HEALTH, WELFARE AND STATE INSTITUTIONS

Minutes of Meeting - April 15, 1975

The twenty-first meeting of the Health, Welfare and State Institutions Committee was held on April 15, 1975 at 3:00 p.m. in Room 323.

COMMITTEE MEMBERS PRESENT: Chairman Lee E. Walker
Senator Herr
Senator Hilbrecht
Senator Schofield
Senator Young

OTHERS PRESENT: See Exhibit A

S.B. 374 - Enacts the Nevada Mental Health and Mental Retardation Law.

Dr. William O'Gorman, Nevada State Medical Assn., spoke in opposition to the bill and feels that two years from now there will be a different approach to handling the problems. Dr. O'Gorman feels this bill is wrong in structure and definitions contained therein. Dr. O'Gorman advised that this bill be tabled until after the Rand Corporation report is out in September of '75. The clinical costs in 1974 was $2,954,649; there will be a noticeable increase in 1975-76.

Dr. Rasul, Nevada Mental Health Institute, presented the committee with copies of proposed amendments to the bill (see Exhibit B for amendments). Dr. Rasul stated that their position regarding patients' rights are that each patient has the right to seek the best possible care.

Dr.H. Hess, Nevada State Board of Phychiatric Examiners, advised that they have no objection to the main thrust of This bill, but would like to point out that there is a controversy in the law. The definition of psychologist on page 44, lines 9-14 is very broad; also if this definition is going to be included in S.B. 374, it should be the same as that provided under NRS 641.

Dr. Tom Stapleton advised that he has a number of objections to this bill and the he would agree with Dr. O'Gorman in that we should wait until the Rand study is completed. Dr. Stapleton commented on what he feels is abuse of the patients' rights and feels these rights might be strengthened if peonage were made more stringent. These needs to work are for therapy and not for the Institute; Dr. Stapleton referred to this as patient labor. Dr. Stapleton feels this is opening the door for not letting someone out of the Institute because they are such good workers. Furthermore, the bill states that the client is guaranteed the right to medical treatment but further in the bill it is clear that the State of Nevada is not responsible for paying for this treatment.

Dr. Dickson advised that if a client is in need of medical treatment, they are referred to Washoe Med.or Las Vegas; this is in the current statutes.

Dr. Stapleton commented that he does not feel the patients' records should be given to him at any time, and also feels that doctors will not put realistic things in the record if they think the patient will see it. Dr. Stapleton feels the entire bill should be tabled.

Dr. Don Molde referred to page 4, Section 27, and suggested that a section be written just as section 27 is written stating that psychologist also be included. Dr. Molde referred to Section 52 and feels that this section should be deleted since these records are not for the client. Dr. Molde feels that this will eventually lead to no record keeping. Dr. Molde further stated that records are absolutely essential; the client is entitled to the content of his record, but they object to the way it is written now. Dr. Molde referred to Section 61, line 30, and feels that the director should be classified rather than unclassified. The institute, clinical and medical directors need to be more autonomous; does not feel that the institute and clinical director are the executive people responsible for hiring and firing everyone, including the physicians. Section 62, line 31 should be amended to read "The institute director is the administrative...".Also, on line 38 of this section, the word "medical" should be deleted; on line 39, the wording "the care and treatment of clients" should be deleted. These deletions should be put under the job description of the medical director. On page 12, Section 66, the same deletions should occur. Dr. Molde is concerned that the statutes are not sufficient to protect the clients' confidentiality and referred to a former client who received a questionnaire and was asked to fill this out and return it to the clinic. Dr. Molde questioned the fact that clients' name were given out for this purpose, and feels that it was an infringement of confidentiality. There should be wording to indicate that any information gathered for questionnaire or computer purposes should be obtained by face-to-face contact with the client or by written or verbal consent.

Mrs. Doris Carpenter, Washoe County Welfare, provided the committee with copy of letter from Washoe County Commissioner (see Exhibit C).

Joan Buckley, Clark County D.A.'s Office, spoke in opposition of the bill. Ms. Buckley referred to Section 54, page 9, regarding the clients working in the Institute while they are being treated. Ms. Buckley feels that since the indigents in hospitals are not paying their own way, the mentally ill should not have to either. Ms. Buckley referred to page 8, line 9, and commented that the commitment proceeding itself tells that a person needs treatment; she expressed concern that each hearing would be turned into incompetency adjudication. Ms. Buckley asked what would be done with the client who refused treatment; she is concerned that we would eventually be declaring

everyone incompetent -- this is inviting litigation. The guardian can sign him in for incompetency. Ms. Buckley feels the bill should be more clear about commitment to a private institution. She referred to Section 38, page 6, and stated that this is simply carrying over provisions from the old law. We should say that the court may admit to a private hospital. Mr. Peter Combs suggested that Section 38, page 6, be amended to read: "Nothing in this Title precludes the involuntary court-ordered admission of a mentally ill person to a private institution". Ms. Buckley referred to Section 76 and stated that she sees no reason for the changes since she does not find that the old statutes are per se' unconstitutional. Section 76 does not refer to court commitments - they are involuntary court-ordered admissions. This difference in language is unrealistic because the spouse, parent, etc. can file petition for commitment but that does not mean that it is a non-emergency admission. It gives the right to any interested person to file a petition for commitment -- this is a little broad because we are incurring liability when we say that anybody can go down and file petition for commitment. With reference to page 16, line 1, Ms. Buckley feels that this should state: "The petitioner has probably cause to believe....". The wording "good reason" seems to her to be unconstitutional. Those facts supporting the probably cause should be stated in an affidavit (see Exhibit D for copy of affidavit). After a member of the family files a petition for commitment, the clerk of the district court shall transmit.....Ms. Buckley advised that it isn't handled this way in a practical manner. Whoever wants to institute commitment proceedings comes to the district attorney's office and they are screened. The affidavit setting out probably cause is then passed to the judge; the judge then issues an order of detention. Ms. Buckely feels that this is unconstitutional to just give the judge the petitions because he has no facts on which to base his order of detention. With reference to Section 79, subsection 2, Ms. Buckley feels that this is unrealistic because if a person cannot be held longer than 24 hours - and that person is not well enough to go back home - the psychiatrist will have to do an emergency hold on the patient. The way it is now when a petition for commitment is filed, they are held in So. Nevada until the day of the hearing. Dr. Dickson commented that they have recommended that this be changed to "public or private" facility. Ms. Buckley feels that from this bill, they would have 5 extra commitments per week (their commitments are now between 8-12 per week). With respect to Section 70, subsection 2, Ms. Buckley questioned how many mental health professionals the county will have to pay for to examine these people. They have one psychiatrist examining them now and the county will have to pay these mental health professionals. The number of people who have been committed and then have walked away from the facility in a matter of hours is quite high; Clark County spent $10,000 committing people who stayed for maybe a day. Ms. Buckley feels that if the client were allowed to inspect his records, it would lead to inadequate record keeping.

Father Larry Dunphy spoke in favor of the patients' rights section, but felt that portions of the bill need serious discussion and questioning (see Exhibit E for copy of testimony).

Mr. Frank Gross, Governor's Advisory Council, advised that he is in support of this bill as it pertains to mentally retarded. Mr. Gross referred to page 8, line 22, and felt that it is unclear when it states that consent may be withdrawn in writing -- how could someone who can't speak or write send a letter of withdrawl. Mr. Gross would like to see a human rights committee, made up of parents and users of these services, established that would be responsible to the Board. This committee would review the rights of persons who are at the facility. Mr. Gross would like to see the bill pass but would like to see a provision where the parents could have some input.

