

NEVADA STATE BOARD OF MEDICAL EXAMINERS

9600 Gateway Drive
Reno, NV 89521

Aury Nagy, M.D.
Board President



Edward O. Cousineau, J.D.
Executive Director

*** * * MINUTES * * ***

LEGISLATIVE SUBCOMMITTEE MEETING

Held in the Conference Room at the Offices of the
Nevada State Board of Medical Examiners
9600 Gateway Drive, Reno, Nevada 89521

and teleconferenced to

The Conference Room at the Offices of the
Nevada State Board of Medical Examiners
325 E. Warm Springs Road, Suite 225, Las Vegas, Nevada 89119

FRIDAY, May 26, 2023– 12:00 p.m.

Subcommittee Members Present

Victor M. Muro, M.D.
Aury Nagy, M.D. (joined at 12:24 p.m.)
Ms. Maggie Arias-Petrel
Nicola (Nick) M. Spirtos, M.D., F.A.C.O.G.

Subcommittee Members Absent

Col. Eric D. Wade, USAF (Ret.)

Staff/Others Present

Sarah A. Bradley, J.D., MBA, Deputy Executive Director
Mercedes Fuentes, Legal Assistant
Tom Clark, Lobbyist
Henna Rasul, Senior Deputy Attorney General

Agenda Item 1

CALL TO ORDER AND ANNOUNCEMENTS

- Roll Call/Quorum

The meeting was called to order by Dr. Muro at 12:07 p.m.

Ms. Bradley took roll call, and all Subcommittee members were present, with the exception of Col. Wade. Dr. Nagy to join shortly. Ms. Bradley announced there was a quorum.

Agenda Item 2

PUBLIC COMMENT

Dr. Muro asked whether there was anyone in attendance who would like to present public comment.

Ms. Bradley stated that there were two members of the public in attendance in the Reno office, and that one of them wanted to make public comment.

Justin Watkins from the Nevada Justice Association presented public comment regarding bill AB404. Mr. Watkins stated that he presented the bill at the invitation of the Assembly Committee on Judiciary and that an amendment has been drafted and is on this meeting's agenda to review but that there is another amendment that is in drafting currently with the Legislative Counsel Bureau. Mr. Watkins stated that he did not have the language to forward on to the Subcommittee however he could state as to what has been asked of LCB due to hearing the Subcommittee's concerns and has made an attempt to address them. Mr. Watkins continued that in the amendment that is available for the Subcommittee to review on the current agenda there will be some changes that clean up some language, there was some language that was drafted by the LCB that created some uncertainty and consternation. On Section 2, page 5, sub section 1(a) it states "for an action in which a hospital, other than a critical access hospital, or an employee, agent or affiliate of such a hospital is a party" ... it is talking about a second cap, a cap of the doctors being 550k and the hospitals being 2 million, the language of "or an employee, agent or affiliate of such a hospital" is being deleted, as a consequence of that the Section 2, subsection 3(a) the definition of affiliate is no longer needed because it is being deleted. In Section 2.5, subsection 3(a-b) will be deleted in regards to agency of a doctor to a hospital and vicarious liability of the hospital for that doctor, a section will be added that precludes a hospital from suing a doctor on the theory of indemnity or contribution, either contractual or equitable, for amounts owed by the hospital to an injured party so that the consequences, the cap of the doctor at 550k is a hard cap that the hospital can't seek reimbursement from the doctor for the increased cap of the hospital at 2 million. Mr. Watkins stated he just wanted to make the Subcommittee aware of those changes and thanked the Subcommittee for the opportunity to present.

Ms. Bradley confirmed that there was no further comment in the Reno Office.

There was one member of the public present in the Las Vegas Board Office, however they did not want to provide public comment.

Agenda Item 3

REVIEW AND APPROVAL OF PRIOR MEETING MINUTES

Dr. Muro asked the Subcommittee members if they had reviewed the minutes prior to the meeting. They responded that they had and that there were no changes to be made.

There was no discussion regarding the minutes.

Ms. Arias-Petrel moved to approve the minutes for the meeting of May 12, 2023, Dr. Muro seconded the motion, and it passed with all Subcommittee members voting in favor of the motion.

Agenda Item 4

REVIEW AND DISCUSSION OF BILLS

Dr. Muro indicated that, like in the previous meetings, he would like Ms. Bradley to state a synopsis of each bill and then the Subcommittee members, after discussion, will move to take a position on the bill either in support, in opposition, or take a neutral or no position on each bill.

a. AB244

Ms. Bradley stated that proposed bill AB244 had been presented to the Subcommittee previously and there is a concern that this bill may affect the physical and mental examinations that the Board or IC may require under NRS 630.318. There was an amendment, but that amendment does not remove the previous concerns. The bill is still stating that when someone has a mental or physical examination that there is a right for an observer to be there and take notes, and the amendments have now exempted some types of examinations but still not the ones that the Board orders pursuant to Title 54 or NRS 630.

Dr. Muro asked if the same concerns from previous discussions still existed. Ms. Bradley confirmed yes because it is not exempting the examinations that the Investigative Committee may order with regard to investigating a complaint.

