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To: Legislative Committee on Health Care
From: Lisa Black, PhD, RN; Nevada Nurses Association
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Madam Chair, thank you for inviting the Nevada Nurses Association (NNA) to present on this very important public safety issue. For the record, I am Dr. Lisa Black, member of the legislative committee of the Nevada Nurses Association. The Nevada Nurses Association has been asked to respond to three key questions in our comments today: (1) what responses or actions has the NNA taken to address the cases of HCV transmission in Southern Nevada, (2) what, if any, continuing education/accreditation programs is the NNA involved in and how might those be used to address this issue, and (3) what general recommendations does the NNA have that might improve this current situation for patients to ensure that such a situation does not recur.

1. First, it is important to address for the committee the role of the Nevada Nurses Association. The mission of the Nevada Nurses Association is to advocate for the profession of nursing, representing the collective voices of registered nurses, while promoting and upholding excellence and integrity in the profession of nursing. The NNA does not have a specific role in the regulation of nursing practice, nor does the NNA investigate or adjudicate alleged violations of legal statute or regulation that may have been committed by specific nurses. These latter functions fall under the purview of the Nevada State Board of Nursing and the courts of competent jurisdiction. While the NNA is not privy to specific investigatory details, it is the understanding of the NNA that the several certified registered nurse anesthetists who cared for patients exposed to HCV in this instance have voluntarily surrendered their licenses to practice nursing pending due process hearings before the Nevada State Board of Nursing.
2. Registered nurses are educated from their beginning student experiences about the principles of infection control, cross-contamination, and prevention of secondary spread of blood-borne and other pathogens. This education involves both the issues of spread of pathogens from patient to patient, from patient to nurse, and from nurse to patient. While the consequences of these apparent breaches of infection control principles that occurred in one or more endoscopic centers in Nevada are, indeed, tragic, basic infection control is a concept about which registered nurses receive extensive education and training. Violation of these principles in this case does not appear to have been a medical error in the classic sense. Nurses are to follow the "reasonable and prudent" standard in regard to their nursing practice. The actions of a reasonable and prudent nurse would be to use a single use vial on only one patient.

It would be the recommendation of the Nevada Nurses Association that mandating additional education regarding these basic principles of infection control is likely not the best approach to prevent this tragic situation from recurring, as a lack of knowledge about infection control principles does not appear to be at issue here. Perhaps a more relevant question would be, did the nurses employed at the endoscopy centers in question act independently or were they following a given order, policy, directive, or expectation? While, again, identification and deliberation of the facts of this case are beyond the purview of the Nevada Nurses Association, common misperceptions exist among nurses, physicians, and others in regard to the limitations of the scope of registered nursing. A common belief is that if a registered nurse receives an order or a directive from a physician, the nurse must follow that order. In most cases, this is true. However, NAC 632.890(8) states that "failing to safeguard a patient from the incompetent, abusive, or illegal practice of any person" is a violation of the nurse practice act for which a registered nurse can be sanctioned by the Nevada State Board of Nursing. In short, this means that a registered nurse must decline to follow any order or directive that might reasonably be assumed to cause real or potential harm to a patient.

If additional education is deemed to be a needed remedy, this distinction of when a registered nurse must follow a medical order or directive and when that nurse must decline to do so may be where the need for education lies. The Nevada Nurses Association sponsored legislation during the 2005 regular legislative session that aimed to provide protections for nurses who refuse an assignment for which he or she does not possess the knowledge, skill, and ability to provide safe care. While this bill was deliberated, it was evident that significant confusion existed in regard to when a nurse must follow a medical order and when a nurse must decline to do so. Recently, the Nevada State Board of Nursing published an article in the Board's newsletter entitled, "A Nurses Responsibility to the Board." A copy of this article was provided to the committee during a previous hearing. This article describes this previously mentioned nurse's responsibility to follow the standard of conduct of a "reasonable and prudent" nurse, and discusses when a nurse must report practice breaches to the Board of Nursing. The Nevada Nurses Association commends the Nevada State Board of Nursing on this informative article that clearly delineates the nurse's role in situations where customary practices are breached and/or patients are harmed. Following emergence of this Hepatitis C cluster, the Nevada Nurses Association obtained permission from the Nevada State Board of Nursing to reprint this excellent and informative article. This reprint will appear in the forthcoming edition of the Nevada RNformation, NNA's quarterly newsletter that is distributed free of charge to every registered and licensed practical nurse in Nevada.