Janice Ayres, Nev. Assn. for Retarded Citizens, advised that the Association does support this bill. They feel the clients have the right to inspect their records. If a client voluntarily commits himself, they should be able to release themselves within a day.

S.B. 25 - Allows veterans with certain background in medical corps to qualify for practical nurses examination and license.

Senator Walker advised the committee that there has been a compromise on this bill and, therefore, it is no longer needed.

Senator Schofield moved "Do Kill"; seconded by Senator Young; motion carried.

A.B. 108 - Revises child abuse and neglect statutes.

Mr. Orville Wahrenbrock, Dept. of Human Resources, referred to the portion of the bill that states "The fee for the services of the guardian ad litem shall be established at the descretion of the court and shall be charged against the county in which the judicial proceedings are initiated". Mr. Wahrenbrock advised that they feel that in this kind of a case the guardian ad litem has the right to protect the rights of the youngster who is involved. They have reached an agreement with the counties where they will enter into a contract in which the state will be paying 75% of the cost of the guardian ad litem and the counties will pick up the 25%. Mr. Wahrenbrock would like this understood by legislative intent that this is what they intend to do. Since the state is not funded to pay this and it comes from Title 20, it should be noted that it comes through appropriate federal funding. Mr. Wahrenbrock is to advise the committee where this language would fit into the bill. Mr. Bill Hadley advised that even if federal funds do not come through, it should state that the state will still pay 75%. Mr. Wahrenbrock felt

somewhat apprehensive as to what they would do if the federal money does not come through. Senator Hilbrecht commented that possibly the program should be conditioned on whether or not these funds are received. Bob Broadbent commented that if there is no federal funding, possibly we should scrap the program. Mr. Wahrenbrock feels they can come back with a recommendation to eliminate Section 3 and pass the rest of the bill which would eliminate the guardian ad litem -- they would then be ineligible for federal funding. Senator Walker asked if they could not make it contingent upon federal money begin available; Mr. Wahrenbrock replied that if the money committees would be satisfied with that, he would be happy to do it but would not want to be acused of coming back in two years and saying that the money did not come through - if the record would reflect this, then Mr. Wahrenbrock said that he would be happy with it.

S.B. 203 - Requires pharmacy located in certain establishments to remain open for same period as establishment and deletes provision authorizing absence of pharmacist from pharmacy.

Mr. Robert Groves, Deputy A.G. for State Board of Pharmacy, presented the committee with a copy of proposed amendment (see Exhibit F for amendments). These amendments seek to require that differential hours be maintained only pursuant to the Board regulations and then mandate the Board to adopt those regulations.

Joe Midmore, representing the chain drug stores, commented that Mr. Art London for Thrifty Drug, and Mr. Gudtke for Skaggs, are present in case the committee has questions.

Virgil Wedge, representing Raleys and Eagle Thrify Drugs, provided the committee with opinions on various questions that have been raised by the committee (see Exhibit G for letter from Mr. Wedge). Mr. Wedge referred to the amendments provided by Mr. Groves, and stated that we come back to the proposition of the different hours for the pharmacy as contrasted to the other departments within the merchantile establishment. Mr. Wedge feels that this amendment is merely another way of getting at the same thing. Paragraph 2 provides that the pharmacy shall be open when other departments are open except on terms and conditions as the Board shall regulate. Mr. Wedge feels they will regulate on the basis that they will all be open at the same time; this would be unconstitutional. If there is a licensed pharmacy within a merchantile department store area, you can control the pharmacy as to matters regarding security, time, etc.

Senator Hilbrecht referred to page 12 of Mr. Wedge's letter and stated that the language suggests that one of the issues before the court is whether the State Board of Pharmacy regulates appliance stores, grocery stores, etc., when they should have only the authority to regulate

the pharmacies. Mr. Wedge replied that that is precisely the way he feels - when a store is within another store, the regulation regarding time should be the same within the store. Mr. Wedge feels that having one part open while another is closed is very unreasonable.

Senator Herr feels that there is one point being overlooked when we are discussing closing one part of the store -- when a sick person needs a prescription filled, that is the most important thing there is. We are 24-hour towns or state, and that elderly citizen may cross town to get a prescription and find the store may be closed; also, the large chain stores give prescriptions cheaper which is an important factor to the elderly. Senator Herr feels we are doing a disservice to that person. Mr. Wedge commented that there is a control factor there. It is just as important to the elderly or sick in Winnemucca, Elko, etc. to have a drug store available as it is in the larger areas. Mr. Wedge asked what is a reasonable time for drug stores to be open to accommodate people who need prescriptions -- if a reasonable time is established, no one can quarrel with this.

Senator Hilbrecht advised that he has difficulty with a statute that says certain stores have to be open certain hours but we are silent as to when other stores have to be open. Senator Hilbrecht asked if this has any legal consequences. Mr. Wedge feels that this has a legal impact because the fact that the general store is open is not a criteria for determining when a pharmacy is open.

S.B. 247 - Regulates transactions involving bedding and upholstered furniture.

Senator Hilbrecht moved that this bill be rereferred to the Commerce and Labor Committee; seconded by Senator Schofield; motion carried.

S.B. 288 - Prohibits denial of hospital privileges to certain podiatrists solely because of their profession.

Mr. Hadley furnished the committee with proposed amendments (see Exhibit H for amendments). Mr. Hadley advised that this would allow them to admit patients to hospitals; the privileges would be defined by the medical staff and as approved by the governing board. They would probably like a physician to do a general workup on a person admitted to the hospital and the podiatrist would have privileges within the hospital to do certain things. This is something that will have to be worked out within the hospital staff.

Sharon Greene commented that an in-patient admitted to a hospital must have a history workup and a physical. Mr. Hadley stated that the podiatrists would probably be assigned to a certain area of the hospital and be under that department. They would have their own

separate subcommittee. Mr. Hadley further commented that as this is written, they will be under the department of surgery.

Senator Hilbrecht asked if in no event, the Board composed of M.D.'s and osteopaths, would be making decisions as to whether their decisions were appropriate podiatrist decisions. Senator Hilbrecht further commented that since the statutory scheme was that hospitals were run for medical purposes and standards by a staff of physicians, and physicians were limited to two categories of health care providers, that we could accommodate a request without undue disruption of the existing structure by adopting this two-tier program; they also said they did not intend to get into the business of judging the proficiency of someone in a profession with which they had no familiarities. Senator Hilbrecht asked how they intend to reconcile this. Mr. Hadley advised that this has to be reconciled or it won't work; there will have to be someone responsible from the medical profession. Senator Hilbrecht commented that we are right back where we started if that is the case. Sharon Green offered that the podiatrists would be like any other speciality with an ultimate governing body overseeing it. The podiatrists would not be voting members of the medical staff nor would they hold office, but they would determine what they felt were their privileges and what they should be able to do.

Senator Hilbrecht feels that the statutes should mandate that if one of these professions is going to be allowed to practice, a provision should be made for governing their practice - the sensible way to do this is provide a peer review. Mr. Hadley advised that 450.160 provides that the Board of Trustees shall set up the by-laws and they shall have the final say as to how this will be done. The way this is drafted put the podiatrists under the governing board and does not make them a member of the staff of physicians. Senator Hilbrecht feels that it should be provided that the peer review be provided as well as a staff of physicians. The peer review should require participation not only by members of the staff of physicians but also by such practitioners of that particular allied health profession that may be involved in the procedure under the review. Mr. Hadley commented that the orthopedic surgeons said they did not want to do this but they would. If they don't do it properly, someone else will. Senator Hilbrecht feels that a subsection should be put in Section 430 or 440 providing for a peer review. Mr. Hadley commented that this bill says that we cannot exclude podiatrists, but that they will be under the governing board of the staff of physicians.

