

MINUTES  
**SENATE HEALTH & WELFARE COMMITTEE**

**DATE:** Monday, January 28, 2013

**TIME:** 3:00 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Heider, Vice Chairman Nuxoll, Senators Lodge, Hagedorn, Guthrie, Martin, Lakey, Bock and Schmidt

**ABSENT/  
EXCUSED:**

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairmen Heider** called the meeting to order at 3:00 p.m. and welcomed the audience. He asked the secretary to take a silent roll. He stated that approval of minutes of the January 15, 2013 meeting was first on the agenda.

**MOTION:** **Senator Schmidt** stated that he has reviewed the minutes. He made a motion to approve the minutes of January 15, 2013. The motion was seconded by **Senator Bock**. The motion was carried by **voice vote**.

**Chairmen Heider** stated the next order of business is to hold the confirmation hearing for Sue A. Payne of the Idaho Commission for the Blind and Visually Impaired to serve a term commencing September 20, 2012 and expiring July 1, 2015. He welcomed Sue to the microphone.

**HEARING:** **Sue Payne** thanked the chairman and members of the committee. She stated she has lived in Idaho for 34 years, in Idaho Falls and Boise. She reviewed her credentials. A copy of her resume has been archived and can be accessed in the office of the Committee Secretary (see Attachment 1). She stated she can be of service to the commission because she has a vast knowledge of federal law, the Rehabilitation Act and all of its subsequent amendments, laws and regulations on both the state and federal levels, as well as relevant programs. She stated that she enjoys working with people. **Ms. Payne** stated she is familiar with the legal framework surrounding the program and has helped to rewrite the manual to get it in line with laws and regulations. She stated she has particularly enjoyed working with the blind. She described experiencing "going under shades" and stated her appreciation for the situations dealt with by the blind. She stated her interest in watching people learn to livewith blindness, develop new skills and training, and enter the workforce. **Ms. Payne** asked for questions.

**Senator Schmidt** asked for a clarification: why does Vocational Rehabilitation not work with the blind and visually impaired? **Ms. Payne** explained that federal law and regulations split the blind from other disabilities probably because they need to undergo different skills training.

**Vice Chairman Nuxoll** asked what the commission does. How can you help the blind become less dependent upon the commission? **Ms. Payne** stated the whole program is designed with independence as the end goal. Vocational Rehabilitation and the commission are under the same federal law and both focus on trying to get people employed. They assist them with job skills training as well as education. Unemployment among the blind has increased, as well as everyone else, which is a concern.

**Senator Nuxoll** inquired as to what kind of jobs the blind can do. **Ms. Payne** answered just about anything. The only restriction is jobs that require great vision. Examples of feasible jobs include banking, government, business ownership, and retail; basically any type of job.

**Senator Hagedorn** asked Ms. Payne to describe the current outreach efforts the commission has with universities and colleges. He asked if there are shortcomings in that effort and what she would be able to do to address them. **Ms. Payne** responded that the commission has a close relationship with universities and colleges because each of them have a disabilities office to assist people with disabilities. She said it is difficult for students who are blind to navigate campuses and there is effort to assist them. She stated the relationship between the commission and these disabilities offices are important. **Ms. Payne** stated that sometimes professors perceive challenges regarding how to teach a person with a disability and one of the best things the commission can do is communicate with them.

**Senator Hagedorn** stated that he works with the Wounded Warrior Foundation, who have worked with three blind veterans attending Boise State University (BSU). He stated that they have had issues concerning teaching math to the blind veterans. He said teaching algebra to blind students seems to be almost impossible. **Senator Hagedorn** went on to say that we expect our colleges and universities to be prepared to teach to the disabled, but his experience has shown him that they are still a long way from reaching that goal. He hopes the commission can focus on not only getting disabled students into the classroom, but also what happens in the classroom. He thanked Ms. Payne for stepping up and doing the important work that she has done. **Ms. Payne** thanked Senator Hagedorn.

**Senator Lodge** thanked Ms. Payne for volunteering and stated her appreciation for her service on the commission and the wealth of experience she brings to the position. She described the experience of Mike Gibson, a blind student, who traveled to the statehouse to testify. She was impressed by him. She thanked the board for all the work that they do. **Ms. Payne** thanked Senator Lodge.

**Chairman Heider** commented on Ms. Payne's resume and stated that she exemplifies what a good samaritan is. He said the committee looked forward to her confirmation and thanked her for coming.

