bit confused reading through the amendments, whether the collaborative agreement would still be required between a physician assistant and a physician. If so, does it have to be submitted to the BME on a regular basis or made available upon request?

ASSEMBLYWOMAN COHEN:

It is with the physician, and it is provided to the BME.



Senate Committee on Commerce and Labor  
May 19, 2023  
Page 25

SENATOR SCHEIBLE:

To me, it is important that it be provided to the BME on a regular basis and also available for review. Can we get some clarity on that?

ASSEMBLYWOMAN COHEN:

It is not just available to the BME; it is being provided. As I understand it, that is not something that changes frequently. It is not something they will have to rescind every year. It is just the agreement. If it changes, it would need to be provided again.

MR. MELGAREJO:

The amendment that was submitted by Mr. Sande, [Exhibit M](#), is attached to this work session document and it contains proposed changes in red. The second amendment [Exhibit N](#), that came in this morning would make changes that are highlighted and stricken. Section 10, subsection 1, paragraph (d), and similarly, section 26, subsection 1, paragraph (g) state that the collaboration agreement must be kept on file at the physician assistant's (PA) primary location of practice and made available to the BME upon request. That has not changed with the amendment that came in this morning.

ASSEMBLYWOMAN COHEN:

My understanding is that the collaboration agreement would be kept on file with the BME. That was my intent. I do not know if a mistake was made when the amendment was submitted. I believed that was everyone's intent when I left the meeting.

ROBERT MASTERSON (Nevada Academy of Physician Assistants):

On behalf of the Nevada Academy of Physician Assistants, we are happy to tighten that up. It was not our intention to leave that loose in section 26, subsection 1, paragraph (g).

ASSEMBLYWOMAN COHEN:

I am perfectly happy for the amendment to be clear that the BME is to have copies of the agreement because that was my intent.

SENATOR SCHEIBLE:

I am still seeking clarity on the collaboration agreement. I appreciate the amendments that specify the agreement has to be with a physician, not just the employer. Are there any parameters on that physician being licensed in Nevada?

Or practicing in Nevada? I am concerned about PAs popping up their own practices and having 500 of them collaborate with a doctor in Timbuktu.

MR. MASTERSON:

Our understanding is that, as it currently stands, the physician does not have to be in Nevada.

CHAIR SPEARMAN:

That is what I understood too, that the physician did not have to be at the place or even in the State. Ms. Fisher, could you come back up? I am unclear whether the physician has to be on-site. I think the distinction is that the collaborator—the doctor—has to review a percentage of the charts.

MS. FISHER:

I do not have the citation right here, but with collaborative agreements, the physician does not need to be on-site nor in Nevada, nor in the United States. I think the doctor is required to review about 10 percent of the charts. That is typically by policy rather than in statute.

CHAIR SPEARMAN:

So the requirement not to be "co-located" with the PA is already in practice?

MS. FISHER:

Current practice is that they do not have to be co-located, because it is not supervisory as much as collaboration.

CHAIR SPEARMAN:

Is there anything in this legislation that would change that?

JOHN SANDE (Nevada Academy of Physician Assistants):

Under existing law, the supervisory agreement is held at the Board level. What we are seeking to do is make slight changes and bring that agreement to the practice level.

So, the hospital, the clinic, the federal health center or wherever that PA is working, will enter into a collaborative agreement with the Nevada licensed physician. But the scope in terms of that collaborative agreement will be determined by that physician and the place of employment.

The amendment that you have before you today addresses some concerns that a hospital would be the only entity responsible for creating the scope of that collaborative agreement. That is not our intent. The agreement is between the place of employment, the physician and the PA; the scope of that will be determined by the place of employment.

As I understand it, right now, the PA must have a supervising physician, or they cannot practice. As Ms. Fisher said, the only requirements that the physician has is to review charts on occasion and meet with the PA about four hours every month. But those requirements apply regardless of the practice area. I use the example of my wife, who practices in family medicine. She has been working for about eight years and has developed an accumulated knowledge base in family practice. She is not in surgical settings.

Her collaborative agreement would probably be a lot different than somebody that is in a surgical setting. You might be two years out of school in a surgical setting. You might need to meet ten hours a month with your physician to go over charts and review things.

But right now, we have that base level that applies to everybody at the Board level. What we are trying to do is to allow for a more refined collaborative agreement at the practice level that will be determined by the physician, who is signing the agreement, as well as their place of employment.

CHAIR SPEARMAN:

If there was a requirement for the physician to be physically present where the PA is, would that require a change to existing law?

MR. SANDE:

Essentially, the law as it is today, does not require the physical presence of a physician.

MS. FISHER:

If you were to contemplate an amendment like that, I would strongly recommend that you have an exception for the critical access facilities.

CHAIR SPEARMAN:

I was not contemplating that. I am trying to understand because I have heard it both ways. I am trying to understand the opposition. If it is not a requirement

for the physician to be physically co-located with the PA, and the physician can be in Nevada; Georgetown, Texas; Paris, France; or wherever; if that is the law right now, that is not changing. What you are changing is the collaborative agreement, and the level of the collaborative agreement.