Being no further business at this time, the meeting was adjourned at 6:10 p.m.

Respectfully submitted,

Sharon W. Maher

Sharon W. Maher, Secretary

APPROVED:

Lee E. Walker

Lee E. Walker, Chairman

SENATE ____________________ COMMITTEE

ROOM # ______

DAY ____________ DATE ____________

NAME	ORGANIZATION	ADDRESS
Thelma Jenkins	NNA	11 Nev Way Henderson
Phyllis Hansen	NNA	
Monte Smith	Skaggs Drug	Plumb + Virg. Reno
Arthur Goodsdorf	Thrifty Drug Stores	Worldway Box 92333, Los Angeles CA 90009
[illegible]	[illegible] - Eagle Thrifty	Reno, Nev
J Richards	Div MH & MR	4600 Kietzke La Reno
Vicki Erickson	MH/MR	"
Jan [illegible]	MH & MR	"
Andrea Rathburn	Div of MH & MR	"
Harry Clemons	MH & MR Div	"
Larry Oakley	Div. MH + MR	Reno
John Read	MH & MR	Reno
Wm. D. O'GORMAN, MD	Nev. State Med. ASSOC	LAS Vegas, Nev
Tom Stapleton MD	None	Reno, Nev
Don Molde	None	Reno, Nev
~~Dr~~ R. Kayser MD	NMHI	Reno. nev
William [illegible]	Washoe D.A. - [illegible]	Reno nev
Doris Carpenter	Washoe Co Welfare	Reno
[illegible]	NMHI	Reno
Marcia Stapleton	UNR	Reno
Larry Dunphy	Franciscan Center	Las Vegas Nv
John Burphy	Clark Co DA's office	Las Vegas Nev.
Barbara J Brady	Clark Co. Social Service	Las Vegas
Leslie Adcock	Intern	Reno
Janice R. Ayres	Nev. Assoc. for Retarded Citizens	1800 E. Sahara L.V. Nev 8910
FRANK CROSS	Nev Assoc. Handicapped Child	Reno NV
Dave Edwards	DIV. MH-MR	

EXHIBIT A

SENATE ______ COMMITTEE

ROOM # ______
DAY ______ DATE 4-15-75

NAME	ORGANIZATION	ADDRESS
Thomas A. Pr[illegible]	Mental Health Institute	Sparks
Alan Gunnan	State Fire Marshal	Carson City
Richard S. Pugh	Nev. State Med. Assn.	Reno
[illegible]	Nev. State Board of [illegible]	Las Vegas
Roger Trounday	Dept. Human Resources	Carson
[illegible]	Nev. Hosp. Assn.	Reno
Joe Midmore	chain drug stores	Reno
Ruby Duncan		C.C.U.R. of Las Vegas
~~Bob Broadbent~~		Boulder City
C. Ferretto	MH-MR	Reno
[illegible]	MH-MR	Reno
Chuck Dickson	MH-MR	Reno
Gwen O'Bryan	MH-MR	Reno
Roger [illegible]	RURAL CLINICS	Reno
Margaret [illegible] Brown	W.P. Co. Welfare	Ely
Marguerite [illegible]	Elko County Welfare	Elko
Kazuko [illegible]	Churchill Co. Welfare	Fallon
[illegible] Combs	Atty. Gen.	Reno
Robert A. Groves	Atty Gen Office	Reno
George T. Bennett	Bd of Pharmacy	Reno
H. Kim Bean, D.P.M.	Nev. State Podiatry Soc.	Carson City
Richard [illegible]		Las Vegas

MIKE O'CALLAGHAN
GOVERNOR

VICTOR J. LoCICERO, M.D.
MEDICAL DIRECTOR

THOMAS A. PIEPMEYER
INSTITUTE DIRECTOR

Nevada Mental Health Institute

P.O. BOX 2460 • TELEPHONE 322-6961
RENO, NEVADA 89505

April 7, 1975

Senator Lee Walker
Chairman
Committee on Health, Welfare and State Institutions
State Legislature
Carson City, Nevada

Dear Senator Walker:

First of all, we thank the Committee for letting us express our opinion on Senate Bill No. 374. We would like to show our concern in the following areas in the Bill:

Line 21, Sec. 61 on page 11, which reads as: The Institute Director staff:

1. Be selected on the basis of training and demonstrated administrative qualities of leadership in any one of the professional fields of psychiatry, medicine, psychology, social work, education or administration.

Before we comment on Sec. 61, we would like you to read Sec. 62 and its subsections 1, 3 and 7, which read as follows:

Line 31, Sec. 62 - The Institute Director is the executive and administrative head of the Institute, and as such he has the following powers and duties, subject to the administrative supervision of the Administrator:

Line 34:

1. To exercise general supervision of and establish regulations for the government of the institute;

Line 38:

3. To appoint such medical, technical, clerical and operational staff as the execution of his duties, the care and treatment of clients and the maintenance and operation of the Institute may require;

Line 48:

7. To invoke any legal, equitable or special procedures for the enforcement of his orders or the enforcement of the provisions of this title and other statutes governing the Institute.

EXHIBIT B

This means that the primary criterion for hiring an Institute Director will be his administrative capability and it won't be necessary that he be a M.D. and that he has at least 3 years' training in psychiatry.

Yet it is expected that the Institute Director not only performs merely administrative duties, but being the executive head of the Institute he will direct and supervise the medical director, psychiatrists, physicians, nurses and the rest of the professional staff; he will appoint medical staff according to the treatment needs of the patients; he will establish regulations for the government of the Institute and most of these regulations are bound to affect the treatment programs directly or indirectly.

We think that this will be simply preposterous. This will be certainly unfortunate if our professional work is guided and directed by somebody who is not trained medically and psychiatrically.

Line 10, Sec. 67, page 13 - reads:

The Medical Director of a mental health center, of the Institute, or of the other division facilities as the administrator shall from time to time designat is the medical head of such mental health center, institute or division facility. He shall be a psychiatrist licensed to practice medicine as provided by law or, in case of a treatment facility authorized by subsection 2 of Section III of this act, as pediatrician licensed to practice medicine as provided by law.

Now the subsection 2 of Section III of this act reads: (Page 23, Line 19) - The division is hereby authorized to operate treatment facilities specifically for the purpose of providing treatment for emotionally disturbed children.

A pediatrician does not have any more training in psychiatry than a G.P., a surgeon, a cardiologist, etc. and he cannot be a substitute for a child psychiatrist. On the other hand, most psychiatrists do have some training in child psychiatry.

Line 1, Sec. 86, subsection 2, page 18:

An involuntary admission pursuant to paragraph (b) of subsection 1 automatically expires at the end of 6 months if not terminated previously by the medical director as provided for in subsection 2 of Section 87 of this act.

Now let us see subsection 2 of Section 87:

Line 20, Sec. 87, subsection 2, page 18:

An involuntary court-committed client may be released prior to the time period specified in Sec. 86 of this act when:

(a) An evaluation team established under Sec. 80 of this act determines that the client has recovered from his mental illness or has improved to such an extent that he is no longer considered a danger to himself of others and is not in need of external support; and

Line 26, (b) - Under advisement from the evaluation team, the medical director of the division facility authorizes the release and gives written notice to the admitting court 10 days prior to the release of the client.

There is no provision under this act that the medical director can discharge an involuntary patient using his own clinical judgment within six months of the admission. This is likely to cause undue hardship and inconvenience to a substantial number of the patients as well as it will cause undue financial burden on the Institute. Incidentally, psychiatrists have always been able to discharge involuntary patients using their clinical judgment.