**Angela Jones**, Administrator Equal Opportunity Employer, stated her support for the confirmation of Sue Payne.

**PASSED THE  
GAVEL:**

Chairmen Heider passed the gavel to **Vice Chairman Nuxoll**, who then called on Mr. Roger Hales to present the rules.

**DOCKET NO.  
24-0601-1201**

**Relating to Rules for the Licensure of Occupational Therapists and Occupational Therapy Assistants (pending rule).** **Vice Chairman Nuxoll** recognized **Mr. Roger Hales**, who informed the committee that the board regulates the practice of occupational therapists in the state, and that the board is served by the Bureau of Occupational Licenses. The board is altering its rules to consolidate by reference the updated Certification Renewal Handbook chart correlating to continuing education, published by the National Board for Certification in Occupational Therapy. The proposed rules clarify close supervision, as well as removes the requirement that two continuing education units (CEUs) must be recommended by the Idaho Occupational Therapy Association to follow changes in the law.

**Senator Martin** asked what the difference between providing daily direction and checks every two weeks. **Mr. Hales** responded that daily direction refers to the regularity of communication and the two week checks are on-site inspections.

**Senator Lakey** inquired if the two week time frame was standard for the industry. **Mr. Hales** responded that he was not sure if it was an industry standard, but the board determines what is appropriate.

**MOTION:**

**Senator Martin** moved to approve **Docket No. 24-0601-1201**. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.  
24-1001-1201**

**Mr. Hales** reviewed **Docket No. 24-1001-1201**, relating to the Idaho State Board of Optometry (Board). The proposed rules:

- update the rule governing Board meetings to set the requirements of the open meeting law (Section 150);
- update the application section by eliminating an outdated address, simplifying the photo requirement, deleting an exam that is no longer available, and clarified the pass rate on the national and state exams (Section 175);
- correct the name of the national accrediting body of schools of optometry (Section 200);
- make a small change to the continuing education rule to allow for electronic verification of completion of a course (Section 300.07);
- update the code of ethics by recognizing a patient's lawful agent and eliminating an archaic section regarding referrals (Sections 325.02 and 325.04.g.);
- update the rule defining gross incompetence by updating a federal code section and adding a ground for lack of education (Sections 425.04 and 425.14);
- clarify and update the prescription rule for glasses and contact lens (Section 450);
- update the patient record section to require compliance with federal law – specifically, the Health Insurance Portability and Accountability Act (section 475.03);
- update the name of one of the Board's annual renewal fees (Section 575); and
- update the medications that optometrists may use in the diagnosis of conditions of the eye and eyelid, and other small changes to the section (Section 600.01).

**Vice Chairman Nuxoll** inquired if the rule declaring that contacts and eyeglass lenses may only be dispensed upon a current prescription was any different than it ever was. **Mr. Hales** responded no, this was just making clarification.

**Senator Martin** inquired that if the provision requiring only licensed physicians to fit contact lenses was a change. **Mr. Hales** responded no, it was not a change.

**Senator Lodge** referenced page 532, column 3, under "A." She inquired if optometrists can prescribe any medication or if they are limited. **Mr. Hales** responded that he believes there is a limit. He referenced page 533 and explained this rule seeks to clarify guidelines regarding diagnostic medicine to make them similar to guidelines regarding medicine used to treat. He noted that the rule was specifically reviewed by State Medical Association who have not objected. **Senator Lodge** asked if it was also reviewed by the Board. **Mr. Hales** responded that a representative of Optometrists was involved.

**Senator Lakey** inquired if there was a typo on page 530, at 06.c., referring to subsection 450.05.b. He asked if it referred to 05. written above, relating to Expired Contact Lens Prescription, which does not have a "b", or was he mistaken? **Mr. Hales** responded that he believes it is a typo. **Senator Lakey** suggested that it was possibly intended to go with 450.06.b. **Mr. Hales** responded that he believed it was intended for 450.06.b., and the point is, no matter who dispenses medication, the prescribing physician is responsible to the patient. **Senator Lakey** inquired if the 75 percent pass rate was a state or national standard. **Mr. Hales** responded that there are two pass rates: one is a national standard and the other is set by the Board.

**Senator Schmidt** inquired if these rules would affect people buying contacts online. **Mr. Hales** responded no, not if they have an up-to-date prescription. He explained some contact providers do not require up-to-date prescriptions, but he is not sure if there is legal authority to enforce this rule across state lines.