MR. SANDE:

Yes, I think you have hit it exactly. The scope of that collaborative agreement will be defined at the practice level.

ASSEMBLYWOMAN COHEN:

That was part of the argument against what we are trying to do. They can collaborate with the doctor anywhere. They can even collaborate with a doctor out of the Country. That is something that is existing. If you want Mr. Sande to confirm and clarify that the agreements are going to be held at the BME's office, that was not reflected in the amendment.

MR. SANDE:

This is a dynamic process. The larger hospitals were concerned about having to physically send those agreements to the BME. That is not our issue. It was their preference to make them available and even keep them for a while after the PA is employed, so that the BME will always have access to those agreements.

SENATOR SCHEIBLE:

Can we also move this matter to the end of the calendar?

CHAIR SPEARMAN:

We can move this item. I keep hearing different things. If you oppose this, it cannot be on the basis that the collaborator, the doctor who is part of the collaborative agreement, is not present at the hospital. That is current practice now. I need somebody from the opposition to tell me what the opposition to this bill is, just for my understanding.

MR. CLARK:

I cannot specifically answer your question simply because I am in the same position as Ms. Fisher. The BME has not had an opportunity to vet this amendment. They did take a position on the previous version of the bill; they were concerned about a lack of supervision by the attending physician. They also had a concern with another part of the bill that put a PA on the BME.

Senate Committee on Commerce and Labor  
May 19, 2023  
Page 29

CHAIR SPEARMAN:  
So, the concern was the lack of supervision?

MR. CLARK:  
In the original version of the bill, yes.

CHAIR SPEARMAN:  
But right now, the physician is not required to be co-located physically with the PA and the "supervision" can happen from anywhere.

MARI NAKASHIMA NIELSEN (Nevada State Medical Association):  
One of our concerns with the amended version of the amendment is that if the collaboration is required by Nevada law, we believe that collaboration should continue to be held at the Board level. Right now, you can send the collaborative agreement in, but it is not a requirement.

When you have a regulatory authority and State law that is mandating a collaboration, we believe that authority should continue to be held and regulated at the State level and not at the private practice or the private hospital level.

MR. CLARK:  
That is the difference between an association and a State Board. They can quickly come up with a position on these particular things. I cannot say that we support or deny this amendment simply because the BME has not taken a position. But I will defer to those licensees that our Board oversees. I appreciate you coming forward and putting that on the record.

CHAIR SPEARMAN:  
I am going to take the advice of Senator Scheible. They are not required to physically be there now, and it is "supervisory," but they can be anywhere so the supervision could take occur through the phone, telehealth, zoom or anyplace. Your opposition would be specifically about who keeps the collaborative agreement?

MS. NIELSEN:  
Yes, that is our concern with where the collaboration piece is held. We do have additional concerns with some of the scope piece, but specifically speaking to the collaboration piece, yes, we believe it should be held at the Board level and

Senate Committee on Commerce and Labor  
May 19, 2023  
Page 30

it should be mandated to be turned in at the regulatory Board level, whether that is the Nevada Board of Osteopathic Medicine or the BME.

CHAIR SPEARMAN:

We will move this to the end because we have some other things going on. I will open the work session on A.B. 392.

**ASSEMBLY BILL 392 (1st Reprint)**: Makes various changes relating to property.  
(BDR 10-209)

MR. MELGAREJO:

I have a work session document (Exhibit O) which includes two separate amendments.

SENATOR STONE MOVED TO AMEND AND DO PASS AS AMENDED  
A.B. 392.

SENATOR BUCK SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

\* \* \* \* \*

CHAIR SPEARMAN:

I will open the work session on A.B. 398.

**ASSEMBLY BILL 398 (1st Reprint)**: Makes various changes relating to insurance. (BDR 57-1045)

MR. MELGAREJO:

I have a work session document (Exhibit P) that describes the bill and its history. There are no amendments.

SENATOR SCHEIBLE MOVED TO DO PASS A.B. 398.

SENATOR STONE SECONDED THE MOTION.

Senate Committee on Commerce and Labor  
May 19, 2023  
Page 31

THE MOTION PASSED. (SENATOR BUCK VOTED NO.)

\* \* \* \* \*

CHAIR SPEARMAN:

I will open the work session on A.B. 439.

**ASSEMBLY BILL 439 (1st Reprint)**: Revises provisions governing certain contracts of insurance. (BDR 57-1044)

MR. MELGAREJO:

I have a work session document ([Exhibit Q](#)) that describes the bill and its history. There is one amendment.

SENATOR PAZINA MOVED TO AMEND AND DO PASS AS AMENDED A.B. 439.

SENATOR DALY SECONDED THE MOTION.

THE MOTION PASSED. (SENATORS BUCK, HAMMOND AND STONE VOTED NO.)

\* \* \* \* \*

CHAIR SPEARMAN:

I will open the work session on A.B. 244.

MR. MELGAREJO:

There is no work session document on A.B. 244, as it was heard today. The bill sets forth the rights of persons compelled to submit to a mental or physical examination. There is one amendment from the Nevada Justice Association.

