

Minutes of the Joint Legislative Oversight Committee\*  
June 21, 2001  
West Conference Room, J. R. Williams Office Building  
Boise, Idaho

Co-chair Senator Lin Whitworth called the meeting to order at 10:05 a.m. Committee members Co-chair Representative Debbie Field, Senator Grant Ipsen, and Representatives Maxine Bell, Margaret Henbest, and Donna Boe attended. Senator Betsy Dunklin joined the meeting in progress. Staff members Nancy Van Maren and Margaret Campbell also were present, as were other OPE staff intermittently throughout the meeting.

**APPROVAL OF MINUTES OF 5/17/01 MEETING**

Co-chair Whitworth opened the meeting with a review of the minutes. **Representative Field moved to approve the minutes of the May 17, 2001 meeting and Representative Boe seconded the motion. The motion passed unanimously by voice vote.**

Co-chair Whitworth welcomed the committee and advised those in attendance that JLOC was different from other legislative committees in that it did not take public testimony. For the report release, the committee would hear from OPE and agency representatives. Any exception would need approval by the committee.

**REPORT RELEASE: *THE STATE BOARD OF MEDICINE: A REVIEW OF COMPLAINT INVESTIGATION AND ADJUDICATION***

Mr. Ned Parrish, Principal Performance Evaluator and team lead on the report, provided an overview of the evaluation request. **Representative Henbest moved to receive the report. Representative Boe seconded the motion, and it passed unanimously by voice vote.** Ms. Leslie Clement, Performance Evaluator, and Mr. Jim Henderson, Senior Performance Evaluator, presented a summary of the findings and recommendations of the report.

Senator Dunklin referenced the board's use of consultants to evaluate standard of care cases. She asked how the board was ensured a consultant impartially evaluated a physician who used cutting-edge technology or treatment methods that were not widely accepted. Ms. Clement said that occasionally the board used out-of-state experts from an academic setting (where cutting edge technology was taught).

Representative Henbest said she thought the board should use consultants more often than in the limited percent of cases reported. She asked how the board identified which consultant was more appropriate to look at the practice of a particular physician. Did the board have a policy? Ms. Nancy Kerr, Executive Director, Board of Medicine, said consultant selection depended upon the case. During the initial investigation, four "on-staff" reviewers sought outside assistance if they lacked expertise. Board reviewers sought university expertise only when a physician's practice was considered cutting-edge technology.

\* As approved by a majority of the Joint Legislative Oversight Committee (see signatures attached).

In response to questions about the difference between the “on-staff” reviewers and the Committee of Professional Discipline, Ms. Kerr said the reviewers she was referring to were the four physician members of the Committee on Professional Discipline. She point out that with the separation of adjudicatory and investigatory functions in HB 628 (2000), the Committee of Professional Discipline now served solely as investigators. She said staff conducted an initial investigation and then forwarded the complaints to the committee for any further investigation.

Representative Boe asked for clarification on term lengths. Mr. Henderson said that board physicians were appointed for six years and were not prohibited from reappointment, although, to date, that had not occurred. Committee membership was limited to two, three-year terms. Assuming there was not a reappointment to the board (which would add six years), overall membership was limited to 12 years.

Co-chair Whitworth called on Ms. Kerr to respond to the report on behalf of the board. Ms. Kerr said the board appreciated OPE staff, who were professional, fair, and objective in conducting the evaluation. She said the board could conduct more aggressive investigations including “collateral” investigations; the board would seek to incorporate related language in the rules. Staff had already begun to document conversations and interviews and include rationale in the file for not opening a case. Ms. Kerr commented on the potential insufficiency of staff at present, even without adding to its investigative efforts.

Ms. Kerr said providers had been notified in all instances except reciprocal discipline, where notification is provided by other means. Ms. Kerr said statute requires consultants in standard of care cases to be providers from the same or similar communities. The board always uses disinterested consultants.

