MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON COMMERCE AND LABOR

Seventy-Fourth Session
March 12, 2007

The Committee on Commerce and Labor was called to order by Chair John Oceguera at 1:39 p.m., on Monday, March 12, 2007, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/74th/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman John Oceguera, Chair
Assemblyman Marcus Conklin, Vice Chair
Assemblywoman Francis Allen
Assemblyman Bernie Anderson
Assemblyman Morse Arberry, Jr.
Assemblywoman Barbara E. Buckley
Assemblywoman Heidi S. Gansert
Assemblyman William Horne
Assemblywoman Marilyn Kirkpatrick
Assemblyman Garn Mabey
Assemblyman Mark Manendo
Assemblyman James Settelmeyer

COMMITTEE MEMBERS ABSENT:

Assemblyman Chad Christensen (excused)
Assemblyman David R. Parks (excused)

GUEST LEGISLATORS PRESENT:

Assemblyman David P. Bobzien, Assembly District No. 24.

STAFF MEMBERS PRESENT:

Brenda Erdoes, Committee Counsel
Dave Ziegler, Committee Policy Analyst
Earlene Miller, Committee Secretary
Gillis Colgan, Committee Assistant

OTHERS PRESENT:

Barry Gold, Nevada State Office Director of Government Relations, AARP
Janet Cottrell, Volunteer, AARP, Gardnerville, Nevada
Diana M. Glomb-Rogan, representing The League of Women Voters of Nevada
Jon L. Sasser, representing Washoe County Senior Service Center and Washoe County Senior Law Project
Julianna Ormsby, representing Nevada Women's Lobby
W.J. Bill Birkmann, Vice President, Nevada Alliance for Retired Americans
Jim Morgan, representing The Pharmaceutical Research and Manufacturers of America
Michael Karagiozis, M.D., Private Citizen, Las Vegas, Nevada
Carol Livingston, Vice President, Wolters Kluwer Health, Phoenix, Arizona
Jim Franklin, Director Data Strategy, Wolters Kluwer Health, Phoenix, Arizona
Liz MacMenamin, Director of Government Affairs, Retail Association of Nevada
Lawrence P. Matheis, Executive Director, Nevada State Medical Association
Shirley Swafford, Volunteer, AARP, Carson City, Nevada
Larry Pinson, Executive Secretary, State Board of Pharmacy
Mylan Hawkins, Executive Director, Nevada Diabetes Association for Children and Adults
F. Fuller Royal, M.D., H.M.D., Medical Director, The Nevada Clinic of Integrative Medicine; Vice President, Board of Homeopathic Medical Examiners
Janine Hansen, State President, Nevada Eagle Forum, Elko
Keith L. Lee, representing the Board of Medical Examiners
Denise Selleck Davis, CAE, Executive Director, Nevada Osteopathic Medical Association

Susan L. Fisher, representing the Chiropractic Physicians' Board of Nevada and the State Board of Podiatric Examiners
Daniel Royal, D.O., Private Citizen, Las Vegas, Nevada
Joe Brown, Private Citizen, Grass Valley, California

[The roll was called and a quorum was present.]

Chair Oceguera:
We will open the hearing on Assembly Bill 128.

Assembly Bill 128: Revises provisions relating to prescription drugs. (BDR 18-108)

Assemblyman Marcus Conklin, Assembly District No. 37:
Assembly Bill 128 is the next generation of drug detailing legislation. Assembly Bill No. 66 of the 73rd Legislative Session sought to codify the standard industry practices used by the American Medical Association (AMA) and the Pharmaceutical Research and Manufacturers of America (PhRMA) in the practice of selling pharmaceutical product information to doctors. It is my desire to work with all interested parties to make this an effective piece of legislation. There are many unanswered questions. If the Office of the Inspector General, PhRMA, and the AMA guidelines are being adhered to, why do we have opposition to the bill? Why will it cost so much to implement when we are already monitoring and improving expenses for reimbursement? I remain open and willing to work on this bill. The Retail Association of Nevada (RAN) has a concern that the language in Section 1, subsection 1, which says "any economic benefit," will have an impact on rebates and discounts. The bill currently requires that a report be filed annually by a pharmaceutical company. It was our intent that reports be filed only if the maximum amounts have been exceeded.

Barry Gold, Director of Government Relations for AARP, Nevada:
[Spoke from prepared testimony (Exhibit C).]

The bill will require the drug companies to report any gifts, economic benefits, or fees in excess of $100 that they provide on their marketing visits to doctors. It will not have the name of the physician attached. This excludes drug samples, things that are direct patient benefits, or certain educational conferences where practitioners are speakers. If the aggregate total exceeds $1,000 per year, the doctor's name is included in the report. Section 2 of the bill is about prescriber profiling, which is done by a third party who collects aggregate data from pharmacies and sells it to pharmaceutical companies so

they are aware of what doctors prescribe. The data is also used for marketing strategy. Section 2 of the bill would outlaw that practice.

The marketing efforts begin in medical school and many of the leading medical schools are banning the practice entirely. According to a *Los Angeles Times* article (Exhibit D) dated September 9, 2006, Yale, Stanford, and the University of Pennsylvania have banned the practice. The medical school at the University of Nevada has joined in this restriction. There were supposed to be students from the American Medical Students Association at the University of Nevada here today, but they were unable to attend.

