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

Eighty-Second Session
April 5, 2023

The Committee on Commerce and Labor was called to order by Chair Elaine Marzola at 12:34 p.m. on Wednesday, April 5, 2023, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. Copies of the minutes, including the Agenda [Exhibit A], the Attendance Roster [Exhibit B], and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/82nd2023.

COMMITTEE MEMBERS PRESENT:

Assemblywoman Elaine Marzola, Chair
Assemblywoman Sandra Jauregui, Vice Chair
Assemblywoman Shea Backus
Assemblyman Max Carter
Assemblywoman Bea Duran
Assemblywoman Melissa Hardy
Assemblywoman Heidi Kasama
Assemblyman P.K. O'Neill
Assemblywoman Selena Torres
Assemblyman Steve Yeager
Assemblyman Toby Yurek

COMMITTEE MEMBERS ABSENT:

Assemblywoman Daniele Monroe-Moreno (excused)

GUEST LEGISLATORS PRESENT:

Assemblywoman Brittney Miller, Assembly District No. 5
Assemblywoman Lesley E. Cohen, Assembly District No. 29
Assemblywoman Sarah Peters, Assembly District No. 24

STAFF MEMBERS PRESENT:

Marjorie Paslov-Thomas, Committee Policy Analyst
Sam Quast, Committee Counsel
Joe Steigmeyer, Committee Counsel
Cyndi Latour, Committee Manager

Elizabeth Lepe, Committee Secretary
Garrett Kingen, Committee Assistant

OTHERS PRESENT:

Sylvia Smith-Turk, Member, Legislative Committee, Nevada Land Title Association
Tiffany Banks, General Counsel, Nevada Realtors
Dylan Keith, Assistant Director, Government Affairs, Vegas Chamber
Mary Walker, representing Lyon County
Forrest Barbee, Corporate Broker, Berkshire Hathaway HomeServices Properties
Athar Haseebullah, Executive Director, American Civil Liberties Union of Nevada
Elliot Malin, Founder and President, Alpine Strategies
John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office
Sara Evans, Vice President, Supervisory Unit, Service Employees International Union Local 1107
Christine Saunders, Policy Director, Progressive Leadership Alliance of Nevada
Paul Catha, representing Culinary Workers Union Local 226
Wiz Rouzard, Deputy State Director, Americans for Prosperity Nevada
Eric Jeng, Acting Executive Director, One APIA Nevada
Meagan Forbes, Senior Legislative Counsel, Institute for Justice, Arlington, Virginia
Misty Grimmer, representing State Contractors' Board
Michael Hillerby, representing State Board of Pharmacy; and Nevada State Board of Accountancy
Neena Laxalt, representing Nevada State Board of Veterinary Medical Examiners
Susan Fisher, representing State Board of Professional Engineers and Land Surveyors; and State Board of Osteopathic Medicine
Alejandro A. Ortiz, Senior Staff Attorney, Racial Justice Program, American Civil Liberties Union
Joseph (J.D.) Decker, Administrator, Compliance Enforcement Division, Department of Motor Vehicles
Ben Prohaska, Board Member, Nevada Academy of Physician Assistants
Carmella Downing, Physician Assistant, Carson Tahoe Health; and representing Nevada Academy of Physician Assistants
John Larsen, Private Citizen
Matthew Wilkie, Private Citizen, Carson City, Nevada
Joan Hall, President, Nevada Rural Hospital Partners
Connor Cain, representing Touro University Nevada
Leila Burg, Chair, Membership Committee, Nevada Academy of Physician Assistants
Dora Martinez, Private Citizen, Reno, Nevada
Sarah Watkins, Interim Executive Director, Nevada State Medical Association
Bayo Curry-Winchell, Private Citizen, Reno, Nevada
Sarah A. Bradley, J.D., Deputy Executive Director, State Board of Medical Examiners

Serena Evans, Policy Director, Nevada Coalition to End Domestic and Sexual Violence
Dylan Shaver, representing Empower Nevadans Now
Christopher M. Ries, Detective, Las Vegas Metropolitan Police Department
Jason Walker, Sergeant, Administrative Division, Legislative Liaison, Washoe County Sheriff's Office

Chair Marzola:
[Roll was called. Committee protocols were explained.] Today, we will be hearing four bills: Assembly Bill 363, Assembly Bill 364, Assembly Bill 392, and Assembly Bill 442. We will also be having a work session. I will be taking the bills out of order, and we will be having the work session towards the end of our meeting. We will move to our first agenda item, Assembly Bill 392. Assemblywoman Kasama, you may begin when you are ready.

Assembly Bill 392: Makes various changes relating to property. (BDR 10-209)

Assemblywoman Heidi Kasama, Assembly District No. 2:
Before I begin, I want to point out that section 1 of the bill has to do with deceptive trade practices regarding 40-year listing agreements, and section 2 is entirely unrelated to section 1, and has to do with some cleanup language needed in *Nevada Revised Statutes* (NRS) Chapter 645 for real estate regulations, which will be covered later in the presentation. They both have to do with real estate issues but are completely unrelated.

As many of you know, I have been the office manager for the Summerlin office of Berkshire Hathaway HomeServices Nevada Properties. Being in real estate is almost like being an elected official. Every day is a surprise with what awaits you. There is never a dull moment, as you know. Last year, it came to my attention through our corporate broker, Forrest Barbee, that we had unusual liens showing up against properties we had listed for sale. What was happening was one of our agents met with an owner to list the property. They provided a comparative market analysis and spoke to the owner about their marketing plan and costs involved to sell their home. An agreement was reached, and our agent was hired. The agent then proceeds to market the home and hold open houses. Eventually, an offer is received, negotiated, and accepted. Next, escrow is opened with the title company. The title company prepares a preliminary title report and outlines all the liens on the property; for example, property taxes, homeowners' association encumbrances, trash and sewer liens, the current owner's mortgage. Some liens continue to run with the property, like property taxes. Others are extinguished at closing, like the seller's mortgage. What was discovered was a lien from MV Realty with a 40-year listing agreement that was the lien on the property, binding to the heirs and the estates. Imagine your kids have to work with a company maybe 30 years from now, to which they have no knowledge of, let alone if that company is still even in existence. When the agent and title company asked the owner about this lien, they responded that they had no idea about it.

What MV Realty does is advertise on the Internet. They will provide a comparative market analysis to the owner and pay you $500, $1,000—whatever the amount might be to provide

this analysis to you. Keep in mind that any real estate agent does this for free. I have been on their website, and what they are doing is buried deep in their advertising. They simply say, by providing this report and money to you, when you decide to list this property in the future, will you consider using them to list the home? Their paperwork is expertly drawn up. They have you sign an agreement that they also have you notarize online that states you agree to this. It does show on the paperwork that it is a 40-year listing agreement, but it is not clear in any of their advertising. It only shows up on the short-form, notarized document.

The company is preying on owners who are looking for quick cash, and it is a deceptive trade practice. When our agents get ready to close on a property and the title company contacts MV Realty to get a lien release, they want a 3 percent commission to release the lien. Of course, our agent gets no commission. We now end up in negotiations with this company to obtain the lien release. Keep in mind they have not been involved whatsoever in the sale process and have made no contribution to the closing of the home.

This bill is to stop this egregious trade practice. I have uploaded some exhibits on the Nevada Electronic Legislative Information System [Exhibit C, Exhibit D]. In addition, there is an amendment from Lyon County [Exhibit E]—which, all of the National Association of Counties agreed to—on page 1, line 3, changing the word from "clerk" to "recorder."

I also wanted to point out that recently there was an *Inman* article—*Inman* is a trade publication that is read quite widely in the real estate industry—and it reported that there are currently four lawsuits being filed in different states against this. It is being reported to the Federal Communications Commission. In addition, they want not only the 3 percent I mentioned to you, but 6 percent if there is no buyer-broker involved. This is based on the value of the home or the selling price of the home, whichever is greater, and MV Realty decides what the value of the home is. With that, I would also like to turn this over to Sylvia Smith-Turk with the title company, and she is going to share some insight as to what is happening on the title side.

Sylvia Smith-Turk, Member, Legislative Committee, Nevada Land Title Association:
I am the past president of the Nevada Land Title Association (NLTA), currently a member of the NLTA Legislative Committee, and I co-chair the American Land Title Association State Legislative and Regulatory Action Committee. I am addressing section 1 of A.B. 392, which the Assemblywoman gave you a bit of background on. In our industry, these agreements are commonly called NTRAPS, which are non-title recorded agreements for personal services [Exhibit C]. You will see that word intermingled in different articles, saying we call them NTRAPS. Generally, the agreements are recorded in the real property records that provides notice, evidencing the owner's agreement for future service in exchange for a small up-front monetary compensation. It is paid to the owner when they sign these agreements. Regardless of what you want to call the agreement, they are recorded, even though in reality, they should not constitute an interest in the real property. It is basically payment for a future service that they agree to list at some time in the future. These recorded memorandums basically create a 40-year term listing agreement with that particular company, and there is more than just MV Realty. We have seen a couple of different companies in Nevada that are

currently operating and using these. The agreements obligate the current owner, and attempt to bind any successive owner of the property to these 40-year contracts as well.

The act of recording it, for our industry, creates a long-term barrier to the sale or refinancing of the real estate and certainly can hamper a state administration where you are passing the property on. They purport to run with the land and basically attach to it for that 40-year term. As Assemblywoman Kasama indicated, if the homeowner does not list with that company, they are still obligated to pay anywhere from a 3 to 6 percent commission to that company. That would come into play if they were to sell as a "for sale by owner." Actually, if they lose the home in foreclosure, they are still indebted to that—the actual recorded document would be wiped out in the foreclosure, but the debt remains. If there is any kind of sale that is not done with the real estate agent, they still owe money, whether they did it themselves or went to a different company.

Again, as Assemblywoman Kasama indicated, in these agreements the commission is calculated on the property's value at the time they entered into the agreement. In our instances, as most of you know the median home price in Washoe County, a year ago, was $620,000. Now, it is down to $519,000. Yet, they would still be committed to pay it at whatever they deemed the value at that time.

The agreement, because it purports to run with the property, is very concerning to the title industry for many reasons. If for some reason it were to be missed in a title search, under the purpose of title insurance, it would become the obligation to pay it. But, if someone does a deed themselves, or an inter-family or a state administration, it stays with the property—a deed upon death—if that language is in there, this agreement runs with the property, so it now indebts someone who had no idea that was out there.

There are over 800 of these agreements currently recorded in Nevada. The bulk of them are in Clark County, but they are in all of the counties—Washoe and almost all of the rural counties have at least five or six of them. I can get that list for you if you would like to see more information on where they are recorded.

Our company recently closed a sale transaction. We had an owner who bought the property in 2013. He had gone through a divorce, refinanced in 2021, signed one of the NTRAP agreements in 2022, accepted a very small payment—I believe it was around the $1,300 mark. He was forced to sell the property earlier this year. He went directly to an investor, so there was never a listing. Because he sold it, he was in foreclosure and was going to lose the property, the company demanded $16,000 to release the recorded memorandum, which we had to insist on because we cannot ensure a new buyer or their lender. It was a tough deal.

I spoke to another local title company. They handled the refinance loan for a customer who had entered into one of these agreements, even though the document said they would agree to subordinate—if someone were to refinance, meaning they would give up their first position and subordinate to a new deed of trust—the lender required that agreement be removed from the property. They would not accept a subordination. That borrower, unfortunately, was in

financial distress as well and facing foreclosure. In order to get the new loan, he had to pay $24,000 to this company to get that document released.

These are just a couple of examples that we see from our side, from title insurance and settlement on the escrow—the closing side—they create hurdles and they create costly clouds on the title to real property. We have a concern that while right now we can find them, get a response, a demand, and a release; maybe in five years, they might not be around. Then what happens? That is going to require that property owner to do a quiet title action, which is a court proceeding that can take anywhere from six months to a year and can cost about $5,000 to $10,000, depending on the action. For us, it is going to create the issue of how to clean them up in the future.

This bill and the way that it was written will prohibit future agreements of this type. It will deem them void and nonenforceable. The Legislative Counsel Bureau (LCB) helped write the notice. Any previously recorded agreements—there are about 800 that are currently of record—it gives them an option to record something within a year, otherwise they will be deemed void and unenforceable as well. It was modeled after the private transfer fee bill, Assembly Bill 271 of the 76th Session, in 2011. It was modeled after that, in that same section: NRS Chapter 111. Similar bills to ours have passed. The most recent was in Utah, about a couple of weeks ago. Bills passed in Georgia and North Dakota that I know of as of now. Other states' attorneys' general offices have filed lawsuits against the companies: Florida [Exhibit D], Massachusetts, Pennsylvania, and North Carolina. This is a nationwide issue that we are trying to address. We respectfully ask that you give consideration to that section 1 and pass it. I want to thank Assemblywoman Kasama for assisting us in bringing this important matter forward. I am happy to answer any questions regarding section 1.

Chair Marzola:
Thank you for your presentation. Assemblywoman Kasama, are you going to go through the bill?

Assemblywoman Kasama:
Yes, I can go through the bill here. In section 1, I want to point out section 1, subsection 1, line 5. In regard to trying to avoid costly lawsuits from the state, I tried to figure out what is a quick way we can deal with this, because people are being hurt by this. The simplest way I thought was we limit listing agreements to one year. You will see in section 1, line 5, it is limited to one year. Ms. Turk-Smith went over some of the other sections there, but I will draw your attention to sections 1, 3, and 4. The language there is what title is looking for too, because, as she said, some of these agreements are already recorded, so this gives a way for them to deal with ones that are already recorded, and then it gives the date where it is prohibited from then on. That is the short story on the sections that are most important. The rest of these are sort of title requirements that they suggested be in the bill. Since the two sections are unrelated, if anybody has questions on these, we stand ready for that on section 1.

Assemblywoman Hardy:
Thank you for this bill. I was talking with the Assemblywoman about this. I was shocked, as I am sure many people are, that this is going on and these companies are getting away with this. As far as the 800 of these agreements that you mentioned, is somebody reaching out to these homeowners to let them know what is available to them, or saying if this law passes, that someone would be in contact with those people so they know what is available to help them?

Sylvia Smith-Turk:
We do not have a way to notify them. It would be the recording of the service agreement that is called for in the section that talks about how they would be required to record that document in plain language so that it is very clear. But beyond that, the answer is no, other than the bill, and hopefully, as an industry, just getting the word out.

Assemblywoman Backus:
This seems so unconscionable to me. I understand how the bill was written; it covers any type of service agreement with exceptions for if something else comes down the pipeline. I am curious if there are lawsuits, attorneys general getting involved around this country, of deeming these types of agreements void and unenforceable if they exceed the 40 years. But then I noticed under subsection 3 that the service agreement prohibited pursuant to this section, that is recorded on or after October 1, 2023, is void and unenforceable. It may be a question for the Legal Division, even though I am an attorney, but I am trying to figure out why we cannot make these simply void and unenforceable.

Sylvia Smith-Turk:
We would love to be able to have them simply deemed unenforceable. I believe when it went to LCB, they mirrored the language under Assembly Bill 271 of the 76th Session, the private transfer fee bill that was done in 2011. But legally, if they could be deemed unenforceable, we would absolutely love that.