Ms. Kerr said she believed there had never been a concern identified about board members’ conflicts of interest. She said the board may have been able to ensure all the necessary changes were made with HB 628 (2000) had they been able to provide input when the legislation was being developed. She believed OPE’s report recommendation should apply to all regulatory bodies that conduct administrative hearings within the state. Finally, Ms. Kerr said the board agrees that membership in any organization should not be a requirement to serve on the Board of Medicine. Also, she was not aware of any board member who would disagree with term limits.

Representative Field said, as the Legislator who carried HB 628, there was open discussion, exchange, and collaboration from the board to get to HB 628 from the original bill, HB 512. Ms. Kerr countered that during the initiation of legislation, there was no collaboration. The board was notified of changes, but not invited to comment.

Questions arose about those cases in which further investigation may have been warranted on complaints designated outside the board’s jurisdiction. Ms. Kerr said the board had developed a written policy and staff had begun to document all conversations and interviews on “almost” complaints. Documents were co-signed by another staff member or staff counsel, indicating the

rationale for being considered outside the board's jurisdiction and whether any referrals were made.

Representative Henbest asked how the board could explain that while cursory investigations were common, use of consultants for more in-depth study of practice was limited, even though it was acknowledged that standard of care cases required the review of care over a period of time. Ms. Kerr responded, acknowledging she was unclear about the question. Ms. Clement indicated that investigation efforts were more thorough in contested cases that went to formal hearings than they were in most other cases. In the majority of cases, decisions were based on the limited preliminary investigations. The report recommended additional preliminary investigative actions, such as interviewing complainants and respondents. In doing so, it would be clearer why one case was closed and a comparative one was investigated further. Mr. Parrish said that preliminary investigative efforts typically focused solely on the complaint at hand, and did not include a review of the physician's overall performance. Information on a physician's overall performance would allow the board to determine if there were a pattern of practice problems.

Representative Field commented that in her time of serving in the Legislature, she had never known a more emotional issue—which was why it became necessary for OPE to sort out the facts. She wanted to clarify that it had never been the intent of JLOC to harass the board, only to make the process fair. She thought things were getting better and encouraged the board to keep working on it.

The committee discussed staff size and qualifications and the use of consultants. Mr. Parrish noted that other states have physicians on staff or routinely use consultants to review standard of care cases. Idaho's Board of Medicine members say they generally felt they could play that role because of their medical backgrounds.

Representative Henbest referred to page 22 of the report where one case seemed to suggest that an "interested" consultant was used. Given that Ms. Kerr indicated earlier that disinterested consultants were "always" used, she asked if there was a written policy on the selection of consultants. Ms. Kerr said the rules for complaint investigation defined who could be selected as consultants but there was no formal written policy. In response to further questions, Ms. Kerr said she did not know the specific case referenced in the report, but competitors could be used because community standard of care was established by physicians in the same or similar communities. In contested cases, outside consultants were always disinterested physicians.

Representative Henbest commented that contested cases seemed to be handled with due diligence, but the problems they had heard about were *average* complaints. She hoped the board would give serious attention to the process leading up to a contested case.

Representative Field said that one of the changes of HB 628 (2000) was to allow physicians to come in and talk to the Committee on Professional Discipline. Had this process worked? Ms. Kerr said the two most recent to come before the committee had an open exchange, while others had not gone as well. Results were "mixed."

Co-chair Whitworth thanked Ms. Kerr for her attendance and comments. Ms. Kerr introduced board council, Cathleen Morgan, assistant director, Mary Leonard, contract attorney, Jean Uranga, and public member of the board, Trudy Jackson.