The drug lobby argues that the Office of Inspector General, Compliance Program Guidance for Pharmaceutical Manufacturers of April 2003, as well as the federal anti-kickback statute regulate this area. (Exhibit E)

You may hear about an opt-out program that is supposed to solve the issue. According to *The Wall Street Journal Online* article dated May 4, 2006, "Starting in July the American Medical Association plans to let physicians opt out of data-mining arrangements." (Exhibit F)

The New York Times article (Exhibit G) describes doctors who were outraged when drug salespeople told them how many times they prescribed a medication, or were surprised when they received a thank-you for writing a certain prescription.

Chair Oceguera:
Are there any questions?

Assemblywoman Gansert:
You had used the figure of $21 billion for marketing and 90 percent to physicians. Do you have a break-out of how much was in samples?

Barry Gold:
I do not, but I will try to find that for you. This bill excludes samples. The money that is left, if it exceeds the guidelines, should be reported.

Assemblywoman Gansert:
Is direct marketing such as television commercials part of the 90 percent?

Barry Gold:
I am not sure. The article seems to state the marketing figure includes gifts and payments given directly to physicians. It does not appear to say it is for direct or consumer advertising.

Chair Oceguera:
Do you have a question, Dr. Mabey?

Assemblyman Mabey:
As a physician, I have not seen any abuse by the pharmaceutical industry in my office. Section 2 of the bill interests me because it offended me when sales representatives would ask why I did not write more of a certain prescription. I have not seen that practice in a number of years. The Pharmaceutical Board told me two sessions ago that this type of reporting would be hard to implement in Nevada because some of the prescriptions are filled in other states. Is it going to be difficult or impossible to administer as far as doctor's prescriptions?

Assemblyman Conklin:
We would only have jurisdiction over pharmacies located in our State. That is not to say that the Attorney General's Office could not reach out to other states. I do not know how much authority we have to enforce it. My understanding of our ability to enforce laws outside of the State is limited.

Assemblywoman Allen:
Nevada has a poor doctor-to-population ratio. What is the state law in neighboring states in regard to doctors and gifts? Will new doctors want to locate in other states?

Assemblyman Conklin:
If receiving free gifts is a qualifier for a doctor to come to Nevada, is he a doctor we want? California's law is not very prohibitive. I am not sure what the laws are in Arizona and Utah.

Assemblywoman Allen:
Is the California law looser than this?

Assemblyman Conklin:
The California statute as I read it is looser than this. It requires the pharmaceutical companies only to have a positive affirmation that they have a policy in place to deal specifically with this issue. There is no reporting mechanism other than the pharmaceutical company has to put some affirmation of that policy on its website.

Chair Oceguera:
Are there other questions from the Committee? [There were none.]

Janet Cottrell, Volunteer, AARP, Nevada:
Drug companies have the opportunity to know the dynamics of a particular physician's office by looking at what prescriptions are prescribed. A drug company could look at how many prescriptions for a class of medication a physician prescribed and extrapolate that number to determine how many patients are being treated in this doctor's practice for a particular condition. A company can know the makeup of a physician's practice by the prescriptions written. The company can look at which drugs are being prescribed and in what quantities. If they set a goal to increase sales for a particular drug, one way is through their drug representatives who visit physician's offices on a regular basis. The pharmaceutical companies provide the doctors' offices with many promotional items which provide a constant reminder of their products. Drug companies have the ability to track what prescriptions are being written and in what quantity. I believe that physicians and patients have the right to expect privacy in medical offices in every way. I am in support of A.B. 128 (Exhibit H).

Chair Oceguera:
Are there any questions? Are there others wishing to speak in favor of the bill?

Diana M. Glomb-Rogan, representing The League of Women Voters of Nevada:
The League of Women Voters of Nevada is in support of A.B. 128; it is good consumer protection legislation and an important way to cut the cost of pharmaceuticals. We urge passage of this bill.

Jon L. Sasser, representing Washoe County Senior Service Center and Washoe County Senior Law Project:
I am speaking on behalf the Washoe County Senior Service Center and Marietta Baba, Director. They are very much in support of this bill, and anything that would help impact the high cost of drugs is important to that community and they urge your support.

Julianna Ormsby, representing Nevada Women's Lobby:
We urge your support of A.B. 128.

W. J. Bill Birkmann, Vice President, Nevada Alliance for Retired Americans:
I represent 16,000 members in Nevada and urge you to support A.B. 128. Our members are tired of paying for pharmaceutical commercials and feel this bill would curb their passing on these costs.

Chair Oceguera:
Are there any questions from the Committee? If you are in the audience and are in favor of this bill, could you stand? [Many stood.] Thank you for coming to support Mr. Conklin's bill. Are there any people wishing to oppose A.B. 128?

