MEMBERS PRESENT: Chairman Stewart
Vice Chairman Sader
Mr. Thompson
Ms. Foley
Mr. Beyer
Mr. Price
Mr. Malone
Mrs. Cafferata
Ms. Ham
Mr. Banner

MEMBERS ABSENT: Mr. Chaney (excused)

GUESTS PRESENT: Vern Calhoun, Dept. of Law Enforcement Assistance
Gene Combs, Dept. of Law Enforcement Assistance
Arnold Ginsborg, Dept. of Law Enforcement Assistance
Bob Evans, UNR Intern (Rusk)
Colleen Dolan, UNR Intern (Stewart)
Michael A. De le Torre, Dept. of Law Enforcement Assistance
R. W. Bunker, Gaming Control Board
Larry Ketzenberger, LV Metro Police Dept.
Patty Becker, Deputy Attorney General, Gaming Division
Bill Isaeff, Deputy Attorney General, Central Office
Chris Broderick, Review Journal
Bruce Laxalt, Washoe County District Attorney
Cal Dunlap, Washoe County District Attorney
Cliff Young, NV State Board of Pharmacy
Frank Titus, NV State Board of Pharmacy
Brian Randall Hutchins, Attorney General Dept. of Law Enforcement Assistance
Bill Macdonald, Humboldt County District Attorney
Richard G. Pugh, NV State Medical Association
Georgia Massey, Nevada Insurance
Martin Griffith, NV State Journal
Kevin Reeves, UNR Intern (Sader)
Pat Gothberg, NV Nurses' Association
Mr. Small, Carson City District Attorney
Maran Razim, UNR Intern (Foley)
Russ Nielsen, UPI
Sam Stern, NFT

Chairman Stewart called the meeting to order at 8:05 a.m. He noted the Committee would consider AB 54 first, and asked if someone from the Attorney General's Office were present, and if so would he please come up and explain the bill to the Committee. Mr. Isaeff came forward.

AB 54: Authorizing certain subpoenas duces tecum.

Mr. Isaeff stated that Attorney General Brian considers this bill to be of considerable importance in the legislation to be considered by the Judiciary Committee during this session of the Legislature. The bill would authorize the Attorney General, in Section 2, in any civil or criminal investigation, to cause to be issued a subpoena commanding a person who is in the possession of books, papers, documents or other objects described in the subpoena, to make those available for examination and reproduction by the Attorney General or, as appropriate, the District Attorney if either of those individuals has reasonable cause to believe that the person has knowledge of or is in possession of those materials.

Mr. Isaeff further noted that the office of the Attorney General engages in a great many investigatory efforts in the civil and the criminal area. It has been their practice, in the past, to seek voluntary compliance with the production of books, papers and documents because often the success--or lack of success--of an investigation will turn on whether or not books and papers relevant to the issues of the investigation can be obtained. Often, people do cooperate and present these items, but in other instances there is a lack of cooperation. In the latter case, an investigation can be stymied due to a lack of documents which could prove critical to a case; e.g., a fraud case.

Mr. Isaeff explained that there had been a similar bill before the 1979 Legislature, but that bill did not contain a key provision contained in AB 54: the second paragraphs of both Sections 1 and 2. Neither the Attorney General nor the District Attorney would have the power to issue the subpoena of his own volition; instead there is the built-in safeguard which requires judicial review. If the District Judge, after having reviewed the affidavit required by the statute to be filed by the attorney, is satisfied with the grounds presented therein, and believes that, in fact, the attorney has reasonable cause to believe the person to be subpoenaed has knowledge of or is in possession of the materials sought, the District Judge shall issue the subpoena.

Mr. Isaeff went on to say that it is very important to alleviate fears among members of the public that this would simply be a device for the Attorney General or the District Attorney to go on some kind of wild fishing expedition into the private rights of citizens. This process of going to the District Courts

is a time-honored one with respect to the issuance of search warrants, and one with which the attorneys are well acquainted.

Mr. Isaeff opined that this bill would provide the Attorney General and the District Attorneys with a valuable new tool, one which many people believe they already have. It is an authority which both of these offices need in Nevada. It has the safeguards of immediate and initial judicial review of the application for this subpoena. In addition, in the office of the Attorney General, it will be suggested, should this bill become law, that each of these applications for subpoena be personally approved by the Attorney General himself, or the Chief Deputy Attorney General. This would further insure the public's belief that this is not being misused, but that it is being applied only upon review at the highest levels within the Office of the Attorney General, to be followed by the judicial review called for in the statute. This would mean that the various Deputy Attorneys General would not necessarily have this power independent of the Attorney General himself.

Mr. Sader asked if this investigation subpoena power was given to other Attorneys General or law enforcement agencies in other states. Mr. Isaeff did not know. Mr. Sader then asked if the bill draft had been based upon similar laws in other states. Mr. Isaeff did not know what the basis for the model was; the bill had not been drafted in the Attorney General's Office.

Mr. Banner wondered if this bill might require newspaper reporters to produce documents. Mr. Isaeff noted that there was a separate Nevada newspaper shield statute. He added he wasn't sure how this bill would interact with that law, which provides a substantial amount of protection for newspapers, their reporters, their notes, etc. He did not believe it was the intent of AB 54 to in any way set aside the shield provisions of Nevada law.

At Mr. Price's request, Mr. Isaeff offered to obtain and provide the Committee with information concerning which other states, if any, grant this power to their Attorneys General. Mr. Price also wondered how the Attorney General had operated to date without this ability, and why the issue was being raised now. Mr. Isaeff answered that the Attorney General and District Attorneys had operated with considerable difficulty up to now, and that the issue had been raised in 1979, but at that time the bill did not contain the provision requiring the attorneys to go to court. Those provisions have been added now to meet basic objections that were raised two years ago.

Mr. Stewart asked what happened when they were seeking books and records from a person who was probably the subject of a criminal investigation. Mr. Isaeff noted that because an affidavit has to be filed, and an application made, and a subpoena actually issued from the court, he would suspect that

any person to whom such a subpoena was issued would have the same opportunities to move to quash that subpoena upon reasonable and legal grounds as any other individual would have with respect to a subpoena issued in a typical civil action. Mr. Stewart asked if that was spelled out anywhere. Mr. Isaeff said it was not expressly so stated, but he believed there was authority for that in the Nevada rules of civil procedure. Mr. Stewart then raised the question of who actually issued a subpoena: a judge or a clerk. He cited line 11 of Section 1 of the bill and pointed out that this requires the magistrate to issue the subpoena. Mr. Isaeff agreed this line inferred that the District Judge must issue the subpoena, and that it was typical civil procedure for the court clerk to issue the subpoenas, but he didn't know who would issue the subpoena in criminal actions.

Mrs. Cafferata then mentioned that health care facilities were under investigation and asked what kind of records would be scrutinized in this instance, patient records? Mr. Isaeff noted that the Attorney General's Office currently has, in one small area, fairly ready access to patient records under the provisions of Chapter 629, dealing with medical malpractice investigations ordered by the Board of Medical Examiners. This particular investigation cited by Mrs. Cafferata involves other types of records dealing with health care facilities.

Mr. Stewart then pointed out that the top line of page 2 requires that the subpoena clearly identify the materials to be produced for inspection and reproduction and noted this is not the case in Section 1. Mr. Isaeff could not explain this discrepancy, could not see that the Attorney General would have any problem with that language being included, and added one would naturally expect the subpoena to clearly identify the materials to be produced.

Mr. Beyer reiterated, and Mr. Isaeff confirmed, that up until now the Attorney General's Office has not had access to books, papers and documents in any criminal or civil investigations except on a voluntary basis. He noted that a number of the state licensing boards do have subpoena power to call people and documents to an actual hearing. Mr. Isaeff added that this bill would grant a pre-hearing subpoena authority to be able to actually conduct the investigation which would lead to the decision as to whether or not there would even be a hearing in the matter.

Mr. Price stated that the real issue was the authority to issue a subpoena on materials prior to anyone being charged with anything, and he wondered who would pick up the costs of the company or individual who had to supply these documents, especially if the investigation resulted in no charges being made. Mr. Isaeff replied that in the past, when voluminous materials have been requested, these have sometimes been paid for by the State, sometimes run off under the supervision of

the Attorney General's Office, and sometimes simply provided to the Attorney General with the understanding he would duplicate them and return the originals.