**PROGRESS REPORTS: *THE STATE BOARD OF MEDICINE'S RESOLUTION OF COMPLAINTS AGAINST PHYSICIANS AND PHYSICIAN ASSISTANTS***

Mr. Eric Milstead, Senior Performance Evaluator, reviewed the two outstanding recommendations from the 1999 evaluation of the Board of Medicine. Both recommendations required action from policymakers. The committee asked if the board had analyzed the cost to strengthen the health care provider profiling system, as recommended by #5, and whether they knew how other states handled the release of information. Ms. Kerr said the board had looked at costs and that it was a "sore subject." Regarding the recommendation dealing with the board's broad discretion to release case information, Ms. Kerr said the general public felt there was not enough information released, and providers felt there was too much.

**Representative Henbest moved that for the next JLOC meeting, the Board of Medicine provide comparative information on how other boards handled sensitive information, and an analysis of the costs involved in strengthening Idaho's health care provider profiling system. Representative Field seconded the motion, and it passed unanimously by voice vote.**

**Representative Bell moved to accept all report findings and recommendations. Senator Ipsen seconded the motion, and it pass unanimously by voice vote.**

Representative Field asked about referring the reports to the germane committees, and members voiced interest in following the recommendations closely themselves. **Representative Henbest moved to request a progress report in six months and to advise the germane committee of the contents of the report. Representative Bell seconded the motion, and it passed unanimously by voice vote.**

Given the committee's endorsement of the recommendations and strong interest in seeing their implementation, **Representative Field moved that OPE work with bill drafters to develop a draft of recommended statutory changes for consideration at the next JLOC meeting, and send a copy of those changes to the germane committees.** It was discussed that JLOC would consider endorsing a bill. **Representative Boe seconded the motion, and it passed unanimously by voice vote.**

*The committee took a break for lunch.*

**PROGRESS REPORTS: *A REVIEW OF SELECTED WILDLIFE PROGRAMS AT THE DEPARTMENT OF FISH AND GAME***

Mr. Paul Headlee, Performance Evaluator, reviewed the department's progress in implementing the report's recommendations, two of which had been implemented, with the other two "in

process.” Mr. Rod Sando, Director, Department of Fish and Game, assured the committee the department would seek to solve the problems identified by OPE staff.

**Representative Henbest moved to request a progress report after the 2001 season, so that more would be known about the recommendation related to the bighorn sheep lottery. Representative Boe seconded the motion.** In response to committee questions about timing, Mr. Headlee said the information would become available in September 2001. Mr. Sando indicated the department would have information available to report at that time. **The motion was amended, with the concurrence of the second, to request a progress report at the next JLOC meeting. The motion passed unanimously by voice vote.**

**PROGRESS REPORTS: *IDFG: OPPORTUNITIES EXIST TO IMPROVE LANDS PROGRAM AND STRENGTHEN PUBLIC PARTICIPATION EFFORTS***

Mr. Parrish reviewed the department’s progress in implementing the evaluation’s recommendations. Members clarified how the department communicated the public input process. Co-chair Whitworth asked the department representatives questions about access to a department property near Soda Springs and the department’s lease agreement. Also, the committee discussed differences in how the department characterized its progress on resolving issues in the report, and OPE’s conclusions about resolution of those issues.

In regards to OPE’s recommendation related to the calculation of fees-in-lieu-of taxes, the department planned to have counties calculate the payments for the department, contrary to Code, which directed the department to do so. This also did not give the department an independent way of knowing the amount of payment due. In response to questions, Mr. Sando said OPE was correct in saying that the department did not have a system to evaluate whether the county assessors’ evaluations were accurate. He thought it was a good thing to ask the department to do. The committee concluded this recommendation was “in process” rather than “not implemented.”

**Representative Field moved to request another progress report in six months. Senator Ipsen seconded the motion, and it passed unanimously by voice vote.**

**PROGRESS REPORT: *THE DEPARTMENT OF FISH AND GAME’S AUTOMATED LICENSING SYSTEM ACQUISITION AND OVERSIGHT***

Mr. Parrish reviewed the department’s progress in implementing the two recommendations. This was the first update JLOC had received, although the report was issued a year ago. One recommendation appeared to have been resolved, while the department had decided not to implement the other. Senator Whitworth asked if there would be a competitive bidding process when the contract with GTECH came up for renewal. Mr. Sando said the department was going to develop an RFP within the next two years for open, competitive bidding on the next contract. The GTECH contract will expire in December 2004 and the department will start developing the RFP in the next year.