Jim Morgan, representing The Pharmaceutical Research and Manufacturers of America (PhRMA):
I ask that you dispassionately define the scope of this problem if it exists in the State of Nevada, determine if any steps have already been taken to address the problem, and then determine whether or not this legislation is lawful and free of unintended consequences. Has there been a clear definition of the so-called problem as it might exist in the State of Nevada? If the problem did exist in the State of Nevada, is there a current remedy? The answer is yes. In April 2000 the industry association, The Pharmaceutical Research and Manufacturers of America (PhRMA), and the American Medical Association (AMA) jointly drafted guidelines to govern the interactions between manufacturers and health care professionals (Exhibit I). In April 2003, the Office of Inspector General of the Federal Health and Human Services Agency, relying on federal investigations, the Department of Justice, and State Medicaid fraud units, established behavior guidelines for the industry. These guidelines identified federal penalties for violations tied to federal anti-kickback statutes, the Federal False Claims Act and the Federal Prescription Drug Marketing Act. Violation of these federal statutes can result in fines up to $25,000, felony convictions, imprisonment for five years, and removal from the list of manufacturers allowed to contract with state and federal governments. In May 2003, changes to *Nevada Revised Statutes* (NRS) Chapters 630 and 639 established a procedure for reporting unlawful and unethical conduct by a pharmaceutical manufacturer directly to the Office of Inspector General. If the problems that this bill attempts to address did exist in Nevada, there is already a remedy in current State law. There is no need for A.B. 128.

As to Section 2 of the bill, the prohibition of the disclosure of the name of a prescriber in data used by manufacturer, there is also a current remedy. Any physician who does not want his name disclosed can go on the AMA website to sign up for their physician data restriction program. It is available to any physician, regardless of membership in the AMA, and is available at no cost. There is no need for the taxpayers of the State of Nevada to pay for enforcement of such a provision.

Chair Oceguera:
Are there any questions from the Committee?

Assemblywoman Buckley:
How many Nevada physicians have put their names on the AMA website?

Jim Morgan:
I have no idea. The system went online in July 2006. There is a website link for anyone to report an unethical behavior directly to the AMA.

Assemblywoman Buckley:
Some physicians are concerned that if they make it known that they do not want these things, they might get repercussions regarding free samples. They like receiving samples because it helps patients, and they feel it is a true consumer benefit. One of the reasons they are careful in their relationships with the drug representatives is they do not want to stop getting samples. I do not know if that is an effective remedy. Section 2 of the bill does not create a new State apparatus, nor does it do anything other than say you cannot reveal certain information. I do not know why the bill would be burdensome and why it would not protect consumers from having that data be sold. I am concerned that the physicians could be the subject of criticism based on their good faith decisions on prescribing.

Jim Morgan:
That point has not been thoroughly examined, but I will do that.

Assemblyman Conklin:
Page 7 of the *PhRMA Code* talks specifically of the value of an item, $100 or less, for primarily patient benefit. What happens to a member who violates this?

Jim Morgan:
He is not looked upon with great satisfaction by the industry. While there is no enforcement inherent in the guidelines, they were put together by the industry to police itself.

Assemblyman Conklin:
This bill does not seek to criminalize any of this activity, but seeks to shed light on the practice when it exceeds your own codes. I think that would place a much greater demand for a level playing field in the industry when people have to report only that which exceeds their own guidelines. In the Office of the Inspector General (OIG) guidelines, are there dollar limits on what you can spend or use in a direct marketing process with an individual doctor?

Jim Morgan:
No. In response to earlier issues, of the $21 billion spent on marketing, it is our understanding that 63 percent was for samples.

Assemblyman Conklin:
In Section 2 of the bill, when a doctor opts out of the prescriber profiling, is the doctor's name excluded from the list that is given to the pharmaceutical company?

Jim Morgan:
I believe, but am not certain, that is correct. There is other information associated with the physician which is needed in the event there is a product recall or clinical trial.

Chair Oceguera:
Are there any questions from the Committee?

Michael Karagiozis, M.D., Private Citizen, Las Vegas, Nevada:
I am opposing A.B. 128 because the bill is too late. The problems that the bill would seek to correct have already been corrected. The bill is expensive. It exerts $720,000 in its initiation and$400,000 per year thereafter to pursue data that is already on record. The bill is cumbersome. If Nevada wants to ensure that local pharmaceutical representatives obey PhRMA guidelines, then this bill needs a single paragraph that says, "Any pharmaceutical company who finds a representative not abiding by PhRMA guidelines must file a report." I have a serious concern that this bill will disadvantage the poor, people of color, single parent families, and children. Several things were not stated in the sponsorship of the bill which should be known. If 2 percent of all prescriptions were moved to generic by this legislation, the insurance companies in southern Nevada would save $37 million off their pharmacy budget in the first year. This bill does not benefit physicians or patients as much as it does insurance companies. As far as policing themselves, I was invited to San Antonio to speak for a drug for Solay Pharmaceuticals, and the night before I was supposed to speak, the PhRMA guidelines security representative asked me not to talk about the drug, not to mention any of the clinical studies, and not to mention any of the trade names. My experience with PhRMA is that they are very conscious of these restrictions. Regarding Section 2, the pharmaceutical companies have to have the names of the physicians so they can issue "black box warnings" so physicians know to stop prescribing. I would not be involved in the clinical trials that I am if the pharmaceutical companies did not know my specialty.

Chair Oceguera:
Are there any questions from the Committee?