Mr. Price then asked what happens to the copies of those documents held by the Attorney General in cases where these are considered, by the company or individual, to be confidential and/or the investigation does not result in any charges; is this covered by any statute. Mr. Isaeff was under the impression that these documents simply remained in the file which had been opened with respect to that particular investigation; he was not personally aware of those documents ever having been returned or subsequently destroyed. He added that the Attorney General's Office does not destroy files, they are maintained back many, many years. Mr. Price then asked if some of these documents might become available through federal statutes. Mr. Isaeff noted that the Freedom of Information Act does not apply to Nevada government agencies, it applies strictly to federal government agencies.

The next person to testify in favor of AB 54 was Vern Calhoun, Chief of the Division of Investigations and Narcotics, Department of Law Enforcement for the State of Nevada.

Mr. Calhoun explained that during the past year he has discussed with numerous prosecutors, police chiefs and sheriffs throughout the state common problems which need resolution. This bill is felt to be a needed tool for these officers to continue working.

During the past year or two, information that was previously readily available to law enforcement officers has been cut off. He cited the confidentiality of phone company records as an example. He pointed out that the only way to get this type of information at present is through a subpoena. If the particular county in question has a Grand Jury in session, a Grand Jury subpoena can usually be obtained. In many of the smaller counties, however, there is no Grand Jury in session, except on rare occasions, and unless the information is offered on a voluntary basis it cannot be obtained. This is just one aspect of why this bill is needed.

Bank records, medical records, etc. have several confidentiality clauses to them, and this bill would not affect this aspect; however, in many cases access to documentary information is needed prior to an arrest.

Mr. Calhoun pointed out that most federal agencies have subpoena power, and that an administrative subpoena can be issued right out of a supervisor's office. However, if the State wanted to get the same information, it could not, unless the investigation involved federal authorities, who could then obtain it for the State investigators. This does not happen very often.

The Department of Law Enforcement believes AB 54 to be an important piece of legislation and to be needed as an investigative tool. It is not an attempt to encroach on the privacy of any citizen; on the other hand there are investigations in which this type of information can be critical.

Mr. Sader clarified that the federal Drug Enforcement Agency has this power prior to an arrest. Mr. Calhoun reiterated this, adding that it must be in connection with an ongoing investigation; it cannot be done on a whim. Mr. Calhoun explained to Mr. Sader that a federal magistrate did not have to issue the subpoena, although it is handled through the U.S. Attorney's Office.

Mr. Malone then asked why it had become more difficult to obtain information which had previously been available. Mr. Calhoun said it was due mainly to the large number of civil suits against various companies for having given out such information; these companies are now continually tightening their controls over this type of information. Mr. Calhoun added that these companies are actually quite willing to provide this information to law enforcement agencies, but they want to be protected from civil suits.

Mr. Price then questioned whether there would be a constitutional problem involved here, but noted that given the Freedom of Information Act, there probably was not. Mr. Calhoun noted that several states already have laws similar to AB 54: California, Arizona, New Mexico, Utah,...

Mr. Beyer then asked if there was any difference between private or personal records and public records; e.g., would phone company records be considered public? Mr. Calhoun said that at one time they were probably considered public, but that in reality they are probably private.

Next to testify was Cal Dunlap, Washoe County District Attorney. He noted that he both supported and opposed AB 54 in some respects.

Mr. Dunlap explained that in each of several of the past Legislative sessions there has been legislation introduced which intended to amend and diminish the powers of the Grand Jury. AB 54 would give some of these powers to the Attorney General and/or the District Attorneys. Once this bill is passed, it is possible subsequent legislation will diminish the powers of the Grand Jury, as has been sought in the past. While there are small counties which need this type of power because they don't have a regularly sitting Grand Jury and cannot obtain the information through investigation that those counties with Grand Juries can obtain, and while this would be a useful tool in the fight against crime, perhaps a better approach would be to limit this power to those areas where there are no Grand Juries

sitting, and in the case of the Attorney General's Office, to grant these subpoena powers in limited areas in which they presently have responsibility.

Mr. Dunlap stated he has some reservations concerning the language of "investigations" in general "in any civil or criminal investigation". This could be interpreted to expand the areas of responsibility of the Attorney General, and this could lead to disagreements in future legislation. The primary law enforcement agencies, in Mr. Dunlap's opinion, are the counties; the Attorney General should handle certain key areas involving State problems and concerns, and should be available to be invited in by the District Attorneys of the respective counties when the counties see fit or when the counties need assistance from the Attorney General.

Mr. Dunlap stated that the concept of this bill is good, provided there is no diminution of the powers of the Grand Jury. He added that other jurisdictions have empowered a judge or magistrate to determine probable cause and issue subpoenas. He noted, however, that this legislation could be interpreted to diminish the presently existing powers to use the subpoena duces tecum and to require a hearing before a magistrate. He recommended that the wording be changed to avoid this.

Mr. Dunlap also expressed concern that the issuance of a subpoena by a judge or magistrate is a public hearing, since the media can attend all judicial proceedings. He feared a request for a subpoena in a sensitive investigation could receive press play, thus jeopardizing the investigation. For this reason, Mr. Dunlap felt the Grand Jury proceeding to be preferable. He added, however, that there is a gap in the powers law enforcement officers currently have for obtaining various records, so addition of this bill to those powers already held would be beneficial, with the caveats that the powers of the Attorney General not be expanded, and that the statute be properly worded.

Mr. Banner asked if passage of this bill might result in a local strike force similar to the federal strike force. Mr. Dunlap did not see any wholesale strike force activity resulting from this bill. He added that no strike force has unlimited powers. He said there is definitely a need for this legislation in order to facilitate investigations.

Regarding Mr. Dunlap's comment concerning press involvement, Mr. Price asked if such an occurrence might not forewarn an individual that he is being investigated. Mr. Dunlap confirmed this as being a definite possibility. Next Mr. Price asked why this did not happen at the federal level. Mr. Dunlap replied that the press does not monitor this type of court proceeding as closely at the federal level as it does at the local level. Mr. Dunlap reiterated that in such instances where confidentiality is advisable, issuance of the subpoena by the Grand Jury is preferable, since in a Grand Jury

investigation the District Attorney does not even file a subpeona duces tecum with a clerk.

Mr. Price further questioned whether appearance before a Grand Jury as opposed to before a magistrate might require a less precise affidavit of probable cause, given the supposed ease with which attorneys manipulate juries. Mr. Dunlap said he wished he could control a Grand Jury so easily. He went on to note that in some large jurisdictions the Grand Jury proceeding has been abused; however, his experience with Grand Juries has been that the selection process results in a wide variety of people, that it might be possible to fool a jury on a one shot basis, but these people will catch on very quickly, and then your future effectiveness has been diminished. Although it is possible a judge might be more legally precise than a Grand Jury in some instances, this too can result in problems; e.g., a case can be felt to be ready for presentation to a Grand Jury for indictment, wherein it is legally clear to both the attorneys and the judge that there is probable cause, yet the Grand Jury can have some practical problem and not indict.

Mr. Stewart then asked if obtaining a search warrant was a procedure which was made public. Mr. Dunlap stated it could be made public--the seach warrant itself is public, although they aren't advertised--it is simply a matter of checking court records. The affidavit is kept confidential at the outset, so the details of the investigation are not known, but the search warrant, and also the affidavit if pushed, are public record unless good cause is shown for keeping them confidential.

Mr. Stewart wondered if the subpoena should be treated any different from a search warrant. Mr. Dunlap noted that there was a difference involved: the type of investigation needing a subpoena involves a person's reputation. Mr. Stewart replied, and Mr. Dunlap agreed, that a person's reputation is also involved in a search warrant.

Mr. Stewart pointed out that the Attorney General has responsibility for narcotics investigations, gaming law violations, and a host of civil responsibilities with all the state agencies, etc. He failed to see how AB 54 gives the Attorney General any authority to step out of his jurisdiction. Mr. Dunlap agreed this was not the intent of the bill, however he is concerned that Section 1 states the Attorney General may, in "any" civil or criminal investigation... He believes this to presuppose the Attorney General has an area of responsibility and/or is empowered to investigate in a particular area, but this is not stated explicitly. Mr. Dunlap suggested wording to the effect "in any civil or criminal investigation in which they are empowered to act".

