

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

DATE: Thursday, January 28, 2016

TIME: 3:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Heider, Vice Chairman Nuxoll, Senators Lodge, Hagedorn, Martin, Lee, Harris, Schmidt and Jordan

ABSENT/ EXCUSED: None

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: **Chairman Heider** called the meeting of the Senate Health and Welfare Committee (Committee) to order at 3:03 p.m.

PASSED THE GAVEL: Chairman Heider passed the gavel to Vice Chairman Nuxoll to conduct the rules review.

DOCKET NO. 24-1501-1501 **Rules of the Bureau of Occupational Licenses Related to the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists** (PCMFT Board). **Mitchell Toryanski**, Attorney, Bureau of Occupational Licenses (BOL), presented this docket.

Mr. Toryanski stated that the pending rules update the incorporated references to the American Association for Marriage and Family Therapy (AAMFT) code of ethics, which was revised and went into effect in January 2015. He stated that the pending rules create a registration renewal process for the supervisors of counselor and therapist applicants and include a requirement for supervisor training. The rule change will allow the PCMFT Board to know which supervisors are still active and qualified. **Mr. Toryanski** reported that the PCMFT Board held an open meeting for these pending rules. Additionally, a postcard was mailed to all licensees in the State of Idaho that informed them of the changes and invited comments. **Mr. Toryanski** stated that no comments were received.

Vice Chairman Nuxoll asked the Committee members if they had any questions.

MOTION: There being no questions, **Senator Harris** moved to approve **Docket No. 24-1501-1501**. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 24-1701-1501 **Rules of the Bureau of Occupational Licenses Related to the State Board of Acupuncture** (Acupuncture Board). **Mr. Toryanski**, BOL, presented this docket.

Mr. Toryanski stated that the pending rules include two changes related to continuing education (CE) requirements for acupuncturist licensees. First, **Mr. Toryanski** reported that, for licensees who have failed to timely renew their license, the pending rules cap reinstatement CE requirements at two years. He explained that acupuncturist licenses are required to be renewed annually. Currently, a licensee can reinstate their license that has lapsed if, within five years, the licensee pays a \$250 license reinstatement fee and shows that they have obtained 15 credit hours of CE for each year of the lapse. The Acupuncture Board felt this current requirement was too burdensome. Therefore, the pending rules require that a licensee needs 15 credit hours of CE to reinstate a license that has lapsed for a year or less; a licensee needs 30 credit hours of CE to reinstate a license that has lapsed for more than a year.

Second, **Mr. Toryanski** stated that the pending rules allow licensees to receive CE credits for both attending and teaching a course approved by the Acupuncture Board. **Mr. Toryanski** stated that many boards give credits to licensees for teaching approved CE courses. The pending rules would allow a licensee to receive one hour of CE credit for every two hours of teaching – up to a maximum of five CE credits per year. Notice of the rule change was given to all State licensees in the same manner as the previous docket item. He stated that no comments were received.

Mr. Toryanski reported that the Acupuncture Board held an open meeting for these pending rules. Additionally, a postcard was mailed to all licensees in the State of Idaho that informed them of the changes and invited comments. **Mr. Toryanski** stated that no comments were received.

Vice Chairman Nuxoll asked the Committee members if they had any questions.

Chairman Heider asked how common it was for acupuncturists to allow their licenses to expire. **Mr. Toryanski** answered that not many of the 177 licensees fail to renew their licenses and that it varies from year to year.

MOTION:

There being no further questions, **Senator Martin** moved to approve **Docket No. 24-1701-1501**. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
24-2401-1501**

Rules of the Bureau of Occupational Licenses Related to the Genetic Counselors Licensing Board (GC Board). **Mr. Toryanski**, BOL, presented this docket.

Mr. Toryanski introduced the GC Board Chairman, Heather Hussey. The GC Board was created last year by the Legislature through the Genetic Counselors Licensing Act. The pending fee rules detail (i) operations of the GC Board, (ii) the license application process, (iii) fee schedules, (iv) licensure requirements, (v) CE requirements and (vi) disciplinary standards. **Mr. Toryanski** reported that the GC Board held open meetings for these pending rules.