Carol Livingston, Vice President, Wolters Kluwer Health, Phoenix, Arizona:
Wolters Kluwer Health is one of the three major health information organizations in the United States. (Exhibit J) We provide products and services to the pharmaceutical industry. We collect, aggregate, and standardize prescription data. Our data and processes strictly adhere to the Health Insurance Portability and Accountability Act of 1997 (HIPAA) regulations in order to protect patient privacy and are certified each year. Our concern with Section 2 of A.B. 128 is that by not allowing health information organizations and pharmaceutical manufacturers to receive prescriber identifiable data, the pharmaceutical companies cannot efficiently provide educational information to physicians. By not knowing which physicians prescribed which drugs, manufacturers cannot provide samples to the doctors whose patients might otherwise not be able to afford the drug. Medicare is increasingly monitoring and limiting physicians' discretion in their selection of appropriate treatment for their patients. If we limit Medicare's access to product information offered through dialogue with a manufacturer's representative, we will be inadvertently endangering the very lives the physician seeks to protect.

We do not apologize for the commercial aspects of our business. It is important to understand that without the commercial side of this business, the availability of this comprehensive information used for public good and safety benefits would not exist. The expense of collecting and managing the data is currently funded by the private sector, yet it is used by governmental agencies such as the Food and Drug Administration (FDA) and the Drug Enforcement Administration (DEA). The FDA uses the data to identify regional health trends and epidemic outbreaks, and to monitor off-label prescribing. The DEA uses the data to recognize controlled substance abuse. The pharmaceutical companies use the data to identify doctors who are good candidates to run clinical trials and to immediately notify appropriate physicians of drug alerts or safety precautions. Doctors may not like the occasionally ill-mannered sales representative, but this bill could deny physicians updated information on cutting-edge specialized uses of new treatments. The AMA has created a simple program whereby a physician may take information about his prescribing behavior out of the hands of sales representatives and their management. If a doctor is not comfortable with merely denying access of a sales representative to his office, this program provides the doctor with the ability to restrict information about his practice from the field sales staff. Opting out of the AMA program is no more difficult than placing your phone number on the do-not-call telemarketers list. Because physician choice is so important, Wolters Kluwer Health has helped fund the AMA physician data restriction program and the physician awareness campaign, and has made space available in over 300 medical journals that Wolters Kluwer publishes to ensure all physicians are well

informed. Our concern with Section 2 of this bill is the unintended and unknown ramifications. It is somewhat overreaching and imprecise in its application.

Assemblywoman Buckley:
Is it your testimony that Section 2 would be dangerous because you could not get recall or other important information in the hands of physicians? Does the AMA guideline do the exact same thing?

Carol Livingston:
The Physician Data Restriction Program (PDRP) allows a physician to opt out, and that restricts his data from being put in the hand of a sales representative or the sales representative's management. It allows the data to be within the pharmaceutical's home office where alerts would be issued.

Assemblywoman Buckley:
If the legislation was worded that way, you would be supportive of it?

Carol Livingston:
I think there are some other ramifications about the bill in general. It can have some outreach and other impacts that I cannot see in the way it is written, such as making the data available for other opportunities with the FDA and clinical trials.

Assemblywoman Buckley:
If the legislation prohibited the use of the information by the sales representatives, and not the other information similar to the voluntary compliance plan, would you support it?

Jim Franklin, Director Data Strategy, Wolters Kluwer Health, Phoenix, Arizona:
We would like to assist with creating language that is carefully crafted. We endorse any language that codifies bad sales representative behavior and references the PDRP which is in effect, but allows doctors to get their information to the manufacturer or drug representatives if they desire. If they do not, they can opt out of that program. The data goes only to the manufacturer, not the sales representatives or their managers.

Assemblywoman Buckley:
I will think about that. It is a bad analogy to use telemarketers because we were dissatisfied with the telemarketers' voluntary efforts to curb the abuses in their industry.

Chair Oceguera:
Are there any questions?

Liz MacMenamin, Director of Government Affairs, Retail Association of Nevada (RAN):
We have some concerns about the language in the bill, but are willing to work with the sponsor to have something that is fair to everyone involved. My members feel that Section 2 may hinder some of the related patient care practices such as disease state management, patient compliance programs, patient adherence programs, and drug use reviews. The sponsor of the bill has assured me that he is willing to work with us to try to come up with language that is fair and workable for everybody.

Chair Oceguera:
Are there any questions? Are there others wishing to oppose A.B. 128?

Lawrence P. Matheis, Executive Director, Nevada State Medical Association (NSMA):
Assembly Bill 128 seeks to deal with two issues related to the marketing of information regarding prescription drugs. The NSMA does not oppose the bill. We have one proposed amendment for the bill.

[Spoke from prepared testimony (Exhibit K).]

Our position is generally positive and we are not opposing the bill at this time.

Chair Oceguera:
Are there questions from the Committee or others wishing to testify? I will close the hearing on A.B. 128? I will open the hearing on Assembly Bill 235.

Assembly Bill 235: Revises provisions relating to prescription drugs. (BDR 54-980)

Assemblyman David P. Bobzien, Assembly District No. 24:
I am here today to present Assembly Bill 235 (Exhibit L). Many people face confusion regarding prescription drugs. It is often difficult to keep track of what the prescription treats. Many people have many prescriptions, and it is difficult to determine what drug is for what condition. This bill provides a method to have a label on prescriptions to tell what the medication is and what it treats. Better informed consumers make better choices. Empowered consumers can make better choices and realize cost savings in their health care. I have provided a copy of an article from the *Wausau Daily Herald* (Exhibit M) that

reported on similar legislation in Wisconsin. We also have an amendment from The Nevada State Board of Pharmacy which we think should be pursued.