Chair Marzola:
I will have Legal Counsel chime in as well.

Sam Quast, Committee Counsel:
That is correct; the provisions there which require the extra notice are based on subsection 6 of NRS 111.870, regarding the private transfer fee obligation. As far as the issue of whether or not all these things could be deemed void right now, that is something I am not fully prepared to address right now. I would like to look into whether or not there are other legal issues that would preclude that. I will look into that and get back to the Committee.

Assemblywoman Torres:
I want to see if you could talk a bit about section 2, regarding property managers, because I do not think that was covered in the presentation. Could you talk about the genesis of that and walk through that part of the bill?

Sylvia Smith-Turk:
Yes, I was going to do that after questions were done for section 1.

Chair Marzola:
You can go ahead and go through section 2 now.

Assemblywoman Kasama:
Before I leave section 1—and I know some of you used the word unconscionable—I thank you because I think this is something we want to stop as quickly as possible. As I said at the beginning, being in politics and real estate, every day is different, and when this popped up this last summer, I was floored and astounded alongside some of my agents. We were working hard on things and then these issues came up. I certainly appreciate your support on this.

In regard to section 2, this section is completely unrelated to the first. It has to do with NRS Chapter 645, which is the real estate section in statute. It is looking at cleanup language, and I would like to turn the remarks over to Forrest Barbee, who is the corporate broker from Berkshire Hathaway. He will walk us through the cleanup language if he is on the line. I do not see him on Zoom. If not, I have the information. I would like to introduce Tiffany Banks. She is general counsel for the Nevada Realtors, and she will step in and assist.

Tiffany Banks, General Counsel, Nevada Realtors:
We are happy to be here today alongside Assemblywoman Kasama to help explain section 2 of A.B. 392. While I am only addressing the language in section 2, we are in full support of section 1 of this bill as currently drafted. We would like to thank the bill sponsors for their hard work on this important piece of legislation. Section 2 sets forth certain duties of a person who acts as a property manager while performing his or her duties pursuant to a property management agreement.

A property management agreement is a legally binding contract between a client and a broker, in which the broker agrees to accept valuable consideration from a client for providing property management for that client. Property management specifically means "the physical, administrative, or financial maintenance and management of real property or the supervision of such activities for a fee, commission, or other compensation." [Per Real Estate Division, Department of Business and Industry.] Pursuant to that property management agreement, it is important to note that in order to hold a property management permit, you have to be a Nevada real estate licensee. The intent of this bill and the language provided is to clarify the relationship between the property manager and owner, and not intended to set forth duties creating a separate license for property managers.

The language contained in section 2 closely mirrors the language already in existence under NRS 645.252, setting forth duties of a licensee acting as an agent in a real estate transaction. Where this differs is, it expands in subsections 4, 5, and 6 additional duties and clarifies that those duties are only specific to those property managers, such as accounting for all money that the property manager receives. Existing law already sets forth actions that may be taken

if any unlicensed property management activities are conducted which require a license. That is not discussed here in this bill. The Nevada Realtors will continue to work on further clarifying language in this section, and we are committed to working with Assemblywoman Kasama on legislation that protects consumers while clarifying responsibilities of those engaging in property management activity in Nevada. I am happy to answer any questions or walk through any specifics of section 2, as they outline the duties today.

Chair Marzola:
We will take additional questions. Committee members, are there any additional questions? [There were none.] We will move to support testimony.

Dylan Keith, Assistant Director, Government Affairs, Vegas Chamber:
First, we would like to thank the sponsors for bringing this bill forward and noticing this important issue and finding a solution. This is an egregious practice, and we want to maintain the reputability of one of our major organizations in the state. For that reason, we are in support, and we ask for your support as well.

Mary Walker, representing Lyon County:
I want to say thank you to Assemblywoman Kasama for accepting our very small one-word amendment [Exhibit E].

Forrest Barbee, Corporate Broker, Berkshire Hathaway HomeServices Properties:
I was supposed to call in earlier to present, but I was muted and could not get unmuted. I have a short statement that I was going to provide for Assemblywoman Kasama. The foundation for a Nevada designated agency as currently practiced was a result of the passage of Senate Bill 403 of the 68th Session. At that time, there was only a need to address brokerage agreements in the context of real estate transactions since property management was not directly addressed with the inception of statutory agency. The 69th Legislative Session addressed property management with the passage of Senate Bill 248 of the 69th Session, which established a framework for the property management beginning in NRS 645.6052, as well as the requirements for a new property management permit. Senate Bill 315 of the 73rd Session, in section 7, properly modified the definition of "brokerage agreement" in NRS 645.005 to exclude property management agreements, primarily because NRS 645.320 prohibits brokerage agreements from containing an automatic renewal provisions clause.

However, Senate Bill 69 of the 74th Session added the definition of "agency" in NRS 645.0045, which unintentionally limited express agency to one created by a brokerage agreement. That was an oversight and should have been a brokerage agreement or a property management agreement. It seems that when the Nevada Legislature passed Senate Bill 69 of the 74th Session, it did not take any consideration into changing that definition. Consequently, there is no evidence from the 74th Legislative Session minutes or meetings that the legislative intent was to exclude property management.

Chair Marzola:
Is there anyone else wishing to testify in support of Assembly Bill 392? [There was no one.] We will move to hear testimony in opposition. Is there anyone wishing to testify in opposition to A.B. 392? [There was no one.] We will move to testimony in the neutral position. Is there anyone wishing to testify in the neutral position to A.B. 392? [There was no one.] Assemblywoman Kasama, would you like to give some final remarks?

Assemblywoman Kasama:
I think we can agree this is a very serious issue and we need to get this passed for our consumer protections. Thank you to my cosponsors and my supporters with their testimonies as well.

Chair Marzola:
We will now close the hearing on Assembly Bill 392.

[All items submitted but not discussed will become part of the record: Exhibit F, Exhibit G, and Exhibit H.]

We will have a one-minute recess [at 1:09 p.m.]. [Meeting reconvened at 1:10 p.m.] We are going to go into our work session before we call our next bill. [Committee protocol and rules were explained.] We will begin with Assembly Bill 216.

Assembly Bill 216: Revises provisions governing travel insurance. (BDR 57-198)

Marjorie Paslov-Thomas, Committee Policy Analyst:
[Exhibit I] Assembly Bill 216 revises provisions governing travel insurance. It is sponsored by Assemblywoman Gorelow. It was heard by the Committee on March 8, 2023. There are nine proposed amendments, and they were requested by Samantha Sato, Director of Legislative Affairs and Operations with Carrara Nevada. The first revises the definition of "blanket travel insurance" in section 4. The second adds language to specify that cancellation fee waivers and travel assistance services are not insurance. The third is to revise section 6 of the bill to change the term "civil" to "civic" in subsection 5; and include any trust or the trustees of a fund established, created, or maintained for the benefit of and covering members, employees, or customers of one or more associations described in subsection 7. Fourth is to revise the definition to "fulfillment materials" in section 7 and specify that the documentation may be provided or sent to the purchaser of a travel protection plan. The fifth is to amend section 11, line 29, to remove the words "of travel insurance." The sixth revises the definition of "travel administrator" in section 15 to provide that the term does not include a person working for a travel administrator to the extent that the activities of the person are subject to the supervision and control of the travel administrator. The seventh proposed amendment revises section 21 to remove the requirement that a person hold certain licenses or registrations in order to be issued a license as a producer of limited lines travel insurance. The eighth proposed amendment is to amend sections 21 and 29 to clarify that: (1) a producer of insurance licensed in certain lines of authority may act as a producer of limited lines travel insurance; and (2) a producer of insurance licensed for property and casualty insurance is not

required to be appointed by an insurer to act as a producer of limited lines travel insurance. The ninth proposed amendment is to amend section 37 to clarify that an insurer is required to pay the tax on insurance premiums for travel insurance premiums paid by a primary certificate holder who is resident of this State and who elects coverage under a group travel insurance policy.

Chair Marzola:
Are there any questions? [There were none.] I will entertain a motion to amend and do pass Assembly Bill 216.

> ASSEMBLYWOMAN JAUREGUI MOVED TO AMEND AND DO PASS ASSEMBLY BILL 216.
>
> ASSEMBLYWOMAN TORRES SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYWOMAN MONROE-MORENO WAS ABSENT FOR THE VOTE.)

I will assign the floor statement to Assemblywoman Gorelow. We will move to Assembly Bill 321.

Assembly Bill 321: Makes various changes relating to public safety. (BDR 52-753)

Marjorie Paslov-Thomas, Committee Policy Analyst:
[Exhibit J] Assembly Bill 321 makes various changes relating to public safety. It is sponsored by Assemblyman Carter. It was heard on March 27, 2023. There are two proposed amendments by Ryan Bellows with NV Energy and Carolyn Turner with Nevada Rural Electric Association. The first is to amend subsection 3 of section 8 of the bill to revise the dates of the prescribed phase-in period by which certain percentages of the foil balloons sold, offered for sale, or manufactured by a person must become compliant. The second amendment is to add two new sections of the bill to revise NRS 200.471 and NRS 200.481, which establish the crimes of assault and battery, respectively, and provide for enhanced penalties for commission of those offenses against certain persons under certain circumstances, to provide for enhanced penalties for the commission of an assault or battery against a utility worker under certain circumstances.

Chair Marzola:
Members, are there any questions? [There were none.] I will entertain a motion to amend and do pass Assembly Bill 321.

ASSEMBLYWOMAN JAUREGUI MOVED TO AMEND AND DO PASS ASSEMBLY BILL 321.

ASSEMBLYWOMAN TORRES SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYWOMAN MONROE-MORENO WAS ABSENT FOR THE VOTE.)

I will assign the floor statement to Assemblyman Carter. Next, we will go to hear Assembly Bill 343.

Assembly Bill 343: Revises provisions relating to occupational therapy. (BDR 54-737)

Marjorie Paslov-Thomas, Committee Policy Analyst:
[Exhibit K] Assembly Bill 343 revises provisions relating to occupational therapy. It is sponsored by Assemblyman Miller. It was heard on March 13, 2023. There is one proposed amendment by Paula Cook, the president of the Nevada Occupational Therapy Association, to amend subsection 3 of section 6 of the bill to remove "an equivalent foreign educational program" and replace it with "a comparable foreign educational program."

Chair Marzola:
Members, are there any questions? [There were none.] I will entertain a motion to amend and do pass Assembly Bill 343.

ASSEMBLYWOMAN JAUREGUI MOVED TO AMEND AND DO PASS ASSEMBLY BILL 343.

ASSEMBLYMAN O'NEILL SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYWOMAN MONROE-MORENO WAS ABSENT FOR THE VOTE.)

I will assign the floor statement to Assemblyman Miller. I will now open the hearing on Assembly Bill 363. Assemblywoman Miller, you may begin when you are ready.

Assembly Bill 363: Revises provisions relating to professional and occupational licensing. (BDR 54-710)

Assemblywoman Brittney Miller, Assembly District No. 5:
I am sponsoring Assembly Bill 363, which is provided in skeleton form [Exhibit L, Exhibit M]. Skeleton form means that it impacts many chapters. Instead of having to print loads of paper for the redundancy that would be repeated throughout each chapter, they present the bill with its intent in skeleton form. Ultimately, Assembly Bill 363 requires considerations on the aspects of the criminal history of an applicant that certain professional and licensing entities are authorized to consider in determining whether to issue a license to

an applicant. In other words, a regulatory body cannot deny a license to an applicant solely on the basis of their criminal history. The burden of proof is on the state to show the applicant is not qualified based on a multistep process for boards to follow in assessing an applicant's criminal records.

Nearly one in three adults in the United States, and one in four Nevadan adults has a record in the criminal justice system. The Institute for Justice reports that a person reentering society after a conviction faces limited employment opportunities because of licensing. Beyond struggling with the ordinary cost of licensing, former offenders often encounter special restrictions that ban or limit people with criminal records, even records involving irrelevant or long-ago violations. The Institute for Justice ranks Nevada as the worst state in terms of licensing burdens, based on the number of jobs requiring licenses and the number of hurdles for jobseekers to overcome, even for low-paying occupations. According to the Institute for Justice, in another recent survey, two in three formerly incarcerated people were unemployed or underemployed five years after release.

What many people do not realize about me is that I once was the director of a prisoner reentry program. While it was funded by the U.S. Department of Justice, the majority of the funding actually came from the federal Department of Labor. The reason for that is because, without question, secure employment is one of the highest factors in reducing recidivism. Interestingly enough, according to a recent study put out by Arizona State University, they reported that states with a higher licensing burden also have higher rates of recidivism. We have the opportunity to address a twofold issue: reducing recidivism while putting more Nevadans back to work, including in some of our occupations with labor shortages.

Let us consider the reality of arrest, conviction, and incarceration. The majority of people will eventually be released from prison. Moreover, a larger group impacted are those who are arrested without conviction. They all need solid employment with a minimum of a living wage to be self-sufficient, provide for their families, and even pay restitution or court costs. Again, one of the most important factors in predicting their success is employment.

In my experience, I saw many people who were imprisoned who needed training or education in order to qualify for certain jobs. What I also saw were plenty of individuals who had already had college degrees, certificates, and experience in stable careers and skilled employment. In addition, the rationale for a criminal records request whereby licensing boards seek robust information to advance the health and safety of the public is misleading and confusing. There is no available evidence demonstrating that having a criminal record is related to poor occupational performance or low-quality services. Simply having a criminal record does not predict an individual's ability to perform an occupation. However, the bill does acknowledge that there may be certain risk factors to consider. In other words, we would not suggest licensing a person who had been convicted of elder abuse to work in a nursing home. Instead, the bill requires that each individual receive scrutiny on a case-by-case basis to determine whether or not the actual offense has a direct link to possible vulnerabilities or risk.

To address this barrier in occupational licensing, the Legislature passed Assembly Bill 319 of the 80th Session, which authorized the person to petition certain regulatory bodies for a determination of whether the person's criminal history would disqualify the person from obtaining a certificate, license permit, qualification, or registration. The person may petition a regulatory board before obtaining any required education or paying any required licensure fee. The bill provided that not later than 90 days after a petition is submitted to a regulatory body, that the body shall inform the person of its determination. In June 2020, the Sunset Subcommittee reported the following boards received petitions to review an applicant's criminal history: for the barbers, there were 55 petitions; cosmetology, 161 petitions; court reporters, 1 petition; dental, 1 petition; medical, 4 petitions; and nursing, 39 petitions. Twenty-two boards reported to the Sunset Subcommittee that there is no clearly defined list of crimes that would automatically preclude a person from licensure. The overwhelming process is to review petitions on a case-by-case basis with applicants, to discuss the circumstances surrounding any criminal history prior to determination.

Before we get into the details of the bill, I want to state again that this bill is an opportunity to get our Nevadans back to work and participating as contributing members of society. We know workforce issues and barriers often affect a person's ability to do that, and it often affects people of all walks of life. With that, I will turn this presentation over to my copresenter, Athar Haseebullah, the executive director of the American Civil Liberties Union (ACLU) of Nevada to walk us through the components of the bill.