3. In regard to practice or policy changes that might prevent a situation similar to this from recurring in Nevada, the Nevada Nurses Association would recommend that this body revisit changes that were made to NRS 449 during the 18th special session in regard to the provision of legal protections for health

care providers who report unsafe practices to regulatory and/or legal authorities. I have included with my comments a copy of NRS 449.205 – 449.207 for the committee’s review. While this change of legislative language was a very good first step toward protecting those who report unsafe health care practices, the enforcement mechanism of this important legislation is lacking in that health care workers who report such events must seek redress through the court of competent jurisdiction for such relief as may be appropriate under the law. The Nevada Nurses Association would recommend that changes to this statute be considered that would provide a more direct recourse and remedy for health care workers who report unsafe practices.

Thank you again for the opportunity to present to the committee on this very important issue. The Nevada Nurses Association looks forward to continuing to work with this legislative body and with the many key stakeholders on this issue to ensure that patients in Nevada receive safe and effective nursing care. I would be glad to address questions from the committee.

Nevada Revised Statutes - Chapter 449

NRS 449.205 Medical facility prohibited from retaliating or discriminating against certain persons for reporting or participating in investigation or proceeding relating to sentinel event or certain conduct of physician or reporting or refusing to provide nursing services beyond his competence; restriction of right prohibited.

1. A medical facility or any agent or employee thereof shall not retaliate or discriminate unfairly against:

(a) An employee of the medical facility or a person acting on behalf of the employee who in good faith:

(1) Reports to the Board of Medical Examiners or the State Board of Osteopathic Medicine, as applicable, information relating to the conduct of a physician which may constitute grounds for initiating disciplinary action against the physician or which otherwise raises a reasonable question regarding the competence of the physician to practice medicine with reasonable skill and safety to patients;

(2) Reports a sentinel event to the Health Division pursuant to NRS 439.835; or

(3) Cooperates or otherwise participates in an investigation or proceeding conducted by the Board of Medical Examiners, the State Board of Osteopathic Medicine or another governmental entity relating to conduct described in subparagraph (1) or (2).

(b) A registered nurse, licensed practical nurse or nursing assistant who is employed by or contracts to provide nursing services for the medical facility and who, in accordance with the policy, if any, established by the medical facility:

(1) Reports to his immediate supervisor, in writing, that he does not possess the knowledge, skill or experience to comply with an assignment to provide nursing services to a patient; and

(2) Refuses to provide to a patient nursing services for which, as verified by documentation in the personnel file of the registered nurse, licensed practical nurse or nursing assistant concerning his competence to provide various nursing services, he does not possess the knowledge, skill or experience to comply with the assignment to provide nursing services to the patient, unless such refusal constitutes unprofessional conduct as set forth in chapter 632 of NRS or any regulations adopted pursuant thereto.

2. A medical facility or any agent or employee thereof shall not retaliate or discriminate unfairly against an employee of the medical facility or a registered nurse, licensed practical nurse or nursing assistant who is employed by or contracts to provide nursing services for the medical facility because the employee, registered nurse, licensed practical nurse or nursing assistant has taken an action described in subsection 1.

3. A medical facility or any agent or employee thereof shall not prohibit, restrict or attempt to prohibit or restrict by contract, policy, procedure or any other manner the right of an employee of the medical facility or a registered nurse, licensed practical nurse or nursing assistant who is employed by or contracts to provide nursing services for the medical facility to take an action described in subsection 1.

4. As used in this section:

(a) "Physician" means a person licensed to practice medicine pursuant to chapter 630 or 633 of NRS.

(b) "Retaliate or discriminate":

(1) Includes, without limitation, the following action if such action is taken solely because the employee or the registered nurse, licensed practical nurse or nursing assistant took an action described in subsection 1:

(I) Frequent or undesirable changes in the location where the employee works;

(II) Frequent or undesirable transfers or reassignments;

(III) The issuance of letters of reprimand, letters of admonition or evaluations of poor performance;

(IV) A demotion;

(V) A reduction in pay;

(VI) The denial of a promotion;

(VII) A suspension;

(VIII) A dismissal;

(IX) A transfer; or

(X) Frequent changes in working hours or workdays.

(2) Does not include action described in sub-subparagraphs (I) to (X), inclusive, of subparagraph (1) if the action is taken in the normal course of employment or as a form of discipline.

NRS 449.207 Retaliation or discrimination in violation of NRS 449.205: Legal remedy. An employee of a medical facility or a registered nurse, licensed practical nurse or nursing assistant who is employed by or contracts to provide nursing services for the medical facility who believes that he has been retaliated or discriminated against in violation of NRS 449.205 may file an action in a court of competent jurisdiction for such relief as may be appropriate under the law.