Dr. Spirtos added that the Subcommittee's position should not change if the work of the Investigative Committee could be inhibited. Ms. Arias-Petrel agreed with Dr. Muro and Spirtos comments.

Mr. Clark stated that the bill passed out of the Senate and was transferred to the assembly to concur or not concur on the amendment. Dr. Spirtos asked Mr. Clark if he could provide more information on how the bill was voted on.

Dr. Muro stated that because the Subcommittee's position has not changed no motion to take a position was required.

a. AB364

Ms. Bradley stated that proposed bill AB364 initially was going to allow independent practice for Physician Assistants (PA) once they finished collaboration, that part has been removed from the language and the only thing that remains from the bill now is that two members will be added to

the Board, one being a PA and one being a Practitioner of Respiratory Care (RT), making it an 11 member Board.

Dr. Muro stated that his previous concerns still apply, however he does appreciate the modification but does still worry about the composition of the Board being so many members and disbalanced representation.

Dr. Spirtos added that representation would not be weighed and would not be a good composition of the Board and that he believes that there is already good communication with PAs and good involvement with PAs on the advisory committees and meetings. Dr. Spirtos asked how many of each license type are currently licensed. Ms. Bradley answered that there are approximately 1,989 active RTs, 1,585 active PAs. and 12,222 active MDs.

Ms. Arias-Petrel stated that PAs are very involved at every Board meeting, and this would add too many people to the Board panel and would be disproportional as far as representation.

Dr. Muro added that it seems like the Subcommittee's position has not changed regarding this issue.

Dr. Spirtos asked if there was any analysis provided regarding the costs to add the additional Board members. Ms. Bradley stated that analysis was not available at this time.

Dr. Spirtos moved to oppose proposed bill AB364, Dr. Muro seconded the motion, and it passed with all Subcommittee members voting in favor of the motion.

b. AB404

Ms. Bradley stated that proposed bill AB404 had been amended, this bill adds a cap for damages for liability for physicians, dentists, and hospitals providing emergency services for traumatic injury demanding immediate attention. Currently this cap is at \$50K but will now go to \$250K on January 1, 2026 and this amount will increase by the percentage of increase of consumer price index each following January 1. It increases overall cap for noneconomic damages from \$350K to \$2 million if a hospital is a party and \$550K for any other action, the amendment removes the language "or employee, agent, or affiliate of such a hospital" and changed the amount from \$2.5 million to \$2 million. Additionally, the definition to affiliate is being deleted because it won't be necessary anymore, and then there was an addition that precludes a hospital from suing a doctor for the money owed to an injured party. There is another amendment on its way. Ms. Bradley further stated that Mr. Watkins was still available if anyone wanted to ask him a question.

Dr. Spirtos asked if the 550K cap is per physician or if it is all encompassing. Mr. Watkins answered that the cap would adjust with CPI, but it is not per physician, it is per action, which is current law, per action regardless of the number of plaintiff's, defendants or theories of recoveries, and that part of the language is not being changed.

Dr. Muro stated that he was still concerned about the effect that this bill would have on access to healthcare in areas horribly underserved and the most vulnerable will be impacted. The end result will diminish across the state the quality and safety of the practice of medicine, which is the charge of the Board. Dr. Muro stated that he does however appreciate all the work that has been put into this bill and the work on the amendments to help try to resolve the concerns and issues.

Ms. Arias-Petrel added that there is a huge shortage of medical providers in general and that the State of Nevada ranks 29th in the United States for healthcare. She believes that this will add to that shortage and as a public member of the Board she is completely opposed to it. Dr. Muro agreed with Ms. Arias-Petrel's comments.

Dr. Spirtos moved to oppose proposed bill AB404, Ms. Arias-Petrel seconded the motion, and it passed with all Subcommittee members voting in favor of the motion.

c. AB442

Ms. Bradley stated that there was an amendment to proposed bill AB442. The new version of the bill applies to all health care licensing boards, and the Board (and all other health care licensing boards) would be charged with making regulations regarding the summary suspension of a license based on the type of violations alleged and number of complaints received alleging certain types of conduct. Licensing boards would share information received in complaints with law enforcement, and vice versa, and there will be an interim working group to study the communication between boards and law enforcement.

Dr. Muro asked if the reporting requirements are still in place. Ms. Bradley answered yes, and it does state that the Board would get permission from the complainant before sending it to law enforcement. Dr. Muro added that his previous opposition to this bill is reporting to law enforcement without the due process or further evaluation of the physician, especially in regard to the summary suspension section of the proposed bill. Ms. Bradley answered that the summary suspension section of the bill was removed and that the Board is only being directed to create regulations that establish the requirements for when a summary suspension would happen, however there is no automatic suspension, and any suspension that could occur pursuant to these regulations would only be done according to the regulations that the Board would make. Ms. Bradley also added that she is not sure that this would affect the existing process that is already in place with regard to complaints that allege, for example, sexual assault or something similar.

Dr. Muro asked if there was a timeline for implementation. Ms. Bradley answered that the Board would have to work on the regulations in the legislative interim.