Representative Field said, unfortunately, JLOC would not be able to do much if the contract could not be renegotiated. She hoped that the department would get a better deal in 2004.

**Representative Field moved to request a progress report, with a copy of the RFP, in 18 months. Representative Henbest seconded the motion, and it passed unanimously by voice vote.** Senator Ipsen added that he would appreciate the department summarizing the key RFP content into a letter for JLOC.

#### **REVIEW OF REQUESTED ACTION PLAN FROM THE DEPARTMENT OF CORRECTION AND THE COMMISSION OF PARDONS AND PAROLE**

Mr. Milstead reviewed the Commission of Pardons and Parole and Department of Correction's progress in developing the requested action plan to address critical data management plans at the Commission of Pardons and Parole. He said the commission and the department were more closely working together to address the commission's data management needs. The department was expanding the parole information on the OTS and was working with the commission to provide more parole-related reports. However, it appeared that even given this effort, commission staff would not have the ability to query data or conduct any summary analysis (a large part of the paper data system) beyond the prepared reports. Also, some record keeping would still be kept by hand. Further, the plan did not include the eventual hiring of in-house IT expertise for the commission. Finally, there was no indication of the timeline under which changes would occur. In discussion, members expressed concern that the commission would not be able to automate all the information needed to make recommendations for parole.

Co-chair Whitworth called on Ms. Olivia Craven, Executive Director, Commission of Pardons and Parole to address the committee. Ms. Craven said the commission was working to make all information electronic. They were working with the current system to capture more data for readily available information. They were also reviewing the Utah system and making sure that everything the commission is currently doing would be compatible if they choose to purchase the Utah system.

Ms. Craven summarized the reports the commission and department are working on automating and problems they are addressing. She said the agencies were going to automate the following reports:

- Action taken list, which summarizes commission decisions made at parole hearings;
- Initial hearing report for every inmate;
- Parole plan module that will track an offender from the day a tentative parole date is granted until they are released;
- Statistical information report that incorporates all the decisions made during the month and throughout the calendar year; and
- Reports that capture sentencing information and personal data.

In addition to automating information, Ms. Craven said the commission and the department were working together to fix system problems and improve access to data already entered in the offender tracking system. The agencies were also working on incorporating personal data that is

currently on the offender tracking system into commission reports. According to Ms. Craven, a program module in the offender tracking system will have to be brought on line so the commission can have access to programming information.

Ms. Craven complimented Brad Alvaro's staff because they have provided excellent support to the commission. She said the department had assigned two staff members to work with the commission and she had appointed two staff members to work with the department to address these problems. However, Ms. Craven warned that this was not an instantaneous process. She said the ultimate goal was to capture, maintain, and use data.

According to Ms. Craven, most of the data used by the commission can be incorporated into the offender tracking system. She said, "Quite frankly, I see in a year down the road to not be tracking anything by hand."

Representative Henbest asked Ms. Craven if she would be able to generate summary reports and query data in a year from now. Ms. Craven said a year was her timeline, although they may be able to do it sooner. Her goal is to have all the information automated. She planned to keep nothing by hand.

Representative Field asked if Ms. Craven was considering IT support within the commission to help meet their goals within the year. Ms. Craven said the plan was to get a contractor if more support besides the department was needed. Also, she will be asking for an IT person in the budget next year. By that time, it will be clearer whether to have this support through the department's IT offices or through her office.

**Representative Field publicly thanked Ms. Craven for moving forward quickly and moved to request a progress report in a year. Representative Boe seconded the motion.**

Representative Henbest spoke about the implications of a budget request for adding more staff to the commission and asked that letters be sent to the germane committees explaining the information technology issues within the commission and JLOC's concern that the data be electronic. Representative Field said the co-chairs would send the germane committee letters and include the department's and commission's response.