Vice Chairman Nuxoll asked the Committee members if they had any questions.

Senator Schmidt asked how many genetic counselors the State expects to license. **Mr. Toryanski** replied that there are approximately 12 in the State currently. However, since the passage of the Idaho Telehealth Access Act, the GC Board expects between 70 to 100 genetic counselors from outside the State to apply for State licensure.

Senator Martin asked why the Idaho Telehealth Access Act will increase the number of genetic counselors. **Mr. Toryanski** answered that the BOL serves multiple boards that are capable of providing services through electronic means. He stated that providing services via electronic means is becoming more popular and will increase interest by out-of-state practitioners. **Senator Schmidt** asked how the fee was established at \$500. **Mr. Toryanski** replied that \$500 fee in the pending rules is the maximum allowed by law. It is still undetermined how many practitioners will be applying for licenses. He stated that the GC Board is approximately \$3,000 in debt. The pending rules are aimed at helping the GC Board pay off its debt; once the GC Board maintains 100 percent to 150 percent of their operating budget on balance, the GC Board will request a fee reduction.

MOTION:

There being no further questions, **Senator Schmidt** moved to approve **Docket No. 24-2401-1501**. **Chairman Heider** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
24-0301-1501**

Rules of the Bureau of Occupational Licenses Related to the State Idaho Board of Chiropractic Physicians (Chiropractic Board). **Roger Hales**, Attorney, BOL, presented this docket.

Mr. Hales identified the relevant documents provided to the Committee, including (i) time lines, (ii) letters to licensees, (iii) notices regarding public hearings and rulemaking and (iv) a letter from the attorney general's office to Representative Fred Wood (see attachment 1). Referencing hearings from the previous Legislative Session, **Mr. Hales** reviewed testimonies of chiropractors regarding certain procedures performed on the public and involving the use of legend and prescriptive drugs such as injectable Vitamin B12. The chiropractors cited IDAPA 24.03.01.020 (Rule 020) as their authority to use legend or prescriptive drugs. Chiropractic statutes prohibit chiropractors from using legend or prescriptive drugs. Chairman Wood of the House Health and Welfare Committee proposed legislation last year to strike Rule 020 completely, but ultimately decided to allow the Chiropractic Board one year to fix Rule 020.

Mr. Hales stated that some chiropractors believe that the language "in all their forms" within Rule 020 justified administration of injectable or intravenous vitamins. A vitamin in injectable or intravenous form is a legend or prescriptive drug. Therefore, these pending rules strike the language "in all their forms" to eliminate confusion and to clarify that the law prohibits the use of legend and prescriptive drugs by chiropractors. Additionally, the pending rules refer back to the statutory scope of practice.

Mr. Hales stated that the Chiropractic Board noticed rulemaking, held open public hearings and solicited comments from the public regarding this rule.

Mr. Hales recognized in attendance: Dr. Mary Jo White, Chairman of the Chiropractic Board; Dr. Herbert Oliver, Chiropractic Board Member; and Berk Fraser, Deputy Executive Director of the State Board of Pharmacy.

Vice Chairman Nuxoll asked the Committee members if they had any questions.

Senator Martin asked how many chiropractors will be affected by this change.

Mr. Hales replied that only a small percentage would be affected. Of those chiropractors, **Senator Martin** inquired what percentage of their practice involves the use of legend or prescriptive drugs. **Mr. Hales** answered that he did not know the answer to that question.

Reviewing Idaho Code § 54-704, **Senator Hagedorn** asked what provisions could be construed to give chiropractors the authority to inject patients. **Mr. Hales** indicated that the referenced provision of Idaho Code authorizes "clinical nutritional methods." Rule 020 further defines "clinical nutritional methods" and includes "in all their forms." This is the authorization cited by chiropractors administering vitamins in injectable or intravenous form. **Senator Hagedorn** asked if there is another type of license that would allow chiropractors to use vitamins in injectable or intravenous form in their treatments. **Mr. Hales** replied that chiropractors are currently prohibited by law from these types of treatments; however, their scope of practice can be expanded in statute in the future.