Athar Haseebullah, Executive Director, American Civil Liberties Union of Nevada:
The Institute for Justice, as Assemblywoman Miller mentioned, has published numerous studies on Nevada's occupational licensing standard [Exhibit N]. It is the ACLU's position that occupational licensing reform should be the most bipartisan issue this legislative session. The Institute for Justice specifically stated in a study they had released, that Nevada earned an F when it came to protections for licensing applicants with criminal records. There are only six other states that have an F rating. Our hope is that through the approval of this bill, we can start to move past an F grade and hopefully show up to future sessions with a much higher grade, and we can applaud the work we have done here.

As Assemblywoman Miller had mentioned, there were previous laws in place that allowed for a predetermination process to occur when an individual had a criminal record and sought licensure. However, licensing entities are not bound by those determinations, and they may rescind those at any time. Those caveats completely undermine the purpose behind the petition process and render them meaningless. This bill addresses that problem. It creates a binding predetermination process so returning citizens can rely on the state's decisions related to their criminal histories when determining whether to invest time and resources into securing a license. It ensures boards are not considering old and irrelevant elements that do not bear on a person's ability to safely perform the duties of that occupation, and it provides people with a meaningful path to employment. That remains critical, and that is why this bill is here today.

I will now go over the technical specifics of the bill. I am happy to take any questions as they come up. Section 2 of the bill lays out the definitions to be used by this bill, to include the definition of "potentially disqualifying felony offense," and as amended [page 5, Exhibit M], the definition of "deny an applicant." "Deny" under this specific bill would mean to "deny, diminish, limit, suspend, revoke, refuse to renew, or otherwise withhold state recognition" for a license. Section 2 also details the disclosure and consideration requirements for licensing boards. Notably, this section includes a prohibition on arrests which did not result in convictions for potentially disqualifying felony offenses or records which were sealed. The reason why this is important is the ACLU of Nevada has been informed multiple times that while there may not have been any conviction, there may have simply been an arrest. Licensing boards have denied otherwise qualified applicants the ability to receive a license simply based on an arrest.

Section 4 of the bill lays out parameters for disqualification of licensure based on an applicant's criminal history, including directly tying the disqualification into the duties and responsibilities of the license being sought, showing that the applicant has not been rehabilitated and that issuance of that license would pose a direct risk to public safety because the applicant cannot perform the duties and responsibilities of the occupation. That standard sets a requirement that disqualification would only be possible through the existence of clear and convincing evidence of those criteria. According to the United States Supreme Court, that definition means that the evidence would be highly or substantially more likely to be true than untrue. Section 4 also creates criteria the boards are to consider when assessing rehabilitation, taking a "totality of the circumstances approach" to a prospective licensee. They would no longer be able to summarily deny a license for no reason. It is an individual consideration that will potentially get more people back to work.

Section 5 states that the preliminary decision process would occur, but it would be bound in a requirement. The preliminary decision process would save time, energy, money, and allow individuals who are seeking licensure to understand what they are going to have to experience before they end up going through the process of moving forward. Although Nevada currently allows workers to receive a pre-application decision to determine whether their criminal histories are disqualifying, boards are not bound by these decisions. Therefore, people cannot rely on pre-application decisions to know whether they should invest time and money into pursuing a license. A licensed applicant may be initially told by a board their criminal history is not disqualifying, invest the time and money into necessary training, only to later be denied by the same board. Section 5, subsection 2 lays out the written notice provisions associated with the denial and creates a right to an informal meeting with an executive director—or their designee if a licensing board does not have one—in the event of denial. Section 5, subsections 3 through 7 lay out associated provisions related to that informal meeting, including specific requirements for applicants who receive a preliminary denial and make such a request, and the timelines associated with such meetings.

Section 6 further bolsters that provision by laying out the parameters for what the informal meeting would do, including items related to character assessments, specifically to bolster the individualized assessment that goes into each license. Again, that is the point of the bill in

large part: an individual assessment where the burden post-denial is not held by the applicant. We have seen, time and time again, individuals who are attempting to better their lives seek an occupational license, they are denied their license, and the burden is on that applicant to move forward and attempt to challenge that. Most of the time, if you are seeking an occupational licensing in that regard, you do not have the money to hire an attorney to combat that in court. This would shift the burden to the board that is denying a license.

Section 7, subsections 3 through 7 lay out the provision for a preliminary denial and provide recourse for applicants in the event of such a denial. If the preliminary decision is averse to the applicant or is clearly erroneous, the regulatory body may deny a license to the applicant on the basis of that history after notice, and an opportunity for hearing is provided within that section. Again, it provides some ability for recourse. No simple denials, no goodbye, or try again in the future but we are not going to tell you what you did wrong or what the issues were. These are individuals under this provision, who in many instances have been denied a license without being convicted of anything. We have seen licensure denial based on arrest alone, which means nothing. We have talked time and time again over the course of the last 48 hours, at a bipartisan level, about the presumption of innocence, but it does not seem to always apply when it comes to licensing boards. The fact that we have an F in this is something that can be easily fixed through this specific provision in this bill.

Sections 8 and 9 of this bill make conforming changes including a requirement within section 9, subsection 7 that the licensing board shall post on its Internet website its licensing requirements and an explanation of the procedures by which the regulatory body may deny a license to an applicant on the basis of their criminal history. That becomes important right now because we do not have notice provisions in place that are sufficient.

Section 10 makes conforming changes specifically addressing the definition of "good moral character." Again, this is a skeleton bill. It could be widened as needed to apply to each individual board. "Good moral character" is one of the most arbitrary terms out there. For those who are attorneys like me, we have had to deal with this with the Nevada Bar and every other bar exam we have taken, and many others have had to deal with these issues as well. What does "good moral character" mean? Under the law as it stood, this particular bill addresses some of those issues by removing provisions 1 through 3; removes "Has not been convicted of a felony, misdemeanor or gross misdemeanor." Specifically, this was with respect to landscape architecture, but a lot of the language has been extrapolated, as you all know, via other sections within NRS that should have probably been more universally applicable but ends up applying or falling within a subsection, and we pulled from there. Our body of law here is still a work in progress, as we might say.

Those are the overall provisions of the bill. I am happy to answer any questions, but I also have two caveats before we do that. First, we had about seventy-five ACLU members who said they were in desire of calling in today. I instead asked them to submit a letter, so we submitted that for the record [Exhibit O]. I recognize the time constraints this Committee is under, so those will be available for you.

Secondarily, and probably more importantly, there is going to be opposition from licensing boards—that is to be expected. The purpose and the reason why this bill is brought forward is to change that process. These boards have a lot of power right now, and the people of Nevada—the people who are seeking these licenses—do not. They are denied the ability to earn a lucrative living. State boards that issue occupational licenses have been tremendously empowered, and this is not a knock on them as individuals. However, the structure we have in place places an onus on an individual attempting to seek work after they have fulfilled every term they need to get back into the workforce. Instead of being greeted with an individual determination and the opportunity for an occupational license that might better their future and the future of their family, they are denied that license and told they can seek an attorney if they have an issue. That is insufficient. We need to get more people back to work. I am happy to answer any questions the Committee might have.

Assemblywoman Duran:
I work with some companies as well where if people are arrested and only charged, people automatically think they are guilty and are kept out of work, and it is a big problem. I want to ask about section 5, subsection 3, as well as section 7, subsection 5. You are only giving them 15 days to appeal that. Why is that? I understand with mail—I think they call it "snail mail"—but can you add electronically in there? Unless it is certified received, that you are seeking they do that, I was curious to see if electronic can be put in that as well.

Athar Haseebullah:
In crafting the language of the bill, it was important for us to glean from best practices in other states and what they have done. Part of the reason for the expedited timeline was specifically to ensure the process moves along. If it ends up being a scenario where it is 30, 60, 90 days, or something that is longer, we might end up extending the entire period of time. That would be for these specific initial denials when you are seeking a preliminary decision on the front end; the goal is to have that come as fast as possible. We have laid out the parameters for what that looks like, and I recognize there will be some arguments made with respect to public safety. That is something that comes up often for advocates for excessive amounts of regulations as it deals with occupational licensing. You have a conflict. A court of competent jurisdiction has deemed you fit to return to work. We have established the parameters for what that looks like, and yet a board may be in a position where they are stringing someone along for an excessive period of time. Therefore, the purpose of that 15-day period was to keep the ball rolling and allow that process to move as expeditiously as possible.

Assemblywoman Duran:
Would you be able to put "electronically" in there as well? I think, as we all know, it is probably a better practice because most of us get email. I think some of us respond to that as well.

Assemblywoman Miller:
We would be more than happy to amend that as an additional option to expedite the process.

Assemblywoman Torres:
One of the issues I have heard from talking to different constituent groups is, the way it reads right now, if you have been accused, charged, or convicted—I do not know that this bill addresses those that have been accused—would there be consideration to address that? Maybe I am reading it wrong, but it looks like it is only for those who have been charged or convicted.

Athar Haseebullah:
I think that it goes beyond that, because the actual provisions that are in place with respect to the individualized determination do not create a blanket opportunity for an adjustment there. I will use that as the example if somebody has been arrested because that is a typical one we have seen. In fact, I received a leaked email that I should not have received three weeks ago about a potential denial that is coming on a separate board. On one of those denials that came through, there was an arrest, so there was a licensure denial based on that. What we do not want to happen is that being used as a precursor to engage in a denial of an occupational license. We believe this bill addresses that because the provisions that are set forth lay out a very specific framework for what that looks like. It also allows the burden to shift over to the state to justify its decision in denying a license versus forcing the applicant to move forward and having to do so.

Assemblywoman Torres:
Maybe we want to do something that prevents the boards from asking the question too. That is a question on licensing applications that I have spoken to stakeholders about. They agree you should not have to answer whether or not you have simply been accused. Many people have been accused of something; that does not mean that somebody has done it. I know that is part of the wording of the question for a lot of our licensing boards.

Athar Haseebullah:
If we need to, we think we can tighten up section 2, which deals specifically with the asks that are requested. We can go ahead and double-check that language and make sure that it is tightened, but it does preclude the ability to assess information or require disclosure of certain information within section 2, namely, that information which is not going to be used in an effective way to make that licensing determination. That does include some of those items including arrests, juvenile adjudications, records that are sealed, and things of that nature.

Assemblywoman Backus:
I appreciate your bringing this bill because another factor of this is, so many people have offenses that are sealed and expunged, and you get in these predicaments when you are filling out these applications, usually under penalties of perjury, of whether or not you have ever had a criminal history. I appreciate the certainty in this. I also like the section where the licensing boards are to be posted on the Internet so people would understand what those disqualifying criminal activities may be that would preclude them.

Assemblyman O'Neill:
I have three questions that sort of dovetail together. On an arrest that is pending—trial is pending—the person has applied for a job, as Ms. Miller said, working at an elderly care facility, and they have been charged with elderly abuse, but have not been convicted. There is a dilemma there that, if I read this correctly, the hiring agency could not delay or deny the application simply because it is a pending court action. I think I may be reading part of this wrong. That is what my question is. I need clarification on that.

Athar Haseebullah:
From our vantage point, that would not be the case. What would happen is, while that information would not necessarily be required to be disclosed pursuant to the terms of the actual bill, the information that is associated with respect to the denial would need to be on an individualized basis. I think what we could do to make sure that portion is clear from a vetting perspective, would be to tighten that language if we needed to—if there is something pending, I do not know if that was fully considered on the front end, so we are happy to make that adjustment if necessary. I think that is a good flag for us. As we mentioned, we are always happy to work on additional language that clarifies things. This is decades worth of cleanup here. The skeleton, as it exists right now, might be brought in and have some meat added to it. It should probably include a provision like that. That makes the provision a bit clearer if there is something that is specifically pending, because again, that is pre-adjudication as well.

Assemblyman O'Neill:
I appreciate that; I truly do. When I was working, one of the divisions that I was chief of actually handled a lot of these background investigations. I will admit, I did not like our making the determinations for the various boards. I thought the information should go to the boards and let them make the determinations. However, there are limitations when criminal histories are transferred from one agency or one person to another; they have security requirements placed on the information—the material itself. I am not sure I see that addressed here. I do think the board should make their own decisions. I truly do. But there are limitations placed by the FBI, and on the criminal history on how that is handled, and it is a lengthy process. Some of that should be brought in and looked at, or in delayed implementation.

Chair Marzola:
Assemblyman O'Neill, we are going to have our Legal Division counsel give an explanation.

Sam Quast, Committee Counsel:
Under this bill, the regulatory body and everybody else who this applies to, the regulatory body could not ask about it. They could not require an applicant for a license, and it only applies with the issuance of licenses. You were referring to someone who applies for a job, so in that context, it applies in the context of issuing licenses. However, if there was a license associated with that, the regulatory body could not ask about anything except any aspect of an individual's criminal history except for information regarding potentially disqualifying felony offenses. That is an offense for which a person was convicted, went to

prison, and was released within the past three years. In the scenario that you have presented, where it is information regarding an arrest, they could not ask about it. If they were to receive that information from some other source—because this just prohibits the regulatory body from requiring the applicant to disclose if they were to receive that information from another source—they could not consider it when determining whether to issue a license.

Assemblywoman Miller:
Does that answer your question, or do you have an additional one because of it?

Assemblyman O'Neill:
I think Assemblywoman Miller, the ACLU, and I would probably like to talk about this a little more offline. If I may ask one more—the applicant, after going through the process, et cetera, and the licensing board is still saying no, does this allow them to go take civil action, go to district court to get it resolved, or is it final? Do the licensing boards have final say?

Athar Haseebullah:
As it stands right now, there is always the ability to challenge agency determinations through a court. What the bill would do is shift the burden and the onus over to the board and require specific parameters and standards set forth by the board in terms of the licensure denial. As it stands right now, the onus and the full burden to justify the actions underway would fall on the applicant. This would shift that over to the board, so the board would have to establish, again, through the evidentiary standards that we laid out, clear and convincing evidence that the denial satisfied the standards of this particular bill.

Assemblywoman Miller:
I would like to add to that as well. Again, this bill is not at all implying that every single applicant must be granted a license. It is simply asking for a case-by-case scrutiny as they review each individual case. Again, there will still be licenses denied. It is just their ability to prove for cause why someone was denied.

Assemblywoman Kasama:
When we said "disqualifying events," such as they have been found guilty, they have been imprisoned, or they were released within the last three years from prison, is there some precedent for using three years?

Athar Haseebullah:
That is what the best practices have suggested at the national level. We have looked at a couple of things. One of the things we looked at on the front end in conjunction with our partners at the Institute for Justice—and I believe the Council of State Governments Justice Center also submitted a letter of support for this bill [Exhibit P]—was specifically reducing recidivism rates. We recognize that the period of time, likely falling outside of that window, encapsulates the quickest period of time where we think the rehabilitative elements, as defined by this bill, would have been able to be demonstrated and could have come through, but also does not preclude somebody from being extended out enough to where it precludes

their option for applying for the occupational licensure or otherwise dims their interest in seeking one.