**The motion carried unanimously by voice vote.**

#### **REVIEW OF THE DEPARTMENT OF CORRECTION'S APPLICATION OF IT GUIDANCE TO PROPOSED SYSTEM ACQUISITION**

Mr. Milstead summarized the Department of Correction's report to JLOC concerning the application of Legislative Audits' guidance on proposed IT acquisitions to the Utah system. He said that while the department's system analysis appeared to be more focused than before, three issues appeared not to be adequately addressed in the department's letter to the committee: (1) system specifications should be developed prior to choosing a new system rather than once the

selection is firm; (2) a few aspects of “realistic expectations” had not been met; and (3) OPE continued to caution that training costs were underestimated.

Senator Dunklin thanked the department for following through on the request to consider Legislative Audits’ guidance. She asked for some assurance that the department would follow the steps outlined by Legislative Audits and address JLOC’s concerns.

Co-chair Whitworth called on Mr. Don Drum, Administrator, Management Services, Department of Correction, to address the committee. Mr. Drum thanked OPE for helping to adjust the department’s focus. The department would continue to work with Legislative Audits. The board had recommended sending an RFI to every state for input on offender information systems and training. Also, the board wanted a demo of the Utah system to decide the steps to take. The board needed to make decisions in the next 2–3 months because of the timing of budget submissions.

#### **CONSIDERATION OF REQUESTED EVALUATION SCOPES; SELECTION OF NEXT EVALUATION**

Ms. Van Maren said OPE currently had one project underway, the compilation of state fees, and could be assigned one or two more evaluations depending upon the committee’s priority of state fees and the scope of requested evaluations.

She summarized each of the four scoping papers the committee had requested and two others that had emerged in the meantime. She also reviewed how OPE would approach each evaluation, and drew distinctions between those that were more oriented toward evaluation (retrospective) and those more oriented toward policy analysis (prospective).

Members discussed the possible pros and cons of housing inmates in county jails, and concluded that most of what needed to be known about the topic was either already in the scoping paper or could be learned from the Division of Financial Management’s or Legislative Services Office’s budget analysts.

Senator Dunklin said she thought a study of school readiness programs would dovetail nicely with correction issues, since studies indicate children with poor reading skills are more likely to be incarcerated as adults. She was particularly interested in not only how effective state-funded programs are now, but also how many kids they were not reaching.

Senator Ipsen said he was concerned that Head Start was an expensive program and should be compared to other programs, which could be shown more effective for less cost. Also, it was important to really know what we were talking about—was Head Start an education program, a welfare program, or a childcare program? The answer to this question helped drive where the funding should come from. Where is the most cost-effective use of money for preparing kids? In addition, he would want to know if Head Start was an appropriate expenditure of TANF money.

Senator Dunklin indicated the additional expense in Head Start was for other program components, such as health care, speech therapy, and job training for parents. The components that were similar to other programs could be compared. Representative Field suggested that much of the information of interest may be available from the Governor's Coordinating Council on Families and Children. Representative Henbest said if such a study were done, she would want it to include a comprehensive list of what is available in the state, because where else could this information be obtained?

The committee also discussed the request to study programming for female offenders and their children, good-time credit, and the Public Works Contractors Licensing Board. Representative Field reminded the committee that its charge was oversight of performance—often providing efficiency tools to agencies. Also, she thought the fee evaluation was important and should continue.

Representative Boe said while she understood JLOC's charge, in cases like good-time credit and early childhood education, how else would the information policy makers need ever get pulled together? Representative Henbest added that less and less Legislators seemed to think they had the information they needed, which was why they were now looking to OPE, even for issues that were more intended to be policy analysis.