Mr. Stewart pointed out that the same problem exists with the District Attorney's power as noted in Subsection 2, and suggested elimination of this subsection, which would cause the District

Attorney to use a Grand Jury. Mr. Dunlap said his preference was for Grand Jury proceedings, however, small counties needed the authority of Subsection 2 because in many instances it is an unnecessary expense to impanel a Grand Jury if only a few records in a minor case are needed, and sometimes a judge won't do it. Thus, it would be useful as an additional power, but it should not diminish the Grand Jury's powers.

Mr. Sader wanted to know what was needed as grounds to obtain a subpoena from a Grand Jury prior to an indictment. Mr. Dunlap explained that basically, nothing was needed. The attorney simply discusses the range or subject matter of the investigation with them, and the Jury then authorizes the attorney to go forward and issue subpoenas to present the necessary evidence. He added that anyone receiving such a subpoena can go to a judge and seek to have this subpoena quashed, and have a hearing on it, etc. so even here it is not an unfettered power.

Mr. Sader then asked if it was necessary to try to prove to the Grand Jury that there is cause to believe that a crime is being committed. Mr. Dunlap said it was not necessary because there are two functions of a Grand Jury: 1) the investigation and presentation of matters for which an indictment is being sought or recommended; i.e., criminal matters; and 2) the inquiry into matters of concern as far as the county's health, safety and welfare is concerned. The latter is under a separate section and is more of a civil, quasi criminal, investigative function which involves things like undue influence, public corruption, etc.

Mr. Sader noted, and Mr. Dunlap confirmed that, in the case of a search warrant, it is necessary to provide evidence of probable cause. Mr. Dunlap pointed out, however, that this is in comtemplation of a criminal case ordinarily, and that search warrants are not issued for an inquiry into the public health, safety and welfare unless there has been a violation of a statute.

Next Mr. Sader noted that this legislation would allow a subpoena to be issued whether or not there was a criminal investigation, or any sort of public wrongdoing, etc.; it only requires that the person have the documents. He added there is no provision of any kind to substantiate why there is an investigation underway: whether civil or criminal, whether there has been wrongdoing to an individual, to the State, etc. Mr. Dunlap replied that was what he meant by noting there was a problem with the wording: there are no limitations in the statute.

Mr. Sader then asked if Mr. Dunlap felt there should be some showing of probable cause for directing an investigation towards a person, and if so, what grounds should have to be presented. Mr. Dunlap agreed a showing of probable cause was desirable and that this was implied in the bill, though not specifically

stated. He added that it would be extremely difficult to specify what grounds should be presented in a civil case, and recommended this be left to the discretion of the judge. He felt this was covered in the bill by the wording: "If the district judge is satisfied with the grounds presented..." In a criminal case, probable cause would be grounds for issuance of a subpoena, but in the civil area determination of the grounds necessary should be left up to the judge.

Next to testify for AB 54 was Mr. Macdonald, District Attorney, Humboldt County. Mr. Macdonald noted that in some counties Grand Juries are seldom impaneled. He cited one case involving both Humboldt County--which has a Grand Jury--and a county which did not have a Grand Jury, noting it was up to Humboldt to issue the subpoena to obtain telephone documents in the other county. If Humboldt County had not had a Grand Jury, it would have been impossible to obtain these documents.

Mr. Macdonald went on to say that such records have been necessary in many instances, even in murder cases, and the ability to obtain them is an absolute necessity. He added that there are times when Grand Jury proceedings can be cumbersome, and he therefore felt that the administrative subpoena is an excellent tool that has long been needed.

Mr. Macdonald explained that there are two types of administrative subpoenas: 1) one similar to the ones issued by the U.S. Attorney, which can be issued without review or approval by anyone, and 2) the one requiring judicial review, be it by a municipal magistrate, justice of the peace, or as in this case, a district judge.

Mr. Macdonald cited an example outside of the criminal area where there is a problem: one of the duties of the Attorney General and the District Attorney is to assure that the families "with the means to do so" pay for hospitalization in public hospitals, and there is little way for this to be determined without access to private documents.

Mr. Macdonald went on to note that with respect to search warrants, some communities do not permit search warrants to become public record, as such, until after the criminal charge is filed. Mr. Stewart asked if Nevada Statutes addressed this question. Mr. Macdonald did not believe there was any mention of it, but he wasn't certain.

Mr. Beyer then asked which counties did not have Grand Juries. Mr. Macdonald did not have that information, but offered to provide it to the Committee at a later date.

Mr. Beyer then asked if, as noted by Mr. Macdonald in his sample case, it was possible for one county to request another county's Grand Jury issue a subpoena. Mr. Macdonald said this could only occur if both counties were involved in the investigation; i.e.,

the crime had been committed in both counties, by the same people, etc. He added that a search warrant must be issued by the magistrate in the county where the search is to be conducted.

There was no further testimony on AB 54, so Chairman Stewart closed the public hearing on it.

At this point Chairman Stewart noted that the Committee was honored to have Senator Young present at the meeting, and he welcomed him.

There was a fifteen minute recess, and the Committee reconvened at 9:15 a.m. to hear testimony on AB 53.

AB 53: Amends certain provisions relating to controlled substances and dangerous drugs.

Mr. Calhoun of the Division of Investigations and Narcotics testified in favor of this bill. Mr. Calhoun pointed out that one of the statutory responsibilities of the Division involved the Controlled Substance Act and the Schedule pharmaceutical products, and that over the past few years the Division has come across numerous technical problems where charges have been dismissed because of loopholes in the Controlled Substance Act. This bill is an attempt to close some of those loopholes. Mr. Calhoun then introduced Mr. Ginsborg, a senior investigator as well as a registered pharmacist for the State.

Mr. Calhoun went through each section of AB 53, noting those changes the Division would like to see made, and the reasons for these changes. See EXHIBIT A.

Following are questions and comments raised or made by the Committee members concerning these proposed amendments:

Page 1, lines 3 through 5: Mr. Stewart asked if there was a requirement to report thefts to local agencies. Mr. Calhoun said thefts are supposed to be reported to the Pharmacy Board and to the federal Drug Enforcement Administration. In reply to another question from Mr. Stewart, Mr. Calhoun said that it is desirable that such thefts be reported immediately, even though the Division realizes that detailed information may not be available until a later date because of the need to verify inventories, etc. in order to determine exactly what was taken.

Page 2, lines 21 through 23: Mr. Sader asked if this wording would also allow veterinarians, podiatrists, and dentists to prescribe controlled substances to individuals under their care. Mr. Calhoun noted that was the reason for the use of the term "practitioner". Mr. Sader asked if the restrictions pertaining to being under a practitioner's medical care affected veterinarians; i.e., did dogs and cats come under the term "person" under medical care. Mr. Calhoun offered to research this question and get back to the Committee on it.

Mrs. Cafferata then asked for clarification as to whether or not nurses are considered to be practitioners and can give drugs. Mr. Calhoun said nurses currently are doing this under a doctor's direction and under very strict controls. This is covered in the statutes.

Mr. Price questioned the need for the words "under a doctor's care", since as soon as the doctor prescribes medication one would consider this to be under his care. Mr. Calhoun noted this portion of AB 53 would cover those infrequent instances when a doctor writes prescriptions strictly for monetary gain, and in some cases doesn't even know the person for whom he is writing the prescription. Mr. Stewart said he understood "under medical care" to mean that a doctor has identified some illness for which he is treating the individual.

In reply to Mr. Price, Mr. Calhoun explained that this bill would not affect a prescription being telephoned in, as this is already regulated. He added that this bill only concerns controlled substances, and not all prescriptions are controlled substances.

Mrs. Cafferata then raised the question of whether an individual would be required to incur the medical expense of physically going to the doctor's office in order to be considered under his care. Mr. Calhoun felt this would be the case.

In reply to Ms. Ham, Mr. Calhoun explained that Angel Dust is an extremely strong tranquilizer occasionally used by veterinarians, and that therefore it was not an illegal substance. He added that Angel Dust found on the street, in most cases is not the diverted legal pharmaceutical product, but a manufactured illicit substance.

In reply to Mr. Beyer, Mr. Calhoun said he did not feel AB 54 would affect AB 53, since by statute the Division already has access to those records concerned with controlled substances. These records are excepted from the confidentiality laws.