Barry Gold, Director of Government Relations for AARP, Nevada:
[Spoke from prepared testimony (Exhibit N).]
Thank you for the opportunity to testify on the issue.

Assemblywoman Buckley:
How would off-label prescriptions be handled?

Assemblyman Bobzien:
We decided it was best for the practitioner to make the determination as to what would go on the label. Once the consumer requests the label, the physician would determine the composition of the label. This is a voluntary situation and a patient may not want to disclose his diagnosis on the label.

Assemblyman Settelmeyer:
Would the label be specific to an individual or a condition?

Assemblyman Bobzien:
The practitioner would make that assessment specific to the individual.

Chair Oceguera:
Are there further questions from the Committee?

Shirley Swafford, Volunteer, AARP, Nevada:

[Read from prepared testimony (Exhibit O).]

I would like you to vote for A.B. 235 because it will help all Nevada families to better understand what their medicines are for and to stay healthy.

Chair Oceguera:
Thank you for your testimony.

Liz MacMenamin, Director of Government Affairs, Retail Association of Nevada (RAN):
This seems to be a practice that is already used. If there is a generic drug used, both names are put on the prescription labels. Our membership has no problem with making this English language on the labels. We have proposed an amendment in Section 3, subsection 2(e). To be more effective the word "patient" should be changed to "practitioner." The same is true in Section 5, subsection 5, and Section 6, subsection 2(e). In Section 4, subsection 2, the

current practice is if a generic drug is ordered by the physician, the label includes the brand name. Subsection 2 reads "unless prohibited by the practitioner." Our members say they do not have the capability to leave off the generic name, and why would the doctor want just the brand name on the label? We believe the current language takes care of the issue of brand and generic names on labels.

Chair Oceguera:
Are there any questions?

Assemblyman Conklin:
Do you want to make certain that the prescribing physician dictates what the medicine is for?

Liz MacMenamin:
That is correct. If you leave in the patient wording, it appears the patient could ask to have his diagnosis put on the label and the pharmacist would have the liability to determine the diagnosis.

Assemblywoman Gansert:
Does that create a need for a call from the pharmacist to the physician if the physician did not say that is how they wanted it to be labeled?

Liz MacMenamin:
The language in Section 1 indicates that the practitioner is going to put this on the prescription. When the prescription goes to the pharmacy, that indication will already be there to put the diagnosis on the label. If you leave in the terminology "patient" in these sections, it would create a call-back. It appears Assemblyman Bobzien and Mr. Gold are trying to have the practitioner have the prescription ready with a diagnosis when it gets to the pharmacy.

Chair Oceguera:
Are there further questions?

Jon L. Sasser, representing Washoe County Senior Law Project:
The Washoe County Senior Law Project desires to go on record in support of A.B. 235. It would be a great help to their clients.

Larry Pinson, Executive Secretary, State Board of Pharmacy:
The Nevada State Board of Pharmacy has a proposed amendment to A.B. 235. The Board of Pharmacy has not seen the bill, but the board staff has no problem with it, and I do not think pharmacists would have a problem with it because this is something we have been doing for years. Many physicians write on their

prescriptions the dosage and the reason it is prescribed. The only problem is if the indication is not on the prescription. The language on the bill is good. It requires the indication be put on by the physician as it should be because pharmacists cannot guess what it is for and drugs have many different indications. This will aid public safety. There are incidents when the wrong prescription is mistakenly given, which could be avoided if the information was on the prescription.

In regard to the amendment, we have strong mandatory generic substitution laws in this State. The language in Section 4 is confusing. The proposed amendment clarifies that language. (Exhibit P)

Assemblyman Mabey:
How would this bill affect a patient going to a pharmacy and asking the pharmacist to call the doctor to request that he call in a prescription?

Larry Pinson:
I think most pharmacists would do that.

Assemblyman Mabey:
Would the pharmacist have to call the physician to ask what the drug is for or would they do it the way it was already written?

Larry Pinson:
If it takes a call, that will happen.

Mylan Hawkins, Executive Director, Nevada Diabetes Association for Children and Adults:
I represent the 7.1 percent of Nevada's population that has diabetes. Many of them take multiple drugs because this is a condition that requires a lot of assistance. I am also here in support of this bill as a caregiver to a mother who took 11 separate pharmaceuticals that required constant monitoring. This bill would help end confusion. I urge you to support this legislation.

Chair Oceguera:
Are there questions from the Committee?

Lawrence P. Matheis, Executive Director, Nevada State Medical Association:
The initial concerns that physicians had were largely resolved by making it something that would be initiated at the patient's request. There may be some issues in the future regarding proper use of terms or about off-label purposes, but we believe those could be addressed as regulatory issues. We do not have

any problems with the bill as it stands. We do not have any problems with the amendments that have been suggested. (Exhibit Q)

Chair Oceguera:
Are there others wishing to testify in favor of A.B. 235?

Julianna Ormsby, representing Nevada Women's Lobby:
We urge your support in favor of A.B. 235.

W. J. Bill Birkmann, Vice President, Nevada Alliance for Retired Americans:
We request your support for A.B. 235 for all the previous reasons and supportive comments, especially those of Ms. Shirley Swafford.

Chair Oceguera:
Are there others wishing to testify in favor of the bill? Are there any who wish to oppose the bill? Are there any others wishing to speak neutrally on the bill? We will close the hearing on A.B. 235.