Vice Chairman Nuxoll asked if a change in the definition of legend and prescriptive drugs by the Food and Drug Administration (FDA) in 1997 resulted in the current interpretation that chiropractors' use of injectable or intravenous vitamins is prohibited; such use was not prohibited prior to the modification of this definition. **Mr. Hales** replied that the FDA changed the federal definition of legend or prescriptive drugs around 1997. He reiterated that present law is clear that chiropractors are prohibited from using legend or prescriptive drugs. **Vice Chairman Nuxoll** asked Mr. Hales to confirm that a change in federal rules modified BOL's enforcement of Idaho regulations, even though the phrase "in all its forms" remained in Rule 020. **Mr. Hales** replied that Rule 020 was adopted in 2008, after the federal government changed its definition of legend or prescriptive drugs. **Vice Chairman Nuxoll** asked if Idaho can change the definition of legend or prescriptive drugs to include injectable drugs for acceptable use by chiropractors. **Mr. Hales** replied that there is an opportunity to allow chiropractors the ability to prescribe legend or prescriptive drugs if the Legislature approved it. **Vice Chairman Nuxoll** asked if this could include injectable vitamins. **Mr. Hales** answered that injectable vitamins are currently considered legend drugs, but the Legislature could authorize to prescribe selected legend or prescriptive drugs.

TESTIMONY:

Vice Chairman Nuxoll invited testimony.

Dr. Mary Jo White, Chiropractor and Chairman of the Chiropractic Board, testified she supports approval of the pending rules. She stated that the pending rules accurately reflect current statute and will protect the public.

Ryan Fitzgerald testified on behalf of the Idaho Association of Chiropractic Physicians (IACP). **Mr. Fitzgerald** stated that the IACP is planning on bringing forth legislation that will (i) establish education standards for chiropractors' use of legend and prescriptive drugs and (ii) establish a formulary of vitamins, minerals and nutrients that may be used by chiropractors. **Chairman Heider** asked whether chiropractors will practice within the framework of the rules and in a safe manner for the public if these pending rules are approved. **Mr. Fitzgerald** replied that IACP is neutral on this rule change. He reiterated that IACP intends to propose the previously described legislation. He noted that chiropractors in the IACP are willing to return to school for additional training. **Vice Chairman Nuxoll** asked if the proposed legislation from the IACP would include injectables. **Mr. Fitzgerald** answered that it included injectables.

Vice Chairman Nuxoll read a letter from a chiropractor in her district. The chiropractor indicated that, as a result of this rule change, more than 30 chiropractors will each experience a \$100,000 to \$500,000 change in their gross income annually for a total of \$3 million to \$15 million per year in gross revenue. This revenue change would account for the loss of approximately \$10,000 in General Fund taxes annually. The chiropractor stated that there have been hundreds of thousands of treatments with no complaints or harm done. The chiropractor reviewed the 1997 federal changes to the definition of legend or prescriptive drugs. The chiropractor noted that legal action could result if the rule passes without the additional proposed favorable legislation. **Vice Chairman Nuxoll** indicated that she considered holding the rule and the law changes in Committee, but she stated she was willing to vote to pass the rule in conjunction with IACP proposing new legislation. She stated her personal interest in this legislation; she noted her two daughters have Lyme disease. Her daughters first experienced relief from the symptoms of Lyme disease when they received certain injectables from a chiropractor. **Vice Chairman Nuxoll** questioned whether or not the pending rules were meant to protect the public or protect them from getting healthy.

Senator Hagedorn indicated that this was a complicated issue, and he noted that the pending rules are focused on those who are practicing outside the scope of the law. He commended the Chiropractic Board for addressing this issue. He suggested that there have been no reports of injectable-related injuries because there was no mechanism for reporting.