**MOTION:** **Senator Hagedorn** moved to approve **Docket No. 24-1001-1201**. **Chairman Heider** seconded the motion. **Vice Chairman Nuxoll** inquired about what should be done with the typo. **Mr. Hales** stated he believed the Board could make the change, and **Senator Lodge** and **Senator Bock** agreed. The motion carried by **voice vote**.

**DOCKET NO. 24-1201-1201** **Mr. Hales** reviewed **Docket No. 24-1201-1201**, relating to the Idaho State Board of Psychologist Examiners. The rules are being updated to:

- provide additional flexibility in meeting the continuing education requirements of licensure;
- expand the course providers for continuing education (Section 402.03); and
- expand the number of courses available by teleconference (Section 402.08).

**Senator Schmidt** asked how many licensed psychologist examiners are in the state. **Mr. Hales** responded there are three hundred-fourteen, and another eighty-five that have inactive status.

**Senator Hagedorn** inquired about why there are limits on continuing education credits from sources not listed, but there are no limits on them from the listed sources. **Mr. Hales** responded that the listed entities provide the best education so credits from these are unlimited, but other sources can provide these credits and the goal is to provide flexibility for those needing continuing education credits.

**MOTION:** **Senator Martin** moved to approve **Docket No. 24-1201-1201**. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO. 24-1401-1201** **Mr. Hales** reviewed **Docket No. 24-1401-1201**, relating to the Rules of the State Board of Social Workers Examiners. The rule:

- clarifies the definition of a relative for purposes of the code of conduct (Section 010.04);
- clarifies the independent practice of social work (Section 201.04);
- clarifies the supervision requirements for independent and clinical licensure through the creation of new supervision sections;
- requires renewal of a supervisor registration every five years (Section 211.03);
- clarifies inactive licenses (Section 225);
- updates the examination process (Section 350); and
- changes the code of professional conduct to clarify appropriate relationships between a licensee and client (Section 450.01.i.).

**Senator Hagedorn** inquired about the logic behind not allowing individuals with certain levels of education to enter into private practice, and asked if there are any of these individuals in private practice currently. **Mr. Hales** responded that requirement is in line with industry standards and, to his knowledge, none of these individuals are currently licensed to practice privately. He deferred to Robert Paine, private practitioner. **Mr. Paine** explained that the term "private practice" refers to accepting third party payments, for example, from insurance companies. He stated this provision takes nothing away, only provides clarity to existing rules.

**Senator Hagedorn** inquired if a social worker with a Bachelor's degree is prohibited from opening a private practice to do marriage counseling. **Mr. Paine** stated they are not allowed because they do not have the proper education to provide that service. **Senator Hagedorn** asked if Master's level individuals can function at that level but are precluded. **Mr. Paine** stated the restrictions on these individuals are in place to protect the public. He stated a Master's level social worker can engage in private practice with clinical supervision. **Senator Hagedorn** explained his concern is, given the shortage of mental health workers in the state, more opportunities should be available for those that can provide this service. **Mr. Paine** responded that the board is sensitive to the shortage, but easing restrictions would be at the detriment of public safety. He stated these rules do not place any further restrictions on social workers; they only clarify existing rules.

**Vice Chairman Nuxoll** asked if she is correct in her understanding that there is no change in this section. **Mr. Paine** responded that there are no changes regarding independent and private practice guidelines, only requirements concerning supervision.

**Senator Guthrie** explained he understands the difference between independent practice and private practice to be their ability to bill. He stated there seems to be inconsistency in the testimony and the language of the rules. He asked why these changes were made and asked for examples of issues that led to the change, because he doesn't understand how this protects the public. **Mr. Paine** asked for clarification to the question. **Senator Guthrie** clarified he is concerned about the difference in the ability to bill. **Mr. Paine** explained that the term private practice should be changed to third party payments because the language is outdated, as it was created in 1971. He stated those in the field understand the rules.

**Senator Hagedorn** asked if Bachelor level and Master's level social workers are essentially required to work for someone else in order to practice their skills. **Mr. Paine** responded no, independents need to contract with providers but are not necessarily employed by them. He stated those who are not qualified need to be supervised.

**Vice Chairman Nuxoll** urged conclusion to the questioning.

**Senator Hagedorn** stated his concern is the restrictions on social workers. He stated he is concerned that educated social workers are not able to set up a private practice rather they are required to work under an organization or institution. **Mr. Paine** responded that under-educated social workers need supervision because they are potentially dangerous; this is a public safety issue.