[John P. Sande III, representing Medco Health Solutions, submitted a proposed amendment to A.B. 235. (Exhibit R)]

We will open the hearing on Assembly Bill 234.

Assembly Bill 234: Makes various changes concerning homeopathy. (BDR 54-646)

F. Fuller Royal, M.D., H.M.D., Medical Director, The Nevada Clinic of Integrative Medicine; Vice President, Homeopathic Medical Board:
This bill needs some explanations and clarifications (Exhibit S). Section 2 is necessary to explain the meaning of alternative, complementary medicine in Nevada. Section 13, subsection 6 of the bill was added to the *Nevada Revised Statutes* 630A by the 2005 Legislature as NRS 630A.155, subsection 6. This is not new language, but is needed for clarity. Section 3 is the same language as currently present in Section 12, subsection 5, which is NRS 630A.110. This is not new language, but is being relocated in the statute. Section 4 is new language that the Homeopathic Medical Board believes to be necessary to clearly define its mandate to protect and benefit the public. Section 5 is necessary new language to assist the Board in reviewing and investigating complaints pertaining to the practice of homeopathy and alternative, complementary, integrative medicine or medical therapies when such complaints are placed in the possession of other boards and not forwarded to the Homeopathic Medical Board. One such board advised the Homeopathic Board that "any complaint of homeopathic wrongdoing received is forwarded to the

Attorney General's Office as your homeopathic board lacks an investigative division." Furthermore, the allopathic board has threatened licensees who have a license to practice homeopathic medicine and are licensed under NRS 630. The allopathic board notified one such physician, who contacted the homeopathic board and stated, "although this treatment may be appropriate to us as a homeopath, it deviates from the acceptable allopathic standard of care. As you are licensed as an allopath as well as a homeopath, you are bound by standards of allopathic medicine even in situations where a treatment may be homeopathic. The investigative committee recommends that you cease all practices that are inconsistent with the practice of allopathic medicine and you are prescribed by statute or regulations, or disciplinary action will be taken against you." The Homeopathic Board requests the Committee remove part of subsection 4 in NRS 630A.155, which is located in Section 13 of A.B. 234. Other boards should be required to send complaints to the Homeopathic Board since it is required to refer complaints to other boards. When another board of a dually-licensed physician and the Homeopathic Board cannot agree as to which board the complaint should rightfully belong, an arbitration panel needs to be in place to resolve that matter. This has been in place and successful in Arizona for a number of years. So far there has been only one case to go before an arbitration panel.

Section 6 is necessary for keeping the Homeopathic Medical Board solvent when fees of the Office of the Attorney General and unforeseen expenses exceed the Board's income. The Board is cooperating with the Legislative Counsel Bureau auditors in seeking a resolution to the increased financial burden on the Board resulting from legal fees owed to the Office of the Attorney General for investigation of licenses and for a civil lawsuit filed by an applicant who was denied a license by the Board. Section 7 is necessary to enable the Board to collect for services rendered to the Nevada Institutional Review Board (NIRB) such as costs for NIRB meetings. The Board is responsible for more than $16,000 in fees owed to the Office of the Attorney General pertaining to the NIRB. New language is needed in Section 9 to clearly define homeopathy and other alternative and complementary medical therapies. Under NRS 630A, licensees are permitted prescription rights in Chapter 630A.014 of the *Nevada Administrative Code*. This needs to be added to NRS 630.040. All physicians licensed under NRS 630A have been licensed as allopathic or osteopathic doctors in states or territories in the United States and have been trained in the use of pharmaceutical drugs. The Homeopathic Board has never received a complaint against a singly-licensed physician pertaining to the administration of pharmaceutical drugs or medicines, which are always used sparingly, if at all, in the treatments approved in the NRS 630A.040.

In Section 19, subsection 1, sub-subsection b, we wanted to insert the International Medical Directory. It is used by the Education Counsel of Foreign Medical Graduates (ECFMG) to determine which medical, allopathic, and osteopathic medical schools have satisfactory medical curriculums.

Chair Oceguera:
Are there questions from the Committee?

Assemblyman Horne:
In Section 5, what if you are reporting to a board something that does not fall under their jurisdiction? Does that give the physician a "black mark" with that board when they have done nothing wrong under the mandates of that board?

F. Fuller Royal:
This is the way the Arizona bill was set up and it worked effectively. The language in NRS 630A as it now stands is not fair to the Homeopathic Board. It requires the Homeopathic Board to refer all complaints regarding a physician with two licenses to the other board where he is licensed. We would like to put it on equal grounds. If another board has a complaint against a dually-licensed physician, they should be required to cooperate with the Homeopathic Board and provide the necessary materials so the Homeopathic Board can also look at the situation. I do not see it as putting a "black mark" on anyone. It is one way of dealing with dually-licensed physicians to the satisfaction of both boards.

Assemblyman Horne:
I am concerned that one board may take issue when they have no purview. In Section 6, you are asking to make up revenues. Do other boards do that?

F. Fuller Royal:
It is not a common practice. The expenses of this Board rose dramatically in 2004 or 2005. It had maintained its finances well until it underwent a civil suit by an applicant who we refused to license because we did not think he was qualified. We then received a mandate from the Legislature to supervise the NIRB and did not realize the tremendous expense involved. We had a procedural and financial audit done by the Legislative Counsel Bureau. Many of the things placed in here were suggestions that perhaps this board should find another way to raise the funds, per capita if necessary, in order to handle those kinds of fees.