Page 2, lines 24 and 25: Fictitious prescriptions can mean an instance when someone steals blank prescription forms and completely fabricates a prescription, as well as the case where an individual alters a legitimate prescription.

Mr. Calhoun stated that diversion and illegal use of controlled substances, in terms of quantity is probably just as serious as with illicit substances, and in terms of danger to human life, 99% of the deaths caused by drug overdoses are by pharmaceutical products.

In reply to a request by Mr. Sader for further clarification of the meaning of "fictitious prescription", Mr. Ginsborg said it could mean for an illness that does not exist, for a person who is not a bona fide patient of the practitioner, for a person

other than the one presently in contact with the doctor, false names, false diagnoses, etc. He further noted that to the best of his knowledge this term is not defined anywhere in the NRS.

Mr. Price then suggested a definition of fictitious be added to the bill. Mr. Calhoun said the original version had this, and he felt Mr. Price's suggestion to be a reasonable one. He noted, however, that one would have to be careful not to outlaw what might actually be an oversight; e.g., a doctor misspells a patient's name because he was rushed, or a pharmacist forgets to write the person's address on the prescription, etc. Mr. Sader requested Mr. Calhoun submit proposed wording to cover this loophole.

To Mr. Malone's suggestion that the number of refills should also be restricted, Mr. Calhoun replied that Schedule II drugs cannot be refilled and the other Schedule drugs are limited to six refills in a given period.

Mr. Calhoun then summarized those changes in the bill being requested by the Division which were considered to be controversial. He noted that Chapter 216 of the NRS creates the Division of Investigations and Narcotics and specifically lists as one of their duties the enforcement of Chapter 453 and of the dangerous drugs laws; AB 53 is simply an attempt by the Division to obtain the authority to enforce Chapter 454, which contains the dangerous drugs laws. He related that it has occurred that at the time of the arrest of an individual for a 453 violation a 454 violation is also discovered; however the 454 violation is often thrown out of court because the statute does not specifically authorize the Division to enforce this Chapter.

Page 5, line 22: Mr. Calhoun said this is another controversial area. He noted that this line should actually read: "A prescription for Schedule II controlled substances must be written entirely by the issuing practitioner".

Page 1, lines 13 through 21: Mrs. Cafferata asked if these lines referred only to Schedule II or to all drugs. Mr. Calhoun said this section referred to the keeping of records and concerned all prescriptions for controlled substances; page 5, line 22 of the bill requires that the practitioner personally write out the entire prescription, but only for Schedule II controlled substances. He added that controlled substances are contained in Schedules II through V inclusive, and that they are defined by statute to be those drugs which have potential for abuse, are addictive, habituating, etc.

Mr. Price noted that the requirement for a doctor to personally write out a prescription presents major problems for busy doctors who are in the habit of having their nurses write out their prescriptions for them. He wondered if simply requiring the doctor's signature on the prescription might not suffice.

Mr. Calhoun explained that the majority of a doctor's prescriptions are not Schedule II drugs; that Schedule II drugs are hard narcotics, very strong and carefully controlled drugs, etc.; and that it is not unreasonable to require a doctor to give his personal attention to prescribing this type of drug.

Page 5, lines 33 through 37: Mrs. Cafferata asked how the Division would enforce this portion, which deals with prescriptions from two separate doctors. Mr. Calhoun explained that the compliance agents are continually working with the Pharmacy Board Inspectors, as well as going to the pharmacies to monitor such things. Thus, there are two ways of checking this. He added that, in most cases, the onus for disclosure would be on the individual, not on the physician.

Page 5, lines 8 through 11: Mr. Stewart asked Mr. Calhoun to explain the need for these lines. Mr. Calhoun noted that the intent of this section is to eliminate the pharmaceutical salesman from having controlled substances in his possession and giving them to practitioners. This is a result of the discovery that unlicensed salesmen--who have nothing to lose--are a great source of diversion of controlled substances. Oftentimes the stocks of these salesmen are unaccounted for, or else the salesmen state they have given samples of controlled substances to practitioners when, in fact, they have sold them on the street. The Division feels the traffic in controlled substances should be confined strictly between the manufacturer, wholesaler, retail pharmacy and/or the doctor. In reply to Mr. Stewart's question as to whether the same problem might exist with a common carrier, Mr. Calhoun noted that there are very strict regulations governing shipping, packaging, accountability, etc.

Page 4, lines 14 through 17: Mr. Stewart noted that as worded, this portion could be interpreted as making it illegal to pass any prescription for a controlled substance. He believed the intent is to make it illegal to pass as genuine any prescription that has been altered or forged, but it doesn't say that. Mr. Calhoun agreed to check on this with the bill drafters. Mr. Stewart asked him to also note that this language appeared again on page 6, line 43.

Page 7, lines 5 and 6: Mr. Stewart noted that the penalty listed is a misdemeanor. Mr. Calhoun noted that this is a new perspective aimed at a small number of pharmacists who might be filling prescriptions for profit rather than for professional reasons. Mr. Stewart wondered whether misdemeanor for such activity was a sufficient charge. Mr. Calhoun stated the Division felt it to be sufficient.

Page 7, line 37: Mr. Calhoun told Mr. Stewart this portion had been added by the bill drafter and he did not understand it. He noted that he had looked up NRS 453.331, and it appeared to be a penalty provision. He agreed to check on this with the bill drafters.

Page 7, line 45: Mr. Stewart asked why NRS 453.531 needed to be repealed. Mr. Calhoun explained that this was the general catchall misdemeanor violations, that these have now been spelled out and addressed individually, and that they have been previously defined as misdemeanors in the statutes.

Page 7, lines 12 and 13: Mrs. Cafferata asked what identification would be needed to purchase hypodermic devices. Mr. Calhoun said there was court precedence as to what is proper identification, and that generally this would consist of a driver's license or some similar document with the person's name on it. He said this did not signify a special document obtained from a doctor.

Next to testify on AB 53 was Senator Cliff Young, who was appearing on behalf of the Nevada State Board of Pharmacy, and Mr. Frank Titus of the Nevada State Board of Pharmacy.

Senator Young stated that this bill could cause problems for both the pharmacies and/or the physicians. He then went through those portions which, in his view, needed amendment.

Page 1, lines 12 through 21: The Board of Pharmacy feels there is no substantial merit to these provisions, which add a new layer to record keeping, and which impact most strongly on the pharmacists, since they maintain most of the records. Senator Young singled out line 19, and noted that the reason for administering or prescribing should be part of the confidential relationship between a patient and his physician, and this section violates that confidentiality. On line 21, regarding the date of each refill, this would not be a record problem for the pharmacies, but it would be for the physicians, except in the case of Schedule II drugs.

Senator Young also questioned the use of the term "practitioner". He said this term creates ambiguities and uncertainties because a "practitioner" is not only someone who can issue a prescription--a doctor, a dentist, a podiatrist and/or a veterinarian--but also a nurse--if she is certified by the Board of Nursing and the Board of Pharmacy--pharmacies, hospitals, and other institutions.

Page 2, lines 21 through 23: If this language is kept intact, Senator Young suggested that the record should indicate certain exceptions. He noted that in doctors' offices with multiple doctors, sometimes the same physician may not see the same patient; a doctor may be on a vacation and another doctor is covering for him; etc. Is that patient then under medical care and in the usual course of the doctor's professional practice? This is an ambiguity which should be cleared up and the record should indicate that the legislation, if kept the way it is, is not designed nor intended to impact unreasonably on these practices.

Page 2, line 19: Senator Young questioned this section, noting there could be exceptions to it. For example, if a person goes out of town to another institution for an examination and is issued a prescription, the physician may not wish to prescribe a large amount at one time, but would rather give the individual several prescriptions dated several days apart. He felt the statute should allow for such exceptions.

Page 3, line 5: Not only should this evidence be available for civil or criminal actions, but also for administrative proceedings, when the Board is conducting hearings on its own.

Page 3, line 7: The word "label" should be deleted; the name and address are sufficient. Otherwise this could impose a burden upon a pharmacy to furnish maybe two or three hundred labels to the investigating officer. The same is true with regard to affixing signatures of both the pharmacist and the investigator; the Board feels the initials would be sufficient, as in the extreme case, there could be perhaps two to four hundred of these prescriptions or documents that are taken into custody.