Line 24, Sec. 50, subsection 1, paragraph (d), page 8:

The absence of express and informed consent notwithstanding, a licensed and qualified physician may render emergency medical care or treatment to any client who has been injured in an accident or who is suffering from an acute illness, disease or condition, if within a reasonable degree of medical certainty, delay in initiation of emergency medical care or treatment would endanger the health of the client and if such emergency medical care or treatment is authorized and approved by the medical director, or in division facilities not employing a medical director, by the administrative officer, and entered into the clients' treatment record.

I can see the necessity of another professional opinion in procedures like E.C.T., major surgery, etc. where there is some degree of risk involved. But obtaining approval for administration of medications, applying sutures to a small wound, etc. from the medical director or administrative officer (who may not be a physician) is incomprehensible and impracticable because of high frequency of such incidents and it is bound to affect the timely and proper care of the patients.

Line 17, Sec. 52, page 9:

A client shall be permitted to inspect his record. This will have some implications such as:

1. Staff will be reluctant to put down many meaningful and useful information in the chart; information they consider might upset or provoke a patient.

2. The patient is likely to find certain facts in the chart to face, which he may not be adequately prepared for yet.

3. As an ordinary patient is not well-versed in professional language and terminology, he is likely to misinterpret the facts and data in the chart.

4. The charts are primarily meant for communication between professional staff and to keep an account of what they plan and do and this act will be direct invasion of staffs' rights.

Line 47, Sec. 50, page 7:

Each client admitted for evaluation, treatment or training to a division facility has the following rights, a list of which shall be prominently posted in all facilities providing such services and otherwise brought to the attention of the client by such additional means as the administrator may designate by regulation:

1. To medical, psychosocial and rehabilitative care, treatment and training including prompt and appropriate medical treatment and care for physical and mental ailments and for the prevention of any illness or disability. Such medical treatment shall be consistent with standards of medical practice in the community.

We believe the above-mentioned right is laudable. However, we insist that not only the medical treatment shall be consistent with standards of medical practice in the community but psychosocial and rehabilitative care and treatment should also meet community standards. We also presume that such division facilities will be provided with adequate diagnostic and treatment equipment and personnel and it is understood that such treatment cost will be almost similar to what it costs in the community.

Lastly, we would like to point out that many of the definitions used in the bill are inadequate and rather unusual. For example, page 44, Line 5: "Psychiatrist" means a person licensed to practice medicine or osteopathy in the State of Nevada, or someone under his supervision, while engaged in the examination, diagnosis or treatment of a client for a mental condition.

Page 2, Line 41: "Emotionally disturbed child" means any person who has attained the age of 2 years but has not attained the age of 18 years whose progressive personality development is interfered with or arrested by a variety of factors so that he shows impairment in the capacity expected of him for his age and endowment:

1. For reasonably accurate perception of the world around him;
2. Poor impulse control;
3. For satisfying and satisfactory relations with others;
4. For learning; or
5. For any combination of the above.

How would you fit children suffering from depression, anxiety, stuttering, anorexia nervosa, sleep walking, hypochondriasis, hysteria, stealing, etc. in this definition?

After reading the bill, one cannot help feel that many clinical realities have been ignored. We, as physicians and particularly the psychiatrists, are put in very adverse situations and many of us may find the conditions too unpleasant for our professional work of helping and treating patients.

Many thanks.

Sincerely,

Darrell Hamilton, M.D.
Senior Psychiatrist
Medical Director, Reno Mental Health Center

Mujahid Rasul, M.D.
Senior Psychiatrist, NMHI

Rajinder Karwan, M.D.
Senior Psychiatrist, NMHI

Zora O. Young, M.D.
Senior Psychiatrist, NMHI

Albert F. Wagner, MSW, ACSW
Chief of Social Services Department and Director of the Alcohol and Drug Abuse Unit
NMHI

Program Director for the Mental Offender
NMHI

bew

Leroy Adams
Psychiatric Social Worker II, NMHI

Eleanore Swink, R.N., Director of Nursing Service, NMHI

Fay E. Miller, Chaplain
Pastoral Department, NMHI

WASHOE COUNTY COMMISSIONER
DICK SCOTT
1190 Williams Avenue Reno, Nevada 89503
Res. 747-3961
Bus. 322-8661

280

April 15, 1975

Senator Lee Walker, Chairman
Committee on Health, Welfare & State Institutions
Nevada State Legislature
Carson City, Nevada

RE: Senate Bill 374

Dear Senator Walker:

The Washoe County Board of County Commissioners opposes enactment of Senate Bill 374 as proposed. While there can be no argument that legislation pertaining to patients' rights is long overdue, objection must be directed to the proposals placing enormous additional financial burdens upon the counties and the discretionary authority vested with the administrative officers of the various mental health facilities in determining indigence, specifically Sections 45, 124 through 126, and amendments to NRS 435.085.

According to figures compiled by the Division of Mental Hygiene and Mental Retardation (based upon present costs, average daily census and an estimated indigency rate), minimum costs to Washoe County for only in-patient care at Nevada Mental Health Institute would be $1 million per year. It is recognized that in his testimony to the committee, the Administrator of the Division, Charles R. Dickson, Ph.D., has offered alternative proposals that charges to the counties be on a 50/50 percentage basis, or that county responsibility be limited to court-committed patients only, reducing costs at Nevada Mental Health Institute to Washoe County to $518,096 and $79,543, respectively.

There are, however, no projections for private hospital in-patient care or out-patient services, although Section 124 provides that the county of the indigent's residence prior to being admitted to a private hospital or division mental health facility shall be responsible for the full cost of his care and treatment. Division mental health facility, in addition to NMHI, includes Reno Mental Health Center, Children's Behavioral Services and the Mentally Disordered Offender Program.

Allegedly, one of the purposes of the bill, in addition to reducing costs to the State, is to "reduce needless in-patient care and encourage the use of community mental health services by the counties," with the courts admitting patients to a "course of treatment" rather than to the NMHI - ergo the counties would be financially responsible for any care extended to any indigent, as

EXHIBIT C

determined by the administrator of the facility, who has been physically present in the county 10 days prior to admission to any mental health service program.

The arbitrary selection of the 10 days' period for acquisition of state residence (Section 45) and the discretion vested with the administrator regarding the return to their state of legal residence of even the few who might not have been in Nevada 10 days are particularly objectionable, in view of existing legislation requiring the counties to be responsible upon their discharge for both disabled residents and non-residents committed from that county.

Amendments to NRS 435.085 providing, in cases of judicially committed mentally retarded persons in need of diagnostic, medical or surgical services not available within the division, that the ability of the parents or guardian to pay for said services shall be determined by the administrator, the remainder to be a charge upon the county of last known residence, imposes additional burdens upon the counties with no regard to Chapter 428 NRS which vests with the Board of County Commissioners authority to establish uniform standards of eligibility for mandated indigent programs.

It would appear that in its zeal to further bureaucratize the delivery of mental health services at the same time reducing costs to the state, the Division of Mental Hygiene and Mental Retardation has chosen to ignore the financial limitations imposed upon the counties by already existing legislation and even lacking legislation, the counties inability to provide open-end financing for state-administered programs.