Assemblywoman Hardy:
Thank you for this bill. A lot of people have heard me say this session that recidivism is something that I am very interested in. When I read this bill, I was happy to see this—that we can work in that space. I appreciate some of the things that were said here, that there are no simple denials, that we are looking at a totality of a circumstance or person, giving somebody the opportunity to discuss what happened, see their progress, and give them the opportunity to rebuild their lives, move forward, and contribute to our communities. I want to make sure that I am clear. Are there any situations where a board could flat out deny it, or is it all circumstances would go through this process as outlined in the bill?

Athar Haseebullah:
The board could still make a denial of the application, but the process for how the denial must occur has been laid out by this bill. What that would look like is—a potentially disqualifying felony offense mentioned here—if an individual falls within that provision and the board chooses, at that point, to deny them, the process for that denial is outlined here. Again, it is not a blanket. You cannot deny someone; it simply lays out the process for if you are going to deny and what those provisions for denial end up looking like. They must be followed and spelled out clearly. No longer would agencies simply be empowered to have suggested approaches to those occupational licensing denials. In effect, it does not stop an agency or a licensing board from denying an occupational license. It simply clarifies the process and lays out specific parameters for what the board can consider in doing so.

Chair Marzola:
Committee members, are there any additional questions? [There were none.] We will move to support testimony of Assembly Bill 363. Is there anyone wishing to testify in support of Assembly Bill 363?

Elliot Malin, Founder and President, Alpine Strategies:
In 2019, then-Assemblywoman Jill Tolles worked with me on Assembly Bill 319 of the 80th Session; our speaker was one of our primary sponsors. Assemblywoman Hardy was another cosponsor of that bill. Today, Assembly Bill 363 is a natural continuation of that bill. I could not be more thrilled to be here in support of this bill. One of the most important things I view that we can do here is to help people get back to work and reduce recidivism. It helps us create better members of our community. It reduces the strains on our community as well as reduces the tax burden placed on the state.

I want to highlight an interesting statistic to show how important this legislation is. Per the National Conference of State Legislatures (NCSL), from a study that I remember seeing in 2019, a quarter of Americans require a license to work. A third of Americans have a criminal conviction. Nevada was one of the first states to address this problem with Assembly Bill 319 of the 80th Session. I know Speaker Yeager spoke at NCSL about that bill and was very excited about that. This is a continuation of that: the natural way we can

help others, reduce recidivism, get people back in the economy, and treat them as full members of our society. I appreciate Assemblywoman Miller for bringing this forward, and I urge all of you to support it.

John J. Piro, Chief Public Defender, Legislative Liaison, Clark County Public Defender's Office:
This is a commonsense piece of legislation that breaks down barriers and provides a pathway to a good job, which is one of the best ways to prevent recidivism. That is the nexus for me, as a public defender. I never want to see my clients again in that capacity. I always want to see them on the road to success, and a good job is one of the best ways to prevent recidivism. This bill is less about thinking outside the box and more about providing a pathway to inclusion, rehabilitation, resilience, and redemption. We strongly urge its passage.

Sara Evans, Vice President, Supervisory Unit, Service Employees International Union Local 1107:
Service Employees International Union 1107 represents over 18,000 workers, including 8,000 nurses. As you heard, nurses were the largest group affected by the denial of an occupational license based on past criminal history. We support this bill and urge the Committee to support this bill.

Christine Saunders, Policy Director, Progressive Leadership Alliance of Nevada:
We are here in support of A.B. 363. While Nevada has made some strides over the past few legislative sessions to address occupational licensing reform, there are many steps we can take to improve employment opportunities for Nevadans. Assembly Bill 363 makes commonsense changes the licensing board can consider with an applicant and shifts the burden to the state to justify the denial. Having a job and being able to afford basic necessities and stable housing are key components to reduce recidivism. Passing A.B. 363 will benefit not only those who are formerly incarcerated, but their families and the economy as a whole. We urge your support.

Paul Catha, representing Culinary Workers Union Local 226:
We support A.B. 363 and echo the comments of our colleagues.

Wiz Rouzard, Deputy State Director, Americans for Prosperity Nevada:
[Read from written testimony, Exhibit Q.] On behalf of thousands of our grassroots activists and as the premier grassroots organization dedicated to outreach, education, and advocacy on long-term solutions to the country's biggest problems, we definitely urge you to support A.B. 363, which includes effective reforms to our nation's criminal justice system by addressing one of the greatest existing barriers to realizing the American dream. Assembly Bill 363 is a smart, commonsense reform that will provide more opportunities for individuals to participate in the workforce and successfully reintegrate back into society after getting a criminal record.

Accountability and personal responsibility are critical components of our justice system. This also means that once someone has fulfilled the debt they owe to our community, it is

essential that we reduce unnecessary barriers for them to become productive citizens in our communities and avoid future criminal behavior. According to the National Reentry Resource Center, Nevada has at least 257 different legal barriers to individuals gaining a license or certificate to work in certain fields. Assembly Bill 363 wisely still allows licensing boards to consider certain criminal history when issuing an occupational license. This bill simply places commonsense conditions around those determinations.

Lastly, what I will say is, in our *U.S. Constitution*, you are innocent until proven guilty. Again, I will reaffirm that we are innocent until proven guilty, and that innocence extends all the way through to your occupation. I urge the Committee members to support A.B. 363. Thank you to the stakeholders for driving this bill and giving us the opportunity to work along with them. I encourage any members of the Committee, if there are any questions, we are happy to work with you as well in ensuring we get to a position where we can have bipartisan support on this amazing bill.

Eric Jeng, Acting Executive Director, One APIA Nevada:
As someone who has personally volunteered to translate and troubleshoot for state licensing tests for occupations with high percentages of Asian American and Pacific Islander (AAPI) community members such as reflexology and [unintelligible] therapy, I want you to know how much work and effort these aunties and uncles, sisters and brothers have studied and prepped to make sure they acquire and retain their licenses. A denial of license does not only mean a loss of income, but for some of our more vulnerable community members it means falling into cycles of exploitation and recidivism. Today, we also want to note that it is AAPI Women's Equal Pay Day. This is the day that highlights how many days AAPI women have to catch up to their white counterparts. This bill removes unnecessary barriers and provides wider access for hardworking Nevadans to earn their living and strive for a better life. It will further help our community close the gender and race wage gap. We urge your support for A.B. 363.

Meagan Forbes, Senior Legislative Counsel, Institute for Justice, Arlington, Virginia:
[Exhibit R] We are a nonprofit law firm that works to protect economic liberty. We have also studied the burdens of occupational licensing, particularly on lower income workers and people with criminal records. Our research shows that licensing creates significant barriers to entry and disproportionately affects many populations, especially people with criminal records. As has already been stated, the Institute for Justice published a national study of the collateral consequences of licensing restrictions for people with criminal records called *Barred From Working*. In our report, Nevada was one of only six states to earn an F because of its lack of meaningful protections for people with criminal records.

Having a binding predetermination process is important to support successful reentry and to set returning citizens up for success. This is a process 24 states currently have. Licensing laws can have a chilling effect on people with criminal records. Some people may never pursue a license simply because they think their criminal record is disqualifying and they cannot afford the risk. A binding predetermination process helps give returning citizens the information they need to make decisions about their careers and their future. We think this

bill is a very important way the state can safely create opportunities, support businesses, and increase public safety. We thank the Committee for considering this legislation.

Chair Marzola:
Is there anyone else wishing to speak in support of Assembly Bill 363? [There was no one.] We will move to testimony in opposition to Assembly Bill 363. Is there anyone wishing to testify in opposition?

Misty Grimmer, representing State Contractors' Board:
The Nevada State Contractors' Board has some concerns with A.B. 363, particularly with how it could possibly hinder our ability to ensure the folks we license are not likely to be any risk to the general public. We license individuals who are granted access to people's homes and families, so we take the consideration of criminal backgrounds very seriously. We have visited with the bill sponsor and shared our concerns and fully understand the goal she is trying to achieve to make sure professional doors are not automatically shut to people simply because of past transgressions. To be very clear, there is no crime that would automatically eliminate a person from being considered for a contractor's license.

As has already been mentioned, Assembly Bill 319 of the 80th Session was a similar bill requiring a prescreening process and a creation of a list of crimes so a person could know they would automatically be disqualified. The Legislature agreed at that time to exclude the Contractors' Board from that statute because there simply is no such list. I will provide for the Committee a summary of how we address the situation where an applicant has a criminal background. I believe if you compare the process we have in place to what is being recommended in A.B. 363, you will see that we already do what the goals of this bill are seeking to achieve. However, the bill does add additional layers that would complicate our process, specifically, the reference to disqualifying offenses being only those which have occurred within the last three years and for which the individual was incarcerated. If a person has been convicted of a crime against children, for example, or multiple crimes against children, even if it was a decade ago, we may want to consider if we should allow that person to enter homes where children are likely to be present. However, if the license they seek was only for commercial work, perhaps it would not matter.

Another concern is the language in section 4, the "potentially disqualifying felony offense" directly and specifically relates to the duties and responsibilities of the occupation or profession which the applicant seeks to license. This section creates some ambiguity for us because the trades we license for, such as plumbing, roofing, or HVAC repair, it is unlikely a crime would have been related specifically to those. However, if that person has a conviction for burglary, for example, we may consider not granting a license that would allow them access to residences or businesses. Additionally, with respect to this section, unlike many other boards who license only the individual performing the work, we actually license the entity, so any history of financial crimes would also be something that we may take a look at.

Furthermore, the process outlined in sections 5 through 7 would have the effect of tying the Board's hands once an informal hearing with the executive officer has made a decision.

[The Chair reminds the testifier of the time limit.] These processes have been developed over many years at the direction of the Legislature through the regulatory process that is also approved through the Legislature. For these reasons, we believe that our process already covers that we individually consider each person's application and will continue to work with the bill sponsor on this bill.

Michael Hillerby, representing State Board of Pharmacy; and Nevada State Board of Accountancy:
I echo many of the comments from my colleague, Ms. Grimmer with the Contractors' Board. The Legislature, over the years, has created some very specific criteria for different boards. For example, in Pharmacy and Accountancy, much as with Contractors and other boards, there is no offense for which there is an automatic disqualification. The board may consider anything, and in those statutes in particular and others, there is a specific list of things that we can consider related specifically to the job duties. I want to thank Assemblywoman Miller for meeting with Ms. Grimmer and me on Friday. We certainly support the goals of the bill. We agree the process ought to be as uniform and simple as it can be. We want it to be friendly and to help people get back into the workforce where that is appropriate.

Again, where you have statutes that the Legislature has created over the years with very specific criteria already laid out—and I understand it is a skeleton bill—we think the overarching language that would supersede all of that is problematic. For those boards that already have those criteria in place and are doing that, we would want to take that into consideration as well.

I do agree with the comments Assemblyman O'Neill and the other testifiers made in regard to clarifying the application of an arrest with pending charges rather than just any arrest history. I think there are certainly some things we can do better. We should never be afraid to ask those questions. Again, as others have said, the ability to get good information that is directly tied to protecting the public health and safety within that occupation remains important, and we will be happy to work with the Committee and the sponsor of the bill.

Neena Laxalt, representing Nevada State Board of Veterinary Medical Examiners:
We agree with the goals this bill is trying to reach. However, we have a bit of differences as all boards do. It is not one brush across the board. When it comes to veterinarian denials, animal crimes are typically not felony crimes. Animal abuse crimes are under that, so they would not meet that criteria. When you are looking at a veterinary license, an animal abuser would not be considered as having committed a felony. We would never find those people if they were getting into the veterinary business. The second thing is, we believe under this bill the contested cases go under judicial review, and our other denials do not usually have that option. This would carve that out specifically for judicial review. We have some suggestions we can provide to the sponsor and work with them.

Susan Fisher, representing State Board of Professional Engineers and Land Surveyors; and State Board of Osteopathic Medicine:
We are here for the same reasons you have already heard. We would like to speak with the bill sponsor, but we do take in the individual cases, and I have sat in on some of the disciplinary hearings, or the licensing hearings, where a person has had some sort of a criminal background before. The boards have been very thoughtful in their processes and in looking at if it had been a drug offense and the person has gone through counseling or is continuing counseling. They are very thoughtful in that process. We realize when you have done the crime, you do the time, and you should not suffer for the rest of your life, but we do need to have some precautions in place. Osteopathic doctors have DEA [Drug Enforcement Administration] licenses. Professional engineers and land surveyors often go into someone's backyard, so we need to be able to peel back the layers of the onion and find out what the crimes were in the past.

Chair Marzola:
Is there anyone else wishing to testify in opposition to Assembly Bill 363?

Alejandro A. Ortiz, Senior Staff Attorney, Racial Justice Program, American Civil Liberties Union:
[Exhibit S] I am actually offering my support for the bill. In our view, supporting it would be easy. First, it is good for the economy. As Governor Lombardo recently announced, Nevada has 1.7 job openings for every unemployed person looking for work, and there are acute shortages of employees in core sectors of the economy. Many would-be workers are still standing on the sidelines deterred from even seeking a job because of their criminal record. Nevada should make it easier, not harder, for people willing to work to obtain jobs. Second, it is good for public safety. Studies show that successful entry into the labor force greatly decreases recidivism. This makes sense. If people with criminal records are unable or limited in their opportunities to obtain lawful employment, then resorting to unlawful means to support oneself becomes a viable option. Finally, doing so promotes racial justice and faith in our criminal legal system. Black people are six times more likely to be incarcerated than white people, and Hispanic people are about three times more likely to be incarcerated than white people. When the government discriminates against people because of their criminal records, it hurts everyone with a criminal record, but particularly hurts communities of color. Moreover, people who have paid their debt to society by fulfilling their sentence should be allowed to work. Doing so gives meaning to the value of redemption underlying our criminal legal system in some instances.

However, licensing boards in Nevada deny licenses to people charged but never convicted of a crime. I have seen this personally. This is a gross injustice. It turns a fundamental pillar of our criminal legal system on its head, that people accused of crimes are presumed innocent unless they are proven guilty. As you consider this bill, ask yourself, Should a person be punished for a crime for which they were not convicted? In summary, this bill is good for the economy, for public safety, and it promotes fairness and racial justice. For all of these reasons, we at the national office of the ACLU urge you to support this bill.

Chair Marzola:
Thank you for your testimony. I will be moving your testimony to support. Is there anyone wishing to speak in opposition to Assembly Bill 363? [There was no one.] We will move to testimony in the neutral position. Is there anyone wishing to testify in neutral to A.B. 363?