**Mr. Hales** referred to page 531 for a clarification of definitions of the various levels of social workers.

**Senator Schmidt** inquired if there is a charge to social workers to get supervision. **Mr. Hales** deferred to Mr. Paine. **Mr. Paine** responded that sometimes it's free and sometimes there is a charge; it depends on the circumstances of the supervision.

**Vice Chairman Nuxoll** asked for a definition of romantic. **Mr. Hales** responded that determining what is romantic is subject to the Board; however, there is a process to challenge any decision by the Board.

**Senator Lakey** inquired into the language regarding restrictions on social workers relationships when it has potential to be harmful to the client. **Mr. Hales** stated these mental health situations are a little different than other fields. This language refers to relationships with those having close personal relationships with the client. **Senator Lakey** asked for clarification that the language regarding restrictions on relationships that may be potentially harmful to the client only refer to relationships with those having close personal relationships to the client and not the client. **Mr. Hales** responds yes, there are different liability sections.

**Senator Bock** stated that in the legal profession, there are also restrictions on how individuals are allowed to practice at various skill levels. There is an issue of conflict of interest. The restrictions on private practice are professional standards used across many professions in order to protect the integrity of the profession.

**Senator Lakey** referred to page 546 and asked if the committee could reject a portion of the proposed rule regarding a two year requirement of practicing in Idaho. **Mr. Hales** responded that the House had approved the language, so if the Senate rejects it, the rule would be in limbo. He stated the Board will examine this section in the future.

**MOTION:** **Senator Bock** made the motion to approve **Docket No. 24-1401-1201**. The motion was seconded by **Senator Martin**.

**DISCUSSION:** **Senator Hagedorn** stated his concern regarding the restrictions on social workers to go into private practice. He stated he is concerned these restrictions are not in the public interest, but are an economic interest. Social workers getting out of college should have more options and there is a need for more social workers in Idaho. He stated that we need to change the way we do this if we want different results. He stated he will not be voting for the bill. **Vice Chairman Nuxoll** agreed, and stated she will not, either.

**Senator Bock** stated his concerns. He recounted graduating in the top ten percent of his class, but not being capable of practicing law on his own. He stated the need for training in the field in order for graduates to learn skills. He stated that these kinds of standards provide protection to the public and the profession and he objected to the idea that the current system is not working properly. **Senator Lodge** agreed, and she cited how teachers need to learn from experienced teachers, and that mentoring and guidance are important.

**ROLL CALL VOTE:** **Chairman Heider** and **Senators Lodge, Martin, Bock** and **Schmidt** voted aye. **Vice Chairman Nuxoll** and **Senators Hagedorn, Guthrie** and **Lahey** voted nay. The motion carried by a 5-4 **voice vote**.

**DOCKET NO. 24-1501-1201** **Mr. Hales** reviewed **Docket No. 24-1501-1201**, relating to the Idaho State Board of Professional Counselors and Marriage and Family Therapists. The proposed rules:

- makes a change to Section 044.01 to delete unnecessary language;
- adopt the New Code of Ethics for marriage and family therapists in the incorporation by reference of Section 004.02;
- clarifies supervised experience for marriage and family therapists, as well as continuing education; and
- specify the documentation essential for informed consent between the licensee and client.

There were no questions from the committee.

**MOTION:** **Senator Guthrie** made the motion to approve **Docket No. 24-1501-1201**. The motion was seconded by **Chairman Heider**. The motion carried by **voice vote**.

**DOCKET NO. 24-1701-1201** **Mr. Hales** reviewed **Docket No. 24-1701-1201**, relating to the Rules of the State Board of Acupuncture. The rules:

- clarifies acceptable course providers;
- changes to the continuing education requirements to create two separate categories to ensure continuing education in both Oriental theory and Western medical theory in the practice;
- clarify and set a deadline for the release of patient records; and
- provide for disclosure of fees to the patient, clarify the nature of activities performed by unlicensed employees and non-exempt individuals, provide for supervision of trainees and technicians, and clarify the limits on advertising.

**Vice Chairman Nuxoll** inquired if these rules increase the cost or training in either Oriental and Western medicines. **Mr. Hales** responded the rules do not increase the amount of overall training.

**MOTION:** **Senator Martin** made the motion to approve **Docket No. 24-1701-1201**. The motion was seconded by **Senator Schmidt**. The motion carried by **voice vote**.

**PASSED THE GAVEL:** Vice Chairman Nuxoll passed the gavel back to the Chairman.

**ADJOURNED:** There being no further business at this time, **Chairman Heider** adjourned the meeting at 4:48 p.m.

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Senator Heider  
Chairman

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Linda Hamlet  
Secretary