Representative Henbest suggested that perhaps JFAC's staff could address good-time credit and the issue of housing offenders in county jails. Couldn't we use the existing structure of government to look at these issues? As for female offenders and their children, school readiness programs, and the Public Works Contractor's Licensing Board, she felt they were all appropriate for OPE. Could they be prioritized?

**Representative Henbest moved to conduct evaluations of several topics, prioritized in the following order: Public Works Contractor's Licensing Board, Idaho Child Care Program, school readiness programs, then female inmates and their children.**

Representative Boe said these made sense, but she was not comfortable with referring good-time credit and housing offenders in county jails elsewhere. She said good-time credit needed to be addressed, and she would prefer to see it included in the prioritized list.

Representative Field asked the committee to consider the limited resources at OPE, and said she thought there were knowledgeable staff in LSO who could help. She suggested forwarding good-time credit and housing offenders in county jails to LSO and talking to the germane committees so they would follow-up. Representative Boe agreed.

**Representative Field seconded the motion. Representative Henbest amended her motion to include forwarding good-time credit and housing offenders in county jails to LSO staff and the germane committees, and she received the concurrence of the second. The motion passed unanimously by voice vote.**

The committee confirmed that the state fee evaluation was a priority and should continue to be worked on.

#### **UPDATE ON ADMINISTRATIVE ISSUES**

Ms. Van Maren introduced Patty Burke, a part-time performance evaluation specialist who joined the office in March. Ms. Van Maren then reviewed the FY2001 budget for OPE and the \$600,000 supplemental that OPE received for the contracted Medicaid evaluation. She said total Medicaid report cost were approximately \$612,000, and OPE had covered the amount over the appropriation. Of the total amount, \$28,800 covered OPE personnel contributions to the completion of the evaluation.

She said OPE anticipated reverting approximately \$93,900 from OPE's FY01 budget. One-time savings explained approximately half of this amount, while the remainder was due to the selection of topics this year. There had been little need for consultants on the selected evaluations, for which funds are built into OPE's budget. Representative Field said she appreciated the good budget management that was apparent. She commended Ms. Van Maren for functioning so well as the first OPE director and putting together an incredible office, function, and staff. She announced that Ms. Van Maren would be taking two months off with the birth of her baby, and senior performance evaluator Jim Henderson would act as director in her absence. As the committee knew, Ms. Van Maren would return half-time in September.

Representative Field indicated that Legislative Audits was undergoing recruitment challenges to fill the supervisor spot left by retiring Larry Kirk. She had spoken with the Speaker and Senator Ipsen had spoken with the Pro Tem about combining legislative audits with performance evaluations and having both offices report to JLOC. Leadership was excited and in favor of the proposal and she had learned audit staff were thrilled at the prospect of being under an oversight committee. The proposal would require statute changes, which could be done during the 2002 legislative session, although it appeared that a temporary arrangement would work until then. The tentative proposal was to hire a director to oversee administrative issues and two deputy directors to oversee the financial and performance audit divisions. The director needed to be a good administrator and director, while the deputy over financial audits would need to be a CPA. She thought this arrangement would allow them to increase the director salary to a competitive level, and attract strong candidates to the position. Mr. Kirk had said that while he did not want to, he would return to help with the transition, if that was what was decided. Ms. Van Maren, too, would help in the transition. Representative Field said she had learned about half of all audit shops in the nation were set up in this manner. Timing for Idaho seemed to be now.

Other members voiced their enthusiastic support for this arrangement and strong opinion that both divisions should be under an audit-oriented committee. In answer to committee questions, Representative Field said that the Legislative Services Office would remain under Legislative Council, and leadership would speak with Carl Bianchi, LSO Director, about the proposal. Committee members suggested adding a third branch under JLOC—policy analysis, while Representative Field noted that the state already had that function. She told the committee she would keep in touch as the transition progressed.

**Senator Ipsen moved to adjourn the meeting. By unanimous consent, the meeting adjourned at 4:00 p.m.**