Joseph (J.D.) Decker, Administrator, Compliance Enforcement Division, Department of Motor Vehicles:
The Compliance Enforcement Division issues occupational licenses for auto dealers, auto salespersons, garages, body shops, emissions inspectors and stations, drive school instructors and operators, and auto wreckers. I have a couple of items I would like to bring to the Committee's attention. In our last communication from our Department of Public Safety in Nevada, regarding the petition that was authorized in Assembly Bill 319 of the 80th Session, in 2021 it was found to violate U.S. Department of Justice federal regulations for access to criminal history and was not being processed. The second item that I would like to bring the Committee's attention to is section 3, subsection 2. It seems to allow the applicant to determine whether or not a felony should be disclosed by deciding for themselves whether it is relevant to the license application. Then, the last item, sections 5 and 7 of the bill, would require Department leadership to meet with license-denied applicants in an appeal-type meeting in which the applicant could present witnesses and evidence of suitability, and appeal the director's decision to a regulatory body. This bypasses or duplicates the existing appeals process through the Department of Motor Vehicles Hearings Division that exists in *Nevada Revised Statutes* (NRS) 482.353, NRS 47.160, NRS Chapter 233B, and *Nevada Administrative Code* 445B.464.

Chair Marzola:
Is there anyone else wishing to speak in neutral to A.B. 363? [There was no one.] Assemblywoman Miller, would you like to give any final remarks?

Athar Haseebullah:
Assemblywoman Miller asked that I go first instead of second. Today, you have heard a presentation on a very important piece of legislation that can help get Nevadans back to work. As Assemblyman O'Neill pointed out, there are a couple of minor issues that we are happy to work through regarding what flexibility might look like here in terms of ensuring we have a bill crafted for the betterment of Nevada. You have also heard opposition testimony; that would not put people back to work. At the end of the day, we will be back here two years from now, still saying we have an F. We might end up with an F- or an F+ but we would be in the same category because nothing will have changed. We urge this body to support this bill, move forward with it, help create occupational licensing reform that is necessary, mandate that the burden shift from the individuals who are being denied licenses to these strong agencies that have the ability to oversee someone's future, and pass this bill. We also urge you to consider doing more occupational licensing reform work as time progresses because this is one of the areas that we at the ACLU feel will help unify the state, bring the state together, and get more people in a better position for themselves and for their families.

Assemblywoman Miller:
Again, I want to thank and attest to the fact that, yes, those that came forward in opposition, we did meet and I am encouraged by the fact that even walking out, generally people in opposition do not stop to tell you how willing they are to work with you. When we met, it was about adjusting some of those technicalities to make sure this is something that works for everyone in every regard. From those I met wit
h, it was most encouraging that they support the sentiment and the goal, as you heard them state on the record. That was very encouraging for me to go in the direction that we as Nevadans are trying to go. I thank everyone for your attention and the opportunity to present this bill. I urge your support.

Chair Marzola:
I will now close the hearing on A.B. 363. I will now open the hearing on Assembly Bill 364.

Assembly Bill 364: Revises provisions governing physician assistants. (BDR 54-148)

Assemblywoman Lesley E. Cohen, Assembly District No. 29:
For some background information, Nevada, like states across the country, is grappling with a health care provider shortage. Health care providers in Nevada are retiring, especially in the family practice and primary care worlds. Physician assistants (PAs) help fill this void in our health care system. Physician assistants are advanced practice allied health professionals who are nationally certified and licensed in Nevada through the Board of Medical Examiners and State Board of Osteopathic Medicine. Before they can earn licensure, PAs undergo rigorous education and training as medical professionals. In Nevada, a PA must enter into an agreement with a physician in order to practice. Assembly Bill 364 would allow PAs, among other provisions, to practice without a supervision agreement with a physician, osteopathic physician, a group of physicians, or osteopathic physicians. The intent of this measure is to remove the administrative burden for PAs and physicians and increase access to care for our citizens. The measure allows PAs to practice where they are needed most, such as our rural areas where a PA may be the only available health care provider. Assembly Bill 364 does not allow PAs to expand their scope of practice unless they receive extra training or licensure requirements.

Before I walk through the bill, I would like to introduce a couple of PAs who have come to give us some information and talk to the Committee. I want to turn the hearing over to them because they are the ones who truly know the situation and what is going on with health care. First, we have Carmella Downing, who is a PA at Carson Tahoe Health and has worked in cardiology for fifteen years. She manages the Congestive Heart Failure Clinic and is the advanced practice medical director for Carson Tahoe Medical Group. We also have Ben Prohaska, who is currently practicing endocrinology in Reno and has been practicing as a PA in Nevada since 2005. He is the immediate past president of the Nevada Academy of Physician Assistants. Mr. Prohaska is a board member of the Nevada Diabetes Association and also serves as one of the medical providers at a week-long diabetes camp for kids each summer in Lake Tahoe. I would like to turn the microphone over to them.

Ben Prohaska, Board Member, Nevada Academy of Physician Assistants:
I have been a PA in Reno for over seventeen years, and I am here as a board member of, and as the immediate past president of, the Nevada Academy of Physician Assistants, referred to as NAPA, to express support of Assembly Bill 364. The aim of NAPA is to improve access to quality health care in the state of Nevada and give a voice to the PA profession through education and advocacy. With over 1,300 PAs working in every facet of Nevada's health care industry, we are committed to delivering high-quality health care to all Nevadans. Today, I will discuss three points: (1) education, background, and qualifications of PAs; (2) the benefits of removing physician supervision of PAs; and (3) adding PAs to the regulatory boards, such as the Nevada Board of Medical Examiners.

I first turn to the education background on qualifications of PAs. Admission to PA school is highly competitive at the University of Nevada, Reno PA program, with an acceptance rate of just 1.4 percent. The average applicant brings with them over 6,000 hours of paid health care experience before entering the program. Before I went to school, I worked at St. Rose Dominican Hospital in Henderson in the cardiology center and cardiac catheterization lab for five years in the 1990s, while I went to the University of Nevada, Las Vegas for my undergraduate degree.

The average age of a student admitted to PA school is 28 years old. Students undergo training at the graduate level to include 123 credit hours, which includes the classroom and over 2,000 hours of clinical hours doing rotations in multiple specialties, such as emergency room, surgery, family practice, cardiology, endocrinology, and gynecology. We are trained in the same medical model as physicians. We must then pass a national certification exam to gain board certification. To maintain our license with the Board of Medical Examiners here in Nevada, like all physicians, we must complete over 40 hours of continuing medical education credits every two years. On top of that, however, to maintain our National Board Certification, we must complete 100 hours of continuing medical education every two years and pass an exam every ten years. Physician assistants are medical providers who can diagnose and treat illnesses, prescribe medications, and we can do much more. For example, I hold my own Nevada state medical license, my own Drug Enforcement Administration license, and my own Nevada State Board of Pharmacy license. Thus, Nevada PAs are qualified.

Next, I address the bulk of this bill, which is removing physician supervision of PAs. I am confident you are all aware that Nevada is at the bottom, or close to it, on multiple health care measures; namely, access to health care services. The issue is worsening, and PAs are here to help address this trend and turn it around for good. Removing supervision sections 5, 10 through 12, 24, and 26 through 29: Research indicates that the most up-to-date practice laws allow health care teams to decide at the practice level how they will be best collaborative to meet patients' needs. The best evidence supports that the most successful clinical teams are those that fully utilize the skills and abilities of each team member and support efficient patient-centered health care. The key word here is "team" for us. Like physicians, PAs are most often employed by hospitals, medical groups, and other facilities. These facilities, which are located in sections 4 and 23, address where PAs are authorized to

practice and have supervision oversight requirements for all employees to ensure patient safety and mitigate liability. Assembly Bill 364 removes supervisory language from the Nevada physician assistant practice act, allowing clinics and hospitals greater flexibility in assembling health care teams to meet patient care needs.

The collaborative and interdependent practice arrangement has either been enacted or is currently being considered in several other states and has provided greater agility in meeting health care needs in those rural areas. It is not surprising, but perhaps less known, that several branches of the federal government, including the military, the U.S. Department of Veterans Affairs, and Indian Health Services of the U.S. Department of Health and Human Services, have long ago removed physician supervisory requirements for PAs and recognize their ability to practice autonomously and safely in thousands of different practice settings and assignments at home and abroad. Additionally, it is worth noting that removing unnecessary supervisory requirements in Nevada also benefits physicians. These benefits include removing physician liability for the care a PA provides when the physician is not involved, thereby reducing physician and employer risk of disciplinary action for administrative reasons.

For example, I work in a practice with a physician, and I see my own patients every day. That is where I was this morning, and my physician was not there in the building. If I were to make a mistake with a patient, current law dictates that my supervising physician would also be held liable for my decision-making, yet they may have never met the patient before. Furthermore, that physician may have not even been working in the practice that day.

Nevada PAs greatly respect the breadth and depth of our physicians' training and are proud to practice medicine alongside them every day. Our practices and patients benefit from this team-based approach. We are not looking to be physicians; we are not looking to do surgery on our own. It continues to be the position of NAPA that physicians are essential to our health care team. We stand by the historic relationship and devotion to team practice with physicians and all members of the health care team. However, team-based care is the best patient-centered care delivery method which creates access to health care even in the most rural areas of Nevada.

Furthermore, with the modernization of PA practice laws in neighboring states, such as Utah and other Western regional states and across the country, we are at risk of driving our PA students outside of Nevada upon completion of PA programs. Nevada has experienced this with other health professions. Let us not repeat it with PAs. Providing favorable, safe PA practice laws will allow Nevada to keep our most valuable resources: our newly graduated PAs. Passing this bill would allow us to retain our PAs, take care of our PAs here in our state, and to attract PAs from out of state. It is kind of a novel concept of getting health care providers to want to move to Nevada to work.

Finally, this bill proposes that PAs be added to regulatory boards. This bill gives PAs a meaningful input into the regulation of the PA profession. This bill allows PAs to be an expert voice on current knowledge of the profession when regulatory boards make decisions

affecting its licensees, like me. In a rapidly growing field, we believe that adding a PA to regulatory bodies is essential in ensuring that PAs are able to contribute to increasing health care access and quality.

I want to conclude my remarks by thanking the sponsors, Assemblywoman Cohen and Assemblyman O'Neill, and several other cosponsors for bringing this bipartisan legislation forward and continuing their work to progress the health care system in the state of Nevada. Six years ago, this legislative body found the wisdom to progress nurse practitioner state laws. The physicians' groups opposed this at that time, yet this body still passed those bills. This current bill proposes to bring PA laws in conjunction with that of Nevada's state nurse practitioner laws. I respectfully ask this Committee to pass this bill. Thank you for your time and consideration.

Carmella Downing, Physician Assistant, Carson Tahoe Health; and representing Nevada Academy of Physician Assistants:

I am a physician assistant working here in Carson City, and I am a representative of the Nevada Academy of Physician Assistants Legislative Committee. Assembly Bill 364 is about transparency of current practice within health care teams, modernization of outdated language regarding the supervisory relationship between a physician and a PA, and the representation of PAs by the medical board which governs them. I wholeheartedly support A.B. 364 because I know that doing so will increase the PA workforce throughout the state, reduce the health accessibility gap, remove physician liabilities for PAs, decrease patient morbidity and mortality by facilitating timely health care, and reduce health care spending related to unnecessary emergency room department visits.

My own practice is an example of this. I help design and manage the Congestive Heart Failure Clinic at Carson Tahoe Health. My clinic gives follow-up visits after education in the hospital within seven days of discharge, and most patients are seen weekly the first week out of the hospital. The current national average readmission rate within 30 days for heart failure patients is 23 percent. Since the initiation of the Congestive Heart Failure Clinic at Carson Tahoe Health, we average 11 percent readmission. We have decreased emergency room visits and costly unnecessary hospital admissions with a program managed by a PA.

I want to make it very clear that A.B. 364 does not signify independent practice by PAs, change education or certification standards, nor hasten PAs to open a private practice. The collaborative relationship of a PA with a physician and other providers will not change. As the advanced practice medical director, I work with physicians, PAs, nurse practitioners, and management to create appropriate collaborative agreements and onboarding plans for our new hires. Assembly Bill 364 will not change this. What will change is how health care employers meet the health care needs of this state.

Nevada is experiencing a health care crisis. As has been explained, health care access in our state is among the nation's worst. Our statistics are dismal. We are not trying to reinvent the wheel; we are trying to not fall behind. Let me give you some more real examples from here in Carson City. When I first started on our recruitment committee, we reviewed candidates

for an urgent care position. A nurse practitioner with just over 4,000 hours, or two years, of clinical experience was favored over a PA with over five years of experience due to a lack of available supervising physicians to sign a supervision agreement. After 4,000 hours, nurse practitioners can practice independently. Nevada does not have enough providers, particularly physicians, to keep up with the demands of the metropolitan areas. We are neglecting our rural and frontier areas due to burdensome administrative complaints. Fortunately, our neighboring states have implemented an environment where PAs may practice to the full extent of their medical education, training, and experience. Additionally, Nevada is the only western state that does not allow a PA representation on the medical boards that oversee them.

The PA advisory board created for the Nevada State Board of Medical Examiners does not allow a PA to vote on any professional manners. Nevada has a suboptimal PA practice landscape. Utah and Arizona have passed similar legislation to that found in A.B. 364. Additionally, Montana's bill passed their senate last week. How do we expect to address Nevada's issues regarding access to health care without modernizing the regulations that stagnates our PAs' ability to care for our patients? Nevada has fallen behind and will continue to do so if this legislation is not passed. I humbly ask for your support of A.B. 364.

Assemblywoman Cohen:
I will now do a quick walkthrough of the bill. Sections 1 through 3, 13 through 16, 18 through 20, 22, 25, 32 through 34, 37 through 80, 85 through 89, 91 through 97, 97 through 127, 129 through 167, and 170 through 201 make various changes so the physician assistants have similar authority and duties to other providers of health care who provide medical service independently and are otherwise treated in the same manner as other such providers of health care. Sections 4 and 23 require a physician assistant who has practiced for less than 4,000 hours as a physician assistant to enter into a collaborative agreement with a physician, and prescribe the setting in which a physician assistant is authorized to practice: a medical facility, any facility licensed pursuant to NRS Chapter 449 or any facility that has established a system for evaluating the credentials of and granting practice privileges to physician assistants; a facility or medical practice owned by a physician or osteopathic physician or a group of physicians or osteopathic physicians; a federally qualified health center or a correctional facility or institution; a state, county, city or district health department, or any other location authorized by the Board.

Sections 6, 7, 8, and 202 require the appointment of two additional members of the Board of Medical Examiners who are physician assistants. The Board is authorized to select physician assistants to serve as advisory members of the Board. Sections 5, 10, 11, 12, 24, and 26 through 29 removes the requirement that a physician assistant be supervised by a physician or osteopathic physician. Sections 9, 21, 30 through 32, 33, 35, 81 through 84, 90, 98, 168, 169, and 204 remove references to the supervision of a physician assistant by a physician or osteopathic physician.

Sections 10 and 26 require a physician assistant to obtain the informed consent of a patient before providing any medical service, prescribe medical services that a physician assistant is

authorized to perform, and require a physician assistant to only perform such services within his or her scope of practice and which he or she has the necessary education, training, and experience to competently perform. Sections 12 and 28 remove a requirement that the Board of Medical Examiners and the Board of Osteopathic Medicine adopt regulations governing the testing or examination of applicants for licensure as a physician assistant and the services which a physician assistant may perform. Sections 17 and 32 authorize an unlicensed person who meets the requirements for licensure as a physician assistant to refer to himself or herself as an inactive physician assistant. Section 30 makes technical revisions concerning the renewal of a license of an osteopathic physician assistant. Section 35 removes a requirement that the State Board of Pharmacy consider the experience and training of the physician assistant when adopting regulations governing the administration, possession, dispensing, storage, security, recordkeeping, and transportation of controlled substances, dangerous drugs, poisons, and devices by a physician assistant. Sections 54, 56, 70, 126, 142, and 178 add advanced practice registered nurses to certain provisions so that physician assistants and advanced practice registered nurses have similar authority. Section 128 removes the requirement that a rural clinic where medical services are provided by a physician assistant or advanced practice registered nurse be supervised by a physician.