Assemblyman Horne:
In Section 5, paragraph 5, you have the definition of Physicians' Licensing Board. Are all of these, including chiropractic physicians, new additions to the Physicians' Licensing Board?

F. Fuller Royal:
Yes, they are all licensed physicians.

Assemblywoman Kirkpatrick:
In Section 19, how do the regulations change for a graduate from a foreign medical school to someone who is approved by the board outside of the United States or Canada? How does that open up the pool of the people in that field?

F. Fuller Royal:
The ECFMG does not accept anyone who is not a graduate of a school recognized by the International Medical Education Directory. We feel this is one step better than just going through the ECFMG. I do not think it will affect the pool of people in the field.

Assemblyman Settelmeyer:
In Section 25, subsection 6, if anyone, including a State agency, requests a meeting with the Board, they will have to pay to have the meeting?

F. Fuller Royal:
Yes.

Chair Oceguera:
Are there further questions? Are there others wishing to testify in favor of the bill?

Janine Hansen, State President, Nevada Eagle Forum:
We have long supported alternative medicine, access to alternative medicine, and medical choice. We support these changes to improve the supervision in homeopathy. Thank you very much for considering this bill.

Chair Oceguera:
Are there others in support of the bill? Are there any others in opposition to the bill?

Keith L. Lee, representing the Board of Medical Examiners:
I have a proposed amendment to the bill (Exhibit T). The Board of Medical Examiners opposes the provisions of Section 5 that set up a panel to decide which of the boards reviews a complaint against a physician who is also

licensed as a homeopathic or allopathic physician. It is the primary responsibility of the State Board of Medical Examiners to determine if there is a violation of the Medical Practices Act and to have a hearing for a physician licensed under NRS 630. It is the responsibility of the State Board of Medical Examiners and one that we could not and should not give up or share with anyone. We would be pleased to share the results of our investigation with the Homeopathic Board, but we do not want to get into a dispute as to who has primary jurisdiction. We presume we have primary jurisdiction if the physician is licensed.

The amendment amends Section 5 by deleting any reference to NRS 630 in line 5. In line 37 of Section 5, delete in subparagraph (a) Board of Medical Examiners. If the other boards choose to go through this dispute resolution process, they may. We think we would discharge our responsibilities to the citizens of the State if we relinquish our responsibilities. It takes long enough to determine to investigate a complaint filed against a physician. We have to go through a peer review. The process is further slowed if we have to go through a dispute resolution process that includes the appointment of an attorney by the Supreme Court and then a hearing.

We are concerned with Section 9; we oppose the Homeopathic Board's request to prescribe controlled substances to their patients unless all homeopathic physicians hold a current license from either the Allopathic Board, per NRS 630, or the Osteopathic Board, per NRS 633. We have no indication of when a homeopathic physician was licensed, or if he has had continuing medical education about all the nuances and all the new drugs. If homeopathic physicians are to be given the ability to prescribe medicine, they should hold a current license from our Board or the Osteopathic Board. Hence, in the other provision of my amendment, on page 2, entitled New Section, I propose to add the word "currently" in subsection 3 before the word licensed and "in the State of Nevada" at the conclusion. We also propose to delete the balance so a homeopathic physician to be licensed in Nevada must hold a current license from either the Allopathic or the Osteopathic Board. Lines 22 through 24 in Section 11, on page 6, should not be deleted. It is the law of the State of Nevada that a homeopathic physician, unless he is authorized and licensed by the Allopathic Board of Medicine, cannot practice Allopathic Medicine. We see no need for that deletion and think that language should stay.

Chair Oceguera:
Are there any questions for Mr. Lee? [There were none.]

Denise Selleck Davis, CAE, Executive Director, Nevada Osteopathic Medical Association:
Mr. Lee did a comprehensive job in covering the points that we wanted to make known. We have homeopathic physicians who are licensed as osteopathic physicians under NRS 633 and, as currently licensed physicians, they can prescribe drugs. We would like them to not go through a "bounce-back" procedure for any type of complaint so the patients are cared for in a timely fashion.

Susan L. Fisher, representing the Chiropractic Physicians Board of Nevada and the State Board of Podiatry:
We take exception to Section 5, subsection 5 lines (c) and (e). We would like to be removed from that because our boards are working well.

Chair Oceguera:
Are there others wishing to testify on A.B. 234?

Larry Matheis, Executive Director, Nevada State Medical Association:
We oppose the bill for the reasons stated and some others. (Exhibit U) There are issues of multiple boards with authority over practicing physicians that need to be addressed. We do not think that what is here would get to the heart of the issue. The bill significantly expands the scope of practice of what can be done exclusively under a Homeopathic Medical Doctor license and the authority of the Board of Homeopathic Medical Examiners. We oppose both of those. The ability to prescribe or dispense controlled drugs without having a license as a medical doctor or an osteopathic doctor is beyond what the practice of homeopathic medicine has been. The only way changing the statute in this manner can be justified is by including the amendment that the Nevada State Board of Medical Examiners has proposed, which says any person to be licensed as a Homeopathic Medical Doctor needs to also be licensed as a Medical Doctor or as an Osteopathic Doctor. At that point you do have overlapping jurisdictions, but you also have clear authority and clear lines of expectation throughout the statutes. The Nevada Institutional Review Board (NIRB) was created at the end of the last legislative session and has raised some serious concerns. We suggest that the entire enterprise of creating a state-run institutional review board for the approval of national clinical research projects be halted. It should be studied during the interim and should come back with a clear mission, charge, and funding source to clean up the statutory problem that was created. For these reasons the Nevada State Medical Association opposes the bill in its current form, but we would work with the Committee or interested parties if there is a desire to process the bill.