Sincerely,

Dick Scott

DICK SCOTT, Chairman
Board of County Commissioners
Washoe County

bjw

CASE NO. _____

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

IN THE MATTER OF THE HOSPITALIZATION)
OF) AFFIDAVIT
JACK DOE)
ALLEGED TO BE A MENTALLY ILL PERSON

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

GRACE DOE, being first duly sworn according to law, deposes and says:

That she is the Petitioner in the hospitalization of JACK DOE; that she is the wife of the said JACK DOE, and has good reason to believe that the said JACK DOE is mentally ill and incompetent and because of such illness is likely to injure himself or injure someone else unless hospitalized; that the said JACK DOE refuses to submit to an examination by a physician.

_____
GRACE DOE

SUBSCRIBED AND SWORN to before me
this 20th day of April, 1972.

_____
NOTARY PUBLIC

SENATOR WALKER AND MEMBERS OF THE SENATE HEALTH AND WELFARE COMMITTEE:

I am Fr. Larry Dunphy representing The Franciscan Center and the NAACP, Las Vegas Chapt Following my remarks from the above perspective, I would request permission to report a few concerns which Dr. Richard Siegal of the ACLU asked me to report on their behalf.

First of all, we wish to strongly support the patients' Bill of Rights Section of SB 374 and feel that that portion of the bill should be passed this session even if the other portions cannot. There are several aspects of the bill which we feel need serious discussion and questioning. The following remarks have been worked out through discussion with persons working in mental health services in Las Vegas and also with Washoe County Legal Services.

On page 3, Sec. 19, in the definition of mental illness the phrase "function effectively in one's life situation without external support," those last three words: "without external support," could be interpreted in many ways. They could be applied inappropriately to an aged person, to a person on Welfare etc. If the definitions are to have any significant application in the functioning of the law, that issue might be considered.

On page 2, lines 41 & 42, the question was raised as to why limit the "emotionally disturbed child" to 2 years of age? It was pointed out that it could become evident before that.

Perhaps the most serious concern though is regarding the priveleged communications in Sec. 194- 196. N either what is contained here nor what is presently in NRS Chapter 49 of the Evideence Code adequately deals with the problem. Social Workers working for Family Counseling Service or myself for Nevada Catholic Welfare are not protected under the present law. Family Counseling Service in Las Vegas hasto tell clients that their reords might be subpoened; this has been a hinderance to good counseling relationships. They have in fact received subpoenas for case records in civil cases. Some provision needs to be put into the law in this session to provide for the confidentialiity of clients who are recieving mental health services which are not conducted under the supervision of a psychiatrist. This Committee did not have mudh interest in liscensing Social Workers when that bill was heard here earlier this session, but nevertheless, it seems that their clients have the same right to priveleged communication and confidentiality as those receiveing treatment in an institute under the supervision of a psychiatrist. The clients rights should be the same irregardless of whcih professional heis receiving treatment from.

A second area of concern centers around the area of the concepts of payment for services for the mentally ill and mentally retarded contained in the bill.

EXHIBIT E

One Las Vegas area mental health worker commented: "I never saw anyone with money be committed." Most of those who make use of the State or County services are those who could not afford to pay the full prices of these services. The statement probably also implies that those who can afford lawyers etc. are not committed.

Be that as it may, in trying to encourage persons in need of mental health care to use the services, it is difficult enough without all the demands and pressures for payment for services. The language in the bill which refers to turning debts over to collection agencies, to attaching of estates, and to relative responsibility seems to be counter-productive; a person who needs mental health services normally is threatened enough by his very need for the services without adding other burdens and threats to it. Also a person most needs his relatives and supportative relationships at a time of personal crisis, at a time when persons would be seeking mental health services; introjecting demands for payment through relative responsibility adds another source of alienation between the person in need of services and his relatives. It should be evident that in the case of low income persons and even moderate income levels, requirements for payments at the level of cost for these services are indeed threatening; relatives would shy away from meeting payments which could reduce them to just above welfare eligibility levels. I would also point out that the "responsible relative" is not defined or clarified in this bill, and that by SB 199 of this session that you have modified the "responsible relative" concept in NRS to that of "spouse to spouse" and of "adult to minor Children". While recognizing that there are serious public problems in funding and paying for these mental health services, and while not wanting to enter into the controvery of whether the state or county pays, I would suggest that mental health services should be provided to those who need them at a public expense. Such services are for the public good and should therefore be provided by the government. In another state in which I received my training in social work and did one of my field placements in a outpatient mental health service, services were provided as a function of the State and even those capable of payment were not charged for the purpose of encouraging use of he services.

Chuch Zeh of Reno Legal Aid society has suggested that considerable alleviation for the cost of services at the Institute in Sparks could be had by bringing the inpatients there under Title XIX coverage. He suggests that this could be done by revising NRS 428.270 Sec. 3, which currently limits such coverage to persons over 65 years of age. NRS 428.270 is merely reflecting the more restrictive option allowed to the State Plan by 45 CFR #249.10 (b) (6) (ii) which says: "Services to persons in institutions for tuberculosis or mental diseases may be limited to persons 65 years of age or over." The federal regulation says "May" which implies that the State could choose to include such persons.

Again in listing various types of "Categorically needy" of which the

State has an option to include or not 45 CFR " 248.10 (b) (ii) says: "Persons in a medical fa cility-skilled nursing home, hospital, institution for tuberculosis or mental disease—who if they left such a facility would be eligible for financial assistance under anotherof the State's approved plans. This includes personsin medical facilities who have enough income to meet their prsonal needs in the institution, but not enough to meet their needs outside of the facility according to the appropriate State Plan." It seems that the mentally ill persons would by definition come under the Disabled Category.

If such persons were to be included in the Sta te SAMI or Title XIX plan, it would have the additional effect of making them eligible for SSI during such times: 20CFR 416.231 (a) (2) which says that persons in a hospital recieving payments under Title XIX are eligible for SSI during such time, and this is further elabora ted under 42CFR 416.231 (b) 1 - 6, especially under subsection 5 which indicates that such persons in the hospital are eligible for SSI if more than half of their payments for support in the hospital are coming from Title XIX. The receipt of SSI payments would be an additional benefit in th t they could help to meet the personal needs of the paitents as well as what was left over from personal needs could be used for payments. We would suggest that you most serioalsy explore the possibilities through Title XIX.

We would further like to point out that there is need for expansion of the kinds of services available and this would not necessarily mean the building of new institutions or facilities. We find in Las Vegas th t there seems to be no services available for the chronic non-dnagerous adult. Although we are not by any means a mental health service agency and there are only two of us who have had professional mental health training, we find that there is one adult chronic female in Las Vegas who hassortof latched on to us for services and the available a gencies will not provide services. She is not really treatable in the sense of being cured, but does need some supervisory care and some place to go for help and medication when it gets to be too much for even h r to stand. At present she simply spreads disruption around the city to private individuals, to stores, to public a gencies, to police, etc; she puts other persons on the brink of needing institutionalization themselves, and constantly shop lifts. Resources for persons like her which do not now exist must be developed. We would urge you not to back off from the State's committment and involvement in mental health services and their development in the State of Nevada.

REMARKS FROM ACLU ON SB 374

Dr. Richard Seigil of the Reno ACLU asked me to pass along these remarks on his behalf ad that of the ACLU.

Dr. Richard Seigil feels that the thrust of the bill is necessary and important for the following reasons:

1) They feel that there is greater need for protection of patient records. They have received a number of complaints relevant to patient records. In one case reported to them a secretary a t the Reno Menta l Health Facility used patient records for a term pap er. Access to patient records is thought to be too easy. Dr. Seigil reported that there is a good deal of opening of the files to the Federal Government.

2) The ACLU is concerned about the review of experimental trea tment. They feel that such review is inadequate. As an example of this inadequate review they cited the famous incident with the cattle prod in the treatment of a young girl. They are concernd about the use of a versive shock for behavior modification and not for depression. ACLU feels that there should be review of these experimental treatments by outside or independent personnell.

