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BOARD OF MEDICAL EXAMINERS' POSITION
REGARDING S.B. 389

The Board of Medical Examiners (the "Board") is part of the Executive Branch of the State of Nevada. It does not make policy; it simply implements policy made by the Legislature. However, the Board strongly believes that, if S.B. 389 is implemented in its present form, serious, adverse consequences would result to the citizens of our state.

S.B. 389 would no longer permit the Board to hire independent legal counsel, but would require the Attorney General to provide legal counsel to the Board. Because of the nature of the legal counsel's responsibilities, which include supervising an investigative staff of four (soon to be six), responding to day-to-day legal questions, and, most importantly, prosecuting doctors in disciplinary proceedings, the position is full-time. It is not a position, like most other legal positions filled by the Attorney General, which is part-time and can be shared with other boards and commissions. Most importantly, the Board's counsel must be a seasoned, experienced lawyer who, when prosecuting doctors in a disciplinary proceeding, has the ability and tenacity to go up against the best lawyers that money can buy. Keep in mind that, when a physician is brought before the Board on disciplinary matters, he or she will hire the best lawyer available, regardless of expense.

The Board also objects to the proposed limitation of an 8-year term for its Executive Director. The Executive Director is appointed by the Board, not the Governor. This proposed limitation would be the only limitation placed upon the executive officer of any board or commission. More importantly, an 8-year limitation would effectively prevent recruiting the best and the brightest to fill that position. The 8-year limitation would be a career stopper for most and certainly not allow the Executive Director to vest in the state retirement system.

If S.B. 389 is passed in its present form, the Medical Practices Act ("MPA") (NRS 630) should be renamed the "Physician's Protection Act."

Presently, Nevada has the toughest licensing standards in the United States. These licensing standards were imposed by the Legislature. There has been no demonstrated need to change the public policy in the state that makes Nevada the strictest licensing state in the Union for physicians. To the contrary, Nevada should remain the toughest licensing state. Tough licensing standard ensure that only the most qualified physicians are licensed in our state. It is elementary that the more qualified the physician, the less likely there are to be problems with that physician.

If S.B. 389 were adopted in its present form, not only would licensing standards be rolled back to virtually no standards, but the Board's ability to discipline doctors would be greatly hampered.

Finally, the proposal to invade the reserves of the Board by appropriating \$2.5 million to a Subsidy Fund for a limited number of physicians, is not only fiscally unsound, but fails to recognize that not all physicians wish to subsidize a certain few. It also fails to recognize that respiratory therapists and physician's assistants, both of whom are regulated by the Board, contribute approximately \$125,000 per year to the Board's treasury.

The following is a brief analysis of particular Sections of S.B. 389 that the Board believes are inappropriate.

Section 10.3, which would limit the Executive Secretary to a term of 8 years. This would be the only term limitation imposed upon any executive officer of any board or commission in this state. It would hamper the recruitment process and would effectively prevent the executive officer from vesting in the state retirement system in most instances.

Section 13, which allows the Board, by a 2/3 vote, to waive any or all licensing requirements for a physician in this state, would move Nevada from the strictest licensing state in the Union to one of the least restrictive. In effect, anyone who is not a graduate of a medical school, can apply, and if he or she can convince 2/3 of the Board that he or she should be licensed, can be granted a license to practice to medicine. In effect, there are no licensing standards in Nevada if this Section is adopted. **Whenever a licensing board is granted discretion in determining licensing standards, it is almost always guaranteed that a lawsuit will ensue if the licensing board fails to grant the waiver in the exercise of its discretion.**

Section 14 permits the Board to issue a private letter of warning or non-punitive admonishment. Presently, the Board takes no such action. Any such disciplinary proceedings taken against a physician are a matter of public record. This would cast shadows on the proceedings of the Board with respect to its dealing with disciplinary actions towards doctors.

Section 15 requires that a physician's license may not be revoked in this state unless a majority of the entire membership (5 of 9 finds by "clear and convincing evidence" that a "material" violation of the MPA has occurred). Presently, the Investigative Committee, comprised of 2 physicians and 1 layperson, do not participate in disciplinary proceedings. Only the remaining 6 Board members participate. A majority of those participating Board members, 4, is required to find by a "preponderance of the evidence," a violation of the MPA. This particular Section, if adopted, would require a super-majority of the voting members on disciplinary proceedings (5 rather than 4) to find by a higher burden of proof that a material violation has occurred.

Section 25.4 would permit a physician who holds a special volunteer license to not submit for renewal after the first year. The Board believes that it is essential that any physician who is licensed in the state, regardless of the licensure status, must be subject

to periodic, and frequent, review. While this review is generally administrative, it still permits the Board to "look" at a physician on a regular basis.

Section 27.4 would change the present law, which allows one act of malpractice to be sufficient for disciplinary action to requiring repeated acts of malpractice and only if they are established by clear and convincing evidence. This Legislature, effective October 1, 1997, removed the proposed provision and made one act of malpractice, to be proven by a preponderance of the evidence, to be sufficient for disciplinary proceedings under the MPA.

Section 29.1 would require any action for revocation of a license to be established by clear and convincing evidence as opposed to the lesser burden of a preponderance of the evidence.

Section 68 would transfer \$2.5 million from the Board to the Subsidy Fund. In December of 2002, the Board reduced the biennial licensing fee of physicians from \$600 to \$400 and further reduced the licensing fee that physicians must pay for physician's assistants, whom they supervise, from \$200 to \$0. **Effectively, there was either a 33% reduction in the biennial license fee or a 50% reduction in the biennial license fee, depending upon whether a physician supervised a physician's assistant. This allowed every physician in this state to share in the sound fiscal management of the Board.** Proposed Section 62 would take physician's money previously paid and the money previously paid into the Board's treasury by respiratory therapists and physician's assistants and subsidize a selected few doctors who, if we read the qualifying the requirements correctly, would grossing in the neighborhood of \$750,000 to \$1 million per year.

In summary, the Board objects to S.B. 389 as it provides no protection whatsoever to the general public, would make Nevada one of the least stringent states in physician licensing and would greatly hamper the Board in exercising its disciplinary responsibilities.