In closing, if I may, Chair, I have a letter that we provided to the Committee as an exhibit. It is from a physician assistant, from one of our not just rural, but frontier, communities that she had asked that I read. If possible, I would like to read it to the Committee because I think it is very impactful and explains a lot about the importance of this bill.

[Read from written testimony, Exhibit T.]

> My name is Ann Hines Miles, and I am a physician assistant. I graduated from UNR with distinction and received my physician assistant training through Western University of Health Sciences at University of California, Chico. I have been a rural practitioner for 20 years, of which 11 of them have been in the frontier. I am instrumental in the creation of the Kingston Health Center.
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> The "rural" area designation for health care is most of the towns in Nevada, excluding Reno and Las Vegas. "Rural" areas are Elko, Ely, Dayton, Yerington, Tonopah, and other like cities. They have pharmacy, paved roads, cell service, hospitals, EMT/ambulance service, and urgent cares. They have stores for bandages and assorted treatments. They usually lack medical specialties.
>
> "Frontier" towns are totally different, as they seldom have any of the above-mentioned services. These towns include Round Mountain, Rachel, Austin, Luning, Midas, Jarbidge, and Kingston, to name just a few. It is not unusual to travel 100 miles for a pharmacy or hospital. This does not mean they do not deserve readily accessible health care.

> There were many challenges I had to accept when choosing to practice in the "rurals" and the "frontier." Professional isolation and lack of support is only one aspect. Over the years, I was able to create a team of specialists who would always take my call or text when I had a question. All medical professionals have colleagues they rely on for support and answers. Having an "assigned" physician collaborator supervisor can be difficult, as many doctors are unwilling to stretch their liability 100 to 200 miles away to cover a PA they hardly know. Who would blame them? Where do people in these communities go if there is an emergency? Is there cell service to call for help? Often not.
>
> I fought to keep the clinic open for five years. You would think, after all you hear about the need for rural medical care, that it would be irresponsible to not support someone who was willing to give their time and life to serve a remote frontier community. Eventually, my supervising physician retired and the owner of the RHC clinic closed it, despite outrage from the community. If A.B. 364 had passed before I retired, I would have been able to continue the operations of the clinic within my scope of practice.
>
> Working as a frontier PA is my calling. It takes many years of varied training to achieve the necessary skills to operate in a frontier environment. We are usually the sole provider on any given day. It is important to be able to practice to my full potential. I believe all medical providers begin their journey with altruistic intent, but they soon learn the reality of medicine. Nevada was once the leader in addressing rural health care shortages with progressive laws promoting and encouraging PAs. I want to believe Nevada can once again become the leader in progressive health care and support the PA profession.

Again, this is Ann Miles, previously of the Kingston Clinic in Kingston, Nevada. With that, we are ready for questions.

Assemblywoman Backus:
When you went through the bill, you raised something that stood out to me. I think it was in sections 12 and 28, there is the elimination of the test or examination of applicants required by the Board. Why is that being eliminated in this bill?

Ben Prohaska:
Historically, the test is very small. It is about twenty questions. It is just testing on whether we have read the laws governing PAs and that we understand what the supervising physician means. If we remove the supervising physician, we no longer need the test.

Assemblywoman Kasama:
It sounds like a main focus is expanding out in the rural communities. My concern is, Are we developing two tiers of health care, one for rural versus urban, with just the expansion of PAs operating independently there?

Ben Prohaska:
I think the bottom line it comes to, it is not just rural. I work in a medical practice, and actually, while I was sitting back here, I had two patients text me. One is a Sparks police officer and one is a physician. They are changing pharmacies and wanted me to refill their insulin. If the physician I work for were to die in a car accident right now, I can no longer refill their insulin because I no longer have a supervising physician. Yet, my knowledge is the same as it was five minutes ago, or yesterday when I was seeing patients, or this morning when I was seeing patients. In the case of this example, I could not see my patients tomorrow. If my supervising physician is no longer around, that would leave about—we have roughly 5,000 patients in our practice—that would leave 5,000 patients without either medical provider. Therefore, this bill would remedy that. It would make it so that a PA can practice without a supervising physician as long as that PA has had enough hours within that specialty to continue to practice while we figure out what happens next with the practice.

Assemblyman Yurek:
I want to thank both the presenters for speaking with me earlier and presenting this idea because it definitely shocked my conscience a bit, this idea of PAs. I have personally experienced some PAs that are absolutely amazing, and some doctors that I would never go back to. I do not want to be offensive when I ask this question, but I think as far as the ability for PAs to act independently, I think there is an association or correlation with the level and amount of training that occurs. Please correct me if I am wrong, but as I understand, very generically, a medical doctor, to act as an independent provider, would have to complete four years of undergrad, typically four years of medical school, and then anywhere from three to seven years of some sort of residency or fellowship. There is extensive training.

I am trying to understand how much training—forgive my ignorance—as I understand it for a PA, it is roughly four years of undergrad and about two years of post-graduate PA training. I do not mean that to be offensive at all. As I look at this, it sounds like the intent is for a PA to be able to operate as an independent medical provider, not under supervision, but under a collaborative agreement of 4,000 hours. Can you help me understand what a collaborative agreement actually means? It is obviously different from supervision. I do not know if that is training, or what the level of collaboration is. Then, in terms of the number of hours, Is that a direct correlation? I know for example, full-time jobs are about a little over 2,000 hours, so does 4,000 hours equate to roughly two more years of collaboration?

Carmella Downing:
I will start with the difference between supervision and collaboration. Supervision, as it is currently by law, is a signature with the state and a box being checked. It does not specify what kind of training or education is provided for that PA. It does not specify what kind of

oversight they see or who they work with. What we are trying to do is move the collaboration to the practice level, because there are many different levels of collaboration. For instance, a surgical PA works side by side, day in and day out, with their surgeon. Occasionally, they see patients in the clinic, maybe on different days, but are very close. Mr. Prohaska and I practice more autonomously. We have a clinic, we see our patients, but we never practice independently. I would even venture to say that no medical provider practices independently, because no, not even a physician could be able to handle the scope or knowledge in medicine.

Today, medicine is huge. We all rely on each other. At the practice level, this is what I do at work—at Carson Tahoe Health. We design a collaboration agreement. I have a form that I made. We go over this with any new applicant: how much collaboration there will be, whether it is reading journals, completing continuing medical education, taking extra tests that we have designed, additional chart review—we may do more chart review depending on the needs of the PA. The difference might be, if I hired Mr. Prohaska to work at Carson Tahoe Health, we would have a very limited collaboration agreement. He would have a physician to work with. Carson Tahoe Health has been excellent at working for optimal team practice. "Team" is the key word. We work together. A physician assistant or a nurse practitioner is hired to work with a physician in a team-based approach. We want to move the collaboration to the practice level, where it is appropriate for that practice, instead of supervision, which is a signature and a box checked.

Assemblyman O'Neill:
I have to say, anybody who says Nevada does not have a need for medical providers, at any level, has never been in Nevada. That is whether you are here in Carson City or if you are in Eureka. Here in Carson City, I have a choice, when I see one of my specialists, of seeing him or her and making an appointment three or more months out, or I can see the PA within two weeks. The physician assistants have always been excellent in their care and their knowledge. The doctors are also comfortable with them. Every physician I know who has worked with a PA relies on that PA. The statistics Ms. Downing gave speak for themselves, when we are at 11 percent. Besides that, Carson Tahoe Health is an excellent hospital, but it is an excellent hospital because of you and the rest of the staff who work there. You answered the one question about the need, if your physician passed away. Those patients are all of a sudden left in the lurch, correct?

Ben Prohaska:
Correct.

Assemblyman O'Neill:
Even physicians today do not work independently. I know you cannot exactly speak for a doctor, but with your experience, whether it is a PA or working with and seeing physicians, have you ever seen a physician in a situation where a patient came in with unusual complaints, not go and ask another physician their thoughts on what this patient may have? Would you work collaboratively? Do you see that regularly? That is a head shake yes by Ms. Downing. That answers my question.

I do have another question. Our needs are immense. The advanced practice registered nurses have been out there working. You know, there are always one or two mix-ups, whatever it may be, in any profession. But the needs—I want to refer back to the letter that was presented, written by Ms. Miles. I want to thank you for bringing this forward and allowing me to sign on to it. It is important for Nevada, and as one of my cohorts said the other night, Now is the time to do what is right. And this is what is right. Would you agree with that?

Assemblywoman Cohen:
When you mentioned our needs—Mr. Prohaska mentioned our surrounding states—I was shocked when I heard about physician assistants. Mr. Prohaska mentioned, it is not only the physician assistants who are being trained here and they can move to other states and do more in their practice, but they can actually still live here. We have people who can practice in other states and still live in Nevada. We are losing out on having that education and skill in our state, because they know what they can do in other states and how they can put that skill and education to work, and how we are not letting them do that and practice to their potential here the way they can do in other states.

Chair Marzola:
Committee members, are there any additional questions? [There were none.] I have a couple of my own. It is probably more for my understanding. You are asking to be removed from supervision, but not asking to practice independently. Do I have that correct? Okay. Right now, do PAs have DEA numbers?

Ben Prohaska:
I do. I have my own DEA license, State Board of Pharmacy license, and Nevada State Medical license. And this is not my supervising physician's DEA license. It is a national number. We have our own NPI [National Provider Identifier] numbers. Physician assistants have their own number for everything.

Chair Marzola:
Right now, are you able to prescribe controlled substances?

Ben Prohaska:
Yes, I am able to prescribe any controlled substance.

Chair Marzola:
Currently, when you see a patient, whether your doctor is there or not, the liability portion is still with the hospital or the doctor you are working under. Is that correct?

Ben Prohaska:
That is correct. State law is the physician only has to be in clinic with me 1/2 day a month. I can work by myself the other 29 1/2 days. The physician only has to be reached by phone. They can be in Florida, New York, or anywhere. And with every patient I see, though the physician is not physically there, the physician is still liable if I, as the physician assistant,

were to make a mistake. That is not really fair. I am the provider. I should be held liable if I were to make a mistake.

Chair Marzola:
In removing the supervision portion, the hospital or the doctor would no longer be liable. So, does that mean that you would then have your own liability insurance?

Ben Prohaska:
I have my own liability insurance. The physician has theirs; I have mine. It is a group liability insurance. I think that a hospital—that is a bigger question probably for an attorney—would probably still be held liable no matter what people like to say. Whoever has the money. But myself—and I am speaking more at the Board of Medical Examiners—I am the one held liable at the Board of Medical Examiners. I think, if a person is hurt, they are going to sue everyone involved, but the physician's license will be safe from mine because we will not be tied any longer at the Board of Medical Examiners.

Chair Marzola:
I just wanted to make sure that if we did remove the supervision, that if something happened to a patient, that there would still be a recourse for them, so I appreciate that. Committee members, are there any additional questions? [There were none.] We will move to testimony in support of Assembly Bill 364. Is there anyone wishing to testify in support?

John Larsen, Private Citizen:
I have been a physician assistant for the past four years. I treat an extremely underserved population of patients who have chronic lung disease. I am in full support of A.B. 364. I earned a bachelor's degree in respiratory therapy prior to earning a master's in PA studies from Eastern Virginia Medical School. For almost twenty years, I have worked with patients with lung disease. I would like to say how much it means to me that the PA profession combines all of my training and allows me to practice with all of that knowledge. In speaking to education for PAs, let me give you a rundown. The average credit hours for PAs in Nevada is 126 hours, and 2,000-plus average clinical hours. For nurse practitioner schools in Nevada, average credit hours are 51, and average clinical hours are 695. For medical doctors and doctors of osteopathic medicine in Nevada, average credit hours are 178, and average clinical hours 3,350. When comparing physician assistants with nurse practitioners and doctors, the benefit for PA schools is the strong focus on collaboration. In fact, that is how the profession was started: focusing on collaboration. At that time, supervision was not problematic to the profession. However, health care has changed, and so have patient demographics. Access to health care has changed, and it is deficient, especially in the state of Nevada.

In closing, nurse practitioners and PAs are considered equals as providers. Nurse practitioners originally had supervision mandates, but the profession has evolved along with legislation that governs it. Physician assistants and nurse practitioners are considered equals as providers, but are not legislated equally. Luckily, for me, I have a supervising physician, but if that supervising physician is no longer here, the chronic lung disease patients who I

treat no longer have a provider. I encourage this legislative body to support A.B. 364, which will remove unnecessary barriers to providers trained in a collaborative model of health care.

Matthew Wilkie, Private Citizen, Carson City, Nevada:
I am here in support of Assembly Bill 364. I work in a local retail pharmacy in Carson City. As a health care worker myself, I hear from patients every week about how hard it is to see any provider. I believe these changes will help provide a positive impact in health care for the state. Expanding the membership of the Board to include physician assistants will bring much-needed diversity and perspective to the Board's decision-making process. Physician assistants are integral and have unique insight and experiences that affect their profession. Authorizing physician assistants to perform services without direct supervision under a physician is a step in the right direction. These changes will increase access to health care in underserved areas where we know there is a drastic shortage of all health care professionals. It will allow them to practice their full extent of their training and education and will provide more timely and efficient care for all patients, eliminate the provisions with testing, provide streamlined licensure processes, reduce unnecessary barriers into entry into the profession, and allow them to practice more quickly. Removing the requirement that a rural clinic be supervised by the physician will also increase access to health care in our rural, underserved areas. I urge the Committee to support Assembly Bill 364, as it increases access to health care throughout the state of Nevada and helps the health care shortage.

Joan Hall, President, Nevada Rural Hospital Partners:
Nevada Rural Hospital Partners is the 13 rural and frontier critical access hospitals in Nevada. Of those 13, they have 17 rural health clinics. "Rural health clinics" is a certification that the federal government has and requires nurse practitioners or PAs to work in those clinics at least 50 percent of the time. While some of our supervisory physicians disagree with independent PA practice, the majority of them agree that the time involved to do the chart checks and to review medications is probably time lost in seeing patients. They feel that the PAs are doing a great job. They work collaboratively; if physician assistants have a patient who needs more care or a different level of care, it is the physician who is going to see them. I see this as the same as the paradigm shift. When we looked at giving advanced practice registered nurses independent practice, it was a struggle. We need to stretch our limits. We think this is a good bill. Please support this bill.

Connor Cain, representing Touro University Nevada:
We are in support of Assembly Bill 364. We thank Assemblywoman Cohen for bringing this bill to help increase access to care for Nevadans. Touro University has a program of physician assistant studies of which it is very proud. They are excited that the profession could be moving forward.