3) A CLU feels that there is ina dequate control over involunatary committment. They did not elaborate on this point.

4) ACLU felt that there is possibly excessive use of lock up and for excessive time periods.

Dr. Seigil also referred to the implications of report of an independent California analysis of the Nevada Mental Health Institute and its physical plant. This report was done in the last year. He said that it mentioned there was little or no treatment for geriatrics, that there was a weakness in civil liberties, and that there was an overwhelming lack of priva cy at the Mental Health Institute.

As further grounds for commending this legislation, Dr. Seigil stated that the ACLU wants to remind the Legislature that the Federal Courts have imposed the right of meaningful treatment for all patients. That they ha ve imposed on the States the burden of insuring a gainst viola tions of their rights. He wished to remind you of the court decision regarding Frank Johnson inAla bama imposing the obligation to treat anyone who is being held.

Dr. Seigil further wantedto state that the a bove remarks are not in criticism of nor condemna tion of the Institute, but rather, as grounds which indicate the need for the legislation.

Other concerns were expressed do:s not adequately provide for the review of treatment process by outside sources, and that the limitation upon use of restraints on pa tients was not adequately developed.

PROPOSED AMENDMENT TO S.B.203

S.B. 203 shall be amended to read as follows:

SECTION 1. Chapter 639 of NRS is hereby amended by adding thereto a new section which shall read as follows:

1. The legislature finds that the enactment of this section is necessary for the preservation and protection of the public health and safety.

2. [A licensed pharmacy which is located within any mercantile establishment that has two or more independent or dependent departments, divisions or businesses owned, managed or operated by the same or different persons shall remain open for pharmaceutical services during all of the time that such mercantile establishment or any one or more of the departments, divisions or businesses is open for business to the general public.]

No person who owns, operates or manages any mercantile establishment within which there is a pharmacy or prescription department may cause the pharmacy or prescription department to be closed while the mercantile establishment remains open for business except upon such terms and conditions as the board shall prescribe by regulation.

3. The board shall adopt regulations setting forth the terms and conditions under which the owner, operator or manager of a mercantile establishment within which there is a pharmacy or prescription department may close the pharmacy or prescription department while the remainder of the mercantile establishment remains open for business.

4. If, pursuant to board regulations, the owner, operator or manager of a mercantile establishment causes a pharmacy or prescription department therein to be closed while the mercantile establishment

remains open for business, all advertising used or disseminated for or in connection with either the mercantile establishment or the pharmacy or prescription department shall prominently state the hours during which the pharmacy or prescription department is open for business.

5. Advertising used or disseminated for or in connection with either the mercantile establishment or the pharmacy or prescription department shall not be false, deceptive or misleading in any respect.

SEC. 2. Delete.

SEC. 3. NRS 639.280 is hereby amended to read as follows:

1. No [store, shop, area, place or premises shall have upon it or displayed within it or affixed to or used in connection with it any] sign [or advertising] :

[1.] (a) Bearing the words "Pharmacist," "Pharmacy," "Apothecary," "Drug Store," "Druggist," "Drugs," "Medicine," "Medicine Store," "Drug Sundries," "Remedies," "Prescriptions," "Medications" or "Medicinals," or any word or words of similar or like import; or

[2.] (b) Where the characteristic symbols of pharmacy are exhibited; or

[3.] (c) Where the characteristic prescription sign Rx or similar design is exhibited,

may be used or displayed except upon or within [unless there is within the store, stop, area, place or] premises licensed as a pharmacy [licensed] pursuant to the provisions of this chapter.

2. No advertising:

(a) Employing the words "Pharmacist," "Pharmacy," "Apothecary," "Drug Store," "Druggist," "Drugs," "Medicine," "Medicine Store," "Drug Sundries," "Remedies," "Prescriptions," "Medications" or "Medicinals," or any word or words of similar or like import; or

(b) Exhibiting the characteristic symbols of pharmacy; or

(c) Exhibiting the characteristic prescription sign Rx or

similar design,

may be used or disseminated except by a licensed pharmacy.

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March 24, 1975

Hon. Lee Walker, Chairman
Health and Welfare Committee
Nevada State Senate
State Senate Building
Carson City, Nevada 89701

Re: Regulation of Pharmacies by Nevada Legislature and State Board of Pharmacy

Dear Senator Walker:

Your committee has requested my opinion on the following questions:

1. May the Legislature and/or the Nevada State Board of Pharmacy constitutionally require a pharmacy to be open when it would otherwise be closed?

2. Does the Nevada State Board of Pharmacy have the power to regulate the opening and closing of pharmacies under existing statutes?

3. If there is a valid delegation of the power to regulate the opening and closing of pharmacies to the State Board of Pharmacy, would legislative action be on firmer constitutional ground than would regulation by the State Board of Pharmacy?

I have attempted to respond to each of the questions in a general manner and in a manner that is understandable to lawyer and layperson alike. Hopefully I have been at least partially successful in those endeavors.

Question No. 1: May the Legislature and/or the Nevada State Board of Pharmacy Constitutionally Require a Pharmacy to be Open When it Would Otherwise be Closed?

Opinion

My opinion on this question depends upon several considerations. First, such a requirement must affect the "public health, safety, morals and welfare." The scope of the police power of a state is very broad. It is generally said that the only limitation upon the exercise of the police power is that such exercise must be reasonable; that is, whether under the circumstances, the regulation is reasonable or arbitrary and whether it is designed to accomplish a purpose falling within the scope of the police power. See, 16 Am.Jur. 2d Constitutional Law §277 (1964). Certainly, it can be argued that the public health and welfare are affected if prescription services are unavailable at times when they are needed. Hence, a regulation (the term regulation is intended to include both a statute and administrative regulation) requiring a pharmacy to be open to provide such services is probably designed to accomplish a purpose falling within the scope of the police power. Generally, regulations governing business have been concerned with requiring a business to be closed when it would otherwise be open. A common example are regulations establishing closing hours for saloons or places where intoxicating liquors are sold. Requiring any business to be open when the market place dictates that it should be closed is different from the opposite requirement. On the one hand, a requirement that a business be closed during certain specified hours, generally, will not result in a pecuniary expenditure by the business being regulated. On the other hand, a requirement that a business, such as a pharmacy, be open during hours when it might otherwise be closed will result in a pecuniary expenditure, perhaps with no hope of recovering such an expenditure.

Serious questions concerning reasonableness are raised when a regulation imposes both a burden and an expense. If, under the circumstances, the expenditure required by a police measure is unreasonable, the measure

may amount to a deprivation of property without due process of law and just compensation. See, 16 Am.Jur. 2d, Constitutional Law §294 (1969).

Therefore, a regulation requiring pharmacies to be open when they otherwise would be closed will be subject to careful scrutiny. Such a regulation should bear a close relationship to the promotion of public health. Any statute not so designed might well be held unreasonable, particularly since it imposes both a burden and an expense.

Closely related to the questions discussed above are the limitations imposed by the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution. Although it was not intended to interfere with the proper exercise of the police power, it is established beyond question that every state power, including the police power, is limited by the inhibition of the Fourteenth Amendment. The due process and equal protection clauses require that the exercise of the police power be reasonable in character and be reasonably and rationally related to the promotion of the legitimate state interest at which the exercise of the police power is directed.