Dr. Muro added that he is concerned that the discretion and due process of the physician will be taken away. Ms. Arias-Petrel agreed with Dr. Muro and added that it will compromise the work that the Board does.

Dr. Spirtos asked where this bill came from, he does not see the problem identified that this bill is trying to solve, is this bill trying to solve a problem that doesn't exist. Mr. Clark stated it was drafted from a concern that law enforcement was not being informed when certain acts are alleged against a physician and it is just to ensure that communication is taking place, but the idea was if a victim comes forward and makes a complaint to either the Board or law enforcement there is a level of communication and that was the concern and basis of the bill coming forward.

Dr. Muro stated he was concerned about the potential impact for the new process to be abused. Dr. Nagy agreed with Dr. Muro and Dr. Spirtos, but thinks that the legislatures that drafted the bill were coming from a place of concern and a perception that there was something that could be improved from the process.

Dr. Muro agreed that it is always good intent to protect the public from providers, and he recognizes the vulnerability of patients, however the way that this bill is stated might be a bit of an overreach.

Dr. Spirtos added that discretion needs to be used because if a complaint allegation is found to be unfounded, if it was made to be public it would be possibly career ending to the physician.

Ms. Arias-Petrel suggested that perhaps this topic of issue could be discussed at an open Board meeting regarding the concern of communicating with law enforcement and the process that the Board has regarding handling a complaint to try to alleviate some concerns. Dr. Muro and Dr. Nagy agreed that it should.

Dr. Spirtos moved to oppose proposed bill AB442, Dr. Nagy seconded the motion, and it passed with all Subcommittee members voting in favor of the motion.

d. SB204

Ms. Bradley explained that there had been no changes since the last meeting regarding language for proposed bill SB204. The most recent amendment was not yet published on the Legislature website, the most recent amendment language was provided to the Subcommittee. This bill would change foreign medical graduates that do not match into a residency to be called “bridge graduate physicians” and they would be licensed by only our Board (not Osteopathic Board).

Ms. Arias-Petrel asked if the Subcommittee was previously opposed. Ms. Bradley confirmed that they were and that she added it to the agenda because there was supposed to be an amendment.

Dr. Muro states that this bill opens doors to folks not adequately trained to have access to practice medicine and that his position has not changed since nothing on the bill has changed.

Dr. Spirtos stated that he is still opposed. Ms. Arias-Petrel and Dr. Nagy also voiced that they were opposed.

Dr. Nagy moved to oppose proposed bill SB283; Ms. Arias-Petrel seconded the motion, and it passed with all Subcommittee members voting in favor of the motion.

Agenda Item 5

REVIEW AND DISCUSSION REGARDING SENDING A LETTER TO GOVERNOR JOE LOMBARDO IN OPPOSITION OF BILLS AND REQUESTING A VETO

Dr. Muro stated that a letter was drafted and delivered to the Legislature regarding the opposition of AB404. Mr. Clark confirmed that the letter was delivered.

Dr. Muro stated that if letters were drafted to send to the Governor regarding the opposition of specific bills, he felt strongly that they should come from the perspective of the adverse impact that these bills would have on the safety of the practice of medicine and the diminished access to healthcare to the most vulnerable populations. Dr. Nagy and Dr. Spirtos agreed.

Dr. Muro asked if Ms. Bradley or the Executive Director should draft the letters. Dr. Nagy stated that when he drafted the last letter that was sent to the Governor's office, he tried to make sure all of the concerns the Subcommittee discussed would be in it. Dr. Muro stated he would just like to make sure that public safety is stressed in the letter.

Dr. Spirtos voiced that he believes that Dr. Nagy as Board President and Dr. Muro as Chair of the Committee should draft the letter and believes that the impact would be greater if it came from them. Dr. Muro agreed and stated that they will work on drafting a letter.

Mr. Clark stated that he suggests that the letter be drafted after the bill has gone through the entire process, that way all final language has been completed.

Dr. Nagy asked that Mr. Clark inform him of if a bill has a hearing with the call-in number and meetings instructions so that members of the Board could weigh in on these bills. Mr. Clark confirmed that he would do so.

Agenda Item 6
PUBLIC COMMENT

Dr. Muro asked whether there was anyone in attendance who would like to present public comment.

Ms. Bradley stated that there was no public comment in the Reno office.

Dr. Havins, in the southern office, wanted to comment that the bills discussed seem to be the most pressing bills but that there are other bills that the Board is opposed to. He suggested to the Subcommittee that for certain bills they will need to ask the Governor to veto them and there should be a separate letter to state a rationale of why each bill should be vetoed. He further stated that there are only ten days for the Governor to veto a bill, as there is no pocket veto in the State of Nevada.

There was no further public comment in the Board's Las Vegas Office.

Agenda Item 7
ADJOURNMENT

Dr. Nagy moved to adjourn the meeting, Dr. Muro seconded the motion and thanked all of the Subcommittee, staff and public members for joining, and it passed with all Subcommittee members voting in favor.

The meeting was adjourned at 1:19 p.m.

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