Page 3, line 9: The same is true for the time and date as for the labels and signatures; the Board feels the date alone would be sufficient and it would therefore be desirable to eliminate the words "time and" from this line.

Page 3, line 15: The Board feels that five working days would be more practical than three.

Page 4, line 16: The Board has the same question as raised by Mr. Stewart regarding passing of a prescription; this is also true on page 6, as noted by Mr. Stewart.

Page 4, line 9: There is question as to the meaning of "material fact". The Board feels it might be desirable to spell out that a material fact is one that is necessary or pertinent to the treatment of the practitioner or prescribing entity.

Page 4, line 27: If the person does not represent himself falsely, is he then outside the scope of the law? Again, this language should be clarified.

Mr. Price then asked what the procedure is for a new doctor to get set up with the various pharmacies for phoning in prescriptions, etc., as well as for filling out-of-state prescriptions. Mr. Titus explained that first of all, the doctor is registered with the Board of Medical Examiners. In order to prescribe any controlled substances in Nevada, however, the doctor must also register with the Board of Pharmacy, who gives him a controlled substances certificate, which is then forwarded to the federal government, and he then receives his federal certificate through them. Following this, the Board of Pharmacy sends out a list of all practitioners so registered to all the pharmacies in the

area. This is sent out on a quarterly basis. Should a pharmacy not have a particular doctor listed, the Board can verify for the pharmacy by phone.

Regarding the filling of out-of-state prescriptions, Mr. Titus said that, while this is currently being done, there are legal questions involved and the Board is looking into it.

Page 4, line 35: Again the word "practitioner" is inaccurate, as it would prevent, for example, a pharmacist from dispensing drugs persuant to a prescription to treat his own family. This could cause major problems in a small town.

Page 4, lines 45 through 50: Again the word "practitioner" causes problems; drug stores cannot take back drugs which have been prescribed and dispensed. Senator Young suggested the original wording might be preferable in this case.

Page 5, line 7: Senator Young suggested deleting the words "to induce that registrant to purchase controlled substances", as this does not add anything to and may even weaken the intent of the law. The Board would prohibit any gratuities to a registrant.

Page 5, line 2: The word "usual" as used in "usual course of professional treatment" should be clarified. Senator Young suggested the word "lawful" might be preferable.

Page 5, line 8: The Board feels this should be broadened to read: "A salesman of any pharmaceutical firm or wholesale distributor..." Wholesale distributors transport controlled substances, and they would not be the manufacturer. There should probably be an exception, however, so that the salesman would not be precluded from possessing these substances if necessary for his own personal medical treatment persuant to a lawfully issued prescription.

Page 5, lines 9 through 11: The Board feels the portion: "Deliveries of...agent of one of these" should be eliminated, as this would preclude a store from delivering these drugs, and possibly prevent a hospital from delivering to a patient from a hospital pharmacy, since the word deliver is defined in the act as transporting or transferring from one person to another. While there may be merit in this proposal, the way it is drafted would raise these questions.

Page 5, line 22: The Board agrees the prescription should be for a Schedule II substance.

Page 5, line 35: Following the word "practitioner", the word "knowingly" should be inserted, because it would be possible for a person to go to a dentist and a doctor and receive these prescriptions and not knowingly violate the law, but the person would be, nonetheless, in violation.

Page 5, lines 48 through 50: The Board feels there should be added language to the effect: "without consulting the issuing physician, dentist, podiatrist, or veterinarian", because in the Board's experience, there have been times when the prescribing physician will make a change, or alter the directions for taking, and although the Board recognizes that if there is evidence of alteration or erasure or addition there should be additional investigation, this could be accomplished by checking with the prescribing entity.

Page 6, line 3: The Board feels "10" should be deleted and "14" inserted in its place; this is more practicable.

Page 6, lines 12 through 34: This involves a philosophical difference between the Pharmacy Board and the Division of Investigations and Narcotics. The Division indicated that the law which establishes the Division apparently gives them authority to investigate dangerous drugs, as well as controlled substances. The Board feels this would be an undesirable expansion of the authority of the Division and that it is not necessary in view of the fact that the Board also has investigators and inspects these records. The Board, composed largely of pharmacists, feels that to allow the Division the same authority to go into the dangerous drugs field, in addition to the controlled substances field, would subject pharmacists to another layer of bureaucracy without there being shown a need for this additional use of manpower and investigation. The Board feels the Division has sufficient responsibility now in connection with the controlled substances, which is where most of the vices lie, and that there is little reason for the Division to be investigating the dangerous drugs, as these are not the sort of things which are valuable on the street (e.g., birth control pills). The Board feels the Division's primary responsibility should be in the controlled substances field; the Pharmacy Board is handling the dangerous drugs area satisfactorily.

Page 6, line 43: The issue raised by Mr. Stewart regarding passing of a prescription is a valid one, and this should be clarified to make sure there is criminal intent before any penalty attaches to passing as genuine any prescription.

Another problem raised by Senator Young was in the area of telephone prescriptions. If it is not a Schedule II drug, then a written prescription is not needed. The Board is not certain that the person who calls in and fictitiously represents himself as a physician and orders a controlled substance would be covered in the statute as it is currently proposed.

Page 7, line 6: The Board feels this should be a gross misdemeanor, not just a misdemeanor, so that the penalty is the same as for attempting to obtain a prescription in a false or fictitious way (page 7, lines 3 and 4).

Page 7, lines 12 and 13: The Board feels this is fairly well covered in existing law, and that this portion is therefore unnecessary and redundant.

Senator Young summarized his presentation by noting that the Board is basically for AB 53, if the noted changes are incorporated into it.

Mrs. Cafferata then questioned Senator Young about the Board's concern over telephone prescriptions. Did the Board want to prevent telephone prescriptions entirely? Senator Young explained the Board's concern was with the removal of the word "utters" from line 42 on page 6, which up to now has been used to cover those cases wherein an individual falsely represents himself as a physician over the phone and issues a prescription. Senator Young stated the Board did not want to prevent telephone prescriptions entirely, nor did they want to prevent, for example, a doctor's nurse from telephoning in a prescription for the doctor. They simply wanted to cover the instance of a false oral prescription.

Mrs. Cafferata then stated it was her understanding that one of the biggest problems occurred in hospitals and pharmacies, from where most of these substances were stolen. She wondered what kinds of internal controls were necessary, and to whom did these institutions report concerning incoming shipments, etc.

Mr. Titus stated that the Division of Investigations and Narcotics took care of this area. He added that anything that was ordered must be ordered on an official government blank, form 222, which is sent to the wholesaler or the manufacturer and a copy of which is sent to the Division by the recipient of the drugs. Record is kept of the out-going drugs (e.g., by prescriptions filled in a drug store), and the Division's or the Board's inspectors go through and check those prescriptions. Mr. Titus added that it is very difficult to keep track of this in a hospital, where there are large quantities of drugs involved and where there are many individuals who must handle the drugs between the pharmacy and the patient, and there is legislation being proposed to help tighten the controls. He further explained that it is easier to keep checks on a pharmacy, where only the pharmacist is involved.

Mr. Price then asked about page 4, lines 45 through 50 concerning the return of unused substances. He wondered if there might be some way of including in this legislation a provision which would require the return of unused drugs which were paid for by the State, and which may have been administered

by an institution. Mr. Titus noted that there has been a great deal of controversy over the "unit dose", and there is a large faction within the pharmacy field who wants to go to the unit dose in order to save the State this money; this, however, would require auditors to check the drugs going into a nursing home and then coming back to the pharmacy, for the pharmacy must then issue credit to the State, or to whoever paid for the drugs. But the Board has no problems with the mechanism if a way can be found for checking the economics of it.

Mr. Price then asked how it was ascertained that those drugs which were not used were disposed of properly. Mr. Titus said this was done by inventories, or by having an inspector present at time of disposal. He added that it was up to the pharmacy providing the service to monitor this.

Next to testify on AB 53 was Mr. Rick Pugh, Executive Director of the Nevada State Medical Association. He stated he wanted to echo what Senator Young and Mr. Titus had to say about this bill. He added a few comments of his own, on specific portions of the legislation.