Leila Burg, Chair, Membership Committee, Nevada Academy of Physician Assistants:
I am a physician assistant and chair of the membership committee of the Nevada Academy of Physician Assistants. A couple of years ago, I was excited about a primary care position my recruiter had found serving an underserved population. I was told my eight years of experience was perfect for this challenging rural population. I speak Spanish and had found

this to be a wonderfully helpful skill for people who often do not get a lot of help. It is one of the many reasons that I love to work in this population. I started working in underserved communities when I started as a PA. My passion is to help educate people who have never been fortunate enough to receive this help because I know that I can change their lives for the better. For this group of people, a little extra education can change their lives.

Unfortunately, the clinic needed a physician to supervise me. They were hoping to find this person at the local hospital. They were never able to find anyone. The clinic changed their search to nurse practitioners only. At least a month later, I saw they were still searching and they had told me they were pretty desperate to find someone because they had been looking for a while. This requirement makes experienced PAs undesirable. Most clinics are no longer physician-owned the way they were when this law was set. If a clinic wants an experienced PA, they need to pay for two licenses: the PA and the physician. It does not matter if the PA ever needs to talk to the physician, which is often the case. An inexperienced nurse practitioner will fill the position without the cost of the supervising position.

I began to do what many PAs have already done: research moving outside of Nevada. In the meantime, I took a job at an urgent care, where we are not set up to do primary care. More than half of the patients seeing me for minor reasons have untreated chronic illnesses. I might be their only chance for intervention. They tell me they have not seen anyone for a long time because they cannot find a primary care provider, or that it would be four months before they could see someone. They tell me they have stopped trying. If I barely address their problem, the patient will neither understand their condition nor follow up with anyone. Not having primary care providers in Las Vegas is causing a lot of health damage.

Assembly Bill 364 will address the supervision issue and give considerably more access to our Nevada communities. Please vote in support of A.B. 364.

Wiz Rouzard, Deputy State Director, Americans for Prosperity Nevada:
We urge you to support this bill. When we talk about health care, we seek to expand access to high-quality, affordable health care for every Nevadan, which is truly a top issue for many families across the state. I applaud Assemblyman O'Neill for highlighting the rural communities. These communities are often impacted the hardest, and those families who are least financially fortunate end up having to wait due to the labor and supply chain issues. The bureaucracy we have seen throughout the many years have led to this distinct disproportion of services. More importantly, it has tied the hands of the health care professionals who have dedicated their lives in serving their communities. We support legislation to eliminate regulatory barriers, restricting medical professional scope of practice so these licensed experts can offer more and provide better services to patients.

This bill is a step in the right direction. I believe someone asked if this is going to create a two-tier system. I can assure you; this does not create a two-tier system. If anything, it drives the free-market principles that are going to lead to a better health care industry than any other state. However, we need to consider repealing Senate Bill 420 if we want to ensure

that we do not achieve a one-tier system—one government-controlled health care system that most individuals—

Chair Marzola:
Please keep your testimony about Assembly Bill 364.

Wiz Rouzard:
My apologies; I was making a reference. In regard to this bill, it does an amazing job in ensuring that all Nevadans, especially those in rural communities, get the care they need. I appreciate the bill, Assemblywoman Cohen for sponsoring this bill, the cosponsors, and the members of this Committee for driving these types of reforms to ensure health care is premier in our state.

Dora Martinez, Private Citizen, Reno, Nevada:
As a member of the Disability Peer Action Coalition, we support this bill one hundred percent. Some of my members are underserved; some of them live in Elko and Eureka and we have to fundraise for them to have a driver to come into Reno to seek doctors because they cannot find them in the rural area. Thank you for this bill.

Chair Marzola:
Is there anyone else wishing to speak in support? [There was no one.] We will move to hear testimony in opposition to Assembly Bill 364. Is there anyone wishing to testify in opposition?

Sarah Watkins, Interim Executive Director, Nevada State Medical Association:
We are in opposition to A.B. 364. This is a disruption of the health care team. Our association more than understands the provider shortage in Nevada and the need to increase access to care. However, the quality of care is just as important, and the passage of A.B. 364 could affect the quality of care provided to patients in Nevada. We understand that physician assistants are an important part of the health care team, but they cannot replace the training and education that a physician has.

Bayo Curry-Winchell, Private Citizen, Reno, Nevada:
I am a previous PA, and currently a board-certified family medicine physician who also practices urgent care, as well as a medical director. I am here to share my concerns with A.B. 364, which is requesting the removal of physician collaboration and oversight. As a previous PA who worked for three years in a wide variety of specialties that included primary care, urgent care, and occupational medicine, I decided to leave the profession and apply for medical school to learn and develop a deeper education and skill set within medicine. It was apparent from the very beginning of medical school that the difference between the education I had received as a PA, and the education I was embarking on, was more significant than I initially expected. Medical school expects a much deeper and extensive understanding of basic sciences including anatomy, biochemistry, and pharmacology, before classes even start. This foundation is then built upon extensively to equip physicians with skills, knowledge, and understanding to provide care that can range

from simple to very complex. As an independent agent who owns a patient's care and treatment, the physician assistant name, as the name implies, has a very different expectation.

The physician assistant curriculum is founded on the principles of assisting a physician. It uses a curriculum of 2 to 2.5 years to provide the CliffsNotes on basic medicine to help the PA work alongside a physician. This is in contrast to the physician curriculum, which is a minimum of 7 years of medical school, which includes direct patient care through a residency program. The physician assistant profession, even with the years of experience, does not equate to the same education and skill set as a physician.

I have experienced both professions and can unequivocally state there is a significant difference in medical knowledge and skill sets. The role of a supervising physician was established because of the gap in medical knowledge and experience. If removed, this would greatly affect the quality of care given to patients and potentially put PAs in a situation they are not equipped to take care of. I think this is a good bill, but there are concerns in respect to the difference of knowledge. I think there is work to be done as far as what we can do to improve access but ensure that we do not discount quality doctors.

Susan Fisher, representing Nevada State Board of Osteopathic Medicine:
The proponents spoke about the team model, and we are very committed to having the team model. We know that we need more physician extenders. We need more physicians, period, in this state. But the physician extenders, the PAs, and other mid-level providers are very important, but we need to make sure that we have the appropriate level of supervision. *Nevada Revised Statutes* 633.469 helps solve some of the problems. That was put into statute a couple of sessions ago and states the supervision only has to be at least with the osteopathic—Chapter 633, that the supervision in-person only needs to be within the first 30 days. After those 30 days, it can be telephonically, electronically, by web, et cetera. The physician does not have to be there in person, so that helps solve some of the issues the rural hospitals have, or even urban hospitals where you may not have a physician on site. The physician may be out of the office, at the hospital, but they are still available by phone and electronically. Also, that chapter does not apply to the federally qualified heath providers, so they have other exemptions as well. For those reasons, we oppose this bill at this time.

Sarah A. Bradley, J.D., Deputy Executive Director, State Board of Medical Examiners:
The Nevada State Board of Medical Examiners subcommittee has voted to oppose this bill, and a summary of the reasons follow. First, there is a concern for patient safety due to the tremendous increase in autonomy for physician assistants without any significant increases in education or training to offset that. The second concern is adding two physician assistants to the Board would be a large representation in terms of percentage when compared with the number of physician assistant licensees. Third, we have some questions about the collaboration and what that will or should entail in the proposed bill. There is not a definition, and perhaps that is something that can be addressed later. Our last concern is, we have some questions about whether a physician assistant would need a new collaboration when switching specialties. In other words, if they did their 4,000 hours in dermatology, and then wanted to work in psychiatry, would there be another 4,000 hours required? Those are

our concerns. We look forward to working with the sponsor and the physician assistants to potentially work out these issues as the process continues.

Chair Marzola:
Thank you for your testimony. Before you get up, Assemblyman O'Neill has a couple of questions.

Assemblyman O'Neill:
I appreciate what you are saying, and I appreciate your last comments regarding working with the sponsors on this bill on your questions. I have a question for you, if you can answer it. You said the first concern the physicians have is the independence of the PA? Please clarify.

Sarah Bradley:
It is almost a direct quote from the subcommittee. The concern is for patient safety due to the tremendous increase in autonomy for the physician assistants with this proposal without any significant increases in education or training that offsets that autonomy.

Assemblyman O'Neill:
Thank you. Going with that statement, as has already been testified by our PAs that they are heading up units, that they see their doctor for a few hours in a 30-day month, that the doctor may be out someplace else—even from the prior testimonies that the PA can be working in Nye County and the supervising physician can be in Reno; I am having trouble grasping that concern, when they are separated by miles, talking on a telephone, seeing each other for a few hours every 30 days. Are you able to go into a little more detail as far as that concern for me, please?

Sarah Bradley:
I can at least tell you what the requirements are, if that is helpful. The requirements are, yes, the supervisor spends part of one day of every month with the physician assistant. They are also supposed to develop a program of supervision. That usually entails reviewing a certain number of charts, things like that. Part of that observation once a month is making sure they observe the conversations with patients' referrals that are made. There is a list of things in our regulations that they should be observing in that meeting. Then, of course, anytime the physician assistant is working, they would be available to consult by telephone. There is one thing I think was not mentioned earlier that might be helpful. They can have more than one supervisor; they can have a substitute or a secondary supervisor for when their primary is not available, so they can keep working if they are gone.

Assemblyman O'Neill:
I appreciate that; I was here in 2015 when the advanced practice nurse practitioners (APRNs) were given some of this freedom to practice. I do not quite remember the physicians having these concerns, and if they did, I do not see some of the problems having come forth with the APRNs working independently, as they have over the last several years. I appreciate your statement. I look forward to working with you and Assemblywoman Cohen on these issues,

and hopefully we can find resolutions because it is a necessary need that we have. This is a need we have for all of Nevada: the rurals and the locals.

Chair Marzola:
Is there anyone else wishing to testify in opposition? [There was no one.] We will move to neutral testimony. Is there anyone wishing to testify in the neutral position to A.B. 364? [There was no one.] Assemblywoman Cohen, would you like to give some final remarks?

Assemblywoman Cohen:
I would like to turn it over to the stars of the show: the PAs.

Ben Prohaska:
We understand the language: "collaborative," "independent," "autonomously." I already work autonomously. Again, I saw patients this morning by myself, and I did not leave each patient and then go call the practitioner I work with. I have a breadth of medical knowledge that I have developed over seventeen years. We do not learn how to be practitioners in school, just as physicians do not learn how to be practitioners in school. They learn how to do it in residency. The 4,000 hours came about because that is what this body gave the APRNs several years ago. That is where we came up with 4,000 hours—to bring our profession to where the APRNs are at so that we too can get those jobs the hospitals are offering.

We are not looking to stop working with physicians. My physician and I talk about patients at lunch. We discuss things like, am I doing the right thing on this patient? What would you do? They are like, sometimes you need to talk through an issue with someone else and you already have the answer. You simply want someone else to say, yes, that sounds reasonable. Physician assistants are not looking to open practices tomorrow. If you look at physicians, when they graduate residency, no one is opening lots of practices. It is not feasible. We work for hospitals; we work for clinics. When the APRNs were given independent practice six years ago, there has not been an uptick in lawsuits. There has not been an uptick in nurse practitioners having malpractice suits. In Utah—this bill mirrors some of what Utah has—when they did this several years ago, there has not been an uptick in PAs with malpractice suits. That is what we are looking at. We are trying to uncouple a couple of state laws that were made decades ago so that I can practice the way I currently practice, which is already autonomously. I love having a physician to talk to. I like having other PAs to talk to. I like having other nurse practitioners to talk to. I do not think any of us are looking to work on our own.

Carmella Downing:
I am not aware of any studies showing poor outcomes when supervision agreements change within the state. I agree with everything Mr. Prohaska has said. We are certainly not looking for independence. Independence is not a word we use. We work very closely, with collaboration, and I wish I had brought my collaboration agreement that we have at Carson Tahoe Health, as it lists almost verbatim the requirements in NRS Chapter 633. I asked you

to support this to bring PAs more up to speed. As a recruiter, it is currently not equal when it comes to hiring and employing PAs and APRNs. I ask you to support this bill.

Chair Marzola:
I will now close the hearing on Assembly Bill 364.

[All items submitted but not discussed will become part of the record: Exhibit U, Exhibit V, Exhibit W, and Exhibit X.]

I will now open the hearing on Assembly Bill 442.

Assembly Bill 442: Requires the Board of Medical Examiners to take certain actions in response to certain complaints against a licensee. (BDR 54-1055)

Assemblywoman Sarah Peters, Assembly District No. 24:
I am grateful. I was approached by a constituent regarding this issue and was asked, What can we do? The issue at hand had to do with a well-known physician in Reno who had harmed this constituent while under his care, damaging her both physically and emotionally, leaving impacts on her daily life. In addition to her story, there were dozens of other similar stories, accompanied with complaints lodged with the Board of Medical Examiners and follow-up with law enforcement, all of which appeared to go unanswered. In looking into this, something that is in the news across the country, and the most disturbing news recently coming out of Utah, is the Utah Supreme Court ruled that a criminal case taken against a physician in their state, accusing the physician of sexual assault of the patient was determined to not be applicable to criminal law and decided to be under the jurisdiction of medical malpractice.

I went digging and approached the Board of Medical Examiners and law enforcement and asked them, What happens when a patient is assaulted on an operating table and they make a complaint? Both entities take this very seriously. It is a criminal allegation, a criminal complaint. It is an abuse of power and abuse of license. Both entities take this very seriously. However, for these constituents, their issues were not being resolved. The physician is still practicing medicine despite the dozens of complaints against him. We dove in. What can we do? How do we have law enforcement work with the Board of Medical Examiners to ensure the path forward has resolution for these victims?

What you have here in front of you today is Assembly Bill 442. It is the beginning of the conversation of, What can we do? We talked about parallel paths. The Board of Medical Examiners takes a complaint that has a criminal allegation in it on a path through their investigation process. Additionally, we have law enforcement taking a path of criminal investigation on a criminal allegation. Then, we have to figure out how to bridge those. How do we have the Board of Medical Examiners and law enforcement talk to each other to know what their findings are and what the process is looking like? We have a draft amendment. I do not know if it made it into the record yet because we are still continuing to work on this, but the goal of the language will ultimately be ensuring that our law

enforcement and the Board of Medical Examiners talk to each other about where they are in the process of reviewing complaints from patients with criminal allegations, and how that resolves with that physician's license; in other words, whether they retain the license or that license is removed. That also includes the restitution for the potential criminal conduct of the physician.

I have Sarah Bradley with me to help present on this. She is with the Board of Medical Examiners, and I would ask that she talk a bit about what their current process looks like and what it was that we identified as being needed to fill the space to ensure we have an appropriate management of these types of complaints.