If the state interest being promoted is to make prescription services available at times and places when they are not presently available, then any regulation should reasonably promote making prescription services available at those times and places. Certainly, a regulation requiring a pharmacy in a mercantile enterprise to remain open at all times when its other departments are open is not reasonably related to promoting that purpose. The times when other departments are open has no direct correlation to the times when prescription services, not now being provided, are needed. Furthermore, areas where the large mercantile establishments do business, the larger cities within the state, also have hospitals which provide emergency prescription services.

Finally, and most importantly, if there is a need for broader prescription services, any regulation must be applied uniformly to all pharmacies within or without

mercantile establishments. A classification requiring only pharmacies within mercantile establishments to provide such services has no rational relationship to any legitimate state interest. Therefore, any regulation requiring only such pharmacies to be open when they might otherwise be closed, would almost certainly be unconstitutional.

It ~~is my opinion that~~ a regulation might constitutionally require a pharmacy to be open when it might otherwise be closed. However, any such regulation must be carefully calculated to promote the purposes for which it was enacted. Additionally, such a regulation must be uniformly applied to all pharmacies in the State of Nevada.

Question No. 2: Does the Nevada State Board of Pharmacy have the Power to Regulate the Opening and Closing of Pharmacies Under Existing Statutes?

Opinion

NRS 233(B).040 provides:

> "Unless otherwise provided by law, each agency may adopt reasonable regulations to aid it in carrying out the functions assigned to it by law and shall adopt such regulations as are necessary to the proper execution of those functions. If adopted and filed in accordance with the provisions of this chapter, such regulations shall have the force of law and be enforced by all peace officers. In every instance, the power to adopt regulations to carry out a particular function is limited by the terms of the grant of authority under which the function was assigned."

Based upon the foregoing statute it would appear that the regulatory power of the Nevada State Board of Pharmacy is limited by the terms of Chapter 639 of the Nevada Revised Statutes, which is the grant of authority under which the Pharmacy Board's functions have been assigned.

NRS 639.070 General powers and duties of board. The board shall have power:

"1. To make such bylaws and regulations, not inconsistent with the laws of this state, as may be necessary for the protection of the public, appertaining to the practice of pharmacy and the lawful performace of its duties.

"2. To regulate the practice of pharmacy.

"3. To regulate the sales of poisons, drugs, chemicals and medicines.

"4. To regulate the means of storage and security of drugs, poisons, medicines, chemicals and devices.

"5. To examine and register as pharmacists applicants whom it shall deem qualified to be such.

"6. To charge and collect necessary and reasonable fees for its services, other than those specifically set forth in this chapter.

"7. To maintain offices in as many localities in the state as it finds necessary to carry out the provisions of this chapter.

> "8. To deposit its funds in banks or savings and loan associations in the State of Nevada.
>
> This section does not authorize the board to prohibit open-market competition in the advertising and sale of prescription drugs and pharmaceutical services."

Arguably, the State Board of Pharmacy has the power to regulate the opening and closing of pharmacies pursuant to the grant under NRS 639.070, subsection 1, and subsection 2. With respect to a regulation pursuant to subsection 1, that is, a regulation necessary for the protection of the public appertaining to the practice of pharmacy, it would appear that the power of the Board is circumscribed by the requirement that the regulation be necessary for the protection of the public. Certainly, strong facts would be required to show that it was necessary for the protection of the public for the Board to regulate the hours pharmacies are open.

It is questionable whether the grant of authority under NRS 639.070, subsection 2, intended to include within it the right to regulate the hours when a pharmacy must be open. Rather, it appears to give the Board the right to regulate the manner in which pharmacies are conducted when they are open.

The final sentence of NRS 639.070 certainly leaves the Board's power in this regard suspect. The Board cannot "prohibit open market competition in the sale of prescription drugs and pharmaceutical services." Irrespective of any showing that there is a necessity for broader prescription services in order to protect the public, it is certainly true that a requirement that pharmacies within mercantile establishments be open at all times when other departments are open, might have a significant effect upon open market competition in the sale of prescription drugs and pharmaceutical services. The Committee has undoubtedly heard testimony that large mercantile establishments have the ability to make

prescription drugs and pharmaceutical services available to the public at prices lower than the small drugstore. The Committee has also heard testimony that if mercantile establishments had the ability to open and close their pharmacies as the market place dictated, they could continue to supply those prescription and pharmaceutical services at prices lower than if they do not have that flexibility. Certainly, any regulation by the Board requiring a pharmacy to be open when the market place dictates that it should be closed would be suspect under the provision prohibiting the Board from passing regulations that prohibit open market competition in the sale of prescription drugs and pharmaceutical services. Therefore, it is our opinion that the Board's power to regulate the opening and closing of pharmacies within mercantile establishments or any pharmacies is not upon firm ground.

Question No. 3: If There is a Valid Delegation of Power to Regulate the Opening and Closing of Pharmacies to the State Board of Pharmacy, Would Legislative Action be on Firmer Constitutional Ground Than Would Regulation by the State Board of Pharmacy?

Opinion

As was pointed out above, legislative action would certainly be on firmer ground because it is questionable that there has, in fact, been a valid delegation of power to the Board in this regard.

Assuming, however, that there has been such a delegation, legislative action might be on firmer constitutional ground than Board action. If a police measure is to be upheld as embodying a means appropriate to the accomplishment of a particular purpose for which the police power may be exercised, the measure must tend toward the accomplishment or promotion of such purpose in a degree that is perceptible and clear. The effect and professed purpose must substantially agree and coincide and there must be a bona fide exercise of the reasonable discretion

of the legislative department of government. The mere assertion by the legislature that a statute, or in this case a regulation, relates to the public health, safety or welfare does not in itself bring that statute within the police power of a state. There must always be an obvious and real connection between the actual provisions of police regulation and its avowed purpose, and the regulation adopted must be reasonably adapted to accomplish the end sought to be attained. See, 16 Am.Jur. 2d Constitutional Law §280 (1969). The discretion of the legislature in determining what the interests of the public require and what measures and means are reasonably necessary for the protection of such interests is large. On frequent occasions, such as in this case, the validity of a regulation may depend upon the existence or nonexistence of certain facts. In this case any regulation requiring a pharmacy to be open when it would otherwise be closed requires a finding such is necessary to promote public health. A finding that there is a need for such services is also required. As a general rule it may be stated that the determination of facts required for the proper enactment of a regulation is for the legislature alone and that a presumption as to the correctness of its findings is usually regarded as conclusive unless an abuse of discretion can be shown. Courts do not generally have jurisdiction or power to reopen questions on the findings of facts, although they may consider facts appropriate for judicial notice. However, neither the reasoning nor the rule apply to the acts of inferior legislative tribunals. Generally, when the power or jurisdiction of such an inferior board is made to depend upon the existence of a fact, its determination of the facts is not conclusive. Hence, the principle which accords the great dignity of conclusiveness to determinations of the general legislature is not only not applied with respect to the proceedings of inferior legislative tribunals but is distinctly inapplicable. See, 16 Am.Jur. 2d Constitutional Law, §170 (1969). Therefore, a legislative finding that it is necessary to promote the public health that pharmacies be required to be open during certain hours would certainly be on firmer constitutional ground than would a State Pharmacy Board regulation.

General Remarks.

The State Board of Pharmacy relying on its interpretation of statutes presently in force has taken several positions which have resulted in a requirement that pharmacies within mercantile establishments be open during all of the time that other departments are open. The Board's rationale stems from several statutes. The first is NRS 639.012. That section provides:

> "Pharmacy means and includes every store, or shop where drugs, controlled substances, poisons, medicines or chemicals are stored or possessed, or dispensed or sold at retail, or displayed for sale at retail, or where prescriptions are compounded or dispensed." /Emphasis added/.