Page 1, lines 12 through 21: Under this requirement, if a physician makes a diagnosis and prescribes, he would have to write down all the information required by this section; then if he asked his nurse to administer the medication, she would again have to write down the same information; and finally the pharmacist, if there were a prescription, would have to do the same thing again. This is a bureaucratic problem which the Association would prefer not to see become State law.

Page 1, lines 19 and 20: The Association feels that the reason for administering falls under priviledged information between patient and physician.

Mr. Pugh went on to say that those points made in earlier testimony were supported by the State Medical Association, and the bill definitely requires amending in many areas.

Mrs. Cafferata asked how this bill would affect patients in rural areas. Mr. Pugh noted that this bill apparently was thought through from the standpoint of the violator, and it does pose some problems for the good guys that are providing health care to the rural areas; it will require a lot of study to make this a good bill.

As there was no further testimony, Chairman Stewart declared the hearing on AB 53 closed.

Chairman Stewart then appointed a subcommittee on AB 53 to work with the individuals involved in an attempt to tighten

up the wording of the bill. The subcommittee consists of: Mrs. Cafferata, Chairman; Mr. Beyer; and Mr. Thompson.

Following a ten minute recess, the meeting reconvened at 10:30 a.m. Chairman Stewart noted that he also wished to appoint a subcommittee on AB 54, to include: Mr. Malone, Chairman and Ms. Foley.

Mr. Beyer then requested that the members of the subcommittees be furnished with additional copies of the minutes for use as working papers.

Testimony was then heard on AB 52.

AB 52: Provides punishment for participation in a criminal syndicate.

First to testify was Mr. Calhoun, who noted that throughout the U.S. there have been problems of high profiteering derived as a result of criminal activities. Under Federal law there is a statute which is referred to as the RICO statute, which is racketeering, influenced and corrupt organizations. This is aimed specifically at those groups which are running illegal enterprises like a business (i.e., if one person is arrested it will not necessarily stop, it will continue to function), and making huge sums of money. In Nevada, while the Division is not ready to say that the State has all kinds of organized crime nor is it prepared to document specific organizations, this legislation is felt to be needed because the Division has worked several investigations where there have been organized groups who have made tremendous amounts of money, and at present there is really not much the Division can do to put those organizations out of business. The Division felt that adoption by Nevada, and by several other States, of State level RICO statutes would permit the Division to have an impact on some of the organizations involved in criminal activities.

Mr. Calhoun stated that, in order to have an impact on these organizations, two things are necessary: 1) a statute which would cover these situations specifically and which would impose penalties much more severe than in other types of crimes, and 2) a method for removing the profits in that type of enterprise.

Mr. Calhoun noted that there were many monies and/or properties which the Division could prove were the direct result of illegal activity. The Division would like to see a statutory requirement that these profits and the results of these profits be forfeited to the State.

Mr. Calhoun explained that the bill contains a "laundry list" which specifies exactly the kinds of crimes which might come up under this kind of a statute because there have been several

court decisions which have attacked the RICO statutes, and hopefully this list would have addressed most of those problems.

Mr. Calhoun added that another area of this bill which is useful is that it gives the Attorney General some additional authority when working on these kinds of cases and two or more counties are involved. This would help solve some of the expense and technical problems which often arise when several counties are involved. Mr. Calhoun noted that this is not a recommendation nor is it coming from the Attorney General's Office, it is simply that the Division felt they could use the Attorney General's assistance in these matters when it involves two or more counties, and/or two or more violations.

Chairman Stewart asked Mr. Calhoun to clarify which other States were passing or had passed RICO statutes. Mr. Calhoun said he had given this information to the bill drafter's office, and noted that the primary states involved were Florida, Arizona, New York, New Mexico, Colorado and Utah. He noted that New Mexico passed the bill two years ago, but has yet to prosecute under it; Arizona has made several successful prosecutions under this statute. Hopefully, this bill is a combination of the working statutes in the other states, but Mr. Calhoun was not sure how closely the bill drafters had followed these models.

Page 3, line 27: Mr. Malone noted that defining a public officer could prove to be quite extensive, and he wondered if the word peace officer might be better. Mr. Calhoun pointed out that this was the bill drafter's wording, and he presumed it had been taken from one of the sample statutes.

Page 3, lines 46 and 47: Mrs. Cafferata asked if this was a customary procedure in other states; i.e., that all profits would be forfeited. She then asked if these profits had to be what was made on this illegal activity, or could it also be property. Mr. Calhoun said it could include property; it could be anything which you obtained as a result of the illegal profits. But it would only be the profits derived from the crime.

Mr. Sader asked why the bill did not contain any provision for the return of property to a victim; i.e., restitution.

Mr. Calhoun felt this would be a great idea, and the Division would have no objection to this provision being added to the statute, although they are not recommending it.

Mr. Price asked what would happen in the instance where the profits had been used to buy, for example, a ranch. Would the State then operate it? Mr. Calhoun said the reason this was left so broad was to give leeway to the Attorney

General or District Attorney to ask for that. Mr. Price then asked if this might include a gaming establishment. Mr. Calhoun said it was quite possible, and pointed out that the key to the issue was the need to document the illegal profits and then document where these profits went.

Mr. Beyer then asked if the State might auction off the ranch cited by Mr. Price and if so, would these funds go back into the general funds of the State. Mr. Calhoun said that would be the Division's recommendation, and that is why the bill is worded as it is. The Division has no preference as to where the funds would go.

Mr. Beyer then suggested that since restitution has been one suggestion for use of the funds, one could also suggest that profits from drug sales should go into State rehabilitation programs for addicts. Mr. Calhoun had no problem with this suggestion either.

Mr. Price then noted it was his impression that were such monies go is stated in the constitution, and that in order to funnel these monies into certain programs, or for restitution, etc., a constitutional amendment would be necessary. However, this could be done.

Next to testify on AB 52 was Mr. Cal Dunlap, District Attorney for Washoe County. Mr. Dunlap noted that he felt this to be a desirable bill, but one which will see little use no matter who has the jurisdiction to enforce its provisions, because these types of cases are quite complex and difficult to prove. It is, however, another tool which should be available.

Mr. Dunlap said he was concerned about the provision in Section 8: "The Attorney General may...one county" mainly because the local entities should prosecute those crimes which exist within the local counties except when the Attorney General's assistance is needed or requested.

Mr. Dunlap did not have any objection whatever to Section 7, which provides for the collection of monies and civil actions being brought by either the Attorney General or the District Attorney, because in terms of collecting money anyone who can collect it and bring it into the general fund for the State... the more the better.

Mr. Dunlap then said he also objected to the expansion of the Attorney General's function because it concerns the basic abilities which exist. He noted it took several years to train an experienced lawyer in the prosecution of criminal actions as well as to instill in him the ability and competence to handle cases involving complex matters, particularly jury trials. Mr. Dunlap did not believe the Attorney General's Office provided this kind of exposure or experience to its

personnel because this office did not have that type of day to day experience. Mr. Dunlap stressed that the kinds of cases noted in this bill should be handled by the very best prosecutors because they are the most complex cases of all.

Mr. Dunlap suggested that the bill be enacted with the provision in Section 8 that the Attorney General may investigate or prosecute any such violation if requested by the District Attorney in a county in which venue is proper.

Mr. Sader asked Mr. Dunlap to summarize exactly what he had in mind for an amendment. Mr. Dunlap said he did not have specific language prepared, but he would have words to the effect that the Attorney General may investigate or prosecute any such violation referring to Section 6 if requested by a District Attorney in a county in which venue is proper.

Mr. Sader then asked Mr. Dunlap if he had any philosophical problem with the concept in Section 7 regarding the forfeiture provision which allows for confiscation by the State and return to the victim, if they can be ascertained, and if not, then forfeiture of the property to the State.

Mr. Dunlap agreed that in all instances where practicable, the victim should be made whole and should be recompensed. The balance should be forfeit to the State. Mr. Dunlap said the best way to hurt this kind of criminal, who insulates himself from the day to day business, is to go after the assets and the ill-gotten gains that the syndicate has put together.

Mr. Beyer noted that the State already confiscated airplanes, etc. used for the importation of drugs into the state. Casinos, however, appear to be excluded from confiscation. He wondered if Mr. Dunlap felt they should be excluded, or should the State also go after this type of establishment.