The first part of the amendment, [Exhibit C](#), is to amend section 1, subsection 1, to add "where no doctor/patient relationship has already been established with the examiner or none will be established with the examiner as a result of the examination."

The second part of that amendment is to add a new subsection 2, to authorize the examiner to suspend the examination if the observer disrupts or attempts to participate in the examination.

The third part of that amendment is to amend subsection 4 of section 1, to provide that a person seeking an action for a violation of this section must first provide written notice at least seven days in advance asking for compliance.

The fourth part of that amendment is to amend subsection 5 of section 1 to add "for public safety and welfare purposes" and to add Title 39 to the exceptions so that this section does not apply to any person compelled to submit to a mental or physical examination.

The new section 1.5 of this amendment provides that the provisions of this bill "shall apply to all pending and future compelled exams upon enactment of this statute."

SENATOR DALY MOVED TO AMEND AND DO PASS AS AMENDED  
A.B. 244.

SENATOR LANGE SECONDED THE MOTION.

THE MOTION PASSED. (SENATOR BUCK VOTED NO.)

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CHAIR SPEARMAN:

I will open the work session on A.B. 198.

MR. MELGAREJO:

It is my understanding that the Chair will accept the amendment, [Exhibit H](#), on A.B. 198 from Mr. Paul Young on behalf of the Nevada Association of Nurse Anesthetists. In addition, you would like to include a new amendment ([Exhibit R](#)) to limit the certified registered nurse anesthetists practice to critical access hospitals.

SENATOR LANGE MOVED TO AMEND AND DO PASS AS AMENDED  
A.B. 198.



Senate Committee on Commerce and Labor  
May 19, 2023  
Page 33

SENATOR SCHEIBLE SECONDED THE MOTION.

THE MOTION PASSED. (SENATORS BUCK AND HAMMOND VOTED NO.)

\* \* \* \* \*

CHAIR SPEARMAN:

I will open the work session on A.B. 364.

MR. MELGAREJO:

The Chair has proposed an amendment to replace the provisions of this bill to amend the membership makeup of the BME to add two positions. One would be a PA and the other would be given to a respiratory therapist.

SENATOR SCHEIBLE:

I am not sure I understand. Is this a gut and replace? Would this replace all the provisions of the bill? Do we have the sponsor here to speak about it?

MR. SANDE:

On behalf of the Nevada Academy of Physician Assistants, I have spoken with the Assemblywoman, and she is comfortable with the amendment. This provision was in the original bill. It does not completely gut it. This was the least controversial of the provisions of the bill.

SENATOR LANGE MOVED TO AMEND AND DO PASS AS AMENDED  
A.B. 364.

SENATOR PAZINA SECONDED THE MOTION.

THE MOTION FAILED. (SENATORS BUCK, DALY, HAMMOND AND  
STONE VOTED NO.)

\* \* \* \* \*

CHAIR SPEARMAN:

We have a four-to-four tie vote. That means the bill cannot move forward. Sorry about that. We are going to recess, and the Committee will reconvene on the Floor of the Senate.

Senate Committee on Commerce and Labor  
May 19, 2023  
Page 34

CHAIR SPEARMAN:  
Hearing no public comment, this meeting is adjourned at 11:36 a.m.

RESPECTFULLY SUBMITTED:

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Kelly K. Clark,  
Committee Secretary

APPROVED BY:

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Senator Pat Spearman, Chair

DATE: \_\_\_\_\_

<b>SUMMARY</b>				
<b>Bill</b>	<b>Exhibit Letter</b>	<b>Introduced on Minute Report Page No.</b>	<b>Witness / Entity</b>	<b>Description</b>
	A	1		Agenda
	B	1		Attendance Roster
A.B. 244	C	3	Alison Brasier / Nevada Justice Association	Proposed amendment
A.B. 244	D	6	George Bochanis / Nevada Justice Association	State survey of compelled examinations
A.B. 244	E	8	Alison Brasier / Nevada Justice Association	Letter from Lewis Etkoff
A.B. 244	F	16	Lauren Chapple-Love / Nevada Psychological Association	Opposition letter
A.B. 120	G	18	Cesar Melgarejo	Work session document
A.B. 198	H	18	Cesar Melgarejo	Work session document
A.B. 218	I	20	Cesar Melgarejo	Work session document
A.B. 250	J	21	Cesar Melgarejo	Work session document
A.B. 342	K	23	Cesar Melgarejo /	Work session document
A.B. 343	L	23	Cesar Melgarejo	Work session document
A.B. 364	M	23	Cesar Melgarejo	Work session document
A.B. 364	N	24	Cesar Melgarejo	Second proposed amendment from John Sande
A.B. 392	O	30	Cesar Melgarejo	Work session document
A.B. 398	P	30	Cesar Melgarejo	Work session document
A.B. 439	Q	31	Cesar Melgarejo	Work session document

A.B. 198	R	32	Cesar Melgarejo	Amendment by Nevada Association of Nurse Anesthetists
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