Chair Oceguera:
Are there any questions? Are there others who wish to testify on A.B. 234?

Daniel Royal, D.O., Private Citizen, Las Vegas, Nevada:
I am a member of the Homeopathic Board and do not have objection to the bill, except in regard to the NIRB. I was president of the Homeopathic Board when Amendment No. 925 was written and attached to A.B. No. 208 of the 73rd Legislative Session. The intent was that the NIRB would be only temporarily supervised by the Homeopathic Board and during the 2007 Legislative Session would be made an independent board. We have heard that excessive costs were incurred by the Homeopathic Board because of their supervision. Allowing the NIRB to remain under that supervision would only increase those costs. The only thing the Homeopathic Board did for the NIRB was remove four of its member appointees without cause. The NIRB has been stalemated since. There is a move in the Nevada State Senate to reform the NIRB. It is BDR 54-709 (later introduced as Senate Bill 414) sponsored by Senator Michael Schneider. When you look at A.B. 234, there are specific sections referring to the NIRB. They are Section 6, subsection 5; Section 7; Section 13, subsection 5; Sections 28-34; and Sections 36-39. Sections 36 to 39 are new language.

Chair Oceguera:
Are there any questions from the Committee? Are there others who wish to testify on A.B. 234?

Joe Brown, Private Citizen, Grass Valley, California:
I am for the bill. I was a citizen of the State of Nevada and was a health professional. I am a cancer survivor. I had lung cancer diagnosed in 1979 and was cured in 1980. I followed two years of orthodox therapy. It was going nowhere. I then received alternative therapy and was well in one year. I survived when others did not. I was curious as to why. I studied hard and learned there is more than one way to get well. I believe in allopathic and chiropractic medicine. I do not believe in alternative medicine, but I do believe in integrative medicine. These things all need to be brought together. They need to be integrated with one another, one not having power over another. If they have to be separate, then they have to be separate. State boards should not take control of the other. The NIRB is one of the most wonderful things I can think of, especially its being under the homeopathic board because then it is not controlled by what drugs it will and will not oversee. Please consider and pass A.B. 234. Allow it to happen. The NIRB has had its problems and it will continue to have problems. It is growing and young. It is causing a lot of problems, but it has to be. Things like my life need to be studied. I was here for the laetrile hearings in 1985. I am a scientist and laetrile should have been banned, but it did work. There are things that are better than laetrile. New

ways of getting well will be discovered, but those ways must be studied under a system that will allow the study of things other than synthetics. Therefore, I ask you to please pass A.B. 234.

Chair Oceguera:
Thank you for your testimony. Are there other comments on A.B. 234? [There were none.] I will close the hearing on A.B.234.

The meeting is adjourned [at 3:45 p.m.].

RESPECTFULLY SUBMITTED:

_____
Earlene Miller
Committee Secretary

APPROVED BY:

_____
Assemblyman John Oceguera, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: March 12, 2007 Time of Meeting: 1:30 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 128	C	Barry Gold, AARP Nevada	Prepared Testimony
A.B. 128	D	Barry Gold, AARP Nevada	Newspaper Article
A.B. 128	E	Barry Gold, AARP Nevada	Office of Inspector General Compliance Program Guidance for Pharmaceutical Manufacturers
A.B. 128	F	Barry Gold, AARP Nevada	Newspaper Article
A.B. 128	G	Barry Gold, AARP Nevada	Newspaper Article
A.B. 128	H	Janet Cottrell, AARP Nevada	Prepared Testimony
A.B. 128	I	Jim Morgan, The Pharmaceutical Research and Manufacturers of America	Informational Packet
A.B. 128	J	Carol Livingston, Wolters Kluwer Health	Memorandum
A.B. 128	K	Lawrence P. Matheis, Nevada State Medical Association	Statement
A.B. 235	L	Assemblyman David P. Bobzien, District No. 24, Washoe County	Bill mock-up
A.B. 235	M	Assemblyman David P. Bobzien, District No. 24, Washoe County	Newspaper Article
A.B. 235	N	Barry Gold, AARP Nevada	Prepared Testimony
A.B. 235	O	Shirley Swafford AARP Nevada	Prepared Testimony
A.B. 235	P	Larry Pinson, Nevada State Board of Pharmacy	Proposed Amendment
A.B. 235	Q	Larry P. Matheis, Nevada State Medical Association	Statement
A.B. 235	R	John P. Sande III, Medco	Proposed Amendment

		Health Solutions	
A.B. 234	S	F. Fuller Royal, The Nevada Clinic of Integrative Medicine	Informational Packet
A.B. 234	T	Keith L. Lee, Nevada State Board of Medical Examiners	Proposed Amendment
A.B. 234	U	Lawrence P. Matheis, Nevada State Medical Association	Statement