Mr. Dunlap stated there was a difference between a vehicle or airplane that has been used to transport narcotics and a casino. He pointed out that a vehicle used to transport narcotics can only be confiscated when it has been used with the knowledge of the person who owns it. Mr. Dunlap said confiscation of casinos, etc. should be a very well thought out matter because there are a lot of hazards of some minor involvement of organized crime in any business and it would not be fair to have the major shareholders suffer because of some minimal involvement of which they might not even be aware. Additionally, the assets involved should be actively concerned with the organized crime. Forfeiture of a license, however, is a completely different issue.

Mrs. Cafferata asked if Section 7 would allow the confiscation of a casino. Mr. Dunlap replied that this section referred to profit derived as a result of the syndicate activity, and if it can be shown that all of the profits of the casino are related to the syndicate activity, then the casino could be forfeited. This, however, is different from forfeiting the fixed assets of the casino or the corporation. One must show a connection between the profits and the illegal activity.

Mr. Stewart then asked about cheating in casinos, which is not listed in the bill. Mr. Dunlap said this probably should be on the list; he pointed out it would be a good idea, both from the point of view of the outside cheater syndicate that preys upon the casinos themselves, as well as from the point of view of the syndicate that is involved in the skimming of money or other illicit inside involvement.

Mr. Stewart then asked about the problem Mr. Malone had raised concerning resisting a public officer, and whether this was a defined crime. Mr. Dunlap said he was under the impression there was such an offense, and that it is a misdemeanor. He suggested it might be better to have the word "obstructing" as opposed to "resisting"; i.e., the syndicate prevents police officers or other public officers from doing their job. Mr. Stewart asked if it would be best if the term used were one which is already defined in the statutes. Mr. Dunlap said it would be best, and the Chairman asked him to check into this for the Committee.

Chairman Stewart then pointed out that that portion of AB 52 dealing with computer crimes and loan sharking had not been discussed, and he asked Mr. Calhoun to testify on this.

Mr. Calhoun explained that at the present time, while there is a conspiracy statute in the state, there is no legislation dealing with computer crimes nor anything explicit on the credit problem.

Mr. Malone asked if there was a federal law on this, to which Mr. Calhoun replied there was. Mrs. Cafferata then asked if this bill followed the federal statutes, and Mr. Stewart asked who had drafted the bill and was it modeled after these federal regulations. Mr. Calhoun said the LCB had drafted the bill, and he would check into the model they had used and whether or not the bill followed federal statutes.

Mr. Calhoun pointed out that Nevada has not seen a great deal of computer crime to date, but it is becoming a serious problem in other states. He further noted that these crimes involve millions of dollars.

Regarding Section 3 of the bill, Mr. Calhoun said this wording came from other states' statutes. He noted that loan sharking is an integral part of syndicate operations and that this is

not currently specified as a violation in Nevada. In reply to Mr. Stewart, Mr. Calhoun noted this section was at the request of the Division.

Page 2, line 13: Mr. Sader asked how the word "family" was defined. Mr. Calhoun said there is a problem in narrowing down this term. Mr. Sader asked if it was defined in the federal statutes. Mr. Calhoun did not know, and said this was a legal question. Mr. Sader asked if this term was defined elsewhere in either the Nevada or the federal statutes. Mr. Calhoun did not know. Mr. Sader then asked that Mr. Calhoun propose a definition for what is meant by "family". Mr. Calhoun said the original version suggested immediate family, but this was not felt to be specific enough either. He said he would look into the matter further.

Next to testify on AB 52 was Bruce Laxalt, Chief Deputy, Washoe County District Attorney's Office.

Mr. Laxalt stated that there was a possible flaw in the loan sharking provision of Section 3 in that it only makes criminal a threat "at the time of the extension of credit". This does not cover a threat of violence made at a later time, for example in connection with the collection of the debt. Mr. Laxalt suggested these other situations be addressed, since, as now written, the statute would be very easy to circumvent.

Mr. Sader suggested wording to the effect that "persons who, in connection with the extension of credit". Mr. Laxalt agreed this would cover the situation.

As there was no further testimony on AB 52, Chairman Stewart declared the public hearing on this bill closed.

The final order of business was the appointment of a subcommittee to study this bill. Ms. Ham and Mr. Banner were asked to serve on this subcommittee, with Mr. Stewart as chairman.

The meeting was adjourned at 11:15 a.m.

Respectfully submitte,

Pamela B. Sleeper

Pamela B. Sleeper
Assembly Attache

PROPOSED AMENDMENT:

THEFTS, LOSSES, DISAPPEARANCE OF CONTROLLED SUBSTANCES. All losses of controlled substances shall be reported to the board and division within 10 days from the date of discovering of such theft, loss or disappearance.

JUSTIFICATION:

The immediate intelligence of theft is needed to enable the division and other police agencies to investigate while there is hope of apprehension of the perpetrator.

206

PROPOSED AMENDMENT:

453.246 REGULATION OF MANUFACTURE, DISTRIBUTION AND DISPENSING OF CONTROLLED SUBSTANCES: RECORDS OF REGISTRANTS.

1. Persons registered to manufacture, distribute or dispense controlled substances under the provisions of NRS 453.011 to 453.551, inclusive, shall keep records and maintain inventories in conformance with the record-keeping and inventory requirements of federal law and with any additional rules the board issues.

2. Any physician, surgeon, dentist, podiatrist, veterinarian or other qualified, licensed individual who issues a prescription, or dispenses or administers a controlled substance shall make a record that, as to the transaction, shows all of the following:

(a) The name and address of the patient;

(b) The date;

(c) The character and quantity of controlled substance involved;

(d) The pathology and purpose for which the prescription is issued, or the controlled substance administered, prescribed, or dispensed; and

(e) The date of each refill.

JUSTIFICATION:

Present statutes are unclear relative to requiring a reason for the prescribing of controlled substances. This is necessary as it will tend to eliminate the "casual", "indiscriminate", and "social prescribing" when a diagnosis is not available. This will additionally aid the practitioner in preventing malpractice situations where person overdose on substances that were not medically indicated.

453.256 REGULATION OF MANUFACTURE, DISTRIBUTION, PRESCRIPTION AND DISPENSING OF CONTROLLED SUBSTANCES; PRESCRIPTIONS.

1. Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance in schedule II may be dispensed without the written prescription of a practitioner.

2. In emergency situations, as defined by regulation of the board, schedule II drugs may be dispensed upon oral prescription of a practitioner. Within 72 hours after authorizing an emergency oral prescription, the prescribing practitioner shall cause a written prescription for the emergency quantity prescribed to be delivered to the dispensing pharmacy. Prescriptions shall be retained in conformity with the requirements of NRS 453.246. No prescription for a schedule II substance may be refilled.

3. Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in schedules III or IV shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than 6 months after the date thereof or be refilled more than five times, unless renewed by the practitioner.

//4. A controlled substance included in schedule V shall not be distributed or dispensed other than for a medical purpose.// //delete//

4. A controlled substance shall not be distributed or dispensed other than for a medical purpose.

JUSTIFICATION:

The "medical purpose" proviso should include all controlled substances - not be limited to only schedule V.

PROPOSED AMENDMENT:

453.256 REGULATION OF MANUFACTURE, DISTRIBUTION AND DISPENSING OF CONTROLLED SUBSTANCE: PRESCRIPTIONS.

1. Except when dispensed directly by the practitioner, other than a pharmacy, to an ultimate user, no controlled substance in schedule II may be dispensed without the written prescription of a practitioner. This prescription, to be valid, must conform in all respects to the requirements as set forth in NRS 453.385 and be signed ~~written in it's entirety~~ by the issuing practitioner.

2. In emergency situations, as defined by rule of the board, schedule II drugs may be dispensed upon oral prescription of a practitioner. Within 72 hours after authorizing an emergency oral prescription, the prescribing practitioner shall cause a written prescription for the emergency quantity prescribed to be delivered to the dispensing pharmacy. It shall adhere to the requirements as outlined in paragraph 1 of this section and (Prescriptions) shall be retained in conformity with the requirements of NRS 453.246. No prescription for a schedule II substance may be refilled.

3. Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in schedules III and IV shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than 6 months after the date thereof or be refilled more than five times, unless renewed by the practitioner.