Sarah A. Bradley, J.D., Deputy Executive Director, State Board of Medical Examiners:
When we get a complaint, we do our best to communicate with all parties that might be relevant to a case. We do a lot of referrals, whether it is to other government agencies or law enforcement. Most of the time—I am thinking of the most recent cases involving sexual allegations—our understanding was that complaints had been filed with law enforcement prior to our getting our complaint, at least in the most recent ones that I am aware of. Obviously, we do not always know everything that law enforcement might see unless we are told. We do our best, like I said, to communicate with others. We also refer things to the Office of the Attorney General—usually not sexually related, but things like billing fraud. We do our best to make sure that not only do we do a comprehensive investigation of what we have before us, but that we send information to others regarding that. I suppose I would echo the fact that sexually related complaints and issues are not always sexual assault; sometimes it is inappropriate touch or an inappropriate comment. There is a lot of unprofessional behavior, I would say, that we have been seeing, that may not necessarily rise to a felony level, but again, we do our best to look at everything before us and investigate it thoroughly and send it wherever we think it might need to go. We would work on it at the same time as them.

Chair Marzola:
Committee members, are there any questions?

Assemblyman Yurek:
I like the idea of increased collaboration between the Board and law enforcement, especially in light of some of the instances that we have seen. My question regards section 3, subsection 1, which provides that if the Board determines there is a felony, somebody is at risk, et cetera, that they can suspend the license already. Also, it looks like we are adding a new subsection 2 that says that it is going to mandate the Board to suspend the license based on a subsequent allegation that is substantially similar. I think I understand what the intent is, but what I want to try to do is clarify because—I will even quote the words of one of my colleagues in an earlier session—just because you are accused of something certainly does not mean that you are guilty of it.

Would this apply to a scenario where, hypothetically, two people are going to conspire to crush this doctor. One person makes this baseless allegation, but for whatever reason, they

give enough detail that it warrants an investigation. Certainly, the Board, under subsection 1, could suspend if they determine there to be some reasonable risk, right? What if they conspired with somebody else a week later to make a similar allegation? Now there are two people making the allegation. Would that apply to this and mandate an immediate suspension of the license, or is this indicating a prior investigation that is substantially similar?

Assemblywoman Peters:
We have been working in consultation with physicians on the best way to address this particular issue. Ms. Bradley can correct me if I am wrong. The Board of Medical Examiners is a board of physicians that helps regulate the licensed physicians in the state of Nevada. Having a "may" is not enough support for that body to make a decision against somebody who has power in the community. We have a small community of physicians. Our goal was to give them a backstop if there is a case in which there are felony complaints of a certain nature—and we are defining certain nature as sexual assault or domestic violence. And then the goal of an amendment we are working on is to give the regulatory authority to the Board to define any other particular situations in which they would have to remove the license, and then give them the regulatory authority to define the process for that. I think it is also important that we look at the scenarios that can occur. To your point: when is it appropriate to remove that license? Is it upon a specific type of finding in an investigation where there is enough evidence that it is apparent to have to remove that license to protect the public? I think it is better defined in regulations than in statute.

My goal with the amendment is to amend the sections so that it is giving regulatory authority to develop that process, while also giving the backstop of, you have to find a process that definitively allows you to remove a license for specific felony conduct. However, that process has to have these transparent steps so there is due process for physicians in the event of exactly what you are talking about. Say there is a conspiracy against a physician for something that is not a felony, an actual felony that has been conducted. I apologize that I do not have a functional conceptual amendment in front of you today, but I want to assure you we are actively, vigorously working together on finding a way to make this work for everybody.

Sarah Bradley:
I would like to echo the comments, and we have the same concern you are raising, Assemblyman Yurek. We would want to make sure that whatever complaints we are taking action on are credible and fully vetted. That is a concern the Board has as well. We take both our public protection—and there are all kinds of reasons someone could potentially be summarily suspended if the health, safety, and welfare of the public required it—so we take that very seriously, but we want to make sure we only do that in appropriate situations. I can tell you, I have been working in administrative law with licensing boards for almost sixteen years. I have only done a handful of summary suspensions in my career because it is usually a rare thing. It is usually really egregious, bad conduct. And usually there is kind of no question. What is good about this, in some ways, is it would give us a bit more of a bolster on some of these that may be harder to prove but are still very serious. But, it also still

allows us to vet carefully to make sure someone is not abusing the process because, of course, we do not want that at all. We just want to help keep the public safe as best as we can.

Assemblywoman Duran:
Thank you for the presentation, because it is a serious allegation for these and it can ruin the physician's life. Is there any thought about the number of complaints against a person? I know some can be unfounded, and is it just—is it the same in nature? Are you taking that into consideration as well?

Assemblywoman Peters:
I think the balance we are trying to strike is the integrity of the institution—our medical institution and our physicians. We want to ensure we are protecting those who are doing the job of a physician and the ethics that are required by that position, but we have to find ways to protect the public. We were going to have some testimony provided by a victim. She is uncomfortable with sharing her name because of what has happened with her. However, in her case, the physician was taking advantage of Medicaid patients who were not English-speaking, and that is a demographic that we do not cater to in the best way within law enforcement or within the advocacy process. So, there is also a balance of making sure we are protecting vulnerable populations from predators while maintaining the integrity of the institution. I think the physicians can speak to this; it is important and imperative that we protect the medical institution, and that people can trust their physicians. However, when we are not taking action on physicians who are conducting these egregious actions against people, especially those who are the most vulnerable, then we are not doing that justice.

Our hope and my goal is to develop a process that allows for that balance to be struck while allowing for some deference from the entities who know best what is happening in the industry, with a check on coming back to the Legislative Commission so we can sort of have a touch on ensuring those regulations are strong enough to support those decisions being made, while also seeking that input from physicians to ensure we are striking that balance for them.

Assemblywoman Duran:
I appreciate that, because there are many people who do not come forward because of that situation—they are vulnerable. They feel that because they do not speak the language, that nobody believes them. I appreciate that if there are complaints, even anonymously, that they take that into consideration as well.

Assemblywoman Peters:
Thank you for bringing that up. I also think it is imperative in those instances that we have these communication tracks, because there may be a potential criminal case where the victim does not want to pursue criminal charges, but that record is still in the law enforcement institution. So, if another person comes in with a similar case, they can see that there is a trend with that particular person. Similarly, for the Board of Medical Examiners, if they are getting complaints that are not getting vetted into law enforcement because of the same

concerns, they do not want to bring a case against the physician where they can say this guy is a bad actor. These women may not want to charge him with criminal activity, but the least we can do is strip him of that license so that he can no longer harm that population.

Chair Marzola:
Are there any additional questions? [There were none.] We will now move to testimony in support of Assembly Bill 442. Is there anyone wishing to testify in support?

Serena Evans, Policy Director, Nevada Coalition to End Domestic and Sexual Violence:
Today, I am here on behalf of numerous victim-survivors who have allegedly experienced reproductive coercion, medical mutilation, and sexual assault at the hands of a prominent obstetrician/gynecologist here in northern Nevada. I say "allegedly" not because I do not believe them, but because our current pending investigations have taken far too long to conclude any final findings. I want to thank Assemblywoman Peters for listening to the heartbreaking stories of these victim-survivors and for taking action in bringing this bill forward. Never in my time as a domestic and sexual violence victim advocate did I think I would be involved in the Board of Medical Examiners' procedures. However, our current systems have seemingly failed victim-survivors, going back over twenty years, which is why I sit before you today.

Our coalition was approached by a large group of women seeking justice against one particular doctor. This group of women has submitted more than one complaint filed through the Board of Medical Examiners claiming unnecessary procedures, sexual assault, botched surgeries, medical coercion, and Medicaid fraud. We have heard that these women tried to pursue actions through law enforcement, but were told they do not have jurisdiction and their complaints to the Board have taken an uncomfortable amount of time to review despite multiple complaints. All the while, this doctor is still practicing and likely harming low-income and marginalized communities. We are taught to trust our doctors, but this is a blatant abuse of power and control and there must be accountability for stopping ongoing harm in our communities.

Working with the victim-survivors, I have heard horror stories that have made me sick to my stomach. Repeatedly, these victim-survivors have pleaded that if they could do one thing, it would be to stop this doctor from harming more patients. The fact there are multiple open complaints against the same doctor and he has still been allowed to continue to practice while the Board is taking as many as four years to review these cases is extremely problematic. There needs to be some form of accountability for doctors harming, harassing, and assaulting their patients. Many of these victim-survivors want to share their stories, but because of their vulnerability and their experiences, and the power this high-profile doctor carries in our community, they are fearful of sharing them on public record. On behalf of those too fearful to speak their truth to power here, today we urge the passage of A.B. 442.

Dylan Shaver, representing Empower Nevadans Now:
Empower Nevadans Now is a victims advocacy group that focuses on people who have been the victims of abuse across Nevada's medical system. I think we all love our individual

doctors, but we all know that anywhere there are bad actors. Unfortunately, over the years, the legal framework that regulates has allowed some folks to get away with some pretty awful things. I am by no means as eloquent as Ms. Evans before me. Nevertheless, I think we are all aware there are some serious challenges in Nevada's health care system and that we all, from both a policy perspective and a community perspective, and from the profession itself, want to see something better. It is important to remember the role accountability plays in improving any system. Whether it is a health care system or a shop, the way to get to quality is to hold people accountable for it.

While that is often uncomfortable and often comes with risks, Empower Nevadans Now would like to thank Assemblywoman Peters and the supporters of this measure for taking a brave first step. We look forward to doing what we can to make sure these victims' stories are told and they have a path to justice in the near future.

Sarah Watkins, Interim Executive Director, Nevada State Medical Association:
We are here in support of A.B. 442. As a patient and physician advocacy association, we always want the patients to be protected and heard. We appreciate the opportunity to work with Assemblywoman Peters and the Board of Medical Examiners with the added amendment that allows for the Board of Medical Examiners to establish regulations around due process, timeframes, and complaints. We thank Assemblywoman Peters for bringing this bill forward.

Chair Marzola:
Is there anyone else wishing to testify in support? [There was no one.] We will move to testimony in opposition to Assembly Bill 442. Is there anyone wishing to testify in opposition? [There was no one.] We will now go to testimony in neutral. Is there anyone wishing to testify in the neutral position to Assembly Bill 442?

Christopher M. Ries, Detective, Las Vegas Metropolitan Police Department:
We are neutral this time but are working with Assemblywoman Peters and are hopeful to move to a position of support. We feel this is valuable and important legislation and thank the Assemblywoman for her work on A.B. 442.

Jason Walker, Sergeant, Administrative Division, Legislative Liaison, Washoe County Sheriff's Office:
We are testifying in neutral to Assembly Bill 442. We are certainly willing to work with Assemblywoman Peters to help bridge any gaps.

Chair Marzola:
Is there anyone else wishing to testify in the neutral position? [There was no one.] We will now close the hearing on Assembly Bill 442. I will now open up for public comment. [There was no public comment.] This will conclude our meeting for today. Our next meeting will be Friday, April 7, at 12:30 p.m. This meeting is adjourned [at 3:50 p.m.].

RESPECTFULLY SUBMITTED:

Elizabeth Lepe
Committee Secretary

APPROVED BY:

Assemblywoman Elaine Marzola, Chair

DATE:

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is a document titled "NTRAPS FAQs," submitted by Assemblywoman Heidi Kasama, Assembly District No. 2, regarding Assembly Bill 392.

Exhibit D is a copy of a Florida court filing document dated November 29, 2022, submitted by Assemblywoman Heidi Kasama, Assembly District No. 2, regarding Assembly Bill 392.

Exhibit E is a proposed conceptual amendment to Assembly Bill 392, submitted by Mary Walker, representing Lyon County.

Exhibit F is a document titled "Memorandum of MVR Homeowner Benefit Agreement," dated March 1, 2022, submitted by Isabelle Beaumont-Frenette, Director, Government Affairs for Communication and Advocacy, Carrara Nevada, regarding Assembly Bill 392.

Exhibit G is a document titled "MVR Homeowner Benefit Agreement," submitted by Isabelle Beaumont-Frenette, Director, Government Affairs for Communication and Advocacy, Carrara Nevada, regarding Assembly Bill 392.

Exhibit H is a copy of a WRE News article titled "National Real Estate Company Under Investigation For Alleged Deception, Triggering New Legislation in NC," written by Leora Ruzin, dated March 23, 2023, submitted by Isabelle Beaumont-Frenette, Director, Government Affairs for Communication and Advocacy, Carrara Nevada, regarding Assembly Bill 392.

Exhibit I is the Work Session Document for Assembly Bill 216, dated March 8, 2023, presented by Marjorie Paslov-Thomas, Committee Policy Analyst.

Exhibit J is the Work Session Document for Assembly Bill 321, dated March 27, 2023, presented by Marjorie Paslov-Thomas, Committee Policy Analyst.

Exhibit K is the Work Session Document for Assembly Bill 343, dated March 31, 2023, presented by Marjorie Paslov-Thomas, Committee Policy Analyst.

Exhibit L is a copy of a PowerPoint presentation titled "AB 363 Fair Chance Licensing," submitted by Assemblywoman Brittney Miller, Assembly District No. 5, regarding Assembly Bill 363.

Exhibit M is a proposed amendment to Assembly Bill 363, submitted by Assemblywoman Brittney Miller, Assembly District No. 5.

Exhibit N is a document titled "Assembly Bill 363–Fair Chance Licensing," submitted by Athar Haseebullah, Executive Director, American Civil Liberties Union of Nevada, regarding Assembly Bill 363.

Exhibit O is a collection of letters, submitted by Athar Haseebullah, Executive Director, American Civil Liberties Union of Nevada, in support of Assembly Bill 363.

Exhibit P is written testimony dated April 5, 2023, submitted by Joshua Gaines, Project Manager, Economic Mobility, Council of State Governments Justice Center, in support of Assembly Bill 363.

Exhibit Q is written testimony dated April 5, 2023, presented by Wiz Rouzard, Deputy State Director, Americans for Prosperity Nevada, in support of Assembly Bill 363.

Exhibit R is written testimony dated April 5, 2023, submitted by Meagan Forbes, Senior Legislative Counsel, Institute for Justice, Arlington, Virginia, in support of Assembly Bill 363.

Exhibit S is a letter dated April 6, 2023, signed and submitted by Alejandro A. Ortiz, Senior Staff Attorney, Racial Justice Program, American Civil Liberties Union, in support of Assembly Bill 363.

Exhibit T is written testimony, signed and submitted by Ann Hines Miles, Private Citizen, Kingston, Nevada, presented by Assemblywoman Lesley E. Cohen, Assembly District No. 29, in support of Assembly Bill 364.

Exhibit U is a document with statistics compiled by the Research Division, Legislative Counsel Bureau, titled "Health Care in Nevada: Statistics and Rankings," dated January 2020, submitted by Robert Masterson, representing Nevada Academy of Physician Assistants, regarding Assembly Bill 364.

Exhibit V is a letter dated April 4, 2023, signed and submitted by Michelle Joy, President and CEO, Carson Tahoe Health, in support of Assembly Bill 364.

Exhibit W is a letter dated March 30, 2023, signed and submitted by Connor Finklea, Private Citizen, Ely, Nevada, in support of Assembly Bill 364.

Exhibit X is a letter dated March 1, 2023, signed and submitted by Cecilia Bowers, Private Citizen, in support of Assembly Bill 364.