Based upon this definition, the Board has taken the position that the entire mercantile establishment (all of the departments within a single structure) constitutes the "pharmacy", since it is a "store" or "shop" where drugs, controlled substances, etc. are stored or possessed, etc. Therefore, the Board has said that the licensed pharmacy is the entire store. The definition, according to the Board, does not recognize the fact that a pharmacy may be an area within a particular store or shop.

NRS 639.220 provides:

> "1. Except as provided in subsection 2, a registered pharmacist, physically present therein and actively engaged in the operation thereof, shall be in charge of every pharmacy, or any other store, dispensary, laboratory or office licensed as a pharmacy, except a duly licensed hospital, when it is open for business for:
>
> (a) The sale, dispensing or compounding of drugs, medicines or chemicals; or

(b) The dispensing or compounding of prescriptions.

"2. The requirement of subsection 1 shall not prohibit the board from authorizing the absence of the registered pharmacist each day for a total period of not to exceed 2 hours for the purpose of taking meals if:

(a) Such registered pharmacist is on call during such absence;

(b) A sign, as prescribed by regulations of the board, is posted for public view in the pharmacy indicating the absence of the pharmacist and the hours of such absence; and

(c) All drugs, poisons, chemical and restricted devices are kept safe in a manner prescribed by regulations of the board.

The authorization required from the board shall be in writing and shall be retained in the pharmacy, available for inspection."

The position of the Board is that since the entire premises is licensed as a pharmacy, any time any department within the premises is open, the pharmacy must be open for business for the sale, dispensing or compounding of drugs, medicines or chemicals or the dispensing or compounding of prescriptions. Although, I cannot agree with the Board's interpretation of NRS 639.220, because I feel the statute intends to allow a closing of the pharmacy department while other areas of the store are open, mercantile establishments have had to either comply with the Board's interpretation or engage in costly and extended litigation.

NRS 639.263 provides:

> "No registered pharmacist or owner of any pharmacy licensed under the provisions of this chapter may make, disseminate or cause to be made or disseminated before the public in this state, in any newspaper or other publication, or any advertising device, or in any other manner or means whatever, any statement concerning prices or services, professional or otherwise, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be false or misleading."

NRS 639.280 provides:

> "No store, shop, area, place or premises shall have upon it or displayed within it or affixed to or used in connection with it any sign or advertising:
>
> "1. Bearing the words 'Pharmacist,' 'Pharmacy,' 'Apothecary,' 'Drug Store,' 'Druggist,' 'Drugs,' 'Medicine,' 'Medicine Store,' 'Drug Sundries,' 'Remedies,' 'Prescriptions,' 'Medications' or 'Medicinals,' or any word or words of similar or like import; or
>
> "2. Where the characteristic symbols of pharmacy are exhibited; or
>
> "3. Where the characteristic prescription sign Rx or similar design is exhibited,
>
> unless there is within the store, shop, area, place or premises a pharmacy licensed pursuant to the provisions of this chapter." /Emphasis added/.

It has been the Board's position that the public is being misled and that NRS 639.280 is violated when a store uses any of the words set forth in NRS 639.280, unless there is an open pharmacy within the premises. Again, I cannot agree with this interpretation, because such an interpretation would require all drug stores to either take down their signs when closed or remain open 24 hours a day. It should be noted that NRS 639.280 apparently recognizes the fact that a licensed pharmacy may be within a store, shop, area, place or premises and that therefore a separate area within such may be licensed. However, as has been pointed out above, such has not been the position of the Nevada State Board of Pharmacy.

I believe that it is imperative that the Nevada legislature take whatever steps are necessary to clarify these problems and to eliminate any question regarding the proper interpretation of the statutes. It is therefore our position that NRS 639.012 should be amended so that it will read as follows:

> "Pharmacy means and includes every store, shop or <u>area within a mercantile establishment</u> where drugs, controlled substances, poisons, medicines or chemicals are stored or possessed, or dispensed or sold at retail, or displayed for sale at retail, or where prescriptions are compounded or dispensed."

This definition recognizes that a "pharmacy" may be an area within a store or mercantile establishment and would recognize that such an area may be licensed rather than requiring the entire store to be so licensed. Licensing of such areas would allow them to be operated according to the economic dictates of the market place.

Such legislation would not affect the need for broader prescription services one way or the other. To date there has been no evidence presented as to an apparent public need to keep pharmacies open when economics dictate they should be closed. There has been no evidence as to a need for pharmacy services at places and times other than

when they are currently being provided. Additionally, if any such need were shown and developed, any legislation along those lines could certainly and would certainly apply to all pharmacies, whether they be an area within a department store or without a department store. It would still allow for the operation of the pharmacy according to the dictates of the legislature and the market place. For example, the legislature might require pharmacies to be open from 9:00 a.m. to 7:00 p.m. on Sundays. However, it might be that it is economical for a department store, save and except the pharmacy, to be open from 9:00 a.m. to 10:00 p.m. on Sundays. Clarification in this regard would allow the pharmacy to of course comply with the legislature's requirements, but then allow it to close when the legislature found that there was no need for it to be open. Still, the other services provided by the department store could remain open until 10:00 p.m.

It has been contended that the public is misled when an open mercantile establishment has its pharmacy closed. This problem, if it is a problem, can be avoided by requiring exterior and interior signs notifying the public as to the hours when the pharmacy area within the store is, in fact, open. This type of narrow regulation should eliminate the problem while at the same time allowing the pharmacies to be operated according to the economic dictates of the market place.

Finally, amendments in this regard will undoubtedly avoid needless litigation, such as is taking place in Las Vegas, Nevada wherein the Board has been enjoined from licensing enclosed pharmacies within department stores. No one, either the State, the public or department stores, is benefited by litigation that may be avoided by reasonable legislation clarifying what is or what is not a pharmacy, clarifying a manner in which areas within stores may be licensed as a pharmacy and further clarifying the powers the Board has with reference to dictating the hours when such pharmacies must be open.

It is therefore respectfully requested that this Committee remedy the problems that have been outlined and that legislation be passed during this session that will benefit all concerned.

Sincerely yours,

VIRGIL H. WEDGE

VHW/rlk

450.430 sub-paragraph 1 should be revised to read as follows:

Privileges of Physicians and Allied Health Professions; Rights of Patients.

1. In the management of the public hospital no discrimination shall be made against physicians licensed under the laws of this state or duly licensed practitioners of the allied health professions, and all such physicians and practitioners shall have privileges in treating patients in the hospital in accordance with their training and ability; provided that, practitioners of the allied health professions shall not be members of the staff of physicians as defined in NRS 450.440 and shall be subject to such bylaws, rules and regulations as are set forth under NRS 450.160 by the Board of Hospital Trustees.

~~Proposed amendment to NRS 450.010 creating~~ two new sub-sections 2 and 3:

COUNTY HOSPITALS

450.010 DEFINITIONS.

2. "PHYSICIAN" defined. For the purposes of this chapter "physician" shall be deemed to mean one who engages in the practice of medicine as defined in NRS 630.020, or osteopathy as defined in NRS 633.010 sub-paragraphs 1-4, inclusive.

3. "ALLIED HEALTH PROFESSIONS" defined. For the purposes of this chapter "allied health professions" shall be deemed to mean the practice of dentistry, psychology, podiatry or chinese medicine as defined in NRS 631.090 sub-paragraph 1; NRS 641.020; NRS 635.010 sub-paragraphs 1 and 2; and NRS 634A.020 sub-paragraphs 1-7 inclusive, and sub-paragraph 9, respectively.

EXHIBIT H