5. No person shall antedate or postdate a prescription for a controlled substance.

6. Except in the regular practice of his profession, no person shall prescribe, administer, dispense, or furnish a controlled substance to or for any person who is not under his treatment for a pathology.

7. No person shall issue a prescription for a controlled substance that is false or fictitious in any respect.

8. No person shall in connection with the prescribing, furnishing, administering, or dispensing or a controlled substance give a false name or false address. Any person prescribing, furnishing, administering or dispensing a controlled substance shall have the right to request proper identification from a person requesting controlled substances.

9. No person shall fill a prescription for a controlled substance if it shows evidence of alteration, erasure, or addition.

10. No person shall fill a prescription for a controlled substance classified in schedule II unless it is tendered on or before the tenth day following the date of issue.

11. Any person who violates this section shall be guilty of a gross misdemeanor and may be further punished by a fine of not more than $2,000.

JUSTIFICATION:

1. This will make forgery of abused substances most difficult. This will make the practitioner more aware of substances prone to abuse.

5-9 These additions are for the purpose of preventing forgeries. Whereas 5-9 are now merely aluded to in statutes, they will now be enforceable statutes clearly defined.

10. Schedule II substances prone to abuse are prescribed for immediate relief of current conditions. This will insure compliance by the patient with the practitioners instructions. This will additionally prevent ingestion of schedule II substances at a date far removed from the illness for conditions other than indicated.

JUSTIFICATION:

Section 1 (4) In administrative inspections prescriptions numbering in the hundred are often impounded for administrative hearings. At present it is impossible to copy these prescriptions on the premises.

Section 2 (4c) The board and division presently can not inspect premises where conceivably chemicals can be provided in the clandestine manufacture of controlled substances.

PROPOSED AMENDMENT:

453.381 LIMITATIONS ON PRESCRIBING, ADMINISTERING AND DISPENSING CONTROLLED SUBSTANCES.

1. Except in cases of emergency, a physician, dentist or podiatrist is prohibited from prescribing, administering or dispensing controlled substances listed in schedule II for himself, his spouse or children.

2. Each prescription for a controlled substance listed in schedule II shall be written on a separate prescription blank.

3. A veterinarian, in good faith and in the course of his professional practice only, and not for use by a human being, may prescribe, administer, and dispense controlled substances, and he may cause them to be administered by an assistant or orderly under his direction and supervision.

4. Any person who has obtained from a physician, dentist, podiatrist or veterinarian shall return to such physician, dentist, podiatrist or veterinarian any unused portion of such substance when it is no longer required by the patient.

(Added to NRS by 1971, 2022: A 1973, 1406; 1975, 989; 1977, 670; 1979, 1668)

6. A manufacturer, wholesaler supplier, or other person legally able to furnish or sell controlled substances in the state of Nevada shall not directly provide samples of controlled substances to any Nevada registrant or any gratuities to induce a registrant to purchase controlled substances. No salesman of any pharmaceutical firm shall possess, transport, or furnish controlled substances. Deliveries of controlled substances shall be effected by a common carrier, public warehouseman, or employee of the carrier or warehouseman.

JUSTIFICATION:

6. This would tend to prevent the diversion of controlled substances from the hand of unlicensed or sales personnel.

PROPOSED AMENDMENT:

453.391 PROHIBITIONS: UNLAWFUL TAKING, OBTAINING OF CONTROLLED SUBSTANCE.

No person may:

1. Unlawfully take a controlled substance, or a prescription for a controlled substance, from a manufacturer, wholesaler, pharmacist, physician, dentist, veterinarian or other person authorized to administer, dispense or possess controlled substances.

2. While undergoing treatment and being supplied with any controlled substance or a prescription for any controlled substance from one physician, obtain any controlled substance or prescription for a controlled substance from another physician without disclosing this fact to the second physician.

JUSTIFICATION:

1. This will reinforce the statute. District attorneys will not prosecute under the statute until the word "prescription" is clearly indicated.

PROPOSED AMENDMENT:

454.286 RECORDS: MAINTENANCE; RETENTION; INSPECTION.

1. Every retail pharmacy, hospital, laboratory, wholesaler, manufacturer, or any physician, dentist, podiatrist or veterinarian who engages in the practice of dispensing or furnishing drugs to patients shall maintain a complete and accurate record of all dangerous drugs purchased and those sold on prescription, dispensed, furnished or dispensed or otherwise.

2. Such records shall be retained for a period of 2 years and shall be open to inspection by members, inspectors or investigators of the board, inspectors of the Food and Drug Administration, or agents of the Division of Investigation and Narcotics. No special form of record is required if an accurate accountability can be furnished within a reasonable time after a demand by a person authorized to inspect such records.

3. Invoices showing all purchases of dangerous drugs shall be considered as a complete record of all dangerous drugs received.

4. For the purpose of this section, the prescription files of a pharmacy shall constitute a record of the disposition of all dangerous drugs.

JUSTIFICATION:

A technical change to forestall a legal challenge.

PROPOSED AMENDMENT:

454.291 STOCK, RECORDS OPEN TO INSPECTION; PENALTIES.

1. All stock and records of purchase and disposition of any dangerous drugs of a manufacturer, wholesaler, pharmacy, physician, dentist, podiatrist, veterinarian, hospital, laboratory or a nonprofit cooperation agriculture organization which supplies and distributes drugs and medicines only to its members shall be at all times, during business hours, open to inspection by agents, assistants, members and inspectors of the board, agents of the Division of Investigation and Narcotics, inspectors of the Food and Drug Administration, and agents and commissioners appointed under chapter 585 of NRS for the enforcement of the Nevada Food, Drug and Cosmetic Act. Such records shall be preserved for at least 2 years from the date of making.

2. Any person who fails, neglects or refuses to maintain such records or who, when called upon by an authorized officer to produce such records, fails, neglects or refuses to produce such records, or who willfully produces or furnishes records which are false, is guilty of a misdemeanor.

JUSTIFICATION:

Technical to forestall legal challenges or limit the scope of the inspection.

214

PROPOSED AMENDMENT:

454.311 FORGED, FICTITIOUS OR ALTERED PRESCRIPTIONS; PENALTY.

1. Every person who signs the name of another, or of a fictitious person, or falsely makes, alters, forges, utters, publishes or passes, as genuine, any prescription for a dangerous drug is guilty of a felony.

2. Any person who knowingly has in his possession any false, fictitious, forged or altered prescription for a dangerous drug is guilty of a gross misdemeanor.

3. Every person who knowingly obtains or has in his possession or under his control any dangerous drug secured as a result of any forged, false, fictitious or altered prescription is guilty of a gross misdemeanor.

4. Any person who knowingly fills a prescription which is false, fictitious, altered, forged, or otherwise not genuine is guilty of a misdemeanor.

JUSTIFICATION:

4. This problem has not been addressed. On infrequent occasions a pharmacist for monetary gain would fill a forged prescription.

Additionally, this change would tend to make pharmacists more cognizant of forgeries.

PROPOSED AMENDMENT:

454.530 OBTAINING POSSESSION OF HYPODERMIC DEVICE BY FALSE, FRAUDULENT REPRESENTATION, FORGED OR FICTITIOUS NAME; PENALTY.

1. Any person who obtains possession of any hypodermic device by a false or fraudulent representation, a forged or fictitious name, or in violation of the provisions of NRS 454.470 to 454.530, inclusive, is guilty of a gross misdemeanor.

2. Proper identification of the purchaser shall be furnished upon demand of the seller or dealer.

JUSTIFICATION:

1. A misdemeanor complaint is difficult to obtain from prosecutors. An investigator would have to be present to arrest.

2-3 Technical to reinforce the statute.

PROPOSED AMENDMENT:

453.296 CONFIDENTIALITY OF MEDICAL, RESEARCH INFORMATION; EXCEPTIONS.

1. A practitioner engaged in medical practice or research is not required or compelled to furnish the name or identity of a patient or research subject to the board, nor may he be compelled in any state or local civil, criminal, administrative, legislative or other proceeding to furnish the name or identity of an individual that the practitioner is obligated to keep confidential.

2. There is no privilege as to any information communicated to a physician in an effort unlawfully to procure a narcotic, dangerous, or hallucinogenic drug, or any controlled substance as defined in NRS 453 or unlawfully to procure the administration of such drug.

JUSTIFICATION:

This will serve merely to reinforce present statute (NRS 49.245)