MOTION: There being no further questions, **Senator Hagedorn** moved to approve **Docket No. 24-0301-1501**. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 24-0501-1501 **Rules of the Bureau of Occupational Licenses Related to the Idaho Board of Drinking Water and Wastewater Professionals** (Water Board). **Mr. Hales**, BOL, presented the docket.

Mr. Hales introduced the Water Board members in attendance: Barry Burnell, Dr. Joan Cloonan, John Lee, and Michael Shepherd. **Mr. Hales** stated that the Water Board regulates the professions of drinking water and waste water operators and backflow assembly testers. First, **Mr. Hales** stated that the pending rules clarify the experience required for Class III and Class IV operators. **Mr. Hales** explained that the pending rules (i) require Class III and Class IV operators to have four years of acceptable, relevant, on-site operating experience and (ii) clarify that for two of the total four years the operator needs to be responsible for a major segment of the system in the same or next lower class.

Second, **Mr. Hales** stated that the pending rules establish a code of ethics and standards of conduct for backflow assembly testers. Backflow assembly testers ensure that backflow assembly devices operate properly. Generally, backflow assembly devices prevent the backflow of potentially contaminated irrigated water from entering the public drinking water system. **Mr. Hales** detailed the four ethics requirements and eight standards of conduct set forth within the pending rules. **Mr. Hales** informed the Committee that the Water Board has been working on the code of ethics and standards of conduct for two years. He reported that the Water Board held an open meeting for these pending rules. Additionally, a postcard was mailed to all backflow assembly testers that informed them of the changes and the rule was posted on the Water Board's website.

Vice Chairman Nuxoll asked the Committee members if they had any questions.

Senator Harris asked what type of feedback the Water Board received during the rulemaking process. **Mr. Hales** replied that there were approximately three or four comments that expressed concern with the adoption of a code of ethics and with the language within the pending rules.

Senator Martin expressed concern with the length of the time backflow assembly testers were allowed to report a failed inspection. **Mr. Hales** replied that two business days is a standard timeframe for backflow assembly testers to respond. He indicated that backflow assembly testers usually respond much sooner with findings of failed tests, but that two business days was the maximum.

Senator Hagedorn asked if there was another rule for backflow assembly testers that includes additional testing and reporting requirements. **Mr. Hales** answered that water system operators have a direct relationship with the backflow assembly testers. He indicated that there are many standards that set forth tools and procedures for testing. **Senator Hagedorn** asked if the standard of conduct are in conflict with the processes of any local owners. **Mr. Hales** responded that there is no conflict to his knowledge.

Senator Schmidt asked if there has been conduct problem with backflow assembly testers. **Mr. Hales** replied that there was a specific case in which a tester did not test, yet stated that he had tested. **Mr. Hales** indicated that the pending rules are intended as a proactive measure by the Water Board to establish certain minimum standards.

Chairman Heider asked if any of the backflow assembly testers in attendance had any objections to the proposed rule. No one indicated objection.

TESTIMONY:

Vice Chairman Nuxoll invited testimony.

Dr. Joan Cloonan, Vice Chair of the Water Board, testified in support of the pending rules. **Dr. Cloonan** stated that the Water Board's purpose is to protect the public health, safety and welfare. Backflow assembly testers are not subject to rules of municipalities because they do not work for municipalities. She reviewed some of the complaints the Water Board received concerning backflow assembly testers. **Dr. Cloonan** commented that the code of ethics and standards of conduct reassure the public. She reviewed the details of the rulemaking process for the Committee. The Water Board made substantial effort to address the comments received. **Senator Harris** asked Dr. Cloonan what concerns were received regarding the pending rules. **Dr. Cloonan** answered that some testers wanted to perform tasks that were more appropriately under the scope of plumbers duties.

Leslie Wilder, Owner of BAT and Supply LLC, submitted written testimony in opposition of the pending rules, but did not testify during the meeting (see attachment 2).

MOTION:

There being no further questions, **Chairman Heider** moved to approve **Docket No. 24-0501-1501**. **Senator Martin** seconded the motion. **Senator Harris** requested that he be recorded as voting nay. The motion carried by **voice vote**.

**DOCKET NO.
24-0601-1501**

Rules of the Bureau of Occupational Licenses Related to the Licensure of Occupational Therapists and Occupational Therapy Assistants. **Mr. Hales**, BOL, presented the docket.

Mr. Hales recognized in attendance: Kristin Guidry, Board Member, State Occupational Therapy Licensure Board (OT Board). First, **Mr. Hales** stated that the pending rules delete the requirement that licensees obtain professional development units, but still requires continuing education units, in order to renew or reinstate their license. This change aligns the rules with Idaho Code § 54-3711, which was revised in 2015 by H 024. Second, **Mr. Hales** stated that the pending rules clarify the deadlines for licensees to comply with the continuing education unit requirements. Third, **Mr. Hales** stated that the pending rules reduce the number of required supervised clinical hours required to perform deep thermal and electrotherapeutic modalities and manage wound care. Forty hours of supervised clinical training in each of these disciplines is now required to perform these techniques. The hours can be earned concurrently. **Mr. Hales** stated that the OT Board felt that the previous requirement of 160 hours for each discipline was overly burdensome, which resulted in reduced services and access for the public. Forty hours of supervised clinical training is within practice guidelines and appropriate for best practice. **Mr. Hales** reviewed the remaining minor and technical changes within the pending rules. **Mr. Hales** reported that the OT Board held an open meeting for these pending rules. Additionally, a postcard was mailed to licensees that informed them of the rule changes. **Mr. Hales** stated that he was not aware of opposition to these pending rules.

MOTION: There being no questions, **Senator Harris** moved to approve **Docket No. 24-0601-1501**. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 24-1201-1501 **Rules of the Bureau of Occupational Licenses Related to the Idaho State Board of Psychologist Examiners** (Psychologist Board). **Mr. Hales**, BOL, presented this docket.

Summarizing proposed changes, **Mr. Hales** stated that the pending rules (i) amend the ethical code of the Psychologist Board to prohibit the violation of patients' human rights, (ii) reduce licensure fees collected by approximately \$19,000 annually, (iii) modify license reinstatement requirements to comply with Idaho Code § 67-2614, which was revised in 2015 by H 117, (iv) revise endorsement qualification, allowing five years experience within the last seven years and (v) clarify continuing education requirements for reinstatement of an expired license.

Vice Chairman Nuxoll asked the Committee members if they had any questions.

Senator Martin asked if the reserve accounts of the Psychologist Board are adequate for reducing fees. **Mr. Hales** answered that the Psychologist Board has a cash balance of approximately \$187,000, with \$81,000 as the average yearly budget. The Psychologist Board is reducing the fees for the benefit of the licensees.

MOTION: There being no further questions, **Senator Lodge** moved to approve **Docket No. 24-1201-1501**. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

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

RS 24009 **Relating to Chiropractic Practice**. **Mr. Hales**, BOL, presented this RS.

Mr. Hales stated that this RS will eliminate confusion created by existing statutes, by clearly identifying what acts are prohibited by a chiropractor regarding the use of legend or prescriptive drugs. **Mr. Hales** stated that the existing statute prohibits chiropractors from "direct[ing] or suggest[ing]" the use of certain substances to patients; revisions proposed in this RS will prohibit chiropractors from prescribing, dispensing, independently administering, distributing, directing or suggesting the use of certain substances to patients. Additionally, **Mr. Hales** noted that the proposed RS will clarify the labeling language used to identify legend or prescriptive drugs. He indicated that the modifications are standard modifications in this area. **Mr. Hales** reported that the Idaho Board of Chiropractic Physicians held meetings for this RS. Additionally, a letter was mailed to licensees that informed them of the changes in the proposed RS.

MOTION: There being no questions, **Senator Hagedorn** moved to send **RS 24009** to print. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business, **Chairman Heider** adjourned the meeting at 4:31 p.m.

Senator Heider
Chair

Karen R. Westbrook
Secretary

Michael